

**DATE: 23 June, 2013**

**United States Bankruptcy Court**

**Southern District of New York**

**One Bowling Green,**

**New York, New York 10004-1408**

**Attn: The Honorable Sean H. Lane –United States Bankruptcy Judge**

**Re: ARCAPITA BANK B.S.C.(c), et al., Debtors**

**Chapter 11 Case; Case No. 12-11076 (SHL)**

**RESPONSE TO OPPOSE THE RECLASSIFICATION, REDUCTION, DISALLOWANCE AND/OR EXPUNGEMENT OF  
CLAIMANT'S CLAIM, PURSUANT TO DEBTOR'S SECOND OMNIBUS OBJECTION TO CLAIMS**

**(the "Response")**

**Preamble**

Combined National Industries Holding Company for Energy (the "**Claimant**"), **Investor # 51898**, hereby submits its Response ( the "**Response**") to oppose the reclassification, reduction, disallowance and/or expungement of its **Claim #236**, pursuant to Debtor's Second Omnibus Objection of Claims ; and pursuant to the "**Hearing**" held on April 26, 2013, before the Honorable Sean H. Lane –United States Bankruptcy Judge of the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004-1408 (the "**Bankruptcy Court**").

This Response is timely submitted to the Bankruptcy Court, by the adjourned deadline of **July 01, 2013 at 4.00 PM** (Eastern Time), for the purposes of the adjourned hearing to be held on **July 18, 2013 at 11.00 AM** (Eastern Time, before the Honorable Sean H. Lane –United States Bankruptcy Judge of the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004-1408 (the "**Bankruptcy Court**"). This Response is also timely copied to (i) counsel for the Debtors, (ii) the Office of the United States Trustees for the Southern District of New York, and (iii) counsel for the Official Committee of Unsecured Creditors

## Statement and reasons in support of the Response

### **Background**

- On 25 June 2007, the Claimant, pursuant to a Share Purchase Agreement with the principal promoter Arcapita Bank B.S.C ("**Arcapita**"), subscribed to and committed to invest USD 75,600,000 (6,000,000 shares @ USD 12.60 per share), representing an estimated 20% stake of the Initial Offering of USD 378 million (30,000,000 shares @ USD 12.60 per share) in Arcapita GCC Utilities Development ("**AGUD I**"), an SPV registered in the Cayman Islands, to develop District Cooling and related projects in the GCC. (see **Exhibit A**)
- Other investors in AGUD I included Arcapita and other investors (Arcapita 'stake an estimated 15% and the remaining other investors an estimated 65%)
- During 2011, the Claimant completed all payment tranches, and paid its total commitment in full, i.e. a total of USD 75,600,000.
- In March 2012, Arcapita filed for Bankruptcy under Chapter 11 protection in the US. (US Bankruptcy Court for the Southern District of New York)
- On 26 August 2012, the Claimant filed Claims in subject Bankruptcy Court thru the Claims and Noticing Agent (Garden City Group Inc. ("**GCG**"). (see **Exhibit B**)

### **Subsequent and relevant Events**

- On 12 September, 2012, Arcapita submitted its post-bankruptcy "Investment Status Letter" relating to AGUD I investments; essentially in three JV projects providing approx: 100,000 tons of refrigeration and to operate under the brand name, Paragon Utilities; namely:
  - Bahrain Bay Utilities Co. ("**BBU**") – In Manama, commissioned in July 2011
  - Bahrain Utilities Company II ("**BU2**") – In Al-Areen, substantially completed and expected to be commissioned in late 2012 once the electrical substation is complete.
  - Paragon ABD Cooling ("**ABD**") – In Saadiyat Island, Abu Dhabi – Under Construction

#### **AGUD I Funding:**

- Total Capital (\*) (excluding fees): USD 283.7 representing:
- USD 207.6 invested to date by AGUD I (see below)
- USD 76.1 million unutilized funds of AGUD I deposited at Arcapita Bank (\*),(\*\*)

(\*) Claimant contributed USD 75.6 Million

(\*\*) To be treated as unsecured liability of Arcapita and is subject to the Chapter 11 process

(see **Exhibit C**)

- On 18 December, 2012, Arcapita, in response to related queries from the Claimant, submitted a report outlining the actual uses and flows of funds to and from AGUD I, including the USD 76.1 million unutilized funds of AGUD I deposited at Arcapita Bank.

(see **Exhibit D**)

- Pursuant to Exhibit D, the Claimant is hereby outlining its view of the funding process. (see **Exhibit E**).


**Claimant's Assertion**

The reason for modification and/or disallowance of the Claimant's claim as outlined in Schedule 1 of the Debtor's objection was (...*The Claimant asserts a claim for its equity investments in non-Debtor entities. The Debtors do not have any liability for such interests*...)

However, in view of the above background , related events and Exhibits, the Claimant opposes the reason for modification and/or disallowance of the Claimant's claim as outlined in Schedule 1 of the Debtor's objection, on the grounds that at a least a significant portion of the claim represents a Cash Deposit with the Debtors (Arcapita), for which it is liable.

As such, the Claimant contends that at least the sum of USD 16.7 million (its prorata share of the USD 76.1 million) deposited at Arcapita Bank B.S.C, the Debtors, should be accepted as a legitimate creditor claim being "a cash deposit at the Debtors, to be treated as one of its liabilities", and not "an equity investment".

Sincerely,

 - **IBRAHIM GEORGE QAMAR**  
(BOARD MEMBER)

شركة الصناعات الوطنية  
المشتركة للطاقة القابضة  
Combined National Industries Holding  
Company for Energy

P.P. Salah Al-Tarkait

Chairman – Combined National Industries Holding Company for Energy (**Claimant**)

Claimant's legal representative

Address: P.O.Box: 4323, Safat 13104 - Kuwait

Tel #: x965 – 22322190; x965-97884666

Copied to:

- 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 Mathew K. Kelsey, Esq.)
- ii. The Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21<sup>st</sup> Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.)
- iii. 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.)

**Combined National Industries Holding Company  
for Energy  
Authorized Signatory**



# مكتب الشرق الأوسط للترجمة Middle East Translation Bureau

تلفون : ٢٢٤٠٠٠٥٦ - فاكس : ٢٢٤٠٢٢٢٢ - تقال : ٩٩٦٠٥٣٥٧ - ص.ب : ١٠٨٢ دسمان، الكويت 15461  
Tel. : 22400056 - Fax : 22403332 - Mobile : 99605357 - P.O.Box: 1082 Dasman - 15461 Kuwait  
E-mail : metranslate1994@yahoo.com



**Ministry of Social  
Affairs & Labor**  
Labor Department of  
Capital Governorate

## Application

**For Registration - Cancellation -  
Renewal of Authorized Signatory**

**Mr./ Undersecretary of Ministry of Social Affairs & Labor Esq.**

*Greetings,*

Kindly approve/cancel the signatures of the persons whose details are stated here below as authorized signatory on the dealings pertaining to the firm

Business Owner : *Combined National Industries Holding Company for Energy*  
Civil Number : 273125400000  
Commercial Name : *Combined National Industries Holding Company for Energy*

**Seal Specimen**

[Stamp of Combined  
National Industries Holding  
Company for Energy]

Name of Authorized Signatory : *Salah Abdulwahab Mohammed Al-Tarkait*  
Civil Number : 251112300792 Nationality: **Kuwaiti**

**Signature Specimen**

*(Signed)*

### Attestation of Competent Authority

[ Attestation by Kuwait Chamber of  
Commerce & Industry - 30/9/2012 ]

### For Official Use

*Seal & Signature are Approved*

*(Signed)*

*Ali Essa Dashti*

**Business Owners Data Section  
Labor Department of Capital Governorate**

[ Seal of Labor Department  
of Capital Governorate ]

**Director's Signature**  
*(Signed)*





# مكتب الشرق الأوسط للترجمة Middle East Translation Bureau

تلفون : ٢٢٤٠٠٠٥٦ - فاكس : ٢٢٤٠٢٢٢٢ - تقال : ٩٩٦٠٥٣٥٧ - ص.ب : ١٠٨٢ - دسمان، الكويت 15461  
Tel. : 22400056 - Fax : 22403332 - Mobile : 99605357 - P.O.Box: 1082 Dasman - 15461 Kuwait  
E-mail : metranslate1994@yahoo.com

[Reverse Side of Authorized Signatory Application]

[ Logo ]  
Labor Department of  
Farwaniya Governorate

Ministry of Social Affairs & Labor  
Integrated Systems for Social Affairs & Labor Services

[Emblem of  
State of Kuwait]

## Licenses' Details & Numbers

Business Owner	National Industries Combined for Energy Holding Co.
File Number	273125400000
Internal File Number	41777

Civil No.	Period of Labors Assessment	Starting Date of Labors Assessment	Name of Entity	Issue Date	Expiry Date	Issuing Authority Number	Address Computer No.	Area
2731254	0	3/4/2010	Combined National Industries Holding Company for Energy	12/3/2012	11/3/2016	1337/2006/MOM	17602366	Qiblah

(Signed)

*Ali Essa Dashti*

Business Owners Data Section  
Labor Department of Capital Governorate

[ Seal of Labor Department  
of Capital Governorate ]

Printed on: 16/10/2012

Page 1 of 1

By: U0110109297646



*Kifah Salah*

Certified True and Correct  
Translation of the Attached  
Text in ARABIC



طلب  
تسجيل - إلغاء - تجديد  
مفوض بالتوقيع

وزارة الشؤون الاجتماعية والعمل  
إدارة عمل : العاصمة

السيد / وكلاء وزارة الشؤون الاجتماعية والعمل  
تجربة وطنية ويعد من أهمها العاصمة

يرجى اعتماد / إلغاء توقيع الشهادة التالية بياناتهم المفوضين بالتوقيع على المعاملات الخاصة بالمنشأة

نموذج الختم

شركة الصناعات الوطنية  
المشتركة للطاقة القابضة  
Combined National Industries Holding  
Company for Energy

اسم صاحب العمل: شركة الصناعات الوطنية المشتركة للطاقة القابضة  
الرقم المدني: 273125400000  
الاسم التجاري: شركة الصناعات الوطنية المشتركة للطاقة القابضة

نموذج التوقيع

اسم المفوض بالتوقيع: صلاح عبد الوهاب محمد التركيت

الرقم المدني: 251112300792 الجنسية: كويتي

للاستعمال الرسمي

علي عيسى رشدي  
قسم بيانات أصحاب الأعمال  
إدارة مصلحة مساهمة العاصمة

غرفة تجارة وصناعة الكويت

KUWAIT CHAMBER OF COMMERCE & INDUSTRY

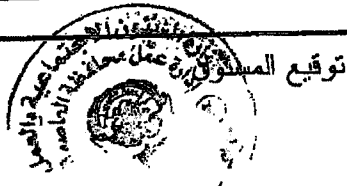
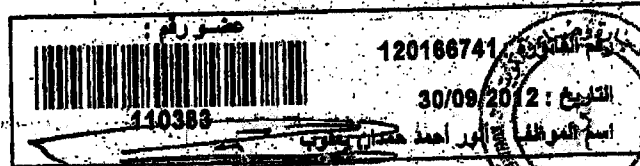


تصديق

على صحة التوقيع / التواقيع وعددها واحد

نطاق التفويض دون تحمل ائني مسؤولية عما تتضمنه هذه الوثيقة

اسم الممثل: شركة الصناعات الوطنية المشتركة للطاقة القابضة ش.م.ك



اسم الموظف وتوقيعه



إدارة عمل مائة المصاحمة

دولة الكويت

وزارة الشؤون الاجتماعية والعمل

النظم المتكاملة لخدمات الشؤون الاجتماعية و العمل



إدارة عمل محافظة العاصمة

شركة الصناعات الوطنية المشتركة للطلاء  
273125400000  
41777

القبضه	17602366	م 2006/1337	11/03/2016	12/03/2012	شركة الصناعات الوطنية المشتركة للطلاء القابضه	03/04/2010	0	2731254
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مديرية العمل  
محافظة العاصمة  
الكويت

بولصلة : 00110109297646

صفحة : 1 من : 1

طبع في : 16-10-2012





# مكتب الشرق الأوسط للترجمة Middle East Translation Bureau

تلفون : ٢٢٤٠٠٠٥٦ - فاكس : ٢٢٤٠٢٣٣٢ - نقال : ٩٩٦٠٥٣٥٧ - ص.ب : ١٠٨٢ دسمان. ١٥٤٦١ الكويت  
Tel. : 22400056 - Fax : 22403332 - Mobile : 99605357 - P.O.Box: 1082 Dasman - 15461 Kuwait  
E-mail : metranslate1994@yahoo.com

[ Emblem of *State of Kuwait* ]

## MINISTRY OF COMMERCE & INDUSTRY

Ref. : 019933

Date : 11 June 2013

### To Whom It May Concern Certificate

The Shareholding Companies Department at the Ministry of Commerce & Industry certifies that the board members of **Combined National Industries Holding Company for Energy (K.S.C)** are as follows:

Mr./ <i>Salah Abdulwahab Mohammed Al-Tarkait</i>	Chairman
Mr./ <i>Mithqal Mohammed Sartawi</i>	Vice Chairman
Mrs./ <i>Catherine Lee Pfeiffer</i>	Member
Mr./ <i>Ibrahim George Qamar</i>	Member
Mr./ <i>Mubashar Hussein Sheikh</i>	Member

This certificate was given upon the Company's request without the least liability on the part of the Ministry.

*Please accept utmost regard,,,*

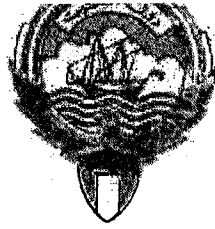
for/ Undersecretary of Ministry of  
Commerce & Industry

( Signed )

11/6/2012

*Osamah Basheer Al-Mana'e*  
Head of Licenses & Statistics Section

[ Seal of Ministry of Commerce & Industry ]



Ref :

Date :

الإشارة : 019933

التاريخ : 11 JUN 2012

## شهادة لمن يهمل الأمر

تشهد إدارة الشركات المساهمة بوزارة التجارة والصناعة بأن أعضاء مجلس الإدارة

شركة الصناعات الوطنية المشتركة للطاقة القابضة (ش.م.ك) كالتالي :

السيد / صلاح عبد الوهاب محمد التركيت  
رئيس مجلس الإدارة

السيد / د. مقال محمد سرطاوي  
نائب رئيس مجلس الإدارة

السيدة / كاترين لي بفيغير  
عضو مجلس الإدارة

السيد / إبراهيم جورج قمر  
عضو مجلس الإدارة

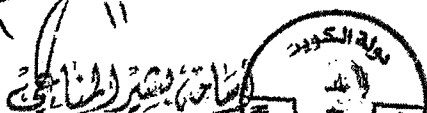
السيد / مبشر حسين شيخ  
عضو مجلس الإدارة

وقد أعطيت هذه الشهادة بناء على طلب الشركة دون أدنى مسؤولية على

الوزارة.

وتفضلوا بقبول خالص التحية،،،

وكيل وزارة التجارة والصناعة



**Exhibit A: Subscription Agreement & April  
2013 Investment Position**



*Share Purchase Agreement*

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I/We hereby irrevocably offer to subscribe for or purchase the number of shares (the 'Shares') specified herein of one or more of the investment companies (each one an 'Investment Company' or collectively, the 'Investment Companies'), acceptance of which, in whole or in part, by way of a Form of Acceptance as set out in Appendix A of the PPM (as hereinafter defined), shall be at the sole discretion of Arcapita Bank B.S.C.(c) ('Arcapita') and the Investment Companies and, if so accepted, shall constitute a binding agreement between me/us and Arcapita, for its own account, and as agent for each seller of the Shares (the 'Seller') and the Investment Companies. I/We understand that I/we must also pay an Arrangement Fee and a Placement Fee as set out herein and as described in the Private Placement Memorandum relating to the Offering of Shares in respect of indirect investments in Arcapita GCC Utilities Development I ("AGUDI") dated July 2007 (the 'PPM'). I/We acknowledge that the Offering is subject to the terms and conditions set forth herein and in the PPM and is further subject to the Memorandum and Articles of each Investment Company in which I am/we are allocated Shares. I/We understand that capitalized terms used and not otherwise defined herein have the respective meanings ascribed thereto in the PPM. I/We agree that the following are continuing representations which will be relied upon by Arcapita, by any Seller of Shares and by the respective Investment Companies. I/We further agree to advise Arcapita promptly of any changes in the facts underlying the representations herein.

I/We understand that the purchase amount for the Shares (the 'Share Purchase Amount') will be payable in four tranches. The first tranche will be 30% of the Share Purchase Amount accepted by Arcapita, and will be payable upon the signing of this Share Purchase Agreement in such amount as Arcapita may notify. The three additional tranches will be payable on or before June 30, 2010 on such dates and in such amounts as Arcapita may notify to me/us, subject to notice of not less than ten (10) business days. By subscribing to purchase the Shares, I/we agree to a right of setoff against, and a continuing security interest in (the "Security Interest"), any and all investment accounts and investments held with Arcapita, including the Shares, to recover from me/us such amounts as may be outstanding for full payment for the Shares. Additionally, legal action may be taken to recover from me/us any such amounts. As part of such Security Interest and for value received, I/we hereby agree to transfer to Arcapita or its designee all Shares as may be issued to me/us pursuant to this Share Purchase Agreement as such Shares are detailed in the Certificate of Acceptance to this Share Purchase Agreement and Arcapita may use this Share Purchase Agreement to exercise such Security Interest and effect the transfer as it may, in its sole discretion, deem appropriate without any further authorization from me/us whatsoever at any time.

In connection with this offer to subscribe for or purchase Shares, I/we represent, confirm and warrant to Arcapita, for its own account and as agent for any Seller of Shares and for each of the Investment Companies, as follows: (a) I/We acknowledge receipt of a copy of the PPM; (b) I/We have, prior to any sale of Shares to me/us, been given access and the opportunity to examine the Principal Documents including the Memorandum, Articles, and Administration Agreement, and the opportunity to ask questions of, and to receive answers from, Arcapita's management concerning the terms and conditions of the offering of Shares or any other matter set forth in the PPM and in the Principal Documents, and to obtain any additional information (to the extent Arcapita possesses such information or can acquire it without unreasonable effort or expense) necessary to verify the accuracy of the information set forth in the PPM; (c) I/We have read and understood the PPM and acknowledge the risk factors set out in the PPM, and that the PPM is not intended to provide investment, tax, legal or accounting advice and that no representation is made with respect to the accuracy or completeness of the financial forecasts or projections set out in the PPM; (d) I/We have reviewed the PPM and the subject investment with such financial, business, legal and tax advisors as I/we have deemed necessary, and have determined that the subject investment is suitable for me/us in light of my/our financial condition and risk preferences; (e) I/We intend to acquire the Shares for investment for my/our own account and not for resale and understand that there is no established secondary market for the Shares and that none is expected to develop; (f) I/We have requisite power and authority, and, if the undersigned offeror is a corporation, partnership, trust, estate or other legal entity, it has been duly organized, is validly existing and in good standing in the jurisdiction of its organization, and has received all requisite corporate or other authorization, in each case if applicable, to make this offer and to subscribe for, acquire or purchase and hold Shares in accordance with the terms hereof and of the PPM; (g) I/We understand and agree that Shares may not be subscribed for or purchased or held by or for the benefit of any Non-Qualified Person (as defined in the PPM) at any time and that a Non-Qualified Person holding Shares, including those held by an otherwise qualified person for the benefit of a Non-Qualified Person, will not be entitled to exercise any voting rights in relation to or derive any economic benefit from such Shares, and that the Articles provide for the compulsory transfer, purchase or redemption, at the election of the respective Investment Companies or the Administrator, of Shares held by or beneficially held for any Non-Qualified Person and I/we represent, confirm and warrant that I/we are not a Non-Qualified Person; (h) I/We acknowledge and agree that the issuance, ownership and transfer of, and other rights and obligations pertaining to the Shares are and will be governed by the Memorandum and Articles of the Investment Companies and the restrictions contained therein, as from time to time amended; (i) I/We hereby certify that (i) I/we understand and agree that the Shares will not be registered or listed in any jurisdiction; (ii) I/we have obtained all necessary authorizations and licenses required in order to offer to subscribe for or purchase and own Shares; and (iii) to the best of my/our knowledge, this subscription for or purchase of Shares by me/us will not violate any securities laws or laws of similar import or any other laws of any jurisdiction.

I/We agree to indemnify Dalkia International S.A. ("Dalkia") and its affiliates, respective directors, officers, employees, agents and professional advisors and/or consultants (collectively, the 'Dalkia Indemnified Parties') and Arcapita and its affiliates and their respective directors, officers, employees, agents and professional advisors and/or consultants (collectively, the 'Arcapita Indemnified Parties') and any senior financier as may be described in the PPM, the Administrator, the Local Administrator, any Seller of Shares, the Investment Companies, their respective directors, officers, employees, agents, and professional advisors and/or consultants (collectively, together with the Dalkia Indemnified Parties and the Arcapita Indemnified Parties, the 'Indemnified Parties') from and against any loss, liability, damage or expense (including, without limitation, reasonable fees and expenses of legal counsel) incurred by any of the Indemnified Parties in connection with any action, suit or proceeding resulting from, arising out of, or relating to, any representation, confirmation, warranty, statement or agreement by the undersigned in this Share Purchase Agreement or otherwise in connection with my/our offer to subscribe for or purchase Shares hereunder. I/We acknowledge that I/we will be solely liable and responsible for the payment of any stamp duties, transfer and other similar taxes imposed in connection with the allotment, purchase or any transfer of the Shares permitted by the Investment Companies or Arcapita, other than duties or taxes, if any, imposed by the Cayman Islands. I/We understand and agree that the laws of the Cayman Islands shall govern this Share Purchase Agreement and the Investment; I/we understand and agree that any litigation or proceeding brought by me/us under or in relation to this Share Purchase Agreement and/or the Investment shall be brought exclusively in the courts of the Cayman Islands. I/We hereby waive any and all rights that I/we may have to transfer or change the venue of any such litigation or proceeding. I/We acknowledge and agree that the Dalkia Indemnified Parties and the Arcapita Indemnified Parties are third party beneficiaries of the Share Purchase Agreement and the above submission to jurisdiction. I/We hereby agree and permit details of this transaction and certain other information pertaining to me/us as an Investor(s) to be released to any regulatory body or other third party in order to comply with any regulatory requirements and the requirements of any counterparties as to their general compliance and 'Know-your-Customer' policies.

Account Number with Arcapita:

Name(s) of Subscriber(s)/ Purchaser(s): **Combined National Industries Co. For Energy**

Nationality:

Occupation:

Address:

Telephone:

Facsimile:

E-Mail:

Payment Arrangement:

(i) Subscription/Purchase Amount \$ **75,600,000**

(ii) Arrangement Fee @ 1%

(iii) Placement Fee @ %

**TOTAL FUNDS TO BE REMITTED (Total of (i), (ii) and (iii) above): \$ 75,600,000**

Please tick one of the two following boxes as to payment of the above sum:

PAYMENT for Shares has been arranged in US Dollars by wire transfer or other reasonable means to an investment account in my/our name at Arcapita which Arcapita may debit for the above sum. The details of the account to which payment is to be made are set out below:

Bank: JP Morgan Chase Bank, New York  
SWIFT Code: CHASUS33  
For account of: Arcapita Bank B.S.C.(c), Bahrain  
SWIFT Code: FIIBBHBM  
Account No: 000400806991

- Please include Subscriber(s)/Purchaser(s) Name, Address and Account Number with Arcapita.
- Prior to transferring the payment, I/we will also arrange for my/our bank to send to Arcapita an authenticated SWIFT message.

In PAYMENT for my/our Shares, please debit my/our investment account with Arcapita for the sum above.

Provided below are the details of my/our normal bank account. I/We confirm my/our understanding that any dividends or other payments made with respect to this investment will be paid to my/our investment account with Arcapita awaiting my/our written instructions and that the adherence to such written instructions may be delayed by insufficient bank details provided by me/us to Arcapita.

All periodic payments (including dividends) payable to me/us should: (TICK ONE BOX)

- Remain in my Investment Account with Arcapita.
- Be transferred to my normal bank account, details of which are below.

Correspondent Bank Name: Account Number:  
SWIFT Code: CHIPS:  
City: Country:  
Telephone: Facsimile:

Account Number with the Correspondent Bank:

Investors' Account Name:

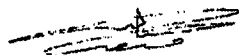
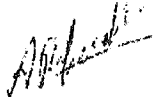
Investors' Account Number:

**IMPORTANT NOTICE:** When transferring funds to Arcapita, please always advise the remitter bank to state the full name and address of the orderer. This is required by international banking laws and failure to comply may result in the transfer of funds being delayed or rejected. If the orderer is not the Subscriber(s)/Purchaser(s), please also advise the remitter bank to state the full name, address and account number with Arcapita of the Subscriber(s)/Purchaser(s). Failure to comply may result in the funds being returned to the remitter bank. Additionally, any changes to the information provided on this form must be notified to Arcapita in writing.

This proxy and appointment of attorney-in-fact is made as a deed on the date below by the undersigned. I/We hereby designate and appoint Arcapita Investment Management Limited, a Cayman Islands company (the "Administrator"), acting in its corporate capacity, through its board of directors or duly authorized representative(s), with full power of substitution, as my/our true and lawful Proxy and Attorney-in-Fact for the purpose of voting and giving written consents in respect of the Shares of the Cayman Islands Investment Companies (the "Investment Companies") described in the Private Placement Memorandum dated July 2007 relating to indirect investments in Arcapita GCC Utilities Development I (the "PPM"), or any shares of any other corporation (the said Investment Companies and any such other corporation hereafter being collectively referred to as the "Entities") which the undersigned receives from any investment Company as (i) a return of share capital and/or contributed surplus, (ii) a redemption of the undersigned's interest in any Investment Company or (iii) as a dividend or other distribution from an Investment Company and further, the undersigned hereby appoints the Administrator to act as agent for receipt of any and all notices with respect to meetings of shareholders of each of the Entities. This Proxy is for any and all matters which may arise at any General or Extraordinary Meeting of shareholders of any of the Entities, and any adjourned and reconvened meeting, and at which such Shares could be voted by shareholders if present in person at such meeting, and for all action that may be taken under the Articles of Association (or any equivalent thereto) of any such Entities by written consent of the shareholders. All notices of proposed Entity shareholder votes (including written consents) will be passed along to the undersigned in advance of the date on which the vote or written consent will occur, as provided in the Articles of Association of the Investment Companies. The undersigned will be entitled to instruct the Administrator how the undersigned's Shares shall be voted in any shareholder vote (including written consents), and the Administrator shall strictly follow any such instructions. If the undersigned falls prior to the time set for the shareholders' vote (including written consents) to give the Administrator such written instructions, the Administrator shall vote the Shares of the respective Entities in such manner as the Administrator, in its sole discretion, believes to be in the best interest of the Entity(ies) in question, except that the Administrator shall not vote the Shares of the undersigned (including by written consent) with respect to the election or removal of any director of any Entity unless the Administrator has received instructions from the undersigned as to how to vote on such matter. This Proxy may be revoked by the registered owner of the Shares herein subscribed for or purchased or of shares of any other Entity by appearing and voting such Shares in person at any meeting of shareholders or by executing as a deed and delivering a subsequently dated Proxy (to the extent of the matters covered by such subsequent Proxy), or by giving written notice, executed as a deed, to the Administrator at its address set forth in the PPM, received by the Administrator at least 48 hours prior to any such meeting or giving of written consent.

IN WITNESS WHEREOF, the undersigned has/have executed this Share Purchase Agreement, Proxy and Appointment of Attorney-in-Fact  
AS A DEED:

In the presence of:

Investor's Signature	Witness Signature	Date and place of execution
Name: Dr. Mithqal Sartawi	Name: Amer R. Khan	25 June 2007
Title: Chairman	Title: S. Analyst	
Investor's Signature	Witness Signature	Date and place of execution
Name:	Name:	
Title:	Title:	

Please print or type name of all investors; name of witness, date and place of execution; all investors must sign. If signing on behalf of a corporation or other legal entity, also print or type title of person signing. All new investors applying to purchase Shares hereunder must also provide the following "know-your-customer" documents:

- (1) A duly completed and executed Arcapita Investment Account Opening Form; and
- (2) For Corporate Investors:
  - a copy of the Certificate of Incorporation of the company/ or Certificate of Commercial Registration;
  - copies of the Memorandum and Articles of Association of the company;
  - a copy of the register of shareholders of the company;
  - List of Officers/ Directors accompanied with passport copies and secondary identification;
  - copy or copies of the passport(s) of the ultimate beneficial owners of the company certified as true copies by an Arcapita employee.
- For Individual Investors:
  - copy or copies of the passport(s) of each investor certified as true copies by an Arcapita employee;
  - copy or copies of one additional identification document for each investor, comprising any of the following:
    - Government issued identity card
    - Utility bill
    - Driving license
    - Birth Certificate







## PORTFOLIO STATEMENT

Combined National Industries Holding Co. for Energy (K.S.C.)  
Holding

ACCOUNT NUMBER: 2367

As at 30 April 2013

### Portfolio by Investment Type

<u>Investment</u>	<u>Currency</u>	<u>No. of Shares</u>	<u>Cost Value</u>
<b>Infrastructure</b>			
Arcapita GCC Utilities Development I	U. S. Dollars	6,000,000.0000	75,600,000.00

**Exhibit B: Original Claim**

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM

Name of Debtor (Check Only One):  Arcapita Bank B.S.C.(c)  Arcapita Investment Holdings Limited  Arcapita LT Holdings Limited

Case No. 12-11076 12-11077 12-11078

Windstarbine Holdings Limited 12-11079  ABID II Holdings Limited 12-11080  Railinvest Holdings Limited 12-11081  Falcon Gas Storage Company, Inc. 12-11790

Your Claim is Scheduled As Follows:

FILED - 00236  
SDNY  
ARCAPITA BANK B.S.C. (C)  
12-11076 (SHL)

If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. (This scheduled amount of your claim may be an amendment to a previously scheduled amount.) If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claim against the Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is listed as any of DISPUTED, UNLIQUIDATED, or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property):

Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent:

INVESTOR 51898  
ADDRESS ON FILE

Telephone number:  
Email Address:

Court Claim Number:  
(if known)

Filed on: \_\_\_\_\_

**COPY**

Name and address where payment should be sent (if different from above):

COMBINED NATIONAL INDUSTRIES HOLDING CO. FOR ENERGY (K.S.C)  
P.O. Box : 4323, SAFAT 13104 - KUWAIT

Telephone number: (x 965) 22322190, Fax: (x 965) 22409358  
Email Address: ms@kawi.p.kw.com.kw

Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

1. Amount of Claim as of Date Case Filed: \$ 75,600,000

If all or part of the claim is secured, complete item 4.  
If all or part of the claim is entitled to priority, complete item 5.

Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. INVESTOR: CLAIMANT  
Basis for Claim: PAR VALUE OF 66,000,000 .0000 SHARES IN  
(See instruction #2) ARCAPITA GCC UTILITIES DEVELOPMENT I

3. Last four digits of any number by which creditor identifies debtor:  
2 3 6 7

3a. Debtor may have scheduled account as:  
\_\_\_\_\_  
(See instruction #3a)

3b. Uniform Claim Identifier (optional):  
\_\_\_\_\_  
(See instruction #3b)

4. Secured Claim (See instruction #4)  
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff:  Real Estate  Motor Vehicle  Other

Describe: \_\_\_\_\_

Value of Property: \$ \_\_\_\_\_

Annual Interest Rate \_\_\_\_\_ %  Fixed or  Variable (when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ \_\_\_\_\_

Basis for perfection: \_\_\_\_\_

Amount of Secured Claim: \$ \_\_\_\_\_

Amount Unsecured: \$ \_\_\_\_\_

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).  Wages, salaries, or commissions (up to \$11,725\*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. § 507 (a)(4).  Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5). Amount entitled to priority: \$ \_\_\_\_\_

Up to \$2,600\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a) (7).  Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8).  Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)( ): \$ \_\_\_\_\_

\*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)



7. Documents: Attached are redacted copies of any documents that support the claim, including but not limited to, accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain: RELATED DOCUMENTATION ATTACHED FROM ARCAPITA

8. Signature: (See instruction #8) Check the appropriate box.

- I am the creditor  I am the creditor's authorized agent. (Attach copy of power of attorney, if any.)  I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.)  I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: MITHQAL M. SARTAWI

Title: VICE CHAIRMAN

Company: COMBINED NATIONAL INDUSTRIES HOLDING CO. FOR ENERGY (C.S.C.)

Address and telephone number (if different from notice address above):

P.O. BOX 14323

SAFAT 13104

STATE OF KUWAIT

(Signature)

(Date)

August 26, 2012

Telephone number: (x 965) 22322 190 email: msartawi@pbc.com.kw

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571. Modified B10 (GCG) (12/11)

### INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the Debtor, exceptions to these general rules may apply. The attorneys for the Debtors and their court-appointed claims agent, GCG, are not authorized and are not providing you with any legal advice.

PLEASE SEND YOUR ORIGINAL, COMPLETED CLAIM FORM AS FOLLOWS: IF BY MAIL: ATTN: ARCAPITA BANK B.S.C.(c), C/O GCG, P.O. BOX 9881 DUBLIN, OHIO 43017-5781. IF BY HAND OR OVERNIGHT COURIER: ATTN: ARCAPITA BANK B.S.C.(c), C/O GCG, 5151 BLAZER PARKWAY, STE A, DUBLIN, OH 43017. ANY PROOF OF CLAIM SUBMITTED BY FACSIMILE OR EMAIL WILL NOT BE ACCEPTED.

THE GENERAL BAR DATE IN THESE CHAPTER 11 CASES IS AUGUST 30, 2012 AT 5:00 P.M. (PREVAILING EASTERN TIME)  
THE GOVERNMENTAL BAR DATE IN THESE CHAPTER 11 CASES IS SEPTEMBER 17, 2012 AT 5:00 P.M. (PREVAILING EASTERN TIME)

#### Items to be completed in Proof of Claim form

#### Bankruptcy Court Information:

All of these chapter 11 cases other than Falcon Gas Storage Company, Inc. were commenced on March 19, 2012. Falcon Gas Storage Company, Inc. filed its chapter 11 petition on April 30, 2012. You should select the Debtor against which you are asserting your claim from the list provided.

**A SEPARATE PROOF OF CLAIM FORM MUST BE FILED AGAINST EACH DEBTOR.**

#### Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. Please provide us with a valid email address. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

#### 1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

#### 2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to your claim.

#### 3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the Debtor's account or other number used by the creditor to identify the Debtor.

#### 3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the Debtor.

#### 3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

#### 4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

#### 5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a):

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

#### 6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the Debtor credit for any payments received toward the debt.

#### 7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

#### 8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

**Exhibit C: Arcapita Investment Report Sept  
2012**

# ARCAPITA

September 12, 2012

Dr. Mithqal Sartawi  
**Combined National Industries Holding Co. for Energy(K.S.C.) Holding**  
P. O. Box 4323  
Safat 13104  
State of Kuwait

Tel: +965 22322190  
Fax: +965 22409358

Dear Dr. Sartawi,

## **Arcapita GCC Utilities Development I ("AGUD I")**

We are writing to provide you with an update on your investment in Arcapita GCC Utilities Development I ("AGUD I"), a portfolio of joint venture projects between Arcapita and Dalkia that build, own, and operate ("BOO") a range of utilities services, principally district cooling, and wastewater treatment projects in the GCC region.

### **INVESTMENT OVERVIEW**

AGUD I has invested in three joint venture projects under development: Bahrain Bay Utilities Company ("BBU"), Bahrain Utilities Company II ("BU2"), and Paragon ABD Cooling LLC ("ABD"). Collectively, the three projects will provide an installed capacity in excess of 100,000 tons of refrigeration to their respective end-users. The three projects will operate under the brand name Paragon Utilities.

- BBU will provide utilities services on a BOO basis to Bahrain Bay, a \$2.5 billion landmark waterfront real estate project in north Manama. The plant was commissioned in July 2011.
- BU2 will provide utilities services on a BOO basis to Al Areen, a \$1.0 billion mixed-use residential and leisure development under construction in southwest Bahrain. Commissioning is expected during late 2012 once the electrical substation is complete.
- ABD will provide utilities services on a BOO basis to Saadiyat Island, a \$27 billion, mixed-use real estate development under construction near the city of Abu Dhabi. The EPC award for two (of three) ABD plants has been awarded to ADC Energy Systems and construction has commenced. The ABD plants are expected to be completed in 2014.

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**ARCAPITA BANK B.S.C. (c)** P.O. Box: 1406, Manama - Kingdom of Bahrain Telephone: +973 17 218333 Facsimile +973 17 217555 [www.arcapita.com](http://www.arcapita.com)

مصرف أركابيتا، من مصرف البحرين المركزي لتقديم الخدمات المصرفية الإسلامية للشركات  
Licensed as an Islamic wholesale bank by the Central Bank of Bahrain

**Debtor in Possession**

# ARCAPITA

In preparation for a potential exit, the joint venture is branding the three projects under a common name, Paragon Utilities. A strong brand will reinforce the portfolio's commitment to the region, facilitate the sourcing of new strategic investors, and improve the positioning of the AGUD I assets at exit.

## AGUD I FUNDING

A total of \$207.6 million has been invested to date by AGUD I in the three portfolio companies, out of a total of \$283.3 million in capital, excluding fees. Below is a summary of the total funding position of the AGUD I portfolio.

The total capital expenditure for the three projects is \$332.4 million with a total funding requirement of \$302.6 million (net of internally generated cash flows). The figures below assume a project financing facility of approximately \$23.5 million (net of financing expenses) will be raised for ABD in 2013. The remaining \$279.1 million required will be financed with equity capital: 85% by AGUD I and the remaining 15% by Dalkia.

Based on the figures below, AGUD I will need to fund an additional \$29.6 million in to complete the three projects. As of August 2012, \$2.4 million in Murabaha facilities was provided to AGUD I from Arcapita Bank to meet AGUD I's equity commitments to the three projects. Refer to the AGUD I Deposit section for additional details. The Murabaha financing will lower the AGUD I funding requirement to \$27.2 million.

### EXHIBIT 1

#### SUMMARY AGUD I FUNDING (USD MILLIONS)

Project Size	\$332.4
- Cash Generated by Projects	29.9
= Net Funding Requirement	302.6
- Bank Financing	23.5
= Equity Financing	279.1
Dalkia Commitment (15% of Equity)	41.9
AGUD I Commitment (85% of Equity)	237.2
AGUD I Equity Funding (as of August 2012)	207.6
= AGUDI Funding Remaining (Before the \$2.4 million in Murabaha Financing)	\$29.6

## AGUD I Ownership

Arcapita Bank and affiliates own 15.2% of AGUD I and investors own the remaining 84.8% of the portfolio. The AGUD I ownership stakes were being revised as at the date of this report and the figures shown reflect the expected ownership stakes assuming the revisions are fully implemented.

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ARCAPITA BANK BS.C. (c) P.O. Box: 1406, Manama - Kingdom of Bahrain Telephone: +973 17 218333 Facsimile +973 17 217555 [www.arcapita.com](http://www.arcapita.com)

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# ARCAPITA

## AGUD I Deposit

In addition to the \$207.6 million invested to-date, AGUD I has unutilized funds deposited at Arcapita Bank (the "Deposit") of \$76.1 million excluding fee reserves.<sup>1</sup>

In June 2010, the last of three capital calls was requested from investors. Funds received from this capital call were primarily intended to be used to execute ABD in Abu Dhabi, and to a lesser extent, to complete BBU and BU2 located in Bahrain. All such funds are held at Arcapita on account for AGUD I and have been drawn down as necessary to provide for project funding as required.

On March 19, 2012, Arcapita filed to reorganize its business through the Chapter 11 process in the United States. The AGUD I deposit is treated as an unsecured liability of Arcapita and the repayment of the amount will be subject to the Chapter 11 process.

Arcapita is working closely with its advisors to justify continued funding of the AGUD I projects in line with its commitments. Should such funding from Arcapita not be agreed with the Unsecured Creditor's Committee and approved by the court, AGUD I would be obliged to seek alternate sources of funding in order to meet its contractual obligations and avoid loss of value. Any funding approved would likely take the form of Murabaha facilities from Arcapita to AGUD I, until such time as the matter of the AGUD I deposit can be resolved through the Chapter 11 process. As of August 2012, Arcapita Bank provided a total of \$2.4 million in Murabaha facilities to AGUD I to meet its equity commitments in the projects.

## AGUD I PROJECT HIGHLIGHTS

- Strong joint venture partner in Dalkia, one of the world's leading energy services firms, with over 800 district cooling and heating projects globally.
- Multi-decade contracts with monopoly status supporting relatively low-risk returns despite real estate construction delays due to the financial crisis.
- Strong government support for the projects in both Bahrain and Abu Dhabi; TDIC, the master developer of Saadiyat Island, is 100% owned by the government of Abu Dhabi.
- Customer consumption fees are designed to ensure that plants can operate at an EBITDA positive level even at low overall demand levels.

<sup>1</sup> In Arcapita's chapter 11 filings, District Cooling Capital Limited, the transaction holding company for AGUD I, was listed as a creditor to Arcapita for an amount totaling \$110 million. This figure was incorrect, and the actual amount of cash which District Cooling Capital Limited placed on deposit with Arcapita and is subject to the chapter 11 process is \$82.2 million.

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# ARCAPITA

## **BBU PROGRESS**

### *Bahrain Bay Development Progress*

The development of the core infrastructure and sub-developments in the Bahrain Bay Development continues to progress well. The Arcapita Bank headquarters is the first fully operational building in Bahrain Bay and is currently supplied with chilled water directly from the BBU plant. Construction is also commencing or is underway on a number of major sub-developments including the Four Seasons Hotel, Al Baraka Banking Group headquarters and the Cooperation Investment House building. The North Manama causeway has also enjoyed rapid progress.

### *BBU Construction Update*

The BBU plant was successfully commissioned in July 2011. Post-commissioning, the remaining capital expenditures will comprise final completion payments to contractors, BBU's portion of the electricity substation, and energy transfer station costs at customer premises, and will be partially offset by customer payments.

## **BU2 PROGRESS**

### *Al Areen Development Progress*

Although significant investments have been made in some of the key sub-developments of Al Areen, real estate construction remains stalled. Unlike Bahrain Bay, where Arcapita is the real estate provider as well as the utility provider, Arcapita does not control the development progress of the underlying real estate. BU2 is also currently in discussion with potential customers outside of the Al Areen development that could be served from the BU2 district cooling facilities.

### *BU2 Construction Update*

BU2 will start the commissioning process in 2012 once the electrical substation is energized and power is available. Post-commissioning, the remaining capital expenditures will comprise completion payments to contractors, BU2's portion of the electricity substation and energy transfer station costs. The remaining expenditures will be partially offset by customer payments. BU2 is anticipating delayed commissioning and is developing an operating plan to minimize expenses until customer demand ramps up.

## **ABD PROGRESS**

### *Saadiyat Island Development Progress*

The development of the Saadiyat Island infrastructure, including the sewerage systems, electrical grid stations, and water supply systems, is underway. Several sub-developments are in the advanced stage of development. The Park Hyatt and St. Regis developments are complete and are being supplied with chilled water by ABD temporary chillers until the permanent facilities are constructed. TDIC is also progressing with the construction of several anchor developments including museums and residential, beach-front apartments.

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مصارف على ترخيص من مصرف البحرين المركزي لتقديم الخدمات المصرفية الإسلامية للمركبات  
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# ARCAPITA

## *ABD Construction Update*

The definitive agreement between ABD and TDIC was signed in December 2010 and all the conditions precedent were satisfied in January 2011. The engineering, procurement and construction (EPC) contract for the ABD project was awarded to ADC Energy Systems for the first phase of the project. Construction is ongoing on two of three district cooling plants to serve the Saadiyat Island development in Abu Dhabi.

TDIC recently changed its district cooling needs for the Saadiyat Island development. ABD is currently in negotiations with TDIC regarding the long term needs of the Saadiyat Island development. As of August 2012, this is anticipated to result in a district cooling investment about 45% smaller in scale than envisioned in 2010. Figures presented in this letter are consistent with the anticipated changes to ABD.

## **THIRD PARTY INVESTMENT AND RESOLUTION WITH TDIC**

Due to the uncertainty regarding Arcapita's ability to deploy the funds in the Deposit into AGUD1, **Arcapita and Dalikia are in discussions with 3rd party investors to provide the necessary financing to complete ABD. Should 3rd party funds be utilized for this purpose, current AGUD1 investors will be offered the chance to participate in this financing.**

Additionally, in the event that agreement with TDIC not be reached, ABD will seek an exit from the project targeting a full recovery of the capital invested to date to the extent possible.

## **AGUD I EXIT**

Under current projections, it is anticipated an exit from AGUD I will be achieved in 2016.

We would like to take this opportunity to thank you for investing in AGUD I. Should you have any query or require any clarification, please do not hesitate to contact me.

Best regards,



Muhannad Buhindi  
Investment Placement

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مُضاعف على أن يكون من مصرف البحرين المركزي لتقديم الخدمات المصرفية الإسلامية للعملاء  
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**Exhibit D: Arcapita Dec 2012 Letter**



18 December 2012

Mr. Jamal Al-Saleem  
Senior Vice President- Support  
**Combined National Industries Co. for Energy (K.S.C) Holding**  
P.O. Box 4323  
Safat 13104  
Kuwait

Tel: + 965 22322193  
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Dear Mr. Al-Saleem,

**PHC Query: 27 November 2012**

**1. If CNICE /PHC does not wish to participate in the "ABD Secondary Investment", and wish to Exit the ABD Investment: In the event of such Exit, would the proceeds go to AGUD I or the respective Investors? If the Exit proceeds go to AUGD I, will AGUD I make a pro-rata distribution to the respective investors?**

At exit of BBU or BU2, proceeds would flow from the exit to AGUD I, and then to Investors in AGUD I based on their percentage ownership. Please note that It is intended for AGUD I to exit the ABD project as per the current plan described in the ABD Secondary Investment letter dated November 22, 2012. The opportunity to acquire the ABD project should be regarded as a separate investment from AGUD I.

All the proceeds from the sale of the ABD investment will be used by AGUD I to pay down the Murabaha financing provided by Arcapita to AGUD I. Any excess amount will be used to complete the BBU and BU2 projects. Approximately USD 20 million will be required to complete the BBU and BU2 projects.

**2. What expenses have been charged by Arcapita and AGUD I against the funds contributed by the investors (other than the 1% Arrangement Fee per the Subscription Agreement)?**

Fees charged to date are consistent with those described in the AGUD I Private Placement Memorandum (see page 65). As of October 31, 2012 total management fees charged by the Fund was approximately USD 11.0m.

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**3. How much did Daklia contribute to the USD 207.6 million equity? (\*) How much did Arcapita contribute to the USD 207.6 million equity? (\*) How much did other investors (excluding CNICE & PHC) contribute to the USD 207.6 million equity? (\*)**

For the sake of clarity, please find below the details of the AGUD I funding position to date:

- A total of USD 252.4 million has been funded to the project companies to date including USD 214.5 million from AGUD I and USD 37.9 million from Dalkia
- Of the USD 214.5 million from AGUD I, USD 207.6 million was from AGUD I equity investors (i.e. Arcapita and other AGUD I investors), and USD 6.9 million was in the form of Murabaha financing from Arcapita
- Of the USD 207.6 million in equity from AGUD I investors, USD 33.96m was contributed by Arcapita, USD 43.38m million from the Combined National Industries Co. for Energy, and USD 130.26m million from the other investors

**4. Noting that CNICE /PHC have contributed a total of USD 75.6 million towards the equity & unutilized deposit (its full subscribed to 6 million shares @ USD 12.60/share totaling USD 75.6 million, pursuant to the 30,000,000 shares USD 378 million offering), and in view of the above, what CNICE/PHC effective ownership stake in AGUD I? (\*)**

The Combined National Industries Co. for Energy (K.S.C.) Holding's ("CNICE") indirect ownership interest in District Cooling Holding Company Limited ("Holdco") is 20.89%. As you are aware, following your subscription to an indirect investment in the AGUD I, your commitment was used to purchase shares of a Cayman Islands investment company(s) established to allow investors to hold indirect interest in Holdco. Funds were raised from Arcapita's investors, including CNICE, under the terms of the AGUD I Private Placement Memorandum and Share Purchase Agreement. The Arcapita Group (Arcapita and investors in AGUD I) holds an 85% economic interest in the three current Joint Ventures with Dalkia.

**5. How much is CNICE/PHC's portion of the USD 76.1 million unutilized funds of AGUD I deposited at Arcapita Bank? (\*)**

The USD 76.1m (excluding fee reserves) deposit with Arcapita was made by District Cooling Capital Limited, an investment company into which CNICE is directly invested. CNICE's indirect exposure to the deposit described herein amounts to approximately USD 16.70m.

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6. What are the amounts /portions of the total USD 207.6 million invested that have been earmarked to the respective three ventures (BBU, BU2 and ABD)?

Of the USD 214.5 million invested to date (refer to question 3 for additional details) by AGUD I in the three projects: USD 117.2 million has been invested in BBU, USD 76.1 million in BU2, and USD 21.2 million in ABD.

a  
→ + 6.9<sup>b</sup> Mervabate

7. What is the estimated value of the three ventures -including ABD-, bearing in mind that BBU has been commissioned and BU2 is substantially complete?

\$43.32 M  
??

As of March 31, 2012, the value of your equity investment of USD 75,600,000 in AGUD I is USD 52,920,000. This is mainly due to the unsecured claim which is part of the Arcapita Chapter 11 process and does not reflect the sale of ABD currently contemplated and other adjustments to BBU and BU2.

+ Deposit @ Arcapita of 16.70<sup>m</sup>  
(Rest of 75,600,000 !!?)

8. What are the implications of the Arcapita Bank Chapter 11 proceedings, if any, on AGUD I and its three investments / ventures? What are the implications of the Arcapita Bank Chapter 11 proceedings on the USD 76.1 million unutilized funds of AGUD I deposited at Arcapita Bank?

The impact of the Arcapita Chapter 11 proceedings on the AGUD I investment value will depend on the following: (i) the recoverability of the AGUD I Deposit, (ii) the revised terms agreed with TDIC, and (iii) terms negotiated with equity and other financing providers to bridge the resulting funding gap. The outcome of these three factors is not known at this time. The outcome of such factors could impact the current investor valuation negatively. Please note that, AGUD I's deposit with Arcapita is considered an unsecured obligation of Arcapita under Chapter 11. Resolution on the terms of repayment will be part of the negotiations with creditors.

10. (\*) According to your 12 September 2012 Investment Report, it seems that the total Offering of 30,000,0000 totaling USD 378 million was not fully subscribed to. (Kindly note the related comment in subject 12 September 2012 Investment Report: "Arcapita Bank and affiliates own 15.2% of AGUD I and investors own the remaining 84.8% of the portfolio. The AGUD I ownership stakes were being revised at the date of this report and the figures shown reflect the expected ownership stakes assuming the revisions are fully implemented ". Please comment.

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# ARCAPITA

As per our letter dated September 3, 2012 the ownership stakes were being revised and the percentages included in that letter assume the implementation of the revision. To date the proposed revision indicated in the letter is yet to be implemented. Arcapita is currently exploring mechanisms available to implement such revision under the Chapter 11 process. As mentioned in our response 5 above, the deposit is currently owed to District Cooling Capital Limited, a Cayman Islands investment company. The proposed revision would move the exposure of the deposit from the investment company to Holdco, the entity which was intended for originally to be the ultimate beneficiary of the USD 76.1 million deposit. If the revision takes place which will be dependent on the approval of the Chapter 11 courts and the creditors, the percentage holding communicated to you our letter dated September 9, 2012 would hold. However, at the date of this letter, Arcapita and its affiliates hold 16.36% and the investors hold 83.64% of District Cooling Holding Company Limited.

Best regards,



Khalid AL Jassim  
Executive Director

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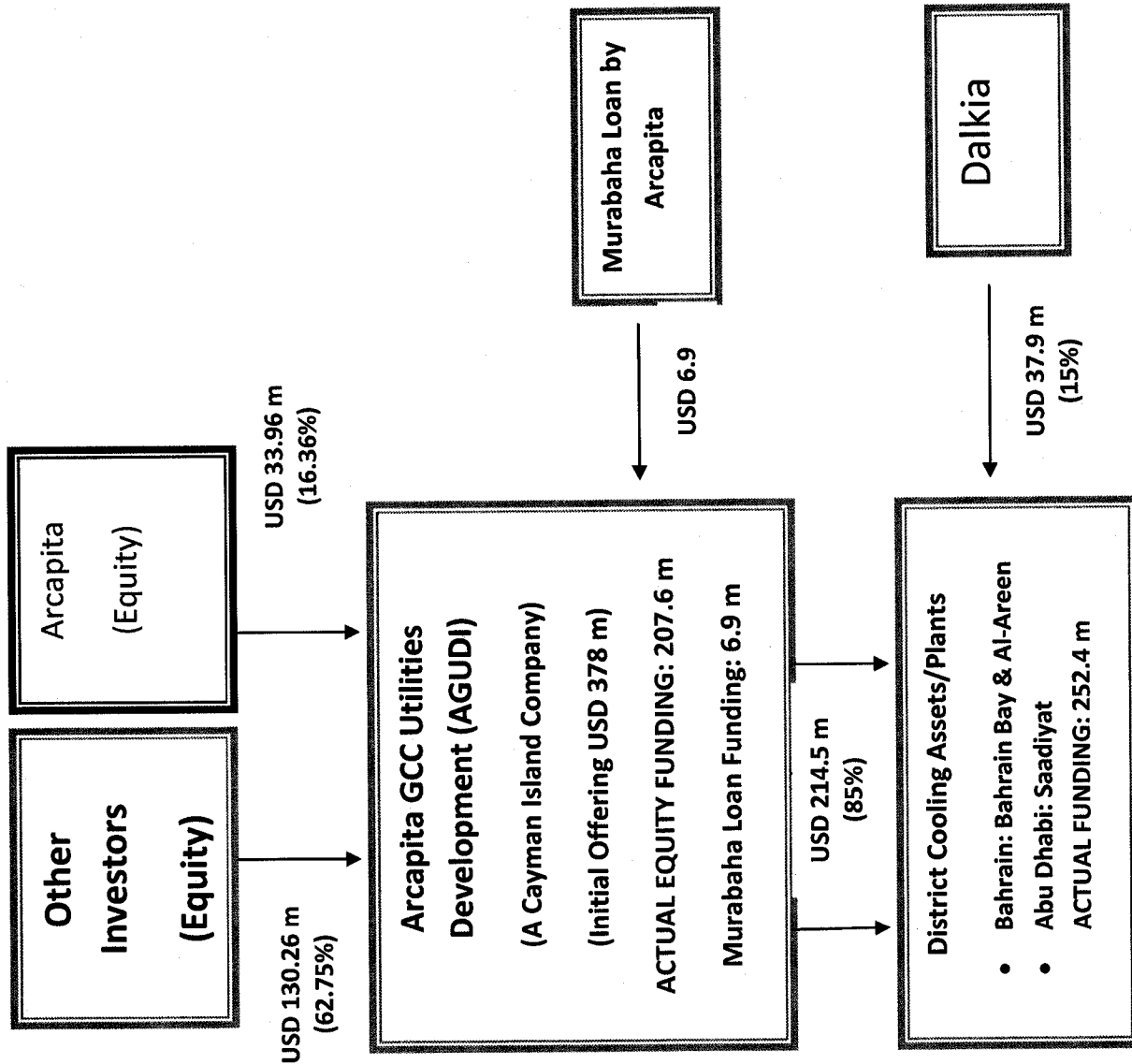
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**Exhibit E: Arcapita GCC Utilities Funding  
Structure**



**Notes (Per Arcapita 18 December Letter):**

- % stakes are those per Letter
- CNICE/PHC amounts are paid
- Amounts paid by others per letter



**CNICE/PHC**  
 Total (Equity) Funding (USD 75.6m)

USD 43.38 m (20.89%)

USD 2.3 m

20.89% share of 11m Fees

**Balance of CNICE/PHC Funding ??**

**13.22 m**

In Cayman Island Holdco or where ?