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Attorneys for the Debtors
and Debtors in Possession

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

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IN RE:	:	Chapter 11
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ARCAPITA BANK B.S.C.(c), et al.,	:	Case No. 12-11076 (SHL)
	:	
Debtors.	:	Jointly Administered
	:	
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**DEBTORS’ MOTION FOR ORDER AUTHORIZING THE
DEBTORS TO FILE UNDER SEAL REFERENCES TO
TERMS OF CONFIDENTIAL LUSAIL AGREEMENTS**

Arcapita Bank B.S.C.(c) (“*Arcapita*”) and certain of its subsidiaries, as debtors and debtors in possession (collectively, the “*Debtors*” and each, a “*Debtor*”), submit this motion (the “*Motion*”) for an order pursuant to section 107(b) of title 11 of the United States Code (the “*Bankruptcy Code*”) ¹ and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) authorizing the Debtors and other parties involved in these cases filed under chapter 11 of the Bankruptcy Code (the “*Chapter 11 Cases*”) to: (a) redact various

¹ All statutory references are to the Bankruptcy Code unless otherwise specified.

contracts, leases and agreements (hereinafter, the “**Lusail Agreements**”)² annexed as exhibits to the Debtors’ *Motion Pursuant To Sections 365(d)(3) And 363(b)(1) of the Bankruptcy Code for Authorization for Arcapita to Make Investment to Support the Lusail Joint Venture* (the “**Lusail Motion**”) in the Lusail Motion and other disclosures, applications, motions, and other pleadings (collectively, “**Disclosures**”) filed publicly with the Court (each redacted Disclosure a “**Redacted Disclosure**”); (b) file unredacted copies of such Disclosures (“**Unredacted Disclosures**”) with the Court under seal; and (c) provide Unredacted Disclosures to the Official Committee of Unsecured Creditors (the “**Committee**”) and the United States Trustee for the Southern District of New York (the “**United States Trustee**”). In support of the Motion, the Debtors respectfully represent:

JURISDICTION

1. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On March 19, 2012 (the “**Petition Date**”), Arcapita and five of its affiliates (collectively, the “**Initial Debtors**”) commenced cases under chapter 11 of the Bankruptcy Code. On April 30, 2012, Falcon Gas Storage Co., Inc. commenced a case under chapter 11 of the Bankruptcy Code (along with the cases of the Initial Debtors, the “**Chapter 11 Cases**”). The Debtors are operating their businesses and managing their properties as debtors in possession

² Specifically, the Lusail Agreements consist of: (1) the Share Purchase Agreement (Ex. B to the Lusail Motion); (2) the Lease (Ex. C to the Lusail Motion); (3) the Promise to Sell (Ex. D to the Lusail Motion); (4) the QRE Letter Agreement (Ex. E to the Lusail Motion); and (5) the Land Purchase Agreement, as those terms are defined in the Lusail Motion.

pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On April 5, 2012, the United States Trustee for Region 2 appointed an Official Committee of Unsecured Creditors [Dkt. No. 60] pursuant to sections 1102(a) and (b) of the Bankruptcy Code (previously defined as the “*Committee*”).

3. Founded in 1996, Arcapita, through its Debtor and non-Debtor subsidiaries (collectively, with Arcapita, the “*Arcapita Group*”), is a leading global manager of Shari’ah-compliant alternative investments and operates as an investment bank. Arcapita is not a domestic bank licensed in the United States, nor does it have a branch or agency in the United States, as defined in section 109(b)(3)(B) of the Bankruptcy Code. Arcapita is headquartered in Bahrain and is regulated under an Islamic wholesale banking license issued by the Central Bank of Bahrain (the “*CBB*”). The Arcapita Group employs approximately 265 people and has offices in Atlanta, London, Hong Kong, and Singapore in addition to its Bahrain headquarters. The Arcapita Group’s principal activities include investing for its own accounts and providing investment opportunities to third-party investors in conformity with Islamic Shari’ah rules and principles. The Arcapita Group also derives revenue from managing assets for its third-party investors.

4. The Arcapita Group provides investors the opportunity to co-invest with the Arcapita Group on a deal-by-deal basis across three global asset classes: real estate; infrastructure and private equity; and venture capital. Typically, the Arcapita Group, through its non-Debtor subsidiaries, takes an indirect 10-20% equity stake alongside its third-party investors in non-Debtor holding companies that directly own operating portfolio companies in the United States, Europe and the Middle East. The underlying investments made by the Arcapita Group are generally medium- to long-term projects that have limited value in the short term, and often

require significant on-going capital funding to complete in order to realize the value of the investment.

RELIEF REQUESTED

5. By this Motion, the Debtors seek entry of an order pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, substantially in the form annexed hereto as **Exhibit A** (the “***Proposed Order***”), authorizing the Debtors and other parties involved in these Chapter 11 Cases (including but not limited to parties to the Lusail Agreements) to: (a) redact the Lusail Agreements in any Disclosures filed publicly with the Court; (b) file Unredacted Disclosures with the Court under seal; and (c) provide Unredacted Disclosures to the Committee and the United States Trustee.

BASIS FOR RELIEF REQUESTED

6. Section 107(b) provides, in relevant part, as follows: “On request of a party in interest, the bankruptcy court shall . . . (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . .” 11 U.S.C. § 107(b).

7. Bankruptcy Rule 9018 provides, in relevant part, as follows:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . . contained in any paper filed in a case under the Code....

Fed. R. Bankr. P. 9018.

8. The Second Circuit has held that section 107(b) and Bankruptcy Rule 9018 do “not require that commercial information be the equivalent of a trade secret before protecting such information.” *Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994). In addition, the Second Circuit has held that a party

seeking to seal information is required to show only that the information is confidential and commercial. No showing of “good cause” is necessary, although as set forth below, the Debtors here have demonstrated that good cause does exist. *Id.*

9. By this Motion, the Debtors seek to limit public access to a very narrow set of information: the confidential terms and conditions of the Lusail Agreements. The Debtors’ rationale for the relief requested is compliance with their contractual obligations under the Lusail Agreements. Each Lusail Agreement explicitly requires the parties thereto to maintain the confidentiality of the terms, provisions and conditions thereof, with limited exceptions. Impermissible disclosure of the terms or conditions of the Lusail Agreements could subject the Debtors to liability for breach of the agreements or even impair the Debtors’ continued performance under the Lusail Agreements. Moreover, impermissible disclosure of the confidential terms or conditions of a Lusail Agreement may harm the Debtors’ reputation for preserving confidential information, thus frustrating their ability to enter into future transactions necessary for a successful reorganization. Accordingly, by this Motion, the Debtors seek to protect themselves from potential liability and also preserve their vital business reputation, which goals are also in the best interests of the Debtors’ estates and their stakeholders. Because the same justifications for protecting the confidentiality of the Lusail Agreements also apply to non-Debtors, the Debtors request that non-Debtors also be permitted to file under seal terms of the Lusail Agreements in any Disclosures in these Chapter 11 Cases.

10. The Debtors will share unredacted copies of the Lusail Agreements with the Committee and the United States Trustee soon after the filing of the Lusail Motion (and in any case, well in advance of any objection deadline with respect to the motion). Therefore, public disclosure of the terms of the Lusail Agreements is not necessary to protect the interests of

the Debtors' creditors. Furthermore, any party or member of the public with a compelling interest in learning the terms of the Lusail Agreements may request a further order from this Court. In sum, the relief sought in this Motion is necessary to protect the confidential commercial information of the Debtors and to permit the Debtors to continue to comply with important and valuable third-party contracts and will not impair the ability of this Court to protect the public interest.

NO PRIOR REQUEST

11. No previous motion for the relief sought in this Motion has been made to this or any other Court.

NOTICE

12. No trustee or examiner has been appointed in the Chapter 11 Cases. The Debtors have provided notice of filing of the Motion by electronic mail, facsimile and/or overnight mail to: (i) 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.); (ii) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis Dunne, Esq. and Evan Fleck, Esq.); (iii) counsel to Qatar Islamic Bank, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Marcia L. Goldstein); and (iv) all parties listed on the Master Service List established in these Chapter 11 Cases. A copy of the Motion is also available on the website of the Debtors' notice and claims agent, GCG, at www.gcginc.com/cases/arcapita.

CONCLUSION

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
May 17, 2012

Respectfully submitted,

/s/ Michael A. Rosenthal

Michael A. Rosenthal (MR-7006)

Matthew J. Williams (MW-4081)

Matthew K. Kelsey (MK-3137)

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ATTORNEYS FOR THE DEBTORS AND
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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

**NOTICE OF HEARING ON DEBTORS’ MOTION FOR ORDER AUTHORIZING
THE DEBTORS TO FILE UNDER SEAL REFERENCES TO
TERMS OF CONFIDENTIAL LUSAIL AGREEMENTS**

PLEASE TAKE NOTICE that a hearing on the annexed motion, dated May 17, 2012 (the “*Motion*”) of Arcapita Bank B.S.C.(c) and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the “*Debtors*”) will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court for the Southern District of New York (the “*Bankruptcy Court*”), One Bowling Green, New York, New York, 10004, on **May 31, 2012 at 2:00 p.m. (Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion (the “*Objections*”) shall be filed electronically with the Court on the docket of *In re Arcapita Bank*

B.S.C.(c), et al., Ch. 11 Case No. 12-11076 (SHL) (the “**Docket**”), pursuant to the Case Management Procedures approved by this Court¹ and the Court’s General Order M-399 (available at <http://nysb.uscourts.gov/orders/orders2.html>), by registered users of the Court’s case filing system and by all other parties in interest on a 3.5 inch disk, preferably in portable document format (“PDF”), Microsoft Word, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 on (i) proposed counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, 10166 (Attn: Michael A. Rosenthal, Esq., Matthew J. Williams, 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 of Arcapita Bank *B.S.C.(c), et al.*, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York, 10005 (Attn: Dennis Dunne, Esq. and Evan R. Fleck, Esq.). The proposed deadline for Objections is May 24, 2012 at 2:00 p.m. (Eastern Time) (the “**Proposed Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard.

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

Dated: New York, New York
May 17, 2012

/s/ Michael A. Rosenthal

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ATTORNEYS FOR THE DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:	:	Chapter 11
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ARCAPITA BANK B.S.C.(C), et al.,	:	Case No. 12-11076 (SHL)
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Debtors.	:	Jointly Administered
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**ORDER GRANTING DEBTORS’ MOTION FOR ORDER AUTHORIZING
THE DEBTORS TO FILE UNDER SEAL REFERENCES TO
TERMS OF CONFIDENTIAL LUSAIL AGREEMENTS**

Upon consideration of the motion (the “*Motion*”)¹ of Arcapita Bank B.S.C.(c) (“*Arcapita*”) and certain of its subsidiaries, as debtors and debtors in possession (collectively, the “*Debtors*” and each, a “*Debtor*”), for entry of an order pursuant to Bankruptcy Code § 107 and Bankruptcy Rule 9018, authorizing the Debtors and other parties involved in these cases filed under chapter 11 of the Bankruptcy Code to: (a) redact various contracts, leases and agreements (hereinafter, the “*Lusail Agreements*”)² annexed as exhibits to the Debtors’ *Motion Pursuant To Sections 365(d)(3) And 363(b)(1) of the Bankruptcy Code for Authorization for Arcapita to Make Investment to Support the Lusail Joint Venture* (the “*Lusail Motion*”) in the Lusail Motion and other disclosures, applications, motions, and other pleadings (collectively, “*Disclosures*”) filed publicly with the Court; (b) file unredacted copies of such Disclosures with the Court under seal; and (c) provide unredacted copies of such Disclosures to the Official Committee of Unsecured

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.
² Those agreements comprising the Lusail Agreements are listed in the Motion.

Creditors (the “*Committee*”) and the United States Trustee for the Southern District of New York (“*United States Trustee*”); it appearing that the relief requested in the Motion is appropriate in the context of these cases and in the best interests of the Debtors and their respective estates; the Court having reviewed the Motion and having considered the statements in support of 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 Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is approved to the extent set forth herein.
2. Pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, the Debtors and any other party involved in these Chapter 11 cases (including, but not limited to, parties to the Lusail Agreements) may redact the Lusail Agreements in any Disclosure (defined in the Motion as a “*Redacted Disclosure*”), and serve such Redacted Disclosure on all parties entitled to notice thereof under the Bankruptcy Code, the Bankruptcy Rules or any other applicable order.
3. The clerk of the Bankruptcy Court shall accept for filing under seal an unredacted copy of any Disclosure that is publicly filed in redacted form pursuant to this Order (defined in the Motion as an “*Unredacted Disclosure*”).
4. The Unredacted Disclosure shall be available to the Court, but otherwise shall remain under seal and may not be unsealed until and unless authorized by an order of the Court.
5. The Debtors shall serve a copy of any Unredacted Disclosure, permitted pursuant to this Order, on the Committee and the United States Trustee.

6. The Debtors shall provide a copy of an Unredacted Disclosure as required by an order of this Court or other Court of competent jurisdiction.

7. This Order shall be immediately effective and enforceable upon its entry.

Dated: New York, New York
_____, 2012

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE