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

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IN RE:	: Chapter 11
ARCAPITA BANK B.S.C.(c), et al.,	: Case No. 12-11076 (SHL)
Debtors.	: Jointly Administered
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APPELLEES’ COUNTER-DESIGNATION OF ISSUES ON APPEAL OF FINAL ORDER (I) AUTHORIZING DEBTORS (A) TO ENTER INTO AND PERFORM UNDER MURABAHA AGREEMENT, AND (B) TO OBTAIN CREDIT ON A SECURED SUPERPRIORITY BASIS, AND (II) GRANTING RELATED RELIEF

Arcapita Bank B.S.C.(c) (“*Arcapita Bank*”) and certain of its subsidiaries, as debtors and debtors in possession (the “*Debtors*” or the “*Appellees*”), in response to the purported designation of issues on appeal [Docket No. 1345] of Appellant Hani Alsohaibi (the “*Appellant*”) as to the *Final Order Pursuant to 11 U.S.C. §§ 105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(e) and 552 and Bankruptcy Rules 4001 and 6004 (I) Authorizing Debtors (A) to Enter Into and Perform Under Murabaha Agreement, and (B) to Obtain Credit on a Secured Superpriority Basis, and (II) Granting Related Relief* [Docket No. 1304] (the “*Replacement DIP Order*”), hereby counter designate the issues set forth below as those issues properly before the District Court on the appeal of the Replacement DIP Order:

1. Whether an appeal of the *Interim Order Pursuant to 11 U.S.C. §§ 105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(e) and 552 and Bankruptcy Rules 4001 and 6004 (I) Authorizing Debtors (A) to Enter Into and Perform Under Murabaha Agreement, and (B) to Obtain Credit on a Secured Superpriority Basis, (II) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(B) and (C) and (III) Granting Related Relief* [Docket No. 1245] (the “**Interim DIP Order**”) is improper because the Interim DIP Order was not a final appealable order.

2. Whether an appeal of the Interim DIP Order is moot because it was superseded by the entry of the final Replacement DIP Order that is the subject of this appeal.

3. Whether the Appellant has standing to appeal the entry of the Replacement DIP Order where there is no justiciable “case or controversy” because the Appellant did not provide any evidence below of any damages, harm, or other pecuniary loss that he will suffer as a result of the Replacement DIP Order.

4. Whether the Appellant is estopped from objecting to the replacement debtor-in-possession financing (“**DIP Financing**”) appealing the Replacement DIP Order because he did not object to the original DIP Financing, which had substantially the same structure as the replacement DIP Financing, and which was repaid through the replacement DIP Financing.

5. Whether the Appellant may challenge the *Findings of Fact, Conclusions of Law, and Order Confirming the Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors With Respect to Each Debtor Other Than Falcon Gas Storage Company, Inc. Under Chapter 11 of the Bankruptcy Code* [Docket No. 1262] (the “**Confirmation Order**”) in an appeal of the Replacement DIP Order.

6. To the extent the Appellant may challenge the Confirmation Order in this appeal, whether the Appellant has standing to appeal the entry of the Confirmation Order confirming the Debtors' chapter 11 plan of reorganization (the "*Plan*") when he neither (i) voted to accept or reject the Plan, (ii) filed an objection to the confirmation of the Debtors' Plan nor (iii) appeared at the hearing on the confirmation of the Debtors' Plan.

7. To the extent the Appellant may challenge the Confirmation Order in this appeal, whether the Appellant has standing to appeal the entry of the Confirmation Order where there is no justiciable "case or controversy" because (i) the Appellant did not provide any evidence below of any damages, harm, or other pecuniary loss that he will suffer as a result of the confirmation of the Plan, and (ii) the Bankruptcy Court expressly found based on the only evidence in the record that the economic result of the Plan to all stakeholders, including the Appellant, is superior to the result that would be obtained in an immediate liquidation under chapter 7.

8. Whether the Bankruptcy Court's entry of the Replacement DIP Order under section 364 of the Bankruptcy Code was clearly erroneous.

9. Because, prepetition the Debtors accepted funds from certain investors to be invested in a manner that conformed with the principles of Shari'ah, whether section 364 of the Bankruptcy Code requires that the Bankruptcy Court must find that postpetition financing of the Debtors complies with the unsettled and hotly debated moral and religious principles of Shari'ah.

10. Whether the determination by the Debtors' Shari'ah supervisory board that the replacement DIP Financing conformed to the moral and religious principles of Shari'ah may be challenged or overturned by an appeal to the United States Federal Courts.

11. Whether the Bankruptcy Code provides that, for postpetition financing to be approved, the Bankruptcy Court must find that the postpetition financing does not “frustrate the reasonable commercial expectations” of all stakeholders.

12. If the Bankruptcy Code requires that postpetition financing cannot be approved if it “frustrates the reasonable commercial expectations” of all stakeholders, whether the Replacement DIP Order may be overturned on appeal where the Appellant provided no evidence (i) as to the existence of the alleged prepetition expectations of stakeholders, (ii) that those alleged “reasonable commercial expectations” were reasonable, or (iii) that those alleged “reasonable commercial expectations” were in fact frustrated by the Replacement DIP Financing.

Dated: New York, New York
July 29, 2013

Respectfully submitted,

/s/ Craig H. Millet

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