

Response Deadline: March 12, 2014 at 4:00 p.m. (prevailing U.S. Eastern Time)  
Hearing Date and Time: March 19, 2014 at 11:00 a.m. (prevailing U.S. Eastern Time)

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*Counsel for the Reorganized Debtors and  
the New Holding Companies*

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

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In re:	:	Chapter 11
	:	
ARCAPITA BANK B.S.C.(c), <u>et al.</u> ,	:	Case No. 12-11076 (SHL)
	:	
Reorganized Debtors.	:	Confirmed
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**NOTICE OF HEARING ON  
OBJECTION TO CLAIM NO. 254**

PLEASE TAKE NOTICE that on February 5, 2014, the above-captioned Reorganized Debtors filed the annexed objection (the “Objection”) to proof of claim no. 254 filed against their predecessors in interest (the “Debtors”) by the joint venture formed by Nass Contracting Co. and Murray & Roberts (the “Claim”).

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Objection 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 on **March 19, 2014 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 that does **NOT** oppose the reduction of the Claim does **NOT** need to file a written response to the Objection and does **NOT** need to appear at the hearing.

PLEASE TAKE FURTHER NOTICE that any party receiving this notice that **DOES** oppose the reduction of the Claim must file and serve a written response to the Objection (a “Response”) so that it is received no later than **March 12, 2014 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 Court, the case number and the title of the Objection; (b) a concise statement setting forth the reasons why the Claim should not be disallowed for the reasons set forth in the Objection, including, but not limited to, the specific factual and legal bases upon which the claimant will rely in opposing the Objection; (c) all documentation or other evidence of the Claim, to the extent not included with the proof of claim previously filed with the Court, upon which the claimant will rely in opposing the Objection; (d) the address to which the Reorganized Debtors must return any reply to any Response, if different from that listed in the claimant's proof of claim; and (e) the name, address, and telephone number of the person (which may be the claimant or the claimant's counsel) 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 it is actually filed on or before the Response Deadline on the docket of *In re Arcapita Bank B.S.C.(c), et al.*, Case No. 12-11076 (SHL), either by (a) electronic filing pursuant to the Case Management Procedures approved by the Court and the Court's General Order M-399 (available at [www.nysb.uscourts.gov/court-info/local-rules-and-orders/general-orders](http://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 Court and General Order M-399, to the extent applicable, or (b) delivering the original Response to the 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 to the Reorganized Debtors, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Lena Mandel, Esq. and Nicholas Kamphaus, Esq.); and (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.).

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

PLEASE TAKE FURTHER NOTICE that any questions about this notice or the Objection should be directed to Garden City Group, Inc., the claims agent retained by the Reorganized Debtors, at 800-762-7029 (toll free), 440-389-7311 (international toll), or email at [ArcapitaBankInfo@gcginc.com](mailto:ArcapitaBankInfo@gcginc.com). CLAIMANTS SHOULD NOT CONTACT THE CLERK OF THE BANKRUPTCY COURT TO DISCUSS THE MERITS OF THEIR CLAIMS.

Dated: February 5, 2014  
New York, New York

**MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP**

/s/ Evan R. Fleck

Dennis F. Dunne

Evan R. Fleck

Lena Mandel

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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), <u>et al.</u> ,	:	Case No. 12-11076 (SHL)
	:	
Reorganized Debtors.	:	Confirmed
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**OBJECTION TO CLAIM NO. 254**

The above-captioned Reorganized Debtors hereby submit, pursuant to section 502(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), an objection to the proof of claim (“Claim No. 254”) filed against Arcapita Bank B.S.C.(c)(“Arcapita Bank”) by the joint venture formed by Nass Contracting Co. and Murray & Roberts (the “Claimant”). This objection is supported by the *Declaration of Scott A. Rinaldi* attached hereto as Exhibit A (the “Rinaldi Declaration”). In further support of this objection, the Reorganized Debtors respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction to consider this objection 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.

### **BACKGROUND**

2. As of the date Arcapita Bank filed for bankruptcy protection (the "Petition Date"), Arcapita Bank and the Claimant were parties to a Construction Contract, dated as of March 1, 2007 (the "Contract") for the construction of the Arcapita Headquarters and a mosque in the Bahrain Bay.

3. Subsequent to the Petition Date, on or around August 15, 2012, Arcapita Bank and the Claimant agreed on the final amount due to the Claimant under the Contract and memorialized this agreement in the Principles of Agreement at Statement of Final Account (the "Proposed Settlement Agreement"). Under the Proposed Settlement Agreement, Arcapita Bank agreed to pay to the Claimant, in full and final satisfaction of all its claims under or related to the Contract BD 1,567,841 (the "Proposed Settlement Amount").<sup>1</sup>

4. Claim No. 254 was timely filed by the Claimant in the Proposed Settlement Amount.

5. Arcapita Bank never obtained this Court's approval of the postpetition Proposed Settlement Agreement and, accordingly, this agreement is not binding on the Reorganized Debtors. Nevertheless, the Reorganized Debtors believe that the terms of the Proposed Settlement Agreement are, generally, reasonable and are willing to abide by such terms. Rinaldi Decl. ¶ 2.

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<sup>1</sup> As of the date of the Proposed Settlement Agreement, the Proposed Settlement Amount was equal to \$4,158,729.40.

6. Paragraph 7 of the Proposed Settlement Agreement states that the Proposed Settlement Amount includes a “provisional sum” of BD 444,600 (which, as of the date of the Proposed Settlement Agreement was equal to \$1,179,310.34) for additional work that, on information and belief, was never performed. Rinaldi Decl. ¶ 3.

**RELIEF REQUESTED**

7. The Reorganized Debtors seek entry of an order in the form attached hereto as Exhibit B allowing Claim No. 254 as a general unsecured claim against Arcapita Bank in the reduced amount of \$2,979,419.10 (i.e., the Proposed Settlement Amount minus the “provisional sum”).

**NOTICE**

8. The Reorganized Debtors have provided notice of the filing of this objection 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.); and (b) the Claimant. The Reorganized Debtors submit that such notice is sufficient and no other or further notice need be provided.

**NO PRIOR REQUEST**

9. No prior request for the relief requested herein has been made to this or any other court.

**CONCLUSION**

WHEREFORE, the Reorganized 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: February 5, 2014  
New York, New York

**MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP**

/s/ Evan R. Fleck \_\_\_\_\_

Dennis F. Dunne

Evan R. Fleck

Lena Mandel

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New York, NY 10005-1413

Telephone: (212) 530-5000

*Counsel for the Reorganized Debtors and  
the New Holding Companies*

**Exhibit A**

**Scott A. Rinaldi Declaration**



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

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	:	
In re:	:	Chapter 11
	:	
ARCAPITA BANK B.S.C.(c), <u>et al.</u> ,	:	Case No. 12-11076 (SHL)
	:	
Reorganized Debtors.	:	Confirmed
	:	
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**DECLARATION OF SCOTT A. RINALDI  
IN SUPPORT OF OBJECTION TO CLAIM NO. 254**

Pursuant to 28 U.S.C. § 1746, I, Scott A. Rinaldi, hereby declare:

1. I am a Managing Director at FTI Consulting, Inc. ("FTI"), the financial advisor for the above-captioned Reorganized Debtors.

2. In my capacity as Managing Director of FTI, I am authorized to submit this Declaration in support of the Reorganized Debtors' Objection to Claim No. 254 (the "Objection")<sup>1</sup> filed by a joint venture formed by Nass Contracting Co. and Murray & Roberts (the "Claimant").

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon: (a) my personal knowledge; (b) my review, or the review of employees of FTI under my supervision and direction, of the relevant documents, including the Books and Records, the Objection, and the proof of claim filed by the Claimant; and (c) information supplied to me by others at the request of the Reorganized Debtors or their professionals. If called upon to testify, I could and would competently testify to the facts set forth herein.

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<sup>1</sup> All capitalized terms not otherwise defined have the respective meanings ascribed to them in the Objection.

### **QUALIFICATIONS AND BACKGROUND**

4. I have extensive experience with chapter 11 cases and other distressed restructurings, having advised debtors and various other stakeholders in the chapter 11 process for approximately 16 years. Since joining FTI in 1997,<sup>2</sup> I have specialized in all aspects of bankruptcy case administration, including, among other things, claims review and reconciliation, preparation of statements and schedules, noticing and the development of custom solutions to complex case administration and claim reconciliation issues.

5. I received my Bachelor of Arts degree in Finance from Florida State University and an MBA from Indiana University. My business address is 3 Times Square 10<sup>th</sup> Floor, New York, NY 10036.

### **THE OBJECTED CLAIM**

1. On or around August 15, 2012, Arcapita Bank and the Claimant agreed on the final amount due to the Claimant under a prepetition construction contract and memorialized the Proposed Settlement Agreement. Under the Proposed Settlement Agreement, Arcapita Bank agreed to pay to the Claimant, in full and final satisfaction of all its claims under or related to the Contract BD 1,567,841. As of the date of the Proposed Settlement Agreement, this Proposed Settlement Amount was equal to \$4,158,729.40.

2. Arcapita Bank never obtained this Court's approval of the postpetition Proposed Settlement Agreement and, accordingly, counsel has informed me that this agreement is not binding on the Reorganized Debtors. Nevertheless, the terms of the Proposed Settlement Agreement appear to be reasonable.

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<sup>2</sup> I joined Coopers & Lybrand in 1997, which merged in 1998 with Price Waterhouse to become PricewaterhouseCoopers ("PWC"). In 2002, FTI acquired PWC's U.S. Business Recovery Services Division, of which I was a part.

3. Paragraph 7 of the Proposed Settlement Agreement states that the Proposed Settlement Amount includes a “provisional sum” of BD 444,600 (which, as of the date of the Proposed Settlement Agreement was equal to \$1,179,310.34) for additional work that, on information and belief, was never performed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: February 5, 2014  
New York, New York

/s/ Scott A. Rinaldi  
Scott A. Rinaldi

**Exhibit B**

**Proposed Order**

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

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In re:	:	Chapter 11
	:	
ARCAPITA BANK B.S.C.(c), <u>et al.</u> ,	:	Case No. 12-11076 (SHL)
	:	
Reorganized Debtors.	:	Confirmed
	:	
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**ORDER GRANTING RELIEF WITH RESPECT TO  
CLAIM NO. 254**

Upon consideration of (i) the objection to the proof of claim no. 254 (the "Objection") filed by the above-captioned Reorganized Debtors, seeking entry of an order, pursuant to section 502(b) of title 11 of the United States Code, Rule 3007(d) of the Federal Rules of Bankruptcy Procedure and this Court's Claim Objection Procedures Order, reducing Claim No. 245, (ii) the Declaration of Scott A. Rinaldi in Support of the Objection, dated February 5, 2014, filed as Exhibit A to the Objection, and (iii) the presentation of counsel at the hearing held on March 19, 2014; and the Court having jurisdiction to consider the Objection pursuant to 28 U.S.C. §§ 157 and 1334; and venue of this proceeding in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Objection and the opportunity for a hearing being appropriate under the circumstances; and no other or further notice being required; and the Court having determined that the legal and factual bases set forth in the Objection, in the Rinaldi Declaration, and at the hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby:

1. **ORDERED** that the relief requested in the Objection is granted.
2. **ORDERED** that, pursuant to section 502(b) of the Bankruptcy Code, Claim No.

254 is hereby allowed as a general unsecured claim against Arcapita Bank in the amount of \$2,979,419.10.

3. **ORDERED** that GCG is hereby directed to adjust the claims register to reflect all of the provisions of this Order.

4. **ORDERED** that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York  
\_\_\_\_\_, 2014

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THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE