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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. 46**

PLEASE TAKE NOTICE that on April 30, 2014, the above-captioned Reorganized Debtors filed the annexed objection (the “Objection”) to proof of claim no. 46 filed against their predecessors in interest (the “Debtors”) by National Bank of Bahrain B.S.C. (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 **June 10, 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 **June 2, 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@gcgin.com](mailto:ArcapitaBankInfo@gcgin.com). CLAIMANTS SHOULD NOT CONTACT THE CLERK OF THE BANKRUPTCY COURT TO DISCUSS THE MERITS OF THEIR CLAIMS.

Dated: April 30, 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

One Chase Manhattan Plaza

New York, NY 10005-1413

Telephone: (212) 530-5000

*Counsel for the Reorganized 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), <u>et al.</u> ,	:	Case No. 12-11076 (SHL)
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Reorganized Debtors.	:	Confirmed
	:	
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**OBJECTION TO CLAIM NO. 46**

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 (as amended, the “Bankruptcy Rules”), an objection to proof of claim number 46 (“Claim No. 46”) filed against Arcapita Bank B.S.C.(c) (“Arcapita Bank”) by the National Bank of Bahrain B.S.C. (the “Claimant”).<sup>1</sup> This objection is supported by the *Declaration of Samuel E. Star* (the “Star Declaration”) and the *Declaration of Anne Davey* (the “Davey Declaration”), both of which are being filed concurrently with this objection. In further support of this objection, the Reorganized Debtors respectfully represent as follows:

<sup>1</sup> A copy of Claim No. 46 is attached hereto as Exhibit A.

## **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. On August 14, 2012, the Claimant filed Claim No. 46, asserting an unsecured non-priority claim against Arcapita Bank in the amount of \$115,136,846.90 and a secured claim in the amount of \$10,000,000. By Order Granting Debtors' Second Omnibus Objection to Claims [Docket No. 1389], Claim No. 46 was reclassified as a general unsecured claim in the amount of \$125,136,847. The Order also preserved the rights of all parties in interest to object to Claim No. 46 on any other grounds.<sup>2</sup>

3. Claim No. 46 is based on Arcapita Bank's guarantee (the "Guarantee") to the Claimant of the payment of certain obligations of Arcapita Bank's affiliate, Riffa Views B.S.C.(c) ("Riffa Views"), under a Master Murabaha Facility Agreement dated July 30, 2007 (as amended from time to time, the "Murabaha Agreement") up to BD 49,906,331 (approximately \$132,729,604). See Exhibit G to Claim No. 46.

4. The amount guaranteed by Arcapita Bank was increased by \$106,133,859 on February 6, 2011<sup>3</sup> in connection with the Fourth Amendment of the Murabaha Agreement whereby the Claimant's loan to Riffa Views was increased from approximately \$79,348,184 to approximately \$132,729,604, *i.e.* by approximately \$53,381,420. See Claim No. 46 ¶¶ 4, 6.

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<sup>2</sup> By Order dated March 31, 2014 [Docket No. 1910], the Court extended to April 30, 2014 the Claims Objection Bar Date (as defined in the Debtors' confirmed chapter 11 plan of reorganization (the "Plan") [Docket No. 1265]).

<sup>3</sup> The original amount of the Guarantee was BD 10,000,000, or approximately \$26,595,745. See Claim No. 46 ¶ 4.

5. On information and belief, Riffa Views has reached an agreement with a group of its unsecured creditors, including the Claimant, that provides for the full satisfaction, over time, of Riffa Views' obligations to these creditors (the "RV Restructuring"), and that a memorandum of understanding has been executed to reflect the same. The RV Restructuring is expected to be consummated in the immediate future.

### **RELIEF REQUESTED**

6. For the reasons set forth herein, the Reorganized Debtors seek entry of an order in the form attached hereto as Exhibit B disallowing Claim No. 46 in its entirety, or, in the alternative, reducing Claim No. 46 (i) to \$15,920,078.85 (*i.e.*, 15% of the amount by which the Guarantee was increased in February 2011), (ii) by any amount the Claimant recovers as a result of the RV Restructuring, and/or (iii) by any amount the Claimant collects on account of Claim No. 45 (as defined below).

### **OBJECTION**

#### **I. Claim No. 46 Should Be Disallowed Because Its Allowance Would Result in More Than Par Recovery to Claimant**

7. As mentioned above, Riffa Views and certain of its unsecured creditors have reached an agreement with respect to the RV Restructuring, pursuant to which, among other things, the Claimant will receive full recovery on account of its claims under the Murabaha Agreement.

8. Because the RV Restructuring is expected to make the Claimant whole, any additional recovery under the Guarantee would provide the Claimant with more than a par recovery on its claim, which is impermissible under the Bankruptcy Code. See Browning v. Levy, 284 F.3d 761, 778 (6th Cir. 2002) (finding recovery in excess of full recovery

impermissible); In re Lenz, 80 B.R. 528, 530 (Bankr. D. Colo. 1987) (same). Accordingly, Claim No. 46 should be disallowed in its entirety and expunged.

9. Alternatively, if the Court were to allow the Claimant any recovery under the Guarantee, such recovery should be conditioned on the Claimant's binding agreement to assign to reorganized Arcapita Bank any proceeds it receives from the RV Restructuring that are in excess of its claim under the Murabaha Agreement.

**II. Claim No. 46 Should Be Disallowed Because Restructuring of Primary Obligation Without Guarantor's Consent Discharges Guarantee Obligation**

10. There is a well-established common law principle that any alteration of the underlying primary obligation without the consent of such obligation's guarantor discharges the guarantee. See, e.g., United Natural Foods, Inc. v. Burgess, 488 F.Supp.2d 384, 390-91 (S.D.N.Y. 2007) (“any alteration of the terms of an underlying contract, for whose performance a guarantor is bound, and without the guarantor's consent, will release the guarantor from his or her obligations”) (citing White Rose Food v. Saleh, 99 N.Y.2d 589 (2003)).

11. The parties to the RV Restructuring never obtained Arcapita Bank's consent thereto. In fact, reorganized Arcapita Bank, through its asset manager, has objected to the RV Restructuring. Accordingly, because the primary obligations of Riffa Views have been altered without the consent of Arcapita Bank, the Guarantee has been discharged, and Claim No. 46 must be disallowed in its entirety and expunged.

**III. Claim No. 46 Is Not Due And Payable**

12. By the express terms of the Guarantee, Arcapita Bank's obligations thereunder are triggered by a written demand from the Claimant. See Exhibit G to Claim No. 46. While the Claimant had been prevented from serving such a demand on Arcapita Bank by the automatic stay prior to the confirmation of the Plan, the Plan has expressly authorized the holders of

Guarantee Claims (as defined therein), such as the Claimant, to deliver upon reorganized Arcapita Bank “any demand, notice or other document with respect to such Holder’s Guarantee Claims, for the sole purpose of enabling such Holder to trigger [Arcapita Bank’s] payment obligation pursuant to such Guarantee Claim.” See Plan § 9.1.2.

13. On information and belief, no such demand has been made by the Claimant on reorganized Arcapita Bank. Accordingly, Claim No. 46 is not currently due and payable. See, e.g., Citibank, N.A. v. Barclays Bank, PLC, 2013 WL 6153258, \* 8 (S.D.N.Y. Nov. 22, 2013) (stating that “the cause of action ‘accrues when payment is demanded’”) (quoting Stanford Square, L.L.C. v. Nomura Asset Capital Corp., 232 F. Supp. 2d 289, 292 (S.D.N.Y. 2002)).

**IV. Claim No. 46 Should Be Disallowed to Extent Increase in Guarantee Obligation Is Avoidable Pursuant to Section 548 of Bankruptcy Code**

14. In the alternative, Claim No. 46 should be disallowed to the extent the over \$100 million increase of the Guarantee amount in connection with the Fourth Amendment to the Murabaha Agreement is an avoidable transfer pursuant to section 548 of the Bankruptcy Code.

15. Section 548(a)(1)(B) of the Bankruptcy Code provides, among other things, that the debtor in possession may avoid “any obligation . . . incurred by the debtor, that was . . . incurred on or within 2 years before the date of the filing of the petition, if the debtor . . . (i) received less than a reasonably equivalent value in exchange for such . . . obligation; and (ii)(I) was insolvent on the date that . . . such obligation was incurred, or became insolvent as a result of such . . . obligation.” 11 U.S.C. § 548(a)(1)(B). The increase in the Guarantee amount on February 6, 2011 satisfies all of these requirements.

16. First, the \$106,133,859 increase in the Guarantee obligations of Arcapita Bank occurred on February 6, 2011, *i.e.* less than two years prior to Arcapita Bank’s filing for bankruptcy protection.

17. Second, at the time Arcapita Bank incurred this substantial additional obligation under the Guarantee, Arcapita Bank was insolvent. See Star Declaration ¶¶ 9-10. Section 101(32) of the Bankruptcy Code defines the term insolvent as a “financial condition such that the sum of [an] entity’s debts is greater than all of such entity’s property, at a fair valuation . . . .” 11 U.S.C. §101(32)(A). Therefore, “to determine the insolvency of the debtor, the traditional balance sheet test is applied.” Coated Sales, Inc. v. First E. Bank, N.A. (In re Coated Sales, Inc.), 144 B.R. 663, 666 (Bankr. S.D.N.Y. 1992). Given the Negative Investment Value Variance (see Star Declaration), it appears that Arcapita Bank’s liabilities may have exceeded its assets on or about February 11, 2011.

18. Finally, Arcapita Bank received less than reasonably equivalent value for agreeing to an over \$100 million increase in the Guarantee amount. First, the amount by which the Guarantee was increased is twice the amount of new money extended by the Claimant to Riffa Views pursuant to the Fourth Amendment to the Murabaha Agreement. See, e.g., Senior Transeastern Lenders v. Official Comm. of Unsecured Creditors (In re TOUSA), 680 F.3d 1298, 1311 (11th Cir. 2012) (voiding grant of liens by debtor-subidiaries to lenders providing financing to debtor-parent where the “costs of the transaction far outweighed any perceived benefits” and “the potential benefits were nowhere close to its expected costs”); Harrison v. N.J. Cmty. Bank (In re Jesup & Lamont, Inc.), \_\_\_ B.R. \_\_\_, 2014 WL 1245003, \*14 (Bankr. S.D.N.Y. Mar. 26, 2014) (noting that while “[a] finding of reasonably equivalent value does not require an exact equivalent exchange of consideration...the benefit the debtor receives from the transfer must approximate its expected costs”).

19. Second, upon information and belief, Arcapita Bank indirectly owns, through various affiliates, approximately 15% of the equity interests in Riffa Views. See Davey

Declaration ¶ 6. As a 15% owner, Arcapita Bank “would receive only [a 15%] proportion of any profit realized by the use of the loan” and, thus, its agreement to incur an additional more than \$100 million obligation cannot be considered “reasonably equivalent” to the value it was likely to realize through this minority equity interest. Horton v. O’Cheskey (In re Am. Housing Found.), 544 F. App’x. 516, 520 (5th Cir. 2013) (affirming bankruptcy court’s finding that minority general partnership interest did not provide guarantor-debtor with reasonably equivalent value in exchange for incurrence of guarantee).

20. Thus, to the extent the Court is inclined to allow Claim No. 46, at most, it should be allowed in the amount that is reasonably equivalent to the value received by Arcapita Bank, *i.e.* \$15,920,078.85 (or, 15% of the amount by which the Guarantee was increased in February 2011).

**V. Claim No. 46 Should Be Reduced to Extent Court Allows Claim No. 45**

21. In addition to Claim No. 46, the Claimant also filed a timely proof of claim (“Claim No. 45”) against Arcapita Investment Holdings Limited (“AIHL”) on account of a Promise to Sell Shares Agreement dated December 15, 2009 (the “SPA”). The SPA provides, among other things, that, in the event Arcapita Bank failed to meet its obligations under the Guarantee, the Claimant could purchase shares in AIHL’s non-Debtor subsidiary, Waterwarf Holdings Limited (“Waterwarf”) of a value of up to \$10 million. The SPA provides that the Claimant “may, at its sole discretion, elect to deduct or set off from the Purchase Price [of the Waterwarf shares] any amounts due by [Arcapita Bank] to [the Claimant].” SPA ¶ 4.2.2.

22. On April 26, 2013, the Debtors objected to Claim No. 45 on various grounds in the *Debtors’ Second Omnibus Objection to Claims* [Docket No. 1050]. The Court held a hearing on the objection to Claim No. 45 on December 17, 2013, and took the matter under

advisement. See Hr’g Tr. 37:10-14 (Dec. 17, 2013) [Docket No. 1730]. To the extent the Court allows Claim No. 45 in any amount and finds that the Claimant may set off the amounts owed to it by Arcapita Bank under the Guarantee, Claim No. 46 should be reduced dollar for dollar for any such setoff.

**NOTICE**

23. 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**

24. 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: April 30, 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

One Chase Manhattan Plaza

New York, NY 10005-1413

Telephone: (212) 530-5000

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

**Exhibit A**

**Proof of Claim No. 46**



B 10 (Official Form 10) (12/11)

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**7. Documents:** Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running 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:

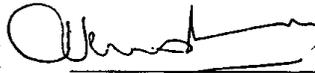
**8. Signature:** (See instruction #8)

Check the appropriate box.

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

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: RAVEENDRA KRISHNAN  
Title: GENERAL MGR., RISK GROUP  
Company: NATIONAL BANK OF BAHRAIN B.S.C.(c)  
Address and telephone number (if different from notice address above):  
PO BOX 106, MANAMA  
KINGDOM OF BAHRAIN 973 17 205652

  
(Signature)

7<sup>th</sup> Aug 2012  
(Date)

Telephone number: \_\_\_\_\_ email: raveendra.krishnan@nbb.com.bh

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.

**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.

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

**Court, Name of Debtor, and Case Number:**  
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

**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. 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 the 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.

*Handwritten initials: CR, CM*

**DEFINITIONS**

**INFORMATION**

**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

**Claim**

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. § 506 (a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. § 507 (a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of 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.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system ([www.pacer.nsc.uscourts.gov](http://www.pacer.nsc.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

**STATEMENT OF PRINCIPAL PLUS INTEREST (AMOUNT OF CLAIM AS OF DATE CASE FILED) AS PER CLAUSE ONE OF PROOF OF CLAIM:**

<b>Amount of claim as of date case filed</b>	<b>Amount In BD</b>	<b>Amount In USD</b>
Principal	46,906,331	124,750,879
Interest	145,124	385,968
<b>Total Due</b>	<b>47,051,455</b>	<b>125,136,847</b>

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

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In re: : Chapter 11  
: :  
Arcapita Bank B.S.C.(c), : Case No. 12-11076 (SHL)  
: :  
Debtor. : (Jointly Administered)  
: :  
.....

**ATTACHMENT TO PROOF OF CLAIM OF NATIONAL BANK OF BAHRAIN B.S.C.**

1. National Bank of Bahrain B.S.C., (the "Claimant") hereby asserts partially secured claim against Arcapita Bank B.S.C.(c) (the "Debtor") arising out of the Debtor's guaranty of a loan made by the Claimant to Riffa Views B.S.C.(c) ("Riffa Views").

2. Prior to the date of the Debtor's bankruptcy filing (the "Petition Date"), the Claimant entered into a Master Murabaha Facility Agreement with Riffa Views (the "Murabaha Facility Agreement"), a copy of which is attached hereto as Exhibit A. Under the terms of the Murabaha Facility Agreement, the Claimant loaned an initial amount of US\$82,000,000 (the "Loan Amount") to Riffa Views for the development of certain real property located in Bahrain. Upon information and belief, the Debtor is the indirect majority owner in Riffa Views.

3. On March 19, 2009, the Claimant and Riffa Views executed an Amendment Agreement (the "First Amendment") whereby the Murabaha Facility Agreement was amended to, among other things, clarify certain terms and definitions, extend the maturity date and defer repayment. A copy of the First Amendment is attached hereto as Exhibit B.

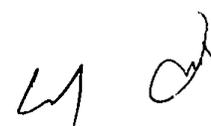
4. On December 15, 2009, the Claimant and Riffa Views executed a Second Amendment Agreement (the "Second Amendment") which provided, among other things, an additional loan amount to Riffa Views in the aggregate amount of BD10,000,000 (approximately

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\$26,595,745 USD) to complete the Riffa Views project. A copy of the Second Amendment is attached hereto as Exhibit C. In connection therewith, the Debtor executed that certain Irrevocable Guarantee to National Bank of Bahrain B.S.C., in which Arcapita, as primary obligor, agreed to guarantee payment by Riffa Views in an amount up to BD10,000,000 (approximately \$26,595,745 USD) plus certain profits, commission, banking charges, legal costs and other expenses, a copy of which is attached hereto as Exhibit D (the “Original Guarantee Agreement”).

5. On June 29, 2010, Riffa Views and the Claimant executed a Third Amendment Agreement which provided, among other things, a further extension of the maturity date. A copy of the Third Amendment is attached hereto as Exhibit E.

6. On February 6, 2011, Riffa Views and the Claimant executed a Fourth Amendment Agreement (the “Fourth Amendment”), which, among other things, provided an additional BD20,000,000 (approximately \$53,191,490 USD) to meet the enhanced cost of construction and converted the currency of the existing loan amount from US Dollars to Bahraini Dinars. A copy of the Fourth Amendment is attached hereto as Exhibit F. Furthermore, given that the overall exposure of the Claimant by Riffa Views was now nearly BD50,000,000 (approximately \$132,978,723 USD), the Debtor and the Claimant executed an additional Irrevocable Guarantee to National Bank of Bahrain whereby the limit on the guaranteed obligations by the Debtor was increased to BD49,906,331 (approximately \$132,729,604) (the “Guarantee Agreement”). By the terms of the Guarantee Agreement, the Guarantee Agreement superseded the Original Guarantee Agreement. Of significance, paragraph 7 of the Guarantee Agreement provided, in part, that “Arcapita obligations shall be primary and not necessarily secondary.” A copy of the Guarantee Agreement is attached hereto as Exhibit G. Thus, the



Guarantee Agreement was intended by the parties to be an indemnity by the Debtor, and such intention is further exhibited in that certain Promise to Sell Agreement, attached hereto as Exhibit H, which provides additional security for the Claimant in the event that the Debtor fails to meet its obligation under the Guarantee Agreement.

7. The Murabaha Facility Agreement defined certain Events of Default upon which the Claimant, could, among other things, demand payment of the loan amount in full from either Riffa Views or the Debtor. Section 12.1.1 provides that non-payment of the agreed profit due on the facility shall constitute an event of default. Section 12.1.14 provides that an event of default is triggered upon a "material adverse change." Furthermore, section 12.1.16 triggers an event of default where there Riffa Views is unable to fund any actual overrun in the costs of completing the project from its own resources or by way of subordinated shareholder loan or equity contribution. Accordingly, on May 29, 2012, the Claimant transmitted a notice of default to Riffa Views (with a copy to the Debtor), advising Riffa Views that certain events of default have occurred and are continuing, a copy of which is attached hereto as Exhibit I.

8. As a consequence of the events of default under the Murabaha Facility Agreement, the Debtor is liable to the Claimant for the full outstanding balance of the loan amount as of the Petition Date (BD47,051,455 or approximately \$125,136,847) and any other remedies provided in the Loan Agreement or the Guaranty, including but not limited to the attorneys' fees and costs incurred by the Claimant in filing this proof of claim.

The Claimant hereby expressly reserves all rights to amend, modify, and/or supplement this proof of claim in any way, including to assert additional claims related to, without limitation, the following: (a) setoff; (b) recoupment; (c) indemnification; (d) subrogation; and (e) any rights

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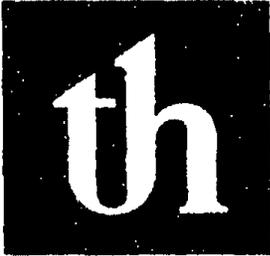
of the Claimant pursuant to a contract or under statutory, regulatory or common law. The filing of this proof of claim is not a waiver or release of the Claimant's rights against any person, entity or property, and nothing contained herein shall limit the right of the Claimant to file any proceeding or take any action concerning the claim in this or any other court.

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**EXHIBIT A**

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EXECUTION COPY

dated 30 July 2007

**NATIONAL BANK OF BAHRAIN B.S.C.**

**(as Seller)**

and

**RIFFA VIEWS B.S.C. (c)**

**(as Purchaser)**

**MASTER MURABAHA FACILITY AGREEMENT**

**th** trowers & hamlins

PO Box 3012

9<sup>th</sup> Floor, The Tower

Sheraton Commercial Complex

Manama

Kingdom of Bahrain

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THIS AGREEMENT is dated 30 July 2007

**BETWEEN:**

- 1 **NATIONAL BANK OF BAHRAIN B.S.C.** of P.O. Box 106, Manama, Kingdom of Bahrain (the Seller); and
- 2 **RIFFA VIEWS B.S.C. (c)** of P.O. Box 3050, Manama, Kingdom of Bahrain (the Purchaser).

(each referred to as a **Party** and collectively referred to as the **Parties**).

**WHEREAS:**

- (A) The Purchaser wishes to deal with the Seller for the purpose of purchasing Commodities in compliance with the principles of Shariah.
- (B) The Purchaser requests that the Seller through its Transaction Agent purchase Commodities and immediately sell them to the Purchaser through its Transaction Agent through Murabaha arrangements in accordance with the terms and subject to the conditions in this Agreement.
- (C) The Parties agree that this Agreement shall be in conformity with the principles of Shariah.

**NOW IT IS HEREBY AGREED** as follows:

1 **Interpretation and Definitions**

1.2 **Definitions**

In this Agreement and the recitals:

**Affiliate** means in relation to any person:

- a any Subsidiary of that person;
- b any Holding Company of that person; and
- c any Subsidiary of that Holding Company;

**Auditor** means KPMG Fakhro, PO Box 710, 5<sup>th</sup> Floor, Chamber of Commerce Building, King Faisal Highway, Manama Kingdom of Bahrain;

**Available Facility** means at any time during the Availability Period, the amount by which the Facility Limit exceeds the aggregate of all Cost Prices under this Agreement in respect of which no corresponding Deferred Sale Prices have yet been paid but adding back for the purposes of such calculation, the Cost Price element of the Deferred Sale Price of any Transaction that is due to be repaid or settled early on or before the Settlement Date of the proposed Transaction;

**Availability Period** means the period commencing on the Effective Date and ending three (3) months before the Final Maturity Date;

**BD** means the lawful currency of the Kingdom of Bahrain;

**Bonds Assignment** means the assignment by way of security over any performance bonds or guarantees in respect of any Key Construction Contract, executed or to be executed by the Purchaser in favour of the Seller in form and substance acceptable to the Seller.

**Broker** means Dawnay, Day & Co Ltd incorporated under the laws of England and Wales of 15 Grosvenor Gardens, London, SW1W 0BD, or any other metals or commodities broker executing trades on the London Metal Exchange or the London Platinum and Palladium Market, which may be substituted in accordance with the provisions set out in clause 5.8;

**Broker Agreements** means any and all agreements, documents, letters or other instruments entered into or issued (or to be entered into or issued) between the Seller, the Purchaser, the Transaction Agent and/or the Broker (or any of them) to record or facilitate transactions in Commodities required under or to be entered into pursuant to, this Agreement;

**Business Day** means a day (other than a Friday, Saturday or Sunday) on which banks are generally open for general business in London and Manama, Kingdom of Bahrain and, in relation to any day upon which a Party is required to make a payment in US Dollars, also in New York City, New York;

**Commodities** means commodities that are segregated, held in allocated accounts, are eligible for trade on the London Metal Exchange or Platinum Group Metals which shall include platinum, palladium, rhodium and iridium and in each case acceptable under Shariah;

**Commodities Title Documents** means, with respect to each Transaction, such documentation evidencing the delivery of title to the relevant Commodities including, without limitation, warrant listings or holding certificates as the case may be;

**Cost Price** means, with respect to each Transaction, the price payable by the Seller (or, as appropriate, by the Transaction Agent on behalf of the Seller pursuant to the Transaction Agency Agreement) to the Broker for the Commodities and as specified in paragraph 2(c) of the relevant Seller Offer;

**Deferred Payment Date** means, with respect to each Transaction, the date on which the Deferred Sale Price is payable to the Seller by the Purchaser which in any event shall be a date no later than the Final Maturity Date and in each case as determined pursuant to clause 4 (*Transaction*) and / or clause 6.1.1 and as specified in paragraph 2(g) of the relevant Seller Offer;

**Deferred Sale Price** means, with respect to each Transaction, the amount payable to the Seller by the Purchaser for the Commodities on the relevant Deferred Payment Date as specified in paragraph 2(e) of the relevant Seller Offer and which shall be the aggregate of the relevant Cost Price and Profit Element;

**DNV Consulting** means Det Norske Veritas Limited a consulting company incorporated in England;

**Early Settlement Event** means each of the events and circumstances set out in clause 8 (*Early Settlement Events*);

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**Effective Date** means the date on which all the conditions precedent set out in Schedule 1 (*Conditions Precedent Documents*) have been satisfied (in form and substance satisfactory to the Seller (acting reasonably)) and/or waived (as the case may be);

**Encumbrance** means any mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;

**Environmental Report** means the report dated 17 November 2005 prepared by DNV Consulting addressed to the Purchaser in relation to the Riffa Views Project;

**Environmental Law** means any applicable law or regulation concerning:

- a the protection of health and safety;
- b the environment; or
- c any emission or substance which is capable of causing harm to any living organism or the environment;

**Event of Default** means any event specified in clause 12 (*Events of Default*);

**Facility** has the meaning given to it in clause 2.1.1;

**Facility Limit** means:

- a during the period commencing on the Effective Date and ending the date falling eighteen (18) months after the Effective Date, up to an initial amount of US\$82,000,000, or
- b during the period commencing on the date falling eighteen (18) months from the Effective Date and ending on the last day of the Availability Period, up to an amount equal to the aggregate of all Deferred Sale Prices outstanding on the first day of such period;

in either case, as reduced or cancelled in accordance with clause 2.1 (*Facility*) and/or otherwise in accordance with the provisions of this Agreement;

**Fee Letter** means the fee letter dated on or about the date of this Agreement and sent by the Seller to the Purchaser pursuant to the terms of which the Purchaser shall pay the fees set out therein;

**Final Maturity Date** means the date falling fifty four (54) months after the Effective Date;

**Financial Indebtedness** means any indebtedness for or in respect of:

- a moneys borrowed;
- b any amount raised by acceptance under any acceptance credit facility;
- c any amount raised pursuant to any note purchase facility or the issue of Sukuk or any similar instrument;

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- d the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease;
- e receivables sold (other than any receivables to the extent they are sold on a non-recourse basis);
- f any amount raised under any other transaction (including any purchase agreement) having the commercial effect of a borrowing;
- g any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- h (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (g) above;

**Financing Reserve Account** means the account maintained with the Seller (as the bank with which the Project Accounts are to be opened and maintained);

**Financing to Value Ratio** has the meaning given to it in clause 10.3.2 a;

**Holding Company** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary;

**IFRS** means international accounting standards, international financial reporting standards and related interpretations, as amended, supplemented, issued or adopted from time to time by the International Accounting Standards Board to the extent applicable to the relevant financial statements;

**Indebtedness** includes any obligation (whether as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

**Intergroup Financing Agreement** means the agreement dated \_\_\_\_\_ made between the Purchaser and Riffa Holding pursuant to which, amongst other matters, Riffa Holding made available certain financial accommodation to the Purchaser, in an aggregate principal amount of BD15,534,833 (or the equivalent in other currencies);

**Key Construction Contracts** means such document, contract or agreement in relation to the Riffa Views Project designated as such by the Parties and references to **Key Construction Contract** shall mean each or any one of them;

**LIBOR** means, with respect to each Transaction, the rate for deposits in US Dollars for the period from the relevant Settlement Date to the relevant Deferred Payment Date (the **Relevant Period**) and for an amount equal to the relevant Cost Price at or about 11 a.m. (London time) on the second (2nd) LIBOR Business Day before the relevant Settlement Date as displayed on Telerate page 3750 (British Bankers' Association Interest Settlement Rates) (or on such other page as may replace such page 3750 on such system or on any other system of an information vendor for the time being designated by the British Bankers' Association to calculate the BBA Interest Settlement Rate (as defined in the British Bankers' Associations Recommended Terms and Conditions dated August, 1985)), provided that if no such rate then appears on such page LIBOR for the Relevant Period, the rate shall be the offered rate for US Dollar deposits quoted to the Seller by leading

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banks in the London Interbank Market at or about 11.00 am (London time) on the second (2nd) LIBOR Business Day before the Settlement Date and for the Relevant Period;

**LIBOR Business Day** means a day (other than a Saturday or Sunday) on which banks are generally open for general business in London and, in relation to any day upon which a Party is required to make a payment in US Dollars, also in New York City, New York;

**Mark-Up Percentage** means, with respect to each Transaction, the aggregate amount equal to the sum of:

- a one decimal five zero per cent. (1.50%) per annum; and
- b LIBOR,

accruing from day to day and calculated on the basis of the actual number of days elapsed in a year of 360 days and as specified in paragraph 2(b) of the relevant Seller Offer;

**Material Adverse Change** means a material adverse change in:

- a the Purchaser's legal form, status, business, operations, performance, property, assets or condition (financial or otherwise);
- b the ability of the Purchaser to perform its obligations under any Transaction Document to which it is a party;
- c the validity or enforceability of any Transaction Document to which the Purchaser is a party (other than as a result of the negligence, bad faith or wilful default by or of the Seller) or the rights and remedies of the Seller;
- d any right or remedy of the Seller in respect of a Transaction Document (other than as a result of the negligence, bad faith or wilful default by or of the Seller); or
- e the development, progress, status, operations, performance and condition of the Riffa Views Project;

**Original Financial Statements** means the audited financial statements of the Purchaser for the financial year ended 31 December 2006, prepared in accordance with IFRS;

**Permitted Disposals** means for the purposes of clause 10.2.5 (*No Disposals*):

- a disposals of assets made in the ordinary course of trading on an arm's length basis;
- b disposals of assets in exchange for, or for cash proceeds which are used within three (3) months of that disposal to acquire, other assets comparable or superior as to type, value and quality;
- c the expenditure of cash in payment for assets or services acquired at market value in the course of its business carried on in compliance with the terms of the Transaction Documents;
- d disposals (whether by way of outright sale, lease, usufruct or otherwise) of all or any Units or all or any part of the Riffa Views Land or any interest of the Purchaser



therein, in accordance with the terms of this Agreement and the Property Mortgage;

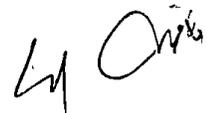
- e the disposal of cash by way of the payment of dividends, in accordance with the terms of this Agreement; and
- f any other disposal made with the prior written consent of the Seller (such consent not to be unreasonably withheld or delayed);

**Permitted Encumbrances** means for the purposes of clause 10.2.1 (*Negative Pledge*):

- a any Encumbrance arising by operation of law (including, without limitation, in connection with Taxes);
- b any Encumbrance arising under any Security Document;
- c any Encumbrance existing as at the date of this Agreement and which has been disclosed in writing to and agreed by the Seller;
- d Encumbrances (including any judgment, attachment, distress or execution) arising in connection with legal proceedings, so long as those proceedings are being contested in good faith and execution is stayed or dismissed within any applicable grace period provided for under the terms of this Agreement;
- e any Encumbrance securing Financial Indebtedness arising out of a title retention or conditional sale provision in a contract for sale or purchase of goods or services entered into by the Purchaser in the ordinary course of trading and on an arm's length basis;
- f any Encumbrance arising out of the rights of consolidation, combination or set-off over any clearing or current or deposit account operated by the Purchaser at its clearing bank;
- g any Encumbrance created in substitution for an Encumbrance permitted under sub-paragraphs (a) to (f) above but only if the principal amount secured and outstanding or capable of being outstanding under that Encumbrance is not greater than that secured by the relevant Encumbrance permitted under sub-paragraphs (a) to (g) above;
- h any Encumbrance securing Financial Indebtedness the principal amount of which (when aggregated with the principal amount of any other Financial Indebtedness which has the benefit of any Encumbrance given by the Purchaser other than any permitted under paragraphs (a) to (f) above) does not exceed US\$10,000,000 (or its equivalent in another currency or currencies);

**Permitted Indebtedness** means for the purpose of clause 10.2.6 (*No Indebtedness*):

- a any indebtedness arising or incurred under the Transaction Documents;
- b any indebtedness incurred on an unsecured basis to or in favour of any Holding Company or Affiliate of the Purchaser (including, without limitation, any indebtedness arising or incurred pursuant to the Intergroup Financing Agreement) which is subordinated to the prior interests of the Seller on terms and conditions



approved by the Seller (such approval not to be unreasonably withheld or delayed);

- c trade payables and contractual obligations to suppliers and customers incurred in the ordinary course of business;
- d any indebtedness arising under finance or capital leases of vehicles, plant, equipment or computers, provided that the aggregate capital value of all such items so leased under outstanding leases by the Purchaser does not exceed US\$5,000,000 (or its equivalent in other currencies) at any time; and
- e any other indebtedness approved in writing by the Seller (such approval not to be unreasonably withheld or delayed);

**Platinum Group Metals** means platinum and/or palladium that is segregated and held in allocated accounts that meet the specifications of the London Platinum and Palladium Market;

**Potential Event of Default** means any event which, with the giving of notice or passage of time or the satisfaction of any other applicable condition, would become an Event of Default;

**Profit Element** means, with respect to each Transaction, the amount equal to the product of the Mark-up Percentage multiplied by the relevant Cost Price and as specified in paragraph 2(d) of the relevant Seller Offer;

**Profit Period** means a period of 1 month, 3 months or 6 months at the option of the Purchaser and with effect from the date falling eighteen (18) months from the Effective Date means successive periods of three (3) months each;

**Project Accounts** means:

- a the Financing Reserve Account; and
- b the Reserve Collection Account;

and Project Account means each and any one of them.

**Project Completion Date** means the date on which:

- a the Seller has received written confirmation from the Project Consultant that all requirements for completion of the Riffa Views Project in accordance with the relevant Key Construction Contracts have been achieved; and
- b all Project Costs that are due and owing have been paid.

**Project Consultant** means the independent project consultant appointed or to be appointed by the Purchaser, *inter alia*, to monitor the progress of construction of the Riffa Views Project, and to advise the Seller of the status of the Riffa Views Project;

**Project Costs** means the development costs of the Riffa Views Project which shall include paying the progress payment invoices of contractors or suppliers and the fees and

expenses due to the consultants and service providers in relation to the Riffa Views Project.

**Property Mortgage** means the first mortgage on the Riffa Views Land executed or to be executed by the Purchaser in favour of the Seller in form and substance acceptable to the Seller;

**Purchase Agreement** means an agreement made pursuant to clause 5.5 (*Purchase Agreement*) between the Purchaser and the Seller for the purchase of the Commodities by the Purchaser from the Seller and includes for the avoidance of doubt, any Purchase Replacement Agreement;

**Purchaser Acceptance** means, with respect to each Transaction, a notice substantially in the form set out in Schedule 4 (*Form of Purchaser Acceptance*) sent by the Purchaser to the Seller (and copied to the Transaction Agent) pursuant to clause 5.3 (*Purchaser Acceptance*), confirming its acceptance of a Seller Offer;

**Purchase Replacement Agreement** means a Purchase Agreement which the Purchaser wants to enter into on a Settlement Date that corresponds to a Deferred Payment Date and in respect of which the Cost Price of the proposed Transaction to which such Purchase Agreement relates is equal to or less than the maturing Deferred Sale Price;

**Revenue Collection Account** means the account maintained with the Seller (as the bank with which the Project Accounts are to be opened and maintained) and operated by the Purchaser into which all Revenues will be deposited by the Purchaser;

**Revenues** means:

- a all revenues accrued and paid to the Purchaser in relation to the operation of the golf course forming part of the Riffa Views Project but excluding any revenues arising in relation to the sale and production of food and beverages; and
- b the Sale Proceeds;

**Riffa Views Land** means the land situated in Bahrain with the title registration numbers (a) 3240/07, (b) 3242/07 and (c) 3244/07;

**Riffa Views Project** means the development of the villas, townhouses and ancillary leisure, commercial and retail facilities adjoining the Riffa Golf Club at Riffa, Kingdom of Bahrain on the Riffa Views Land and known as Riffa Views as the same may be extended or reduced from time to time;

**Sale Proceeds** means all proceeds (after deduction of all costs, fees and expenses properly incurred in connection with such sale) arising from, flowing or otherwise accruing or paid to the Purchaser by any person in connection with a sale by the Purchaser to such person of all or any Units;

**Security Documents** means:

- a the Bonds Assignment;
- b the Property Mortgage; and

such other documents at any time designated as such by the Parties and **Security Document** means each and any one of them;

**Security Period** means the period from the date of this Agreement until all the obligations of the Purchaser under the Finance Documents have been discharged to the satisfaction of the Seller;

**Seller Offer** means with respect to each Transaction a notice, substantially in the form set out in Schedule 3 (*Form of Seller Offer*), sent by the Seller to the Purchaser (and copied to the Transaction Agent) pursuant to clause 5.2 (*Seller Offer*), offering to enter into a Purchase Agreement;

**Settlement Date** means, with respect to each Transaction, the date on which completion of the sale and purchase of the Commodities occurs and the sale price is payable to the Purchaser, or is to occur as specified in paragraph 2(f) of the relevant Seller Offer;

**Shariah** means the rules, principles and parameters of Islamic law;

**Standard Contract** means the standard sale contract for the sale of Units in the form delivered (or to be delivered) to the Seller pursuant to this Agreement;

**Subordination Letter** means a letter in a form agreed between the Seller and Riffa Holding subordinating the rights of Riffa Holding under the Intergroup Financing Agreement to those of the Seller arising under the Transaction Documents;

**Subsidiary** means, in relation to a company, any other company;

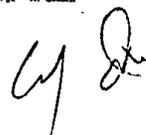
- a which is controlled, directly or indirectly, by the first mentioned company; or
- b more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first mentioned company; or
- c which is a Subsidiary of another Subsidiary of the first mentioned company.

and, for these purposes, a company shall be treated as being controlled by another if that other company is able to direct its affairs and/or to control the composition of its board of directors or equivalent body;

**Tax or Taxes** means any and all present or future taxes or funds including, without limitation, income, profits, sales, use, consumption, excise, transfer, business, value added, unitary and stamp tax, any withholding, assessment, levy, impost, customs and other duty or other charge of a similar nature (including, without limitation, any penalty or damages payable in connection with any failure to pay or any delay in paying any of the same) which may be imposed by the law and/or official practice of any (including any international) jurisdiction or relevant authority therein or thereof in relation to any Transaction Documents and/or the transactions envisaged herein and/or any assets which are the subject matter of any such transaction;

**Tax Credit** means a credit against, relief or remission for, or repayment of any Tax;

**Transaction** means each acquisition of Commodities from the Broker by the Seller (or, as appropriate, by the Transaction Agent as agent of the Seller pursuant to the Transaction Agency Agreement) and the correlating Purchase Agreement entered into between the



Seller (or, as appropriate, by the Transaction Agent as agent of the Seller pursuant to the Transaction Agency Agreement) and the Purchaser pursuant to this Agreement;

**Transaction Agency Agreement** means the agreement dated on or about the date of this Agreement and executed between the Seller and the Transaction Agent pursuant to which, amongst other matters, the Transaction Agent will act as the agent of the Seller for the purpose of undertaking Transactions;

**Transaction Agent** means Arcapita Investment Funding Limited of PO Box 1406, Manama, Kingdom of Bahrain;

**Transaction Documents** means:

- a this Agreement;
- b the Fee Letter;
- c when entered into, each Purchase Agreement;
- d the Security Documents; and
- e the Subordination Letter;

such other documents at any time designated as such by the Parties;

**Transaction Request** means, with respect to each Transaction a notice, substantially in the form set out in Schedule 2 (*Form of Transaction Request*) sent by the Purchaser to the Seller (and copied to the Transaction Agent) pursuant to clause 5.1 (*Transaction Request*) informing the Seller of the Purchaser's intention to purchase Commodities;

**Unit** means a townhouse or villa constructed as part of the Riffa Views Project on or at the Riffa Views Land; and

**US Dollar or US\$** means the lawful currency of the United States of America.

### 1.3 Construction

#### 1.3.1 Any reference in this Agreement to:

- f a **clause** shall, subject to any contrary indication, be construed as a reference to a clause hereof;
- g a **schedule** shall, subject to any contrary indication, be construed as a reference to a schedule hereto;
- h a **person** shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- i the **winding-up, dissolution or administration** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the

law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business;

j **month or months** means a period beginning in one calendar month and ending in the relevant later calendar month on the day numerically corresponding to the day of the calendar month in which it started, provided that (a) if the period started on the last Business Day in a calendar month or if there is no such numerically corresponding day, it shall end on the last Business Day in such later calendar month and (b) if such numerically corresponding day is not a Business Day, the period shall end on the next following Business Day in such later calendar month but if there is no such Business Day it shall end on the preceding Business Day and **monthly** shall be construed accordingly;

k a period of time shall be construed as a reference to a period of time measured by the Gregorian calendar and all profits, rates of return, costs, expenses, commission and fees under the Transaction Documents shall be calculated according to the Gregorian calendar;

l the **Seller** or the **Purchaser** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

m where the day on or by which any act or matter is to be done is not a **Business Day**, that act or matter must be done on or by the preceding **Business Day**; and

n an Event of Default is continuing if it has not been remedied or waived.

1.3.2 Save where the contrary is indicated, any reference in this Agreement to this Agreement or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented.

1.3.3 Periods of time shall be construed by reference to the Gregorian calendar.

1.3.4 clause and schedule headings are for ease of reference only.

## 2 Facility

### 2.1 Facility

2.1.1 Subject to the terms and conditions of the Transaction Documents, the Seller hereby grants to the Purchaser a US Dollar facility (the **Facility**) in an aggregate amount up to the Facility Limit prevailing at that time.

2.1.2 The Purchaser agrees that from the date falling eighteen (18) months from the Effective Date and at three (3) monthly intervals thereafter up to and including the Final Maturity Date the Facility Limit shall automatically reduce by eight decimal three three per cent. (8.33%).

### 2.2 Purpose

2.2.1 The Facility shall be used by the Purchaser to partially fund the Project Costs.

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2.2.2 The Purchaser shall obtain the written approval of the Seller in the event that the Purchaser wishes to utilise the Facility for any purpose other than that set out in clause 2.2.1.

2.2.3 Notwithstanding the foregoing provision:

- a the Seller shall not be obliged to enquire as to the application of the Facility (or any part thereof) or to ensure that it is in fact applied to the purpose set out herein; and
- b the obligations of the Purchaser under the Transaction Documents to which it is party shall not in any way be prejudiced, affected or diminished by reason that all or any part of the Facility are applied to some other purpose (whether or not the Seller has notice of that fact).

### 2.3 Purchase Contract

Subject to the terms and conditions of the Transaction Documents, the Seller (acting through the Transaction Agent as agent for the Seller in accordance with the Transaction Agency Agreement) shall purchase Commodities from the Broker and immediately sell them on to the Purchaser on deferred payment terms, in accordance with the terms and subject to the conditions contained in this Agreement.

## 3 Availability Period and Effective Date

### 3.1 Availability Period

The Purchaser shall be entitled to deliver a Transaction Request under this Agreement on any Business Day during the Availability Period.

### 3.2 Effective Date

The Seller shall promptly inform the Purchaser in writing that the Effective Date has occurred.

## 4 Transaction

4.1 The following limitations shall apply to each Transaction:

4.1.1 no Purchase Agreement will be entered into if the result of entering into that Purchase Agreement would result in the Cost Price payable in respect of that Purchase Agreement when aggregated with any outstanding Cost Prices in respect of all other Purchase Agreements (if any), exceeding the Facility Limit prevailing at that time. A Cost Price will be "outstanding" if the Deferred Sale Price corresponding to that Cost Price is unpaid. However, for the avoidance of doubt, the Cost Price shall not be "outstanding" if the Cost Price element of the Deferred Sale Price is to be paid on the proposed Settlement Date of any relevant Purchase Replacement Agreement;

4.1.2 the Cost Price under each Transaction shall be for a minimum amount of US\$5,000,000 and may not exceed the Facility Limit prevailing at that time;

4.1.3 the Purchaser may select a Deferred Payment Date for a Transaction falling one (1), three (3) or six (6) months from the Settlement Date of such Transaction and with effect from the date falling eighteen (18) months from the Effective Date, falling three (3) months from the

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Settlement Date of such Transaction, or such other period as the Seller may approve, provided that the Deferred Payment Date (i) falls on a Business Day and (ii) does not fall later than the Final Maturity Date:

- 4.1.4 there shall be no more than five (5) Transactions entered into at the same time under this Agreement (unless otherwise agreed by the Seller);
- 4.1.5 the proceeds of any new Transaction may be applied in or towards discharging the payment of any Deferred Sale Price of any Transaction maturing on the Settlement Date of such new Transaction subject to no amount being outstanding later than the Final Maturity Date; and
- 4.1.6 any amount under the Facility that has been prepaid or cancelled by the Purchaser or automatically cancelled pursuant to clause 2.1.2, may not be re-utilised for another Transaction.
- 4.2 Any amount of the Available Facility that is still unutilised at the end of the Availability Period will be cancelled.

**4.3 Further Conditions**

Notwithstanding the provisions of clause 5 (*Implementation*), if:

- 4.3.1 in the case of a Purchase Replacement Agreement, an Event of Default or, in the case of any other Transaction, a Potential Event of Default has occurred and is continuing or would result from the entry into a Purchase Agreement; or
- 4.3.2 the repeating representations and warranties set out in clause 9.1.22 (*Repetition*) are untrue or inaccurate in any material respect on and as of any Settlement Date; or
- 4.3.3 at any time it is unlawful for the Seller to purchase (or procure the purchase by the Transaction Agent of) any Commodities or for the Seller to allow any Deferred Sale Price to remain outstanding in relation to any Commodities; or
- 4.3.4 in the reasonable opinion of the Seller, a Material Adverse Change has occurred; or
- 4.3.5 the Seller is unable to perform its obligations under any Purchase Agreement as a result of any events, circumstances or actions of persons that are outside its control,

then the Seller may notify the Purchaser thereof and shall thereafter cease to be obliged to purchase or sell (or procure the purchase or sale of) the Commodities under this Agreement, notwithstanding the issue of any Seller Offer or Purchaser Acceptance or any other provision of this Agreement.

**5 Implementation**

**5.1 Transaction Request**

- 5.1.1 Notwithstanding any provisions in this Agreement, the Purchaser may enter into a Transaction at any other time as it requires during the Availability Period. The Purchaser shall notify the Seller of the Settlement Date and Cost Price required for the purchase of Commodities by sending a duly executed Transaction Request to the Seller which must be received by the Seller no later than 9.00 am (Bahrain time) four (4) Business Days before

the proposed Settlement Date of the proposed Transaction. The Transaction Request shall specify, *inter alia*:

- a the proposed quantity and description of the Commodities;
- b the Cost Price which shall be no more than the Available Facility as at the proposed Settlement Date;
- c the proposed Settlement Date which shall be a day falling within the Availability Period; and
- d the Deferred Payment Date which shall be a day falling on or before the Final Maturity Date.

5.1.2 If the Purchaser wishes to utilise the Facility on a Deferred Payment Date and the Transaction would involve a Purchase Replacement Agreement then the Transaction Request must specify that it is so given.

5.1.3 Once given a Transaction Request is irrevocable.

## 5.2 Seller Offer

Subject to clause 5.1 (*Transaction Request*), if the details specified in the Transaction Request satisfy the requirements of this Agreement the Seller shall inform the Purchaser of its willingness to enter into a Purchase Agreement by dispatching a Seller Offer at least three (3) Business Days before the Settlement Date. Such Seller Offer will specify, *inter alia*:

- 5.2.1 the quantity and description of the Commodities;
- 5.2.2 the Cost Price;
- 5.2.3 the Profit Element;
- 5.2.4 the Deferred Sale Price;
- 5.2.5 the Settlement Date;
- 5.2.6 the Deferred Payment Date; and
- 5.2.7 the warrant list / holding certificate number of the Commodities;

## 5.3 Purchaser Acceptance

Following receipt by the Purchaser of the Seller Offer, the Purchaser shall be bound immediately, unconditionally and irrevocably to send a Purchaser Acceptance to the Seller. The Seller must receive such Purchaser Acceptance no later than 2.00 pm (Bahrain time) three (3) Business Days before the Settlement Date, confirming, *inter alia*, the details set out in the Seller Offer.

## 5.4 Failure to send Purchaser Acceptance

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If the Purchaser fails to send a Purchaser Acceptance as set out in clause 5.3 (*Purchaser Acceptance*), it shall be deemed to have failed to purchase the Commodities and it shall indemnify the Seller in respect of all actual costs, claims, losses and expenses of whatsoever nature properly suffered or incurred by the Seller as a direct result of such failure (but excluding any consequential losses or loss of opportunity).

**5.5 Purchase Agreement**

As soon as the Purchaser has accepted a Seller Offer by sending a Purchaser Acceptance in accordance with clause 5.3 (*Purchaser Acceptance*), a Purchase Agreement upon the terms of the Purchaser Acceptance and incorporating the terms and conditions of this Agreement shall be created.

**5.6 Payment of Broker**

Subject to the Seller receiving a duly signed Purchaser Acceptance from the Purchaser, the Seller (or, as appropriate, by the Transaction Agent on behalf of the Seller pursuant to the Transaction Agency Agreement) shall, on the Settlement Date, credit the Cost Price to the account of the Broker in accordance with the Payment Letter.

**5.7 Appointment of Seller as Purchaser's Agent**

5.7.1 Provided that a Purchase Agreement has arisen pursuant to clause 5.5 (*Purchase Agreement*), the Purchaser hereby appoints the Seller as its agent and hereby irrevocably instructs the Seller to immediately on sell (or procure that the Transaction Agent shall on sell) the Commodities it has purchased from the Seller (as principal) pursuant to the Purchase Agreement to a third party purchaser on behalf of the Purchaser and to do (or to procure that the Transaction Agent, as its agent, shall do) all acts with such purchaser as fully as the Purchaser could itself do and negotiate with commodity dealers or brokers.

5.7.2 The Purchaser shall fully indemnify the Seller (including its directors, officers, employees, agents, advisors and representatives) on an after-Tax basis in respect of any and all claims, demands, losses, penalties, actions, suits, damages and liabilities of whatsoever nature, other than where such claims arise through the Seller's gross negligence or wilful misconduct, directly relating to or arising out of or in connection with, the Seller acting as the Purchaser's agent, including any actual liabilities, costs, fees or expenses properly paid (or payable) by the Seller to the Transaction Agent in acting as agent of the Seller pursuant to the Transaction Agency Agreement.

**5.8 Additional or Alternative Broker**

5.8.1 If, for any reason whatsoever, the Seller or the Transaction Agent as agent of the Seller under the Transaction Agency Agreement needs to appoint and/or deal with an additional or alternative Broker, the Seller and the Purchaser shall agree on the appointment of an alternative Broker (and each shall act reasonably in reaching such agreement). If no agreement is reached the Seller shall not be obliged to enter into (or to procure that the Transaction Agent shall enter into) any new Transaction with any additional or alternative Broker until such time as it is satisfied with the appointment of any additional or alternative Broker. The Seller shall not be obliged to enter into (or to procure that the Transaction Agent shall enter into) any new Transaction with an additional or alternative Broker until it

is satisfied that such additional or alternative Broker has entered into agreements in form and substance equivalent to the Broker Agreements.

- 5.8.2 The Purchaser acknowledges and agrees that it will indemnify and hold the Seller harmless from any reasonable cost or expense incurred by the Seller in connection with (a) the services performed by the Transaction Agent pursuant to the Transaction Agency Agreement and (b) the selection and appointment of an additional Broker. The Purchaser further acknowledges and agrees that such reasonable cost or expense will be payable upon demand by the Seller.

## 6 Payments

- 6.1 In the event that a Purchase Agreement arises pursuant to clause 5.5 (*Purchase Agreement*), the following provisions shall apply:

- 6.1.1 during the period commencing from the Effective Date, the Purchaser shall be absolutely, unconditionally and irrevocably obliged to pay to the Seller on any Deferred Payment Date:
- a the amount which is the difference between the outstanding Deferred Sale Price and the Facility Limit prevailing at that time;
  - b the amount constituting the Profit Element under the outstanding Deferred Sale Price; and
  - c all other sums expressed or agreed to be payable under this Agreement in respect of the Commodities.

## 7 Certain Terms Applicable to Sale and Purchase of Commodities

### 7.1 Transfer of Title

After a Purchase Agreement has been finalised in accordance with clause 5.5 (*Purchase Agreement*), title to the Commodities shall immediately pass to the Purchaser on the relevant Settlement Date. The Purchaser will obtain such title to the Commodities as the Seller (acting through the Transaction Agent) has received from the Broker and the Seller shall not be deemed to give any warranty or representation whatsoever whether arising by implication, by statute or otherwise and, without prejudice to the generality of the foregoing, any such warranty or representations are hereby expressly excluded to the fullest extent permitted by law.

### 7.2 Assignment of rights

Upon the sale of the Commodities to the Purchaser, the Seller shall be deemed to have assigned to the Purchaser all rights in relation thereto or otherwise arising out of the purchase of the Commodities which have vested in the Seller and the Seller shall, at the expense of the Purchaser, execute such instruments and do such acts as may be necessary or desirable (within the reasonable opinion of the Purchaser) to effect such assignment or otherwise to enable the Purchaser to have the benefit of such rights.

### 7.3 Transfer of Risk

Risk in the Commodities purchased by the Purchaser from the Seller under any Purchase Agreement will pass to the Purchaser at the time when title to the Commodities pass to the Purchaser pursuant to clause 7.1 (*Transfer of Title*).

**7.4 No Warranty**

The Purchaser acknowledges and agrees that all Commodities purchased from the Seller under each Purchase Agreement are sold in "as is, where is" condition with all faults, subject to all applicable laws from time to time.

**7.5 Acceptance of the Commodities**

The Purchaser acknowledges that upon delivery or transfer of title to the Commodities to the Purchaser, the Purchaser shall be deemed to have accepted such Commodities unconditionally and without reservations and shall have no further remedy against the Seller.

**7.6 Delivery and passing of title**

7.6.1 The Purchaser acknowledges and agrees that the physical delivery of the Commodities to the Purchaser shall not be the responsibility of the Seller under any circumstances. Delivery of title to the Commodities shall be effected by the delivery of the Commodities Title Documents to the Purchaser.

7.6.2 The delivery of the Commodities Title Documents shall be made without reference to any set-off or counterclaim and shall be made free and clear of and without any deduction for or on account of any set-off or counterclaim.

**7.7 Waiver of claims**

Without prejudice to clause 7.5 (*Acceptance of the Commodities*), the Purchaser hereby waives any claims which it may have against the Seller in respect of any loss or damage which the Purchaser may suffer by reason of, or arising out of or in connection with, the performance or non-performance of the Broker other than any such claim which it may have in relation to the Seller's failure to transfer the Cost Price through the Transaction Agent under the Transaction Agency Agreement to the account of the Broker pursuant to clause 5.6 (*Payment of Broker*) other than any such claim which it may have in respect of any loss or damage which the Purchaser may suffer or incur as a direct result of the negligence, bad faith or wilful default of the Seller.

**7.8 Indemnity**

Subject to Shariah principles, the Purchaser shall fully indemnify the Seller (including its directors, officers, employees, agents, advisors and representatives) on an after-Tax basis in respect of any and all actual claims, demands, losses, penalties, actions, suits, damages and liabilities of whatsoever nature (in this clause 7.8, *Losses*), properly suffered or incurred by the Seller and directly relating to or arising out of or in connection with, the Seller having taken title to the Commodities or having sold the Commodities to the Purchaser under this Agreement or any Purchase Agreement. This clause 7.8 does not extend to Losses arising as a result of the Seller's gross negligence, bad faith or wilful default.

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8 **Early Settlement**

8.1 **Voluntary Early Settlement**

8.1.1 The Purchaser may during the Availability Period, by notice in writing to the Seller, inform the Seller of its desire to make an early settlement of any Deferred Sale Price, either in full or in part, prior to the relevant Deferred Payment Date (an **Early Settlement Notice**) provided that

- a the minimum amount shall be US\$2,500,000 and in integral multiples of US\$1,000,000 or the outstanding balance of the Facility, if lower;
- b any amount under the Facility that has been prepaid by the Purchaser may not be re-utilised for another Transaction; and
- c any payment made by way of early settlement in accordance with this clause 8 shall be made together with an early settlement fee equal to zero decimal five per cent. (0.5%) of the aggregate amount of any such early settlement payment.

8.1.2 An Early Settlement Notice given by the Purchaser must be given no less than five (5) Business Days prior to the proposed date for the early settlement of the relevant Deferred Sale Price (the **Early Settlement Date**).

8.1.3 An Early Settlement Notice shall be effective only upon receipt by the Seller, shall be irrevocable and shall oblige the Purchaser to pay the relevant Deferred Sale Price in full or in part (as the case may be and as specified in the Early Settlement Notice) on the relevant Early Settlement Date.

8.1.4 Any purported Early Settlement Notice which does not comply with the requirements of clause 8.1.2 shall not be valid and the Seller shall not be obliged to take any notice thereof.

8.2 **Seller Discretion**

8.2.1 Following any early settlement under clause 8.1 (*Voluntary Early Settlement*), the Seller may make a rebate payment to the Purchaser in such amount as it may, in its absolute discretion, determine.

8.2.2 Any provision in this clause 8 (*Early Settlement*) may be waived by the Seller in its absolute discretion.

8.3 **Voluntary cancellation**

The Purchaser may, during the Availability Period, by notice in writing to the Seller, inform the Seller of its desire to cancel the whole or any part (being a minimum amount of US\$2,500,000) of the Available Facility (a **Cancellation Notice**).

Any Cancellation Notice given by the Purchaser must be given not less than five (5) Business Days prior to the proposed date for cancellation.

9 **Representations**

9.1 The Purchaser represents and warrants to the Seller that:

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**9.1.1 Due Incorporation**

it is duly organised, validly existing and in good standing under the laws of the Kingdom of Bahrain with power and authority to carry on its business and enter into each Transaction Document to which it is a party, to own its assets and to exercise its rights and perform its obligations thereunder and all corporate and other action required to authorise its execution of each Transaction Document to which it is a party and its performance of its obligations thereunder has been duly taken;

**9.1.2 *Pari Passu* ranking**

under the applicable laws in force in the Kingdom of Bahrain as at the date of this Agreement, the claims of the Seller against the Purchaser under this Agreement and any Purchase Agreement will rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors save those whose claims are preferred solely by any bankruptcy, insolvency, liquidation or other similar laws of general application;

**9.1.3 Governing Law**

the chosen governing law of Bahraini law for the Transaction Documents and will be recognised and enforced in its jurisdiction of incorporation;

**9.1.4 Necessary acts taken**

all acts, conditions and matters required to be done, fulfilled and performed in its jurisdiction of incorporation in order:

- a to enable it lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by it in the Transaction Documents to which it is a party;
- b to ensure that the obligations expressed to be assumed by it in the Transaction Documents are legal, valid and binding; and
- c to make the Transaction Documents admissible in evidence in its jurisdiction of incorporation have been done, fulfilled and performed;

**9.1.5 No registration**

save for the registration of a duly executed, notarised copy of the Property Mortgage with the Land Survey and Registration Bureau, it is not necessary that any Transaction Document be filed, recorded or enrolled with any court or other authority in its jurisdiction of incorporation or that any stamp, registration or Tax be paid on or in relation to any Transaction Document;

**9.1.6 Valid and binding obligations**

the obligations expressed to be assumed by it in each Transaction Document are valid, legally binding, direct and unconditional obligations enforceable in accordance with the terms hereof and thereof save to the extent that the enforceability thereof may be affected by the application of equitable principles, statutes or other legislation providing for limitation periods or the mandatory application of insolvency laws or principles and on the basis that 'enforceable' in the Transaction Documents means obligations of a type and



form that are customarily enforced in the courts of the Kingdom of Bahrain but does not imply that such obligations will be enforced in all circumstances;

**9.1.7 Shariah Compliance**

it has entered into the Transaction Documents to which it is a party after having reviewed the Transaction Documents to which it is a party for the purposes of compliance with Shariah principles and with, to the extent it has considered this necessary, independent advice from advisors specialising in matters of Shariah and it is satisfied that the provisions of the Transaction Documents to which it is a party and any Transactions contemplated thereby do not contravene Shariah principles.

**9.1.8 No contravention**

the execution and delivery of, the performance of its obligations under, and compliance with the provisions of, each Transaction Document to which it is a party will not (a) contravene or conflict any existing applicable law, statute, rule or regulation or any judgment, decree or permit to which it is subject, (b) conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or is subject or by which it or any of its property is bound, (c) contravene or conflict with any provision of its constitutive documents (where relevant) or (d) result in the creation or imposition of or oblige it to create any Encumbrance on any of its undertakings, assets, rights or revenues other than a Permitted Encumbrance;

**9.1.9 Financial Statements**

the Original Financial Statements as delivered to the Seller (together with the Auditor's statement) have been prepared in accordance with IFRS and give a true and fair view of the financial condition of the Purchaser as at the financial year end to which they relate and, as at such date, the Purchaser did not have any significant liabilities (contingent or otherwise) or any unrealised or unanticipated losses which were not disclosed by (or by the notes to), or reserved against or provided for in, the Original Financial Statements;

**9.1.10 Winding-up**

it has not taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against it for its winding-up, dissolution or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets;

**9.1.11 Material Adverse Change**

no Material Adverse Change has occurred from the date set forth in the Original Financial Statements;

**9.1.12 Event of Default**

no event has occurred or is continuing which constitutes, or which with the giving of notice and/or the lapse of time and/or a relevant determination would constitute an Event of Default or Potential Event of Default;

**9.1.13 Encumbrance**

the Purchaser is not a party to or bound by, any order, agreement or instrument under which the Purchaser is, or in certain events may be, required to create, assume or permit to arise any Encumbrance (other than a Permitted Encumbrance) as a result of entering into the Transaction Documents;

**9.1.14 Tax**

under the laws in force in the Kingdom of Bahrain as at the date of this Agreement, there are no Tax, deductions or similar charges applicable to the Transaction Documents or to any payment to be made by it pursuant to the terms hereof;

**9.1.15 Information**

to the best of the Purchaser's knowledge and belief, as at the date at which such information was provided, the information furnished by the Purchaser in connection with the Transaction Documents does not contain any statement or information that is false or misleading, and all expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after due and careful enquiry by the Purchaser and the Purchaser is not aware of any material facts or circumstances that have not been disclosed to the Seller;

**9.1.16 Immunity**

the Purchaser is subject to civil and commercial law with regard to its obligations under the Transaction Documents to which it is a party, and the execution, delivery and performance of the Transaction Documents to which it is a party constitute private and commercial acts and neither the Purchaser nor any of its properties enjoy any immunity on the grounds of sovereignty or otherwise in respect of its obligations under the Transaction Documents to which it is a party;

**9.1.17 Title to Riffa Views Land**

the Purchaser has:

- a good title to, or freedom to use, under any applicable laws, the Riffa Views Land and any other assets (including intellectual property rights) necessary or desirable to implement the Riffa Views Project in accordance with the Key Construction Contracts to which it is a party; and
- b access to the Riffa Views Land and all easements, wayleaves, the benefit of the Riffa Views Land and other rights otherwise necessary or desirable in order to implement the Riffa Views Project in accordance with the Key Construction Contracts to which it is a party;

**9.1.18 Bahraini laws**

the Purchaser is in compliance in all material respects with all Bahraini laws and regulations applicable to it.

**9.1.19 Further representations**

The Purchaser further represents that:

**9.1.20 Liquidation proceedings**

it has not taken any corporate action and no legal proceedings or other steps have been started or, to the best of its knowledge and belief, threatened or pending against it for its winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues; and

**9.1.21 Litigation pending**

no litigation, arbitration or administrative proceeding is taking place, pending or to the knowledge of the officers of the Purchaser, threatened against the Purchaser which is reasonably likely to be adversely determined and, if so determined, would result in a Material Adverse Change occurring.

**9.1.22 Repetition**

The representations and warranties in clauses 9.1 and 9.1.19 (*Further representations*), respectively (and so that the representation and warranty in clause 9.1.9 (*Financial Statements*) shall for this purpose refer to the then latest financial statements delivered to the Seller under clause 10.1.4 (*Financial Statements* and information) other than those set out in clauses 9.1.5 (*No registration*) and 9.1.14 (*Tax*) and 9.2.21 (*Litigation pending*), respectively shall be deemed to be repeated by the Purchaser each time a Transaction Request is issued and on each Settlement Date.

**10 Covenants**

**10.1 Positive Covenants**

The Purchaser shall, from the date of this Agreement and so long as any monies are owing under the Transaction Documents:

**10.1.1 Notification of Event of Default**

promptly inform the Seller of the occurrence of any Event of Default or Potential Event of Default forthwith upon becoming aware thereof;

**10.1.2 Authorisations**

obtain or cause to be obtained, renew, maintain in full force and effect and comply in all material respects with the conditions and restrictions (if any) imposed in, or in connection with, every material consent, authorisation, action, condition, licence or approval of governmental or public bodies or authorities or courts and do, or cause to be done, all other acts and matters which may from time to time be necessary under applicable law for the continued due performance of all its obligations under the Transaction Documents to which it is a party and as are necessary to complete the Riffa Views Project:

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10.1.3 ***Pari Passu***

ensure that its obligations under this Agreement and each Purchase Agreement shall, at all times rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors save for those claims which are preferred solely by any bankruptcy, insolvency, liquidation or other similar laws;

10.1.4 **Financial statements and information**

- a The Purchaser shall supply to the Seller as soon as the same become available, but in any event within:
  - i 180 days after the end of each of its financial years, its audited financial statements for such financial year;
  - ii 90 days after the end of the first half of each of its financial years, its unaudited semi annual interim financial statements for such period.
- b The Purchaser shall, at the same time as sent to its shareholders or creditors generally, deliver to the Lender any circular, document or other written information sent to its shareholders or creditors of a non-confidential nature.
- c The Purchaser shall, from time to time on the written request of the Seller, furnish the Seller with such information about the business, operations and financial condition of the Purchaser as the Seller may reasonably require.
- d The Purchaser shall promptly inform the Seller of any litigation, arbitration or administrative proceedings involving the Purchaser, which are current or, to its knowledge, threatened or pending against the Purchaser which, if adversely determined, will or might reasonably be expected to have a Material Adverse Effect.
- e The Purchaser shall ensure that each set of financial statements delivered by it pursuant to clause 10.1.4(a) above is:
  - i prepared on the same basis as was used in the preparation of its Original Financial Statements and in accordance with IFRS;
  - ii in the case of the audited financial statements, certified by the Auditors of the Purchaser as giving a true and fair view of the financial condition of the Purchaser as at the end of the period to which those financial statements relate and of the results of its operations during such period; and
  - iii in the case of the unaudited semi annual financial statements, certified by the Purchaser's chief financial officer as giving a true and fair view of the financial condition of the Purchaser as at the end of the period to which those financial statements relate and of the results of its operations during such period;

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- f The Purchaser shall ensure that each set of financial statements delivered by it pursuant to sub-clause 10.1.4(a)(i) above has been audited by the Purchaser's auditors.

**10.1.5 Unit sales information**

On a quarterly basis, in arrears, commencing on the date falling three (3) months from the date of this Agreement until the Final Maturity Date, deliver to the Seller:

- a a sales report in the form agreed between the Purchaser and the Seller prior to the date of this Agreement certified by the Auditor and confirming (a) the details of all sales of Units made within the preceding three (3) month period to which such report relates (b) that all sales of Units detailed therein have been made pursuant to the Standard Contract and (c) that the amount due or to be become due to the Purchaser from buyers of Units sold or reserved shall, at all times, equal or exceed one hundred and ten per cent. (110%) of the monies due and owing under the Transaction Documents;
- b an operating and financial report containing details of (a) the specifics of the Units sold (b) the rate per month at which Units are being sold;

**10.1.6 Contractor appointments**

will only appoint contractors after the date of this Agreement to undertake work on the Riffa Views Project of a standard appropriate for a project of the nature of the Riffa Views Project and will use all reasonable efforts within its control (but without liability), to ensure that any such contractors are "Class A" contractors;

**10.1.7 Know your customer checks**

if:

- a the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- b any change in the status of the Purchaser after the date of this Agreement; or
- c a proposed assignment or transfer by the Seller of any of its rights and/or obligations under a Transaction Document (a **Prospective Transferee**),

obliges a Seller (or, in the case of paragraph (c) above, any Prospective Transferee) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Purchaser shall promptly upon the request of the Seller supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Seller (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any Prospective Transferee) in order for the Seller (or, in the case of the event described in paragraph (c) above, any Prospective Transferee) to carry out and be satisfied with the results of all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Transaction Documents;

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**10.1.8 Compliance with law**

comply with the terms and conditions of all laws, regulations, agreements, licences and concessions material to the carrying on of its business;

**10.1.9 Environmental Laws**

operate the Riffa Views Project in accordance with Environmental Law relevant to the Riffa Views Project in all material respects. The Purchaser shall promptly upon becoming aware, notify the Seller of:

- a any environmental claim current, or to its knowledge, pending or threatened against the Purchaser, the Riffa Views Project or its assets;
- b any circumstances reasonably likely to result in an environmental claim against the Purchaser, the Riffa Views Project or its assets; or
- c any suspension, revocation or modification of any environmental approval relating to the Purchaser, the Riffa Views Project or its assets,

which has or is reasonably likely to cause a Material Adverse Change;

**10.1.10 Environmental recommendations**

it will use reasonable endeavours, where matters are within its control, to comply with and act upon the recommendations set out in the Environmental Report;

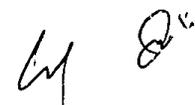
**10.1.11 Assistance to Project Consultant**

- a procure that the Project Consultant has access to the site of the Project at reasonable times and in accordance with the Project Consultant's scope of work in a manner that does not disrupt the ongoing construction, operation or management of the Riffa Views Project, and upon reasonable prior notice and subject always to compliance by the relevant person(s) with the Purchaser's and/or the construction contractor's safety requirements; and
- b otherwise co-operate and procure that the construction contractors co-operate with the reasonable requests for information by the Project Consultant on the progress of the Riffa Views Project; and

**10.1.12 Inspection of Riffa Views Project**

permit representatives of the Seller, the Project Consultant and/or any consultant of the Insurances to visit the Riffa Views Project and to inspect all facilities, plant and equipment forming part of, or related to, the Riffa Views Project, in each case, on reasonable notice and at reasonable times and frequencies and to co-operate and provide all reasonable assistance and information to the representatives of the Seller, the Project Consultant and/or any consultant of the Insurances in connection with any such visit and/or inspection (provided that any such visit and/or inspection shall be subject to normal safety requirements of the Purchaser applicable at the relevant time and shall not interfere with, or interrupt, the operation of the Riffa Views Project).

**10.2 Negative Covenants**



The Purchaser further covenants with the Seller that, from the date of this Agreement and so long as any monies are owing under any Transaction Document, without the prior consent of the Seller:

**10.2.1 Negative Pledge**

it shall not permit any Encumbrance to subsist, arise or be created or extended without the prior written consent of the Seller (such consent shall not be unreasonably withheld or delayed) over all or any part of its present or future undertakings, its assets, rights or revenues to secure or prefer any present or future Financial Indebtedness of the Purchaser or any other person other than a Permitted Encumbrance;

**10.2.2 No merger**

it shall not merge or consolidate with any other company or person except that the Purchaser may purchase or participate in the purchase of share capital issued by banks or financial institutions provided that any such purchase will not, in the sole opinion of the Seller acting reasonably result in a Material Adverse Change;

**10.2.3 Constitutional Documents**

The Purchaser shall not amend its constitutional documents in any material respect without the prior written consent of the Seller (such consent not to be unreasonably withheld or delayed).

**10.2.4 Change of business**

no substantial change will be made to the general nature of the business of the Purchaser so that the Purchaser shall continue to operate predominantly in the property development business;

**10.2.5 No disposals**

it shall ensure that (disregarding any sale, lease, transfer or disposal in the ordinary course of business which shall not effect any Encumbrance under any Security Documents) it shall not, unless at arms' length on normal commercial terms or with the prior written consent of the Seller (such consent not to be unreasonably withheld or delayed), sell, lease, transfer, lend or otherwise dispose of, by one or more transactions or series of transactions (whether related or not), the whole or any part of its revenues or assets other than by way of a Permitted Disposal;

**10.2.6 No Indebtedness**

it shall not create, incur, assume, guarantee or permit to exist any indebtedness of other than the Permitted Indebtedness;

**10.2.7 No Abandonment**

it shall not suspend or abandon all or a material part of the Riffa Views Project (other than any suspension contemplated under any Key Construction Contract and with the consent of the Seller).

**10.3 Financial Covenants**

The Purchaser covenants with the Seller, from the date of this Agreement and so long as any monies are owing under any Transaction Document, that:

**10.3.1 Outstandings to Unit Sales**

the amount due or to become due to the Purchaser from buyers of Units sold or reserved under the terms of the Standard Contract shall, at all times, equal or exceed one hundred and ten per cent. (110%) of the monies due and owing under the Transaction Documents;

**10.3.2 Outstandings to Value of Riffa Views Land**

- a the value of the Riffa Views Land shall be maintained, at all times, at a minimum rate of two hundred per cent. (200%) of the monies due and owing under the Transaction Documents (the **Financing to Value Ratio**); and
- b if at any time, the Purchaser shall fail to be in compliance with the Financing to Value Ratio, the Purchaser shall with fourteen (14) days of the Seller notifying the Purchaser of such non-compliance or the Purchaser becoming aware of such non-compliance (whichever is the earlier), either (1) voluntarily prepay or settle early such amount of the Deferred Purchase Price and/or (2) provide such additional security to the Purchaser as, in either case, will be sufficient to restore the Financing to Value Ratio.

**10.3.3 Computation of Financial Covenants**

the financial covenants in clauses 10.3.1 (*Outstandings to Unit Sales*) and 10.3.2 (*Outstandings to Value of Riffa Views Land*), respectively shall be computed at the end of each financial year during the subsistence of the Transaction Documents which shall be determined by an independent valuer appointed by the Seller;

**10.3.4 Compliance Certificate**

a certificate shall be delivered to the Seller at the end of each financial year substantially in the form set out in Schedule 5 (*Form of Compliance Certificate*) duly signed by the chief financial officer of the Purchaser evidencing the Purchaser's compliance with the financial covenants in clauses 10.3.1 (*Outstandings to Unit Sales*) and 10.3.2 (*Outstandings to Value of Riffa Views Land*), respectively which shall be computed in accordance with the provisions of clause 10.3.3 (*Computation of Financial Covenants*).

**11 Project Accounts**

**11.1 Opening of Project Accounts**

- 11.1.1 Unless otherwise agreed by the Seller and the Purchaser, the Project Accounts shall be opened and maintained with the Seller.
- 11.1.2 Each Project Account will be governed by a mandate in respect of any such Project Account (as varied by the terms of the Finance Documents), which shall be agreed from time to time between the Purchaser and the Seller (each acting reasonably).
- 11.1.3 In the event of any conflict between the terms of the Finance Documents and the terms of any mandate in respect of any Project Account, the provisions of the relevant Finance Document shall prevail and the Purchaser and the Seller agree that any contrary provision in such mandate will be of no effect.

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**11.2 Project Accounts - General**

11.2.1 Each Project Account (and any sub-account) shall be a separate account held with the Seller. Each Project Account shall be *Shari'ah*-compliant and denominated in Dollars.

11.2.2 If the Purchaser or the Seller receives any moneys for crediting to a Project Account in a currency other than that referred to in clause 11.2.1, the Seller shall convert those moneys into Dollars on the date on which they are received (at the then prevailing spot rate of exchange of the Seller).

**11.3 Operation of the Project Accounts**

At all times during the period from Effective Date until the end of the Security Period the following provisions shall apply:

**11.4 Revenue Collection Account and Order of Application of Funds**

- a The Revenue Collection Account shall be funded by the deposit of all Revenues into the Revenue Collection Account.
- b To give effect to clause 11.4a, the Purchaser undertakes to the Seller that (1) the Standard Contract shall contain an instruction to each buyer of a Unit, that any and all amounts payable to the Purchaser in respect of the purchase price of such Unit shall be paid directly to the Revenue Collection Account, (2) such instruction shall not be amended, cancelled or revoked for so long as the Purchaser remains under any obligation or liability (actual or contingent, present or future) to the Seller under the Transaction Documents (3) it will instruct each buyer of a Unit who has reserved or purchased a Unit prior to the date of this agreement that any and all amounts payable to the Purchaser in respect of the purchase price of such Unit shall be paid directly to the Revenue Collection Account and (4) for the period from the Effective Date up to and including the Final Maturity Date, all Revenues are deposited into the Revenue Collection Account; and
- c The Purchaser shall apply monies standing to the credit of the Revenue Collection Account for the following purposes at the following times and in the following order of priority:
  - i **First**, to pay all Taxes and other government levies;
  - ii **Second**, to pay fees, costs and expenses payable by the Purchaser pursuant to the Transaction Documents;
  - iii **Third** no later than the date falling eighteen (18) months from the Effective Date, to the Financing Reserve Account an amount, by way of reserve, equal to the immediately succeeding reduction of the Facility Limit by 8.33% required by clause 2.1.2 (the **FRA Minimum Required Balance**);
  - iv **Fourth** with effect from the date falling twenty-one (21) months from the Effective Date and thereafter at three (3) monthly intervals until the Final Maturity Date, to transfer to the Seller, such amounts as are necessary to enable the Facility Limit to be reduced by 8.33% at the end of each such three (3) month period, in accordance with the provisions of clause 2.1.2 ;

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v **Fifth**, provided that the foregoing applications have been paid and provided that no Potential Event of Default or Event of Default has occurred and is continuing, any remaining balance will be released to the Purchaser

d On or after the end of the Security Period, the Purchaser may close its Revenue Collection Account. Any amounts standing to the credit of the Revenue Collection Account after the end of the Security Period shall be released to the Purchaser or as the Purchaser may direct.

**11.5 Financing Reserve Account**

- a The Financing Reserve Account shall be funded by the transfer of funds from the Revenues Collection Account in accordance with clause 11.4ciii above;
- b To the extent the balance at any time standing to the credit of the Financing Reserve Account is less than the FRA Minimum Required Balance, the Purchaser shall apply amounts from its own resources to the extent required to replenish the FRA Minimum Required Balance.
- c To the extent the balance at any time standing to the credit of the Financing Reserve Account is more than the FRA Minimum Required Balance, any such excess shall be released to the Purchaser.
- d The Purchaser may, on or after the end of the Security Period, close the Financing Reserve Account.

**11.6 Withdrawals from Project Accounts**

11.6.1 the Purchaser shall not make any withdrawal from any Project Account:

- a otherwise than in accordance with the terms of the Finance Documents;
- b unless a request for withdrawal from a Project Account is given to the Seller in accordance with the terms of the relevant mandate;
- c if any Project Account would by reason of such withdrawal be or become overdrawn;
- d if a Potential Event of Default or Event of Default has occurred and is continuing;
- e if an Event of Default would result from any such withdrawal,

except with the Seller's consent.

11.6.2 All amounts withdrawn from any Project Account by the Purchaser for application in or towards making a specific payment or meeting a specific liability must be applied by the Purchaser in or towards making that payment or meeting that liability, and for no other purpose.

**12 Events of Default**

12.1 Each of the following circumstances is an Event of Default:



**12.1.1 Non-payment**

the Purchaser fails to pay any sum due from it under any Transaction Document at the time, in the currency and in the manner specified herein or therein, unless the failure to pay is due solely to technical or administrative delays in the transmission of funds and the relevant amount is paid in full within three (3) Business Days of the due date;

**12.1.2 Breach of covenant**

the Purchaser commits any breach of or omits to observe any of the obligations or covenants expressed to be assumed by it under clauses 10.1 (*Positive Covenants*) and 10.2 (*Negative Covenants*) respectively, and such breach or failure, if capable of remedy, is not remedied within fourteen (14) days after the Seller has given notice thereof to the Purchaser;

**12.1.3 Breach of Financial Covenant**

the Purchaser commits any breach of or omits to observe any of the financial covenants expressed to be assumed by it under clause 10.3 (*Financial Covenants*) in the manner specified herein;

**12.1.4 Utilisation of Facility**

the Purchaser utilises the Facility for a purpose other than that set out in clause 2.2 (*Purpose*);

**12.1.5 Other obligations**

the Purchaser commits any breach of or omits to observe any of the obligations expressed to be assumed by it under the Transaction Documents to which it is a party (other than failure to pay any sum when due or any breach of the provisions of clause 10 (*Covenants*), and in respect of any such breach or omission which in the reasonable opinion of the Seller is capable of remedy, such action as the Seller may require shall not have been taken within thirty (30) Business Days of the Seller notifying the Purchaser of such default and of such required action;

**12.1.6 Breach of Security Document**

the Purchaser commits any breach of or omits to observe any of the obligations or covenants expressed to be assumed by it under any Security Document to which it is a party to and such breach or failure, if capable of remedy, is not remedied within fourteen (14) days after the Seller has given notice thereof to the Purchaser;

**12.1.7 Misrepresentation**

any representation or warranty made or deemed to be made or repeated by or in respect of the Purchaser in or pursuant to the Transaction Documents to which it is a party or in any notice, certificate or statement referred to in or delivered under the Transaction Documents to which it is a party or proves to have been untrue, incorrect or misleading in any material respect and if, the facts and circumstances causing such misrepresentation are capable of remedy within such period, within thirty (30) days after the earlier of the Purchaser becoming aware of such misrepresentation and receipt by the Purchaser of

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written notice from the Seller requiring the facts and circumstances causing such misrepresentation to be remedied, the Purchase shall have failed to remedy such facts and circumstances;

**12.1.8 Cross Default**

any Financial Indebtedness of the Purchaser is not paid when due or within any applicable grace period, any Financial Indebtedness of the Purchaser is declared to be or otherwise becomes due and payable prior to its specified maturity by reason of any actual default, event of default, termination event, acceleration event or the like, howsoever defined, or any bank or financial institution creditor or creditors of the Purchaser become entitled by reason of any actual default, event of default, termination event, acceleration event or the like, howsoever defined, to declare any Financial Indebtedness of the Purchaser due and payable prior to its specified maturity, provided that no Event of Default will occur under this clause 12.1.8 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness referred to in this clause 12.1.8 is less than US\$5,000,000 (or its equivalent in other currencies);

**12.1.9 Insolvency**

- a the Purchaser is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its Financial Indebtedness;
- b the value of the assets of the Purchaser is less than its liabilities (taking into account contingent and prospective liabilities);
- c a moratorium is declared in respect of any Financial Indebtedness of the Purchaser;

**12.1.10 Insolvency Proceedings**

Save for any arrangements notified by the Purchaser to the Seller and approved by the Seller (in their absolute discretion) prior to the date of this Agreement:

- a the Purchaser convenes a meeting of its creditors or proposes or makes any arrangement or composition with, or any assignment for the benefit of, its creditors or a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for making an administration order against or for winding up, dissolution or liquidation of the Purchaser or a petition for winding up is presented against the Purchaser;
- b (i) any legal proceedings are started (other than by the Purchaser) as part of the process leading to the winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of the Purchaser or of any or all of its assets and such legal proceedings are not discharged or stayed within one hundred and eighty (180) days of their commencement; (ii) any appointment of a receiver, administrator, administrative receiver, trustee or similar officer of the Purchaser or of any or all of its assets is made; or (iii) any order is made for any winding-up, dissolution, administration or re-organisation of the Purchaser;

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- c (i) any step is taken as part of the process leading to the winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of the Purchaser; (ii) such step seriously jeopardises the Purchaser; and (iii) such step is followed by legal proceedings which are started, but not discharged or stayed, within one hundred and eighty (180) days of such step being taken; or
- d any execution or distress is levied against, or an encumbrancer takes possession of the whole or any material part of, the properties, undertaking or assets of the Purchaser;

**12.1.11 Repudiation**

the Purchaser repudiates any of the Transaction Documents to which it is a party or does or causes to be done any act evidencing an intention to repudiate any Transaction Document to which it is a party;

**12.1.12 Unlawfulness**

at any time it is or becomes unlawful for the Purchaser to perform or comply with any or all of its obligations under the Transaction Documents to which it is a party or any of the obligations of the Purchaser under the Transaction Documents to which it is a party are not or cease to be legal, valid and binding;

**12.1.13 Cease Business**

the Purchaser ceases or threatens to suspend or cease to carry on the general nature of the business of the Purchaser which is predominantly in the property development business;

**12.1.14 Material Adverse Change**

there occurs, in the reasonable opinion of the Seller, a Material Adverse Change;

**12.1.15 Riffa Views Project**

the Riffa Views infrastructure and landscaping in respect of the Riffa Views Project is not completed on or before 31 December 2008;

**12.1.16 Cost overrun**

the Purchaser is unable to fund any actual overrun in the costs of completing the Riffa Views Project from its own resources or by way of subordinated shareholder loan or equity contribution.

**12.2 Consequences of an Event of Default**

On and at any time after the occurrence of an Event of Default which is continuing, the Seller shall be entitled:

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- 12.2.1 to declare that the obligation of the Seller to make the Commitment or the Available Facility available shall be terminated, whereupon the Commitment or the Available Facility, as appropriate, shall be reduced to zero forthwith;
- 12.2.2 to require by written notice to the Purchaser that the Purchaser shall immediately make full payment to the Seller of each Deferred Sale Price in respect of any Purchase Agreement then subsisting whereupon the Purchaser shall be obliged to make payment of such Deferred Sale Price together with all other sums then payable under this Agreement and under each Purchase Agreement and that the security created under the Security Documents shall be enforced;
- 12.2.3 to declare by written notice that any relevant Seller Offer and Purchaser Acceptance relating to any Commodities the Cost Price of which has not yet been paid shall be cancelled;
- 12.2.4 to enforce all or any of the Encumbrances constituted by the Security Documents; and/or
- 12.2.5 to pursue any other legal remedy available to the Seller.

**13 Early Settlement Events**

13.1 Each of the events and circumstances set out below is an Early Settlement Event (whether or not caused by any reason outside the control of the Purchaser) and the Seller shall promptly notify the Purchaser of the occurrence of any such event upon its becoming aware of the same:

**13.1.1 Unlawfulness**

It becomes unlawful in any jurisdiction for the Seller to perform any of its obligations as contemplated by the Transaction Documents;

**13.1.2 Increased Costs**

By reason of (i) any change after the date hereof in any law or in its interpretation or administration and/or (ii) compliance with any request from or requirement of any central bank or other fiscal, monetary or other authority made after the date hereof (including, without limitation, a request or requirement which affects the manner in which the Seller allocates capital resources to its obligations under the Transaction Documents):

- a the Seller incurs a cost or a loss of yield as a result of its having entered into and/or performing its obligations under any Transaction Document; or
- b the Seller becomes liable to make any payment on account of Tax (not being a Tax imposed on its overall net income) on or calculated by reference to the amount of its commitment or payments under any Transaction Document and/or by reference to any sum received or receivable by it thereunder;

**13.1.3 Market Disruption**

if there is any change in national or international monetary, financial, tax, economic or political conditions or currency exchange rates or exchange controls imposed by regulatory authorities which would render the Facility as contemplated in this Agreement

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temporarily or permanently impossible or impose an increased cost or loss of yield on the Seller; or

13.1.4 **Nationalisation**

all or a material part of the property or assets of the Purchaser shall be condemned, seized or otherwise appropriated or nationalised or custody or control of such property or assets shall be assumed and retained for more than one hundred and eighty (180) days by any person acting under the authority of the Government of the Kingdom of Bahrain, or the Purchaser shall have been prevented for a period of more than one hundred and eighty (180) days from exercising normal managerial control over all or any substantial part of its property or assets by any person which may result in a Material Adverse Change.

13.2 **Consequence of an Early Settlement Event**

13.2.1 Upon the occurrence of an Early Settlement Event pursuant to clause 13.1.1 (*Unlawfulness*):

- a without in any way limiting, reducing or otherwise qualifying the obligations of the Purchaser under paragraph (b) below, the Seller shall in consultation with the Purchaser, endeavour to take such reasonable steps as are open to it to mitigate or remove such circumstances (but not including the transfer of its rights and obligations under this Agreement to another financial institution) unless the taking of such steps might (in the opinion of the Seller) be prejudicial to the Seller or involve the Seller in expense (unless it receives a full indemnity from the Purchaser in respect of such expense) or an increased administrative burden; and
- b where such Early Settlement Event cannot be remedied the Purchaser shall make an early settlement of the Deferred Sale Price in full no later than (i) the date which is twenty one (21) days after the occurrence of such Early Settlement Event or (ii) the last date upon which the Deferred Sale Price and other obligations of the Purchaser may lawfully remain outstanding provided the Seller agrees (in its absolute discretion) to such further deferral.

13.2.2 Upon the occurrence of an Early Settlement Event pursuant to clause 13.1.2 (*Increased Costs*) the Purchaser may elect to either:

- a make an early settlement of the Deferred Sale Price in full within twenty one (21) days after the occurrence of such Early Settlement Event; or
- b where the Purchaser does not elect to make an early settlement of the Deferred Sale Price pursuant to clause 13.2.2 the Purchaser shall, from time to time and no later than twenty one (21) days following a demand in writing by the Seller, pay to the Seller such amount or amounts as are sufficient to indemnify the Seller against (i) such cost or (ii) such liability.

13.2.3 Upon the occurrence of an Early Settlement Event pursuant to clauses 13.1.3 (*Market Disruption*) and 13.1.4 (*Nationalisation*), respectively the Seller shall be entitled to require by written notice to the Purchaser that the Purchaser enters into discussions (for a period of no longer than fifteen (15) Business Days from the date of the Seller's notice) with the Seller to ascertain whether any steps can be taken by the Purchaser to remedy such Early

Settlement Event provided always that any steps proposed by the Purchaser shall be subject to the Seller's approval (which it may withhold in its absolute discretion). If no such steps can be taken the Seller shall be entitled to exercise the rights described in clause 12.2 (*Consequence of an Event of Default*).

**13.3 Rebate**

Where the Purchaser is required to make an early settlement payment in full of the Deferred Sale Price pursuant to this clause 13, the Seller may at its discretion make a rebate payment to the Purchaser in accordance with clause 8.2 (*Seller Discretion*).

**13.4 Notification**

Any notification by the Seller concerning any of the matters referred to in this clause 13 shall save for any manifest error be conclusive and binding on the Purchaser.

**14 Late Payment Costs**

**14.1 Late Payment Amount**

If any sum due and payable by the Purchaser under this Agreement or any Purchase Agreement is not paid on its due date (the balance thereof for the time being unpaid being herein referred to as an **unpaid amount**), the Purchaser shall make a payment in respect of the unpaid amount calculated in accordance with clause 14.2 (*Calculation of late payment amount*) (such amount being the **late payment amount**).

**14.2 Calculation of late payment amount**

The late payment amount in respect of an unpaid amount for any period relating thereto shall be an amount equal to the result obtained upon application of the formula:

$$\frac{A \times B \times C}{360}$$

Where:

A means the amount of such unpaid amount;

B means a sum in aggregate equal to (a) one per cent. (1%) per annum and (b) the Profit Element; and

C means the number of days in the period beginning on the due date for payment of such unpaid amount and ending on the date that the Purchaser's obligation to pay the same is discharged.

**15 Indemnities, Costs and Expenses**

**15.1 Purchaser's Indemnity**

**15.1.1** The Purchaser undertakes to indemnify the Seller, and its directors, officers, employees and advisors (in this clause 15.1, an **Indemnified Party**) on demand from and against:

*By [Signature]*

- a any actual cost, claim, loss, expense (including, without limitation, legal fees and disbursements) or liability which it may sustain or incur as a consequence of the occurrence of any Event of Default;
- b subject to clause 14 (*Late Payment Costs*), all actual costs or losses incurred or suffered by an Indemnified Party as a result of the Purchaser's failure to make any payment due under this Agreement; and
- c any actual losses, costs, liabilities and expenses incurred by the Seller as a result of any payment to it under this Agreement being made subject to any deduction for or on account of any set-off, Tax, levies, deductions or withholdings of any kind.

15.1.2 The Purchaser shall make payment of any indemnity in favour of an Indemnified Party provided for in this clause 15.1 within twenty one (21) days of demand by such Indemnified Party. Such indemnity shall not extend to any cost, claim, loss, expense (including without limitation legal fees and disbursements) incurred or suffered by an Indemnified Party as a result of its negligence, bad faith or wilful default.

15.1.3 This clause 15.1 will survive the termination of the Transaction Documents whether by cancellation, repudiation or otherwise.

**15.2 Indemnity for Costs**

15.2.1 The Purchaser shall indemnify the Seller for all reasonable costs and expenses (including, without limitation legal fees, the fees of any other professional advisers that may be appointed by the Seller and brokerage fees) incurred in connection with the preparation, execution and completion of the Transaction Documents and the transactions contemplated therein.

15.2.2 The Purchaser agrees to reimburse the Seller for such costs and expenses within thirty (30) days of presentation to the Purchaser by the Seller of a statement of account, to be supported by documents evidencing such expenses.

**15.3 Stamp and/or other Taxes**

The Purchaser shall pay all stamp, registration or other Taxes (not being any Tax imposed on the net income of the Seller) to which any Transaction Document is or at any time may be subject and shall indemnify the Seller against any liability now or hereafter imposed upon the Seller to make payment to any applicable authority of any value added tax, sales tax or other similar Tax in relation to the transactions carried out under any Purchase Agreement.

**15.4 Costs and Expenses**

Notwithstanding the provisions of clause 19.3 (*Assignment of Transaction Documents and Related Costs*) the Purchaser agrees to pay all reasonable costs and expenses (and any Tax thereon where applicable) incurred by the Seller arising in connection with the performance of its obligations hereunder, including (i) all expenses in connection with the execution of the Facility such as travelling costs and communications costs, (ii) the preparation and printing of the Transaction Documents and amendments and supplements thereto, and any other document relating to the Facility, (iii) legal and Shariah expenses, (iv) the cost of any advertising and marketing materials in connection with the Facility, and

(v) the cost for valuation of the Riffa Views Project as contemplated under the Conditions Precedent, upon demand by the Seller.

**15.5 Costs of enforcement**

The Purchaser agrees to pay on demand all reasonable legal fees, out-of-pocket expenses and all other costs, losses or expenses (including, without limitation, each cost, loss or expense incurred by the Seller as a result of having received payment of all or part of the Deferred Sale Price or any payment related thereto other than on the Deferred Payment Date) of the Seller in connection with the preservation and / or enforcement by action or otherwise of any Transaction Document or the recovery of any sum due thereunder.

**15.6 Fees**

The Purchaser agrees to pay to the Seller the fees as set out in the Fee Letter in accordance with the terms and conditions therein.

**16 Payments**

**16.1 Mode and destination of payments**

Any amount to be paid by the Purchaser to the Seller under any Transaction Document shall be paid by the Purchaser to the Seller for its account to such account as the Seller may notify the Purchaser in writing.

**16.2 No set-off or deductions**

**16.2.1** All payments to be made by the Purchaser under any Transaction Document or any Purchase Agreement shall be made in full without any set-off, counterclaim or other restrictions.

**16.2.2** All payments to be made by the Purchaser under any Transaction Document or any Purchase Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any present or future taxes, duties, fees or other charges of whatever nature; provided, however, that, in the event that the Purchaser is prevented by operation of law or otherwise from making such payments free and clear of such deductions or withholdings, all payments due under this Agreement shall be increased to the extent necessary to ensure that after making the required deduction or withholding the Purchaser remits to the Seller the full amount which the Seller would have received had such payments been made without such deductions or withholdings. The Seller shall, in consultation with the Purchaser, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to this clause 16.2.2, including (but not limited to) transferring its rights and obligations under the Transaction Documents to another Affiliate or facility office.

**16.3 Tax Credit**

If the Purchaser makes a payment to the Seller in respect of any deduction or withholding referred to in clause 16.2 (*No set-off or deductions*) and the Seller determines that:

- a a Tax Credit is attributable either to an increased payment of which that payment forms part, or to that payment; and
- b the Seller has obtained, utilised and retained that Tax Credit.

the Seller shall pay an amount to the Purchaser which the Seller determines will leave it (after that payment) in the same after-Tax position as it would have been in had the payment referred to not been required to be made by the Purchaser.

16.4 **Non-Business Days**

If any payment due from the Purchaser falls due on a day which is not a Business Day, the payment shall be made on the next succeeding Business Day save where the next succeeding Business Day falls in the next calendar month in which event the payment shall be due and be made on the immediately preceding Business Day.

17 **Currency of Account and Payment**

17.1 **Currency of Payments**

The US Dollar is the currency of account and payment for each and every sum at any time due from the Purchaser under the Transaction Documents provided that each payment in respect of costs and expenses shall, if the Seller so requests, be made in the currency in which the same were incurred.

17.2 **Currency Indemnity**

If any sum due from the Purchaser under the Transaction Documents or any order or judgment given or made in relation hereto or thereto has to be converted from the currency (the **first currency**) in which the same is payable thereunder or under such order or judgment into another currency (the **second currency**) for the purpose of (a) making or filing a claim or proof against the Purchaser, (b) obtaining an order or judgment in any court or other tribunal or (c) enforcing any order or judgment given or made in relation hereto, the Purchaser shall indemnify and hold harmless each of the persons to whom such sum is due from and against any loss suffered as a result of any discrepancy between (i) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency and (ii) the rate or rates of exchange at which such person may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order, judgment, claim or proof.

18 **Set-Off**

At any time after the occurrence of an Event of Default which is continuing, the Seller may set off any matured obligation due from the Purchaser under the Transaction Documents against any matured obligation owed by the Seller to the Purchaser regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Seller may convert either obligation at a market rate of exchange in its usual course of business for the purpose of set-off.

19 **Benefit of Agreement**

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**19.1 Nature of Agreement**

This Agreement shall be binding upon and enure to the benefit of the Parties and its or any subsequent successors and assigns.

**19.2 Entire Agreement**

This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all oral statements and prior writings with respect thereto.

**19.3 Assignment of Transaction Documents and Related Costs**

19.3.1 The Purchaser shall not be entitled to assign or transfer any of its rights, benefits or obligations under any Transaction Document.

19.3.2 The Seller shall not be entitled to assign or transfer or novate any of its rights, benefits or obligations (as the case may be) under any Transaction Document to any financial institution without the prior consent of the Purchaser (which shall not be unreasonably withheld or delayed). In the event that the Purchaser's consent is not received by the Seller within fifteen (15) Business Days, such consent shall be deemed to have been given by the Purchaser. Notwithstanding this, if an Event of Default or an Early Settlement Event has occurred, the Purchaser's consent shall not be required by the Seller. Any such assignment, transfer or novation shall be at the Seller's cost.

**19.4 Disclosure of Information**

The Seller may disclose to any of its Affiliates and any other person (or such Party's professional advisers or auditors who require access to such information for the purposes of their appointment):

- a to (or through) whom the Purchaser has agreed that the Seller may assign or transfer, pursuant to clause 19.3.2 all or any of its rights and obligations under this Agreement;
- b with (or through) whom the Seller enters into (or may potentially enter into) any transaction under which payments are to be made by reference to, this Agreement;  
or
- c to whom, and to the extent that, information is required or requested to be disclosed by any regulatory body, or as required by any applicable law or regulation.

any information about any of the Purchaser and the Transaction Documents as the Seller shall consider appropriate, provided that in the case of clauses 19.4a and 19.4b, respectively the person has entered into a confidentiality undertaking substantially in the form approved by the Loan Market Association.

**20 Calculations**

Any calculation made by the Seller in connection with the Transaction Documents or any Purchase Agreement shall, in the absence of manifest error, be conclusive and binding on the Parties hereto.



21 **Remedies and Waivers**

No failure by the Seller to exercise, or any delay by the Seller in exercising, any right or remedy under the Transaction Documents or under any Purchase Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies by law.

22 **Partial Invalidity**

If, at any time, any provision of this Agreement or any other Transaction Document is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement or any other Transaction Document nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

23 **Amendments**

The Parties hereto agree that the Seller shall have the right to review or amend the provisions of this Agreement and any Transaction Document upon the occurrence of a change in market conditions which in the sole opinion of the Seller may result in a Material Adverse Change.

24 **Notices**

24.1 **Delivery Requirements**

All notices, requests, demands or other communications to or upon the Parties hereto shall be in writing (by letter or fax) and shall be deemed to have been duly given or made:

- a if delivered by letter, at the time of hand delivery or (as the case may be) five (5) days after being despatched by registered airmail, postage prepaid; and
- b if given by fax, when received in legible form (provided that if the date of despatch is not a business day in the country of the addressee or if the time of despatch of any fax is after the close of business in the country of the addressee it shall be deemed to have been received at the opening of business on the next such business day).

and in each case addressed or sent to the appropriate address or number as follows:

- i if to the Purchaser:

(a) **RIFFA VIEWS B.S.C. (c)**  
PO Box 3050  
Manama  
Kingdom of Bahrain

Attention:  
Facsimile:



(b) ARCAPITA BANK B.S.C. (c)  
PO Box 1406  
Manama  
Kingdom of Bahrain

Attention: Arthur Rogers III (Mr.)  
Facsimile: +973 17 208526

ii if to the Seller:

**NATIONAL BANK OF BAHRAIN B.S.C.**  
PO Box 106,  
Manama,  
Kingdom of Bahrain

(a) Attention: Abdul Rahman Khalil (Mr.)  
Facsimile: +973 17 205601

(b) Attention: Tariq I. Siddiqui (Mr.)  
Facsimile: +973 17 205571

or to such other address or number as such Party may specify in writing to the other. In the case of notices given under the this Agreement or made by fax, the giver or maker thereof shall, if reasonably requested so to do by the other Party, confirm the contents of such fax in a letter to be despatched by registered airmail, postage prepaid, on the same day any such request is so made provided that any failure to so confirm shall not affect the validity of any notice which would otherwise be valid.

#### 24.2 Notices to be in English

Each communication and document made or delivered by one Party to another pursuant to any Transaction Document shall be in the English language or accompanied by a translation thereof into English certified (by an officer of the person making or delivering the same) as being a true and accurate translation thereof.

#### 24.3 Electronic Communication

24.3.1 Any communication to be made between the Purchaser and a Seller under or in connection with the Transaction Documents may be made by electronic mail or other electronic means, if the Purchaser and Seller:

- a agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- b notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- c notify each other of any change to their address or any other such information supplied by them.

24.3.2 Any electronic communication made between the Purchaser and a Seller will be effective only when actually received in readable form and in the case of any electronic

communication made by a Purchaser to the Seller only if it is addressed in such a manner as the Seller shall specify for this purpose.

- 24.3.3 The Purchaser acknowledges that it is fully aware of the risk associated with communications via telephone or facsimile transmission.
- 24.3.4 In relation to any communication received by the Seller via telephone or facsimile transmission and in or purported to be in the Purchaser's name or the name of one or more authorised representatives of the Purchaser, the Purchaser irrevocably (i) authorizes Seller to accept, rely and act upon such communication without further enquiry as to the authority or identity of the person sending such communications, (ii) in the absence of manifest fraud or error, agrees to on demand indemnify the Seller against all losses, claims, actions, proceedings, damages, costs and expenses incurred or sustained by the Seller as a result of the Seller accepting, relying and acting upon such communication and (iii) acknowledges that, in the absence of manifest fraud or error, the Seller shall have no liability for accepting, relying or acting upon such communication and shall have no liability in the event that any facsimile transmission is not received, or is mutilated, illegible, interrupted, duplicated, incomplete, unauthorized or delayed for any reason.
- 24.3.5 The Purchaser verifies that each person which the Purchaser has identified to the Seller as an authorised representative is duly authorized to give or send instructions and other communications by telephone or facsimile transmission.
- 24.3.6 The Seller shall have absolute discretion whether or not to accept, rely or act upon any communication received via telephone or facsimile transmission and shall be entitled to request verification of any such communication by any reasonable method the Seller deems appropriate.

25 **Counterparts**

This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

26 **Third Parties**

No term of this Agreement is enforceable by a person who is not a party to this Agreement.

27 **Interest**

The Parties recognise and agree that the principle of the payment of interest is repugnant to the Shariah and accordingly, to the extent that any legal system would (but for the provisions of this clause) impose (whether by contract or by statute) any obligation to pay interest, the Parties hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover interest from each other.

28 **Law and jurisdiction**

28.1 **Law**

This Agreement and each Purchase Agreement shall be governed by, and shall be construed in accordance with the laws of the Kingdom of Bahrain.

28.2 **Jurisdiction**

- 28.2.1 **Bahrain Courts:** The Parties irrevocably agree that the courts of the Kingdom of Bahrain shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any disputes, which may arise out of or in connection with this Agreement and, for such purposes, irrevocably submits to the jurisdiction of such courts.
- 28.2.2 **Forum:** Each of the Parties irrevocably waives any objection which it might now or hereafter have to the courts, referred to in clauses 28.2.1 (*Bahrain Courts*) being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement and agrees not to claim that any such court, committee or other body is not a convenient or appropriate forum.
- 28.2.3 **Other competent jurisdictions:** The submission to the jurisdiction of the courts, referred to in clauses 28.2.1 (*Bahrain Courts*) shall not (and shall not be construed so as to) limit the right of the Parties to take proceedings against the other Party in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.
- 28.2.4 **Consent to enforcement:** The Parties hereby consent generally in respect of any legal action or proceeding arising out of or in connection with this Agreement to the giving of any relief or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.
- 28.2.5 **Waiver of immunity:** To the extent that either of the Parties may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to himself or his assets such immunity (whether or not claimed), each of the Parties hereby irrevocably agrees not to claim and hereby irrevocably waive such immunity to the full extent permitted by the laws of such jurisdiction.

IN WITNESS WHEREOF, the Parties or their duly authorised representatives have caused this Agreement to be duly executed as of the date stated at the beginning of this Agreement.

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**Schedule 1**  
**Conditions Precedent Documents**

**Corporate Documents**

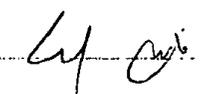
- 1 Copies, each certified as correct, complete and in full force and effect as at a date no earlier than the date of this Agreement by a duly authorised officer of the Purchaser of:
- a the constitutive documents of the Purchaser;
  - b a resolution of the board of directors of the Purchaser:
    - i approving the execution, delivery and performance of the Transaction Documents to which it is a party and the terms and conditions thereof;
    - ii authorising a named person or persons to sign the Transaction Documents to which it is a party and any documents to be delivered by the Purchaser pursuant thereto; and  - c a certificate of a duly authorised officer of the Purchaser
    - i setting out the names and signatures of the persons authorised to sign, on behalf of the Purchaser, the Transaction Documents and any documents to be delivered by the Purchaser pursuant thereto; and
    - ii confirming that no financing limit will be exceeded.

**Signed Documents**

- 2 The original Transaction Documents, each duly executed by the parties to it.

**Miscellaneous Documents**

- 3 A certified true copy of the necessary building permit and approval for the Riffa Views Project.
- 4 Copies, certified as true copies by or on behalf of the Purchaser, of any consents, licences, approvals, registrations or declarations including any environmental clearance in relation to the Riffa Views Project and as are necessary to render the relevant Transaction Document legal, valid, binding and enforceable, admissible in evidence in Bahrain and to enable the parties thereunder to perform its respective obligations;
- 5 Copies of the signed Key Construction Contracts;
- 6 Any reasonable information requested by the Seller to fulfil any "know your customer" and/or anti money-laundering requirements with respect to the Purchaser;
- 7 Evidence from the Seller that all fees and all expenses for which invoices have been presented have been received, respectively or will be received on or before the Settlement Date of the first Purchase Agreement.
- 8 A certified true copy of the Transaction Agency Agreement.

..... 

- 9 A Copy of a report from the Auditor confirming that the aggregate proceeds paid (or payable) in respect of the Units then sold (or contracted to be sold) is at least one hundred and ten per cent. (110%) of the amount of the Facility.
- 10 The Property Mortgage duly notarised and registered at the Survey and Land Registration Bureau.
- 11 A certified true copy of the agreement between the Purchaser and Bahrain International Golf Course WLL whereby the latter has transferred the assets detailed therein to the Purchaser for the purposes of the Riffa Views Project.
- 12 A certified copy of the title deeds to the Riffa Views Land evidencing the unencumbered ownership of the Purchaser.

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**Schedule 2  
Form of Transaction Request**

To: **NATIONAL BANK OF BAHRAIN B.S.C.**  
P.O. Box 106,  
Manama,  
Kingdom of Bahrain.

cc: **ARCAPITA INVESTMENT FUNDING LIMITED**  
PO Box 1406,  
Manama,  
Kingdom of Bahrain.

Ref: •  
Date: •

**Master Murabaha Facility Agreement dated • 2007 between NATIONAL BANK OF BAHRAIN  
B.S.C. and RIFFA VIEWS B.S.C. (c) (the Agreement)**

Dear Sirs,

- 1 We refer to the Agreement. Terms defined in the Agreement have the same meanings in this notice. This is a Transaction Request pursuant to clause 5.1 (*Transaction Request*) of the Agreement.
- 2 We hereby notify you that we wish to purchase the following Commodities on the following terms:
  - (a) Quantity (expressed in single units) and description of Commodities: •
  - (b) Cost Price: •
  - (c) Proposed Settlement Date •
  - (d) Proposed Deferred Payment Date •
- 3 We unconditionally and irrevocably promise to purchase the specified Commodities and undertake to indemnify you in respect of all actual costs, claims, losses and expenses suffered or incurred by you as a consequence of our failure to do so in accordance with the Agreement.
- 4 We confirm that as of the date of this notice:
  - (a) no Event of Default or Potential Event of Default would result from the giving of this notice;
  - (b) the repeating representations set out in clause 9.1.22 of the Agreement are true and accurate and will be true and accurate in all material respects at the proposed Settlement Date set out above.
- 5 We wish to exercise our right to enter into a Purchase Replacement Agreement for the Transaction that occurred on • and we confirm that the Cost Price of the Purchase Replacement Agreement shall be equal or less than the maturing Deferred Sale Price for that Transaction - *to delete if not applicable*
- 6 This Transaction Request shall be governed by and construed in accordance with Bahraini law.



Yours faithfully.

.....  
For and on behalf of  
**RIFFA VIEWS B.S.C (c)**

[Redacted signature area]

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**Schedule 3**  
**Form of Seller Offer**

To: **RIFFA VIEWS B.S.C (c)**  
P.O. Box 106,  
Manama,  
Kingdom of Bahrain

cc: **ARCAPITA INVESTMENT FUNDING LIMITED**  
PO Box 1406,  
Manama,  
Kingdom of Bahrain.

Ref: •  
Date: •

**Master Murabaha Facility Agreement dated • 2007 between NATIONAL BANK OF BAHRAIN  
B.S.C. and RIFFA VIEWS B.S.C. (c) (the Agreement)**

Dear Sirs,

- 1 We refer to the Agreement and the Transaction Request dated • 200• with reference •. Terms defined in the Agreement have the same meanings in this letter. This is a Seller Offer pursuant to clause 5.2 (*Seller Offer*) of the Agreement.
- 2 We hereby offer to enter into a Purchase Agreement with you, the details of which are as follows:
  - a Quantity and description of Commodities: •
  - b Mark-Up Percentage: •
  - c Cost Price: •
  - d Profit Element: •
  - e Deferred Sale Price: •
  - f Settlement Date: •
  - g Deferred Payment Date: •
- 3 The Deferred Sale Price shall be payable by you to account number • sort code with National Bank of Bahrain • in the name of • with reference • on the Deferred Payment Date.
- 4 Our offer to enter into a Purchase Agreement upon the terms set out in this letter shall only be binding upon us subject to our receipt from you of a Purchaser Acceptance confirming your acceptance of the terms of this notice and the details set out above, on the same date as this Seller Offer.
- 5 This Seller Offer shall be governed by and construed in accordance with Bahraini law.

Yours faithfully,



.....  
For and on behalf of  
**NATIONAL BANK OF BAHRAIN B.S.C.**

[Redacted signature area]

*[Handwritten signature]*

**Schedule 4  
Form of Purchaser Acceptance**

To: **NATIONAL BANK OF BAHRAIN B.S.C.**  
P.O. Box 106,  
Manama,  
Kingdom of Bahrain

cc: **ARCAPITA INVESTMENT FUNDING LIMITED**  
PO Box 1406,  
Manama,  
Kingdom of Bahrain.

Ref: •  
Date: •

**Master Murabaha Facility Agreement dated • 2007 between NATIONAL BANK OF BAHRAIN  
B.S.C. and RIFFA VIEWS B.S.C. (c) (the Agreement)**

Dear Sirs,

- 1 We refer to the Agreement and your Seller Offer dated • 200• with reference •. Terms defined in the Agreement have the same meanings in this letter. This is an irrevocable Purchaser Acceptance pursuant to clause 5.3 (*Purchaser Acceptance*) of the Agreement.
- 2 We accept your Seller Offer dated • 200• and hereby confirm our purchase from you the Commodities in accordance with the terms and subject to the conditions of the Agreement and the Seller Offer.
- 3 This Purchaser Acceptance shall be governed by and construed in accordance with Bahraini law.

Yours faithfully,

.....  
For and on behalf of  
**RIFFA VIEWS B.S.C. (c)**



**Schedule 5  
Form of Compliance Certificate**

To: **NATIONAL BANK OF BAHRIAN B.S.C.**  
P.O. Box 106,  
Manama,  
Kingdom of Bahrain

Date: •

**Master Murabaha Facility Agreement dated • 2007 between NATIONAL BANK OF BAHRAIN B.S.C. and RIFFA VIEWS B.S.C. (c) (the Agreement)**

Dear Sirs,

- 1 We refer to the Agreement. This is a compliance certificate pursuant to clause 10.3.4 (*Compliance Certificate*) of the Agreement.
- 2 We hereby confirm that as at the date of this notice, Riffa Views B.S.C. (c) (the Purchaser) has complied with the financial covenants set out in clauses 10.3 and 10.1.4, respectively in the Agreement.

Yours faithfully,

.....  
**Chief Financial Officer  
RIFFA VIEWS B.S.C. (c)**



**SIGNATORIES**

**The Seller**

SIGNED for and on behalf of )  
NATIONAL BANK OF BAHRAIN B.S.C. )

**The Purchaser**

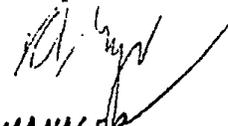
SIGNED for and on behalf of )  
RIFFA VIEWS B.S.C. (c) )

*Handwritten signature*

SIGNATORIES

The Seller

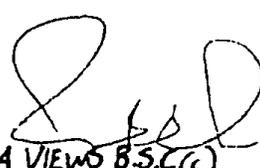
SIGNED for and on behalf of  
NATIONAL BANK OF BAHRAIN B.S.C.

} 

ABDUL RAZAK A. HASSAN AL QASSIM - GENERAL MANAGER

The Purchaser

SIGNED for and on behalf of  
RIFFA VIEWS B.S.C. (c)

} 

YASSER A. ABDULLA - BOARD MEMBER RIFFA VIEWS B.S.C.C)

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**EXHIBIT B**

[Redacted content]

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*Handwritten initials*

Dated 19<sup>th</sup> March, 2009

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**National Bank of Bahrain B.S.C.**

as Seller

and

**Riffa Views B.S.C. (closed)**

as Purchaser

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**AMENDMENT AGREEMENT**

**relating to Master Murabaha Facility  
Agreement**

**dated 30 July 2007**

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THIS AGREEMENT is dated 19<sup>th</sup> March 2009 and made BETWEEN:

1. NATIONAL BANK OF BAHRAIN BSC PO BOX 106 MANAMA KINGDOM OF BAHRAIN (as Seller); and
2. RIFFA VIEWS B.S.C. (closed) P.O BOX 3050 MANAMA, KINGDOM OF BAHRAIN (as Purchaser).

(Each referred to as a Party and collectively referred to as the Parties)

**WHEREAS:**

- (a) On 30<sup>th</sup> July 2007, the Parties entered into a Murabaha Facility Agreement (the **Original Agreement**) pursuant to which the Seller granted a USD 82,000,000 Murabaha facility to the Purchaser.
- (b) The Parties have agreed to enter into this Agreement, amending certain terms of the Original Agreement (as defined below).

IT IS AGREED as follows:

**1 Definitions and interpretation**

- 1.1 In this Agreement:
- 1.2 Unless specified as otherwise in this Agreement, capitalised terms used in this Agreement shall have the same meaning given to them in the Original Agreement.
- 1.2 Each of the Seller and the Purchaser designate this Agreement an integral part of the Original Agreement.

**2 Amendments**

With effect from March 10, 2009 (the **Effective Date**), the Seller and the Purchaser agree that the Original Agreement shall be amended as follows:

- 2.1 The following definitions shall be amended to read:

**Facility Limit** means:

- a. during the period commencing on the Effective Date and ending on 15/12/2009 up to an initial amount of US\$ 82,000,000, or
- b. from 15/12/2009 to the last day of the Availability Period up to an amount equal to the aggregate of all Deferred Sale Prices outstanding on the first day of such period.

**Final Maturity Date** means 15<sup>th</sup> September 2012.

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LIBOR means, with respect to each Transaction, the rate determined by the Seller for deposits in US dollars for the period from the relevant Settlement Date to the relevant Deferred Payment Date (the Relevant Period) and for an amount equal to the relevant Cost Price on the second (2<sup>nd</sup>) LIBOR Business Day before the relevant Settlement Date.

Mark-Up Percentage means with respect to each Transaction, the aggregate amount equal to the sum of:

- (a) three decimal twenty five per cent. (3.25%) per annum; and
- (b) LIBOR

accruing from day to day and calculated on the basis of the actual number of days elapsed in a year of 360 days and as specified in paragraph 2(b) of the relevant Seller Offer;

Profit Period means a period of 3 months.

- 2.2 The following definition shall be included;

**Upfront Mark-up** means an amount of US\$820,000 payable by the Purchaser to the Seller.

- 2.3 The following words shall be added to point (a) of the definition of Transaction Documents to read 'this Agreement or any amendment thereto'.

- 2.4 Clause 2.1.2 (Facility) shall be amended to read as follows:

"The Purchaser agrees that from 15/12/2009 and at three (3) monthly intervals thereafter up to and including the Final Maturity Date the Facility shall automatically reduce by eight decimal thirty three per cent (8.33%)".

- 2.5 A new Clause 6.1.2 shall be added to read as follows:

"The Purchaser agrees that to pay the Upfront Mark-up on March 23, 2009".

- 2.6 Clause 11.4 c (iii) shall be amended to read as follows: "Third no later than 15 September 2009, to the Financing Reserve Account an amount by way of reserve equal to the immediately succeeding reduction of the Facility Limit by 8.33% required by clause 2.1.2 (the FRA Minimum Required Balance)".

- 2.7 Clause 11.4 c (iv) also shall be amended to read as follows: "Fourth with effect from 15 December 2009 and thereafter at three (3) monthly intervals until the Final Maturity Date, to transfer to the Seller such amounts as are necessary to enable the Facility Limit to be reduced by

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8.33% at the end of each such three (3) months period, in accordance with the provisions of clause 2.1.2."

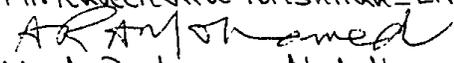
2.8 Clause 12.1.15 (Riffa Views Project) shall be amended to read as follows: "The Riffa View infrastructure and landscaping in respect of the Riffa Views Project is not completed on or before 31 January 2010"

3. The provisions of the Original Agreement shall, except as amended by this Agreement, continue in full force and effect. The Original Agreement and the relevant provisions of this Agreement shall be read and construed as one instrument. References in the Original Agreement to "this Agreement" shall, from the date of this Agreement, be construed as references to the Original Agreement as amended by the relevant provisions of this Agreement.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

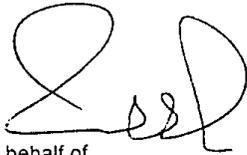
The Seller

SIGNED for and on behalf of  
NATIONAL BANK OF BAHRIAN BSC

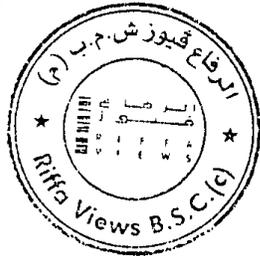
  
) Mr. Ravendra Krishnan - EAGM - CPRM  
)   
Mr. A. Rahman Abdulla - DAM

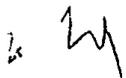
The Purchaser

SIGNED for and on behalf of  
RIFFA VIEWS BSC(C)



)  
) Mr. Yasser A. Abdulla - Director







**EXHIBIT C**

*LM*

Dated <sup>15<sup>th</sup></sup> December 2009

National Bank of Bahrain B.S.C.  
As Seller

and

Riffa Views B.S.C.  
As Purchaser

**SECOND AMENDMENT AGREEMENT**

**Relating to Master Murabaha Facility  
Agreement**

**Dated 30 July 2007**

*LM*

Amendment to Master Murabaha Facility Agreement dated 30<sup>th</sup> July 2007 This  
Second Amendment Agreement ("Second Amendment Agreement") is made the ( )  
15<sup>th</sup> day of December 2009

**Between:**

1. National Bank of Bahrain BSC of P.O. Box 106, Manama – Kingdom of Bahrain (the "Seller").
2. Riffa Views BSC (c) of P.O. Box 3050, Manama – Kingdom of Bahrain (the "Purchaser").

each referred to as a "Party" and collectively referred to as the "Parties".

**Whereas:**

- a. On 30<sup>th</sup> July 2007, the Seller and the Purchaser entered into Master Murabaha Facility Agreement (the "**Original Agreement**") whereby, the Seller granted to the Purchaser a US Dollar Murabaha facility in a maximum aggregate amount of US\$ 82,000,000/- (the "**First Facility**") in accordance with the terms and conditions of the Original Agreement, to complete the construction of Riffa Views Project.
- b. On 19<sup>th</sup> March 2009, the Parties entered into an amendment agreement (the "**First Amendment Agreement**") whereby certain terms and definitions of the Original Agreement were amended.
- c. The Purchaser has requested a further Murabaha facility in Bahraini Dinars for an aggregate amount of BD10,000,000/- (the "**Second Facility**") to complete the Riffa Views Project and the Seller has agreed to the Purchaser's request subject to the terms and conditions of the Second Amendment Agreement.
- d. The Parties acknowledge and agree that the Purchaser owes USD82,427,777.78 under the First Facility as of 30<sup>th</sup> November 2009.
- e. The Parties have agreed to enter into this Second Amendment Agreement to amend and add certain terms to the Original Agreement so that the First Facility (to the extent provided for in this Second Amendment Agreement) and Second Facility shall both be governed by the terms hereof.

Now it is hereby agreed as follows:

**1. Definitions and Interpretation**

- a. Unless otherwise defined herein, capitalized terms and expressions used in this Second Amendment Agreement shall have the same meaning given to them in the Original Agreement.
- b. Each of the Seller and the Purchaser agree that this Second Amendment Agreement is an integral part of the Original Agreement.

**2. Amendments**

The Seller and the Purchaser agree that the Original Agreement shall be amended to include the following changes:

Qc



- 2.1 Clause 1.2 ("Definitions") of the Original Agreement shall be amended as follows:

**Amendment Fee Letter** means the fee letter dated on or about the date of this Second Amendment Agreement and sent by the Seller to the Purchaser, pursuant to the terms of which the Purchaser shall pay to the Seller the fees and other amounts as set out therein.

**Arcapita** means Arcapita Bank B.S.C. (c) a closed joint stock company with its registered office at P.O.Box 1406, Manama, Kingdom of Bahrain.

**Availability Period** means the period commencing on the Effective Date and ending one (1) month before the Final Maturity Date.

**Facility Limit** means the amounts shown in Schedule 2 in the column headed "Facility Limit". The Facility Limit will reduce at the end of each month to the amount shown in such column against the corresponding date in Schedule 2 in the column headed "Date".

**Final Maturity Date** means, in respect of the First Facility and the Second Facility, 31.12.2010.

**Guarantee** means the notarized document executed by Arcapita Bank in the form set out in Schedule 3, being the irrevocable undertaking of Arcapita in favour of the Seller to secure the repayment by the Purchaser of the Facility up to a maximum principal amount of BD 10,000,000 plus profit @ 12.5% per annum.

**Mark-up Percentage** shall be replaced with the term "Profit Rate" at all relevant places in the Original Agreement.

**Mile-Stones** means the occurrence of each of the following events;

- i. Payment of Murabaha profit of each month by the 5<sup>th</sup> (Business Day) of the immediately succeeding month.
- ii. Achievement of sales collection as per Schedule 4, such that the amount due to the Seller under the Facility does not exceed the amount shown in the column headed "Facility Limit" as per Schedule 2.
- iii. Completion, as per Schedule 5, of landscaping, infrastructure and villas in all respects such that they are ready for handover from contractors to Riffa Views. Infrastructure is defined as roads with final surface pavement completed, street lights, sewerage and water connections to all villas and plots.
- iv. Reduction of total outstanding dues to NBB at least by BD 10MM by June 30, 2010, either through credits to the Financing Reserve Account or through infusion of any shortfall by Arcapita Bank under its guarantee.
- v. The Project and the villa handover from contractors to be completed latest by Dec 31, 2010.

**Permitted Indebtedness** shall be amended to delete paragraph 'd' in entirety from the respective definition in the Original Agreement.

**Profit Rate** means,

- a. in respect of the First Facility, 9.25% per annum, and
- b. in respect of the Second Facility, 12.5% per annum.

In each case, accruing from day to day and calculated on the basis of the actual number of days elapsed in a year of 360 days and as specified in paragraph 2(b) of the relevant Seller Offer.

**Profit Period** means consecutive periods of one month.

**Project Accounts** means

- i. the Financing Reserve Account; and
  - ii. the Revenue Collection Account (number 0099563932) maintained with NBB;
- and Project Account means each and one of them.

**Revenues** means in addition to items specified in paragraph 'a' and 'b' of the respective definition in the Original Agreement, inclusion of the following paragraph 'c'.

- c. all rental and other income accrued and paid to the Purchaser in relation to or from the Riffa Views Project (excluding income generated by the Riffa Views International School and the Royal Golf Club, but including rental income generated by Riffa Views Project by leasing/renting properties to such entities).

**Second Amendment Agreement Effective Date** means the date on which the Purchaser delivers to the Seller the Conditions Precedent documents set out in Schedule 1, in form and substance acceptable to the Seller.

**Security Documents** means,

- a. The Bonds Assignment
  - b. The Property Mortgage (as may be supplemented or amended)
  - c. The Guarantee;
  - d. The Promise to Sell Shares Agreement (Schedule 6); and
- such other documents at any time designated as such by the Parties and Security Documents means each and any one of them.

**Step In Rights** means that the Seller (i.e. National Bank of Bahrain) will have the right (but not the obligation) at its absolute discretion if any Mile-Stone is breached, to take over decision making authority regarding the Riffa Views Project. The "Step In Rights" will include, but will not be limited to, the right to (a) take over the management of Riffa Views Project directly or to appoint an agent to manage the project on behalf of the Seller; (b) appoint or replace officers, staff & the management of the Riffa Views Project; (c) appoint consultants and

contractors and negotiate/ re-negotiate terms with them; (d) set and negotiate/ re-negotiate prices of unsold and sold Units and any part(s) of the Riffa Views Land; (e) any other actions necessary to protect the Seller's interests

**Transaction Documents** means,

- a. The Original Agreement, the first Amendment Agreement and this Agreement.
  - b. The Fee Letter and the Amendment Fee Letter.
  - c. When entered into, each Purchase Agreement.
  - d. The Security Documents.
  - e. The Subordination Letter.
  - f. The Undertaking.
  - g. Summary of Additional Terms and Conditions (Schedule 7).
- and such other documents at any time designated as such by the Parties.

**Undertaking** means,

Undertaking provided by Arcapita, Riffa Holding Company Ltd and Bahrain International Golf Course Company Ltd as per item (g) of Schedule 1 (Condition Precedent).

- 2.2 (i) Clause 10.1.5 shall be amended by inclusion of the following as clause 10.1.5 (ii)
- a. The Purchaser shall submit a monthly report duly certified by KPMG to be received by the Seller latest by the 10<sup>th</sup> of each succeeding month (along with soft copy by email in Microsoft Excel format) showing a detailed break-up of all villas in the project. Such report shall include the following details:
    - i. Plot number of Villa
    - ii. Name of the buyer, if sold
    - iii. Rate at which the plot / villa is sold, if sold or expected sale price, if not sold
    - iv. Construction cost incurred on the each villa
    - v. Remaining Construction Costs to be incurred for completion
    - vi. Amount of sale proceeds received, if sold
    - vii. Outstanding receivables, if sold
    - viii. The final due date for receiving full payment, if sold
    - ix. Overdues, if any, as on date, if sold
  - b. The Purchaser shall submit to the Seller monthly operating and cash flow reports to be received by the Seller latest by the 10<sup>th</sup> of each succeeding month (along with soft copy by email in Microsoft Excel format), which shall provide a detailed break-up of:
    - i. Monthly summary Cash Flow projections till December 2010 (which is the projected date of completion of the Riffa Views Project)
    - ii. Details of payments to be made to contractors and others, with names of the payees, amount due, and expected dates of payment
    - iii. Summary of sales proceeds received

The bottom of the page contains several handwritten signatures and initials. On the left, there is a small, partially visible signature. In the center, there is a large, stylized signature that appears to be 'C. K. ...'. To the right of this, there are two more distinct signatures: one that looks like 'D.' and another that is more complex, possibly 'M. A. ...'.

- iv. Summary of receivables on sales made
  - v. Summary of payments made
- (ii) Clause 10.3.2(a) of the Original Agreement shall be amended by adding the following in the last line of the clause:  
"For the purpose of determining the Financing to Value Ratio, the security value will be determined on an annual basis by an independent evaluator appointed by the Seller at the Purchaser's cost".
- (iii) Clauses 11.4(c), 11.5(b) and 11.5(c) shall be deleted in entirety and replaced by Clauses 2.3(a), 2.3(b) and 2.3(g) of this Agreement.
- (iv) Clause 17.1 shall be amended by adding the following words at the beginning of the clause  
"With respect to the First Facility"
- 2.3 The following conditions are accepted and agreed by the Purchaser with effect from the Second Amendment Agreement Effective Date and are hereby included as additional Covenants.
- a. The Purchaser authorizes the Seller to transfer from the Revenue Collection Account to the Financing Reserve Account, 45% of all revenues generated from the Riffa Views Project, except as otherwise stated in Clause 2.3(g).
  - b. The Purchaser authorizes the Seller to utilise at the end of each month, the balance in the Financing Reserve Account to repay the First Facility and Second Facility on a pro rata basis.
  - c. With effect from the Second Amendment Agreement Effective Date, the Purchaser will not issue cheques or make withdrawals from the Revenue Collection Account except in compliance with clause 2.3(d).
  - d. With effect from the Second Amendment Agreement Effective Date, the Purchaser will furnish to the Seller at the beginning of each month, a listing of payee, amount and serial numbers of cheques which are to be honoured during that month and not exceeding the remaining amount after transfers to the Financing Reserve Account as per Clause 2.3(a) and Clause 2.3(g). Disbursement for each month will be based on the collection of the previous month.
  - e. The Purchaser acknowledges the Seller's exclusive right for the next 10 years (the "Exclusivity Period"), which shall be binding on the Purchaser's successors and assignees, to install and operate Automated Teller Machines (ATM) and Point of Sale machines (POS) in the Riffa Views Project area and/or commercial establishments run on properties leased from the Purchaser and such exclusivity right shall be incorporated in all lease agreements signed by the Purchaser during the Exclusivity Period.
  - f. The Purchaser acknowledges that if any covenant is violated or payment default occurs or Mile-Stones are not achieved, the Seller will have the right (but not the obligation) at its absolute discretion,

to exercise Step In Rights.

The Purchaser will ensure that the "Step In Rights" condition is acknowledged by Arcapita Bank, Riffa Holding Company Ltd and Bahrain International Golf Course Company Ltd.

- g. Notwithstanding the terms stated in Clause 2.3(a) and Clause 2.3(b), the Seller specifically agrees that
- i. all amounts received in excess of the Indicative Purchase Price shown for the villas listed in Schedule 8 as well as all amounts received in respect of the villas listed in Schedule 9 will be transferred to a separate account to be opened with NBB by the Purchaser.
  - ii. In the event of any funds remaining in the account referred to in Clause 2.3(g)(i) after meeting the dues of PCC Terna, this remaining amount will be transferred to the Financing Reserve Account subject to (a) maximum transfer being 25% of the funds credited during the previous month to the account, and (b) minimum balance of BD500,000/- being maintained in the account.
  - iii. The balance in the Financing Reserve Account will be utilized to repay the First Facility and the Second Facility on a pro rata basis.
- h. The Purchaser undertakes to create first priority mortgage in favour of the Seller title deeds of 510 villas in Oasis and Lagoon developments in the Riffa Views Project.
- i. The Purchaser undertakes to repay the First Facility and the Second Facility plus the Profit Element in the manner and time specified in Schedule 2.
- 2.4 Except with the prior written consent of the Seller, there shall be no repayment of shareholders loans nor shall there be distribution of profit or payment of dividend to the shareholders of the Purchaser until all amounts due to the Seller from the Purchaser under the Transaction Documents are fully settled.
- 2.5 The Purchaser will ensure that there is no change in the shareholding or control of its ownership. If Arcapita ceases to maintain control of Riffa Views Holding Company Limited or 100% ownership of Riffa Views Holding Company Limited and/or if Riffa Views Holding Company Limited ceases to own at least 63% shareholding in the Purchaser, the Seller will have the right to demand full and immediate settlement of all outstandings under the First Facility and the Second Facility and take such action as necessary for recovery of its dues, including sale of the mortgaged properties.

### 3. Representations and Warranties

- 3.1 The Purchaser represents and warrants to the Seller on the date of this *Second Amendment Agreement and the Effective Date* as follows:
- 3.1.1 The representations and warranties set out in Clause 9 of the Original Agreement are true and correct in all material respects with reference

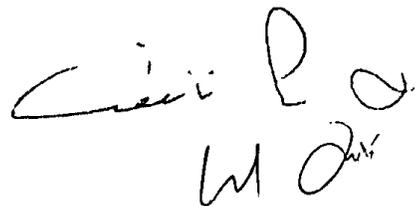
*C. R. A.*  
*M. C. K.*

*Q.*

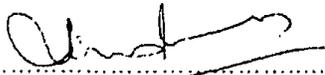
to the facts and circumstances existing at each such date.

- 3.1.2 The Purchaser has the power to execute, deliver and perform its obligations under this Second Amendment Agreement; all necessary corporate, shareholder and other actions has been taken to authorize the execution, delivery and performance of this Second Amendment Agreement and this Second Amendment Agreement constitutes valid and legally binding obligation of the Purchaser, enforceable in accordance with its terms, save to the extent that the enforceability thereof may be affected by the application of equitable principles, statutes or other legislation providing for limitation periods or the mandatory application of insolvency laws or principles and on the basis that 'enforceable' in the Transaction Documents means obligations of a type and form that are customarily enforced in the courts of the Kingdom of Bahrain but does not imply that such obligations will be enforced in all circumstances .
4. **Continuing Obligations**  
The provisions of the Original Agreement, shall except as amended by the First Amendment Agreement and this Second Amendment Agreement, continue in full force and effect. The Original Agreement, the First Amendment Agreement and the relevant provisions of this Second Amendment Agreement shall be read and construed as one instrument. Reference in the Original Agreement and the First Amendment Agreement to "this Agreement" shall, from the date of this Second Amendment Agreement, be construed as reference to the Original Agreement as amended by the relevant provisions of this Agreement.
5. **Fees**  
The Purchaser shall pay to the Seller all reasonable costs and expenses incurred by the Seller in connection with negotiation, preparation, drafting and execution of this Second Amendment Agreement.
6. **Governing Law and Jurisdiction**  
This Second Amendment Agreement shall be governed by and construed in accordance with the law of Kingdom of Bahrain and shall subject to the jurisdiction of Bahraini courts.

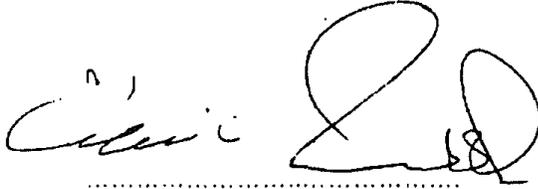
This Second amendment Agreement has been entered into on the date stated at the beginning of this Second Amendment Agreement.



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.....  
Authorised Signature(s)  
For and on behalf of  
National Bank of Bahrain B.S.C. as "Seller"



.....  
Authorised Signature(s)  
For and on behalf of  
Riffa Views B.S.C. (c) as "Purchaser"



**EXHIBIT D**

*Handwritten signature or initials*



سجل التصديق  
الرقم التسلسلي ٩-٥-٢٩٤  
رقم اتصال الوثيقة RC08260949144

**IRREVOCABLE GUARANTEE TO NATIONAL BANK OF BAHRAIN B.S.C**

In consideration of National Bank of Bahrain BSC (the "Seller") granting to Riffa Views B.S.C.(c) (the "Purchaser") a Murabaha facility pursuant to the terms and conditions of a Master Murabaha Facility Agreement dated 30 July 2007, as amended by an Amendment Agreement dated 19 March 2009 and a Second Amendment Agreement dated 15 December 2009 (collectively, the "Agreement"), each made between the Seller and the Purchaser, Arcapita Bank B.S.C. (c) ("Arcapita") hereby as primary obligor irrevocably and unconditionally undertakes:

1. To pay and satisfy to the Seller within three (3) Business Days of first written demand by the Seller, any and every sum or sums of money within the Guaranteed Obligation (as defined below) which the Purchaser is at any time liable to pay under or pursuant to the Facility and which has become due and payable but has not been paid at the time such demand is made.
2. That Arcapita's liabilities under this guarantee shall be within a limit of BD 10,000,000 (BD Ten Million) (the Guaranteed Obligation) and profit rates thereon at the relevant Profit Rate applicable to the Facility together with commission, banking charges, legal costs and other expenses.
3. This Guarantee is a continuing security for all the Purchaser's obligations and shall remain in full force and effect until all amounts due from the Purchaser to the Seller under the First Facility and the Second Facility (as defined in the Second Amendment Agreement dated 15 December 2009) are fully and finally settled notwithstanding any agreement, arrangement, compromise, adjustment, forbearance, waiver, release, discharge, extension of time or any other indulgence granted to the Purchaser, bankruptcy, liquidation or winding up, change in the ownership, management, constitution of the Purchaser or any waiver by the Seller of any remedy it may have against the Purchaser. Arcapita agrees that this Guarantee shall not be discharged by any intermediate discharge or any settlement of accounts between the Seller and the Purchaser or any other person.
4. This Guarantee shall be in addition to and shall not in any way prejudice or affect or be in any way prejudiced or affected by any collateral or other security now or hereafter held by the Seller for all or any of the obligations hereby guaranteed, and all moneys received by the Seller from Arcapita or the Purchaser or any person or persons liable to pay the same may be applied by the Seller to any account or item of account of the Purchaser or to any transaction of the Purchaser to which the same may be applicable.

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## ARCAPITA

5. Arcapita obligations shall be primary and not necessarily secondary and the Seller may, at its option, proceed in the first instance against Arcapita without first proceeding against the Purchaser or any other person and without resorting to any property held by the Seller as collateral security.

Arcapita further undertake as primary obligor and not merely as a surety, within three (3) Business Days of first written demand by the Seller, to indemnify the Seller against any actual loss, cost or liability suffered by the Seller as a result of the Purchaser failing to pay any amount due or as a result of the Guaranteed Obligation or any part thereof becomes unenforceable, invalid, void or illegal.

6. In the event that any amount or installment not being paid on its due date or the Purchaser failing to pay any amounts which the Seller may decide at its sole discretion, Arcapita hereby irrevocably authorizes the Seller to debit such amount or installment to its account(s) with the Seller without reference to Arcapita, and to set off its liability hereunder within the Guaranteed Obligation against any monies in whatsoever currency available in such accounts.
7. If the Purchaser fails to inject credits into the Financing Reserve Account as (a s defined in the Second Amendment Agreement) such that the outstanding under the Facility is reduced by BD 10,000,000 (BD Ten Million) during the first six months commencing from the date of the Second Amendment Agreement, Arcapita shall make good any shortfall by injecting credits to the Financing Reserve Account from its own resources. Failure to meet this condition will entitle the Seller to demand payment of the corresponding amount under this Guarantee.
8. Until the Purchaser's obligations under the Facility shall have been paid or discharged in full, Arcapita obligations hereunder shall remain valid unconditional, absolute and hereby waive all rights of subrogation, set off or any other defenses generally available to guarantors.
9. This Guarantee is entered into by Arcapita and shall continue to be in full force in all respects and bind its successors, assigns and administrators until all monies and obligations hereunder have been paid and satisfied.
10. The Seller's statement as to any amount due from Arcapita under this Guarantee shall (in the absence of manifest error) be binding on Arcapita.
11. Any notice in writing (including notices by fax or E-mail) served hereunder shall be sufficiently served if addressed to Arcapita at its address as notified to the Seller from time to time. A notice sent by post shall be deemed to have been given at the time when it is delivered at the address to which it is sent; a notice by fax shall be deemed served at the time of transmission, if an E-mail, once the sender having received the electronic acknowledgement of receipt of the receiver, and immediately if delivered personally.



Handwritten signatures and initials at the bottom right of the page, including a large signature and the initials 'LJ' and 'Cate'.



**EXHIBIT E**

*24* *OR*

Dated 29<sup>th</sup> June 2010

Amendment to Master Murabaha Facility Agreement

between:

National Bank of Bahrain BSC as "Seller"

And

Riffa Views BSC (c) as "Purchaser"

Third Amendment Agreement

Relating to Master Murabaha Facility Agreement

Dated 30 July 2007

21 J  
Cms

**Third Amendment to Master Murabaha Facility Agreement dated  
30<sup>th</sup> July 2007**

Between:

1. National Bank of Bahrain BSC of PO Box 106 Manama,- Kingdom of Bahrain (the "Seller").
2. Riffa Views BSC (c) of PO Box 3050 Manama,- Kingdom of Bahrain (the "Purchaser").

(each referred to as a Party and collectively referred to as the Parties).

Whereas:

- a. On 30<sup>th</sup> July 2007 the Seller and the Purchaser entered into Murabaha Agreement (the "Original Agreement") whereby the Seller has granted to the Purchaser a US Dollar Murabaha ("First Facility") in accordance with the terms and conditions of the Original Agreement to complete construction of Riffa Views Project.
- b. On 19<sup>th</sup> March 2009 the Parties entered into the First Amendment Agreement ("First Amendment") whereby certain terms and definitions of the Original Agreement were amended.
- c. On 15<sup>th</sup> December 2009 the Parties entered into the Second Amendment Agreement ("Second Amendment") whereby the Seller extended to the Purchaser additional Murabaha facility in aggregate amount of BD 10,000,000 ("Second Facility") to complete the Riffa Views Project subject to the terms and conditions contemplated therein.
- d. The Parties wish to enter into this Agreement ("Third Amendment") amending certain terms of the Original Agreement, First Amendment and Second Amendment.

Now it is hereby agreed as follows:

1- Definitions and Interpretation:

- 1.1 Unless otherwise defined herein capitalized terms and expressions used in this Agreement shall have the same meaning given to them in the Original Agreement and the First and Second Amendments.
- 1.2 Each of the Seller and the Purchaser agree that this Third Amendment is an integral part of the Original Agreement and shall be read together with it and the First and Second Amendments.

2- Amendments:

The Seller and the Purchaser agree that the following terms and provisions of the Original Agreement, First Amendment and Second Amendment shall be amended as follows:

- 2.1 The following definitions shall be amended to read:

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**Facilities** mean the First Facility and Second Facility.

**Final Maturity** means, in respect of the Facilities, 30 September 2012.

**Guarantee** means, the irrevocable undertaking of Arcapita Bank dated 23 December 2009, as amended on the date hereof, in favor of the Seller to secure the repayment by the Purchaser of the Facilities up to BD 10,000,000.

**Profit Rate** means 8% per annum payable monthly on the Facilities with effect from July 1, 2010.

- 2.2 Schedule 2 (Facility Limit) attached to the Second Amendment Agreement shall be deleted in its entirety and shall be replaced with new Schedule 1 attached to this Agreement.
- 2.3 The Purchaser undertakes to arrange payment from Arcapita Bank on behalf of Purchaser of partial repayment of the Facilities by BD 5,000,000 (BD five million) latest by September 30, 2010 and BD 5,000,000 (BD five million) latest by December 31, 2010.
- 2.4 If the amount is not paid within the period prescribed in clause 2.3 this Agreement will immediately cease to be valid or enforceable, in which case the provisions of the Second Amendment shall apply without any changes.
- 2.5 Clause 2.3 (a) of the Second Amendment shall be amended to read as follows: The Purchaser authorizes the Seller to transfer from the Reserve Collection Account to the Financing Reserve Account 20% of all revenues generated from Riffa Views Project with effect from the date of this Agreement up to 31<sup>st</sup> December 2010 and 35% from 1<sup>st</sup> January 2011 until the entire Facilities have been fully settled.
- 2.6 If the amount transferred pursuant to clause 2.5 is not sufficient to meet the profit charged monthly as defined in the (Profit Rate) the Purchaser undertakes to provide additional amount as may be necessary to meet this obligation.
- 2.7 Clause 2.3 (i) of the Second Amendment shall be amended to read as follows: The Purchaser undertakes to repay the remaining balance of the Facilities plus the Profit Element at the Profit Rate in the manner and time specified in Schedule 1.
- 2.8 The Purchaser undertakes to route all payments and receipts related to Riffa Views project to the Purchaser's accounts with the Seller including amounts transferred to all other banks. The Purchaser confirms that no diversion of funds will take place.
- 2.9 Any default or failure on the part of the Purchaser in performing any of the obligations stipulated herein will be an Event of Default under the Original Agreement as amended by the First Amendment and the Second Amendment, whereupon the Seller shall have the

right to exercise all remedies and rights available to it under the Original Agreement as amended by the First Amendment and Second Amendment, including but not limited to the Step In Rights.

### 3. Representations and Warranties

3.1 The Purchaser represents and warrants to the Seller on the date of this Agreement and the Effective Date that:

3.1.1 The representations and warranties set out in clause 9 of the Original Agreement are true and correct with reference to the facts and circumstances existing at each such date.

3.1.2 The Purchaser has power to execute, deliver and perform its obligations under this Agreement; all necessary corporate, shareholder and other actions has been taken to authorize the execution, delivery and performance of this Agreement and this Agreement constitutes valid and legally binding obligation on the Purchaser enforceable in accordance with its terms.

### 4 General Provisions

#### 4.1 Continuing Obligations:

The provisions of the Original Agreement, the First Amendment and the Second Amendment, shall except as amended by this Agreement, continue in full force and effect. The Original Agreement, the First Amendment, the Second Amendment and the relevant provisions of this Agreement shall be read and construed as one instrument. Reference in the Original Agreement, the First Amendment and the Second Amendment to (this Agreement) shall from the date of this Agreement be construed as reference to the Original Agreement as amended by the relevant provisions of this Agreement.

#### 4.2 Fees

The Purchaser shall pay to the Seller all reasonable expenses incurred by the Seller in connection with negotiation, preparation, drafting and execution of this Agreement.

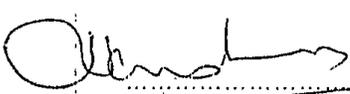
#### 4.3 Governing Law and Jurisdiction

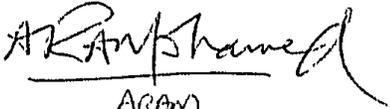
This Agreement shall be governed by and construed in accordance with the law of Kingdom of Bahrain and shall subject to the jurisdiction of Bahraini courts.

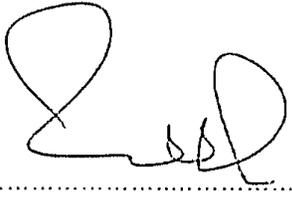
4.4 Central Bank of Bahrain Approval

This agreement will be also be subject to the Seller receiving the approval of the Central Bank of Bahrain for continuation of the Seller's exposure to the Purchaser in excess of the Large Exposure Norms of the Central Bank of Bahrain.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

  
.....  
Authorised Signature(s)  
For and on behalf of  
National Bank of Bahrain B.S.C. as "Seller"

  
.....  
ARAM

  
.....  
Authorised Signature(s)  
For and on behalf of  
Riffa Views B.S.C. (c) as "Purchaser"







**Schedule -1**

(BDs in Millions)

<b>Date</b>	<b>Minimum Repayment by</b>	<b>Facility Limit</b>
On Agreement Date		39.91
On or before September 30, 2010	5.00	34.91
On or before December 31, , 2010	5.00	29.91
31-Mar-11	4.30	25.61
30-Jun-11	4.30	21.31
30-Sep-11	4.30	17.01
31-Dec-11	4.30	12.71
31-Mar-12	4.30	8.41
30-Jun-12	4.30	4.11
30-Sep-12	4.11	0
<b>Total</b>	<b>39.91</b>	

**EXHIBIT F**

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**Dated 06 February 2011**

**National Bank of Bahrain B.S.C.  
As Seller**

**and**

**Riffa Views B.S.C.(c)  
As Purchaser**

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**FOURTH AMENDMENT AGREEMENT**

**Relating to Master Murabaha Facility  
Agreement dated 30 July 2007**

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**Fourth Amendment to Master Murabaha Facility Agreement dated 30<sup>th</sup> July 2007**

This Fourth Amendment Agreement ("Fourth Amendment Agreement") is made this 6<sup>th</sup> day of February 2011

**Between:**

1. National Bank of Bahrain B.S.C. of P.O. Box 106, Manama – Kingdom of Bahrain (the "Seller").
2. Riffa Views B.S.C.(c) of P.O. Box 3050, Manama – Kingdom of Bahrain (the "Purchaser").

each referred to as a "Party" and collectively referred to as the "Parties".

**Whereas:**

- a. On 30<sup>th</sup> July 2007, the Parties entered into Master Murabaha Facility Agreement (the "**Original Agreement**") whereby, the Seller granted to the Purchaser a US Dollar Murabaha facility in a maximum aggregate amount of US\$ 82,000,000/- in accordance with the terms and conditions of the Original Agreement.
- b. On 19<sup>th</sup> March 2009, the Parties entered into an amendment agreement (the "**First Amendment**") whereby certain terms and definitions of the Original Agreement were amended.
- c. On 15th December 2009 the Parties entered into the Second Amendment Agreement ("**Second Amendment**") whereby the Seller extended to the Purchaser additional Murabaha facility in aggregate amount of BD 10,000,000 subject to the terms and conditions contemplated therein.
- d. On 29th June 2010 the Parties entered into the Third Amendment Agreement ("**Third Amendment**") whereby certain terms of the Original Agreement, First Amendment and Second Amendment were amended.
- e. The First Amendment, the Second Amendment and the Third Amendment are herein collectively referred to as the ("**Amendment Agreements**")
- f. The Parties acknowledge and agree that the aggregate Cost Prices of all Purchase Agreements which have been entered into under the Original Agreement is USD 79,348,184/-
- g. The Purchaser has requested the Seller to convert the currency of the Facility into Bahraini Dinars and has also requested the Seller to increase the Available Facility by an amount of BD 20,000,000/- thus aggregating as of the date of this Fourth Amendment Agreement BD 49,906,331/- (the "**Enhanced Facility**") and the Seller has agreed to the Purchaser's requests subject to the terms and conditions of this Agreement ("**Fourth Amendment**").
- h. The Parties have agreed to enter into this Fourth Amendment to amend

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*Handwritten initials/signatures*

and/or add certain terms to the Original Agreement (as amended by the Amendment Agreements), so that the Enhanced Facility shall be governed also by the terms hereof.

Now it is hereby agreed as follows:

**1. Definitions and Interpretation**

- a. Unless otherwise defined herein, capitalized terms and expressions used in this Fourth Amendment shall have the same meaning given to them in the Original Agreement and the Amendment Agreements.
- b. Each of the Seller and the Purchaser agree that this Fourth Amendment is an integral part of the Original Agreement (as amended by the Amendment Agreements) and shall be read together with the Original Agreement (as amended by the Amendment Agreements) as if they were one and the same instrument.

**2. Amendments**

The Seller and the Purchaser agree that the Original Agreement (as amended by the Amendment Agreements) shall be further amended to include the following changes:

**2.1 The following Definitions shall be amended:**

**Facility Limit** means as of the date of this Fourth Amendment BD 49,906,331/- and with effect on and from each Reduction Date the amount set out opposite such Reduction Date in the column in the table in Schedule 1 headed "Facility Limit".

**Final Maturity Date** means 15<sup>th</sup> June, 2014.

**Fourth Amendment Agreement Effective Date** means the date on which the Purchaser delivers to the Seller the Conditions Precedent documents set out in Schedule 3, in form and substance acceptable to the Seller.

**Guarantee** means the document executed by Arcapita Bank B.S.C.(c) in the form set out in Schedule 2, being the irrevocable guarantee of Arcapita in favour of the Seller of all amounts from time to time due and owing by the Purchaser to the Seller under the Original Agreement, the Amendment Agreements and the Fourth Amendment.

**Mile-Stones** means the occurrence of each of the following events;

- i. Payment of the Profit Element of each relevant Purchase Agreement, by no later than the Deferred Payment Date of such Purchase Agreement; and
- ii. Payment of a portion of the Cost Price element of the Deferred Sale Price of each relevant Purchase Agreement, in an amount of not

less than the relevant Minimum Repayment, on each of the relevant Reduction Dates as specified in Schedule 1.

**Minimum Repayments** means each of the amounts set out in the column in the table in Schedule 1 headed "Minimum Repayment".

**Profit Element** means, with respect to each Transaction, the amount equal to the product of the Profit Rate multiplied by the relevant Cost Price and as specified in paragraph 2(d) of the relevant Seller Offer and with respect only to the first Transaction entered into after the date of this Fourth Amendment, means an additional amount equal to the Upfront Profit Payment.

**Profit Period** means a period of one month or such other date as agreed by the Parties.

**Profit Rate** means 8% per annum with effect from the Fourth Amendment Agreement Effective Date.

**Reduction Date** means each of the dates set out in the column in the table in Schedule 1, headed "Date".

**Security Documents** means the Guarantee and such other documents specified as such in the Original Agreement and the Amendment Agreements and any document designated as such at any time by the Parties and Security Documents means each and any one of them.

**Subordination Letter** means the letter from Arcapita subordinating all their past, present and future dues from the Purchaser, to the dues to the Seller

**Transaction Documents** means,

- a. The Original Agreement, the First, the Second and the Third Amendment Agreement and this Agreement.
- b. The Fee Letter and the Amendment Fee Letter.
- c. When entered into, each Purchase Agreement,
- d. The Security Documents.
- e. The Guarantee
- f. The Subordination Letter.
- g. The Undertakings.
- h. Such other documents at any time designated as such by the Parties.

**Upfront Profit Payment** means a profit payment in an amount of BD 190,000 (One hundred and ninety thousand Bahraini Dinars).

- 2.2 Schedule 1 attached to the Third Amendment Agreement shall be deleted in its entirety and shall be replaced with a new Schedule 1 attached to this Agreement.
- 2.3 Clause 2.5 of the Third Amendment Agreement shall be deleted in its

entirety.

2.4 With effect from the Effective Date, all references in the Original Agreement (as amended) and in any other Transaction Document to "US\$", "\$" or "Dollars", shall be read and construed as a reference to "BD" or, as appropriate, to "Bahraini Dinars" and any reference in the Original Agreement (as amended) and in any other Transaction Document to any existing figure in Dollars shall be converted to the equivalent in Bahraini Dinars, using the spot rate of exchange of the Seller at the relevant time.

2.5 With effect from the Effective Date, Section 4.1.3 of the Original Agreement is amended in its entirety to read as follows:

"The Purchaser may select a Deferred Payment Date for a Transaction falling one (1) month from the Settlement Date of such Transaction, or such period as the Seller may approve, provided that the Deferred Payment Date (i) falls on a Business Day and (ii) does not fall later than the Final Maturity Date."

2.6 With effect from the Effective Date, all references in the Original Agreement (as amended) to "LIBOR" or "BIBOR" or to the calculation or computation of the Profit Rate and/or the Profit Element of any Purchase Agreement, by reference to any other variable rate benchmark shall be disregarded.

2.7 The following conditions are accepted and agreed by the Purchaser with effect from the Fourth Amendment Agreement Effective Date and are hereby included as additional Covenants in Clause 10 of the Original Agreement (as amended).

a. In the event of the Purchaser seeking release of any mortgaged title deed, the Purchaser shall pay an amount equal to higher of 10% of sales value or 35% of receivables in respect of the villa covered by the title deed, as per list as on 31.12.2010, into the Financing Reserve Account number 0099574985. The balance in the Financing Reserve Account (if any) from time to time, shall be applied as follows:

i. First and on the Deferred Payment Date of the then outstanding Purchase Replacement Agreement, in or towards paying and discharging the Profit Element due and payable on such Deferred Payment Date; and

ii. Second and if any balance remains standing to the credit of the Financing Reserve Account after being applied in the manner set out in paragraph (i) above, in or towards reducing the Facility Limit, over and above the Minimum Repayment as per Schedule 1 in inverse order of maturity.

b. The release of mortgaged title deeds will be such that the Purchaser shall always ensure that the security cover is maintained

at a minimum of 2.0 times the outstanding Enhanced Facility throughout its tenor. For the purpose of determining the security cover, the security value will be determined on an annual basis by an independent valuer appointed by the Seller at the Purchaser's cost. If the security cover decreases, the Purchaser, within three Business Days of being notified by the Seller that the security cover has decreased, shall arrange to top up the security or settle early a part of the Deferred Sale Price, to the extent required to restore the security cover.

- c. The Purchaser undertakes to pay to the Seller, the Profit Element on the Deferred Payment Date of each Purchase Agreement and the Minimum Repayments, on each of the Reduction Dates. The provisions of this clause shall replace and override the existing provisions of sub-paragraph IV of paragraph C of clause 11.4 of the Original Agreement (as amended). The parties agree that each Purchase Agreement will be for a maximum of one month unless otherwise agreed.
- d. The Purchaser acknowledges and agrees that the Enhanced Facility shall be covered by the provisions of the Security Documents and the Security Period as if such Security Documents and Security Period were initially executed or intended to secure the Enhanced Facility.
- e. The Purchaser acknowledges that if any covenant is violated or Mile-Stones are not adhered to or default in payment of the Profit Element or Minimum Repayments on the due dates occurs, the entire outstanding balance under the Enhanced Facility will become due and payable immediately

### 3. Representations and Warranties

- 3.1 The Purchaser represents and warrants to the Seller on the date of this Fourth Amendment Agreement and the Effective Date as follows:
  - 3.1.1 The representations and warranties set out in Clause 9 of the Original Agreement are true and correct in all material respects with reference to the facts and circumstances existing at each such date.
  - 3.1.2 The Purchaser has the power to execute, deliver and perform its obligations under this Fourth Amendment Agreement; all necessary corporate, shareholder and other actions has been taken to authorize the execution, delivery and performance of this Fourth Amendment and this Fourth Amendment constitutes valid and legally binding obligation of the Purchaser, enforceable in accordance with its terms, save to the extent that the enforceability thereof may be affected by the application of equitable principles, statutes or other legislation providing for limitation periods or the mandatory application of insolvency laws or principles and on the basis that 'enforceable' in the Transaction Documents means obligations of a type and form that are customarily enforced in the courts of the Kingdom of Bahrain but does not imply that such obligations will be enforced in all circumstances .

**4. Continuing Obligations**

The provisions of the Original Agreement, shall except as amended by the Amendment Agreements and this Fourth Amendment, continue in full force and effect. The Original Agreement the Amendment Agreements and Fourth Amendment shall be read and construed as one instrument. Reference in the Original Agreement and the Amendment Agreements to "this Agreement" shall, from the date of this Fourth Amendment, be construed as reference to the Original Agreement and the Amendment Agreements as amended by the relevant provisions of this Fourth Amendment.

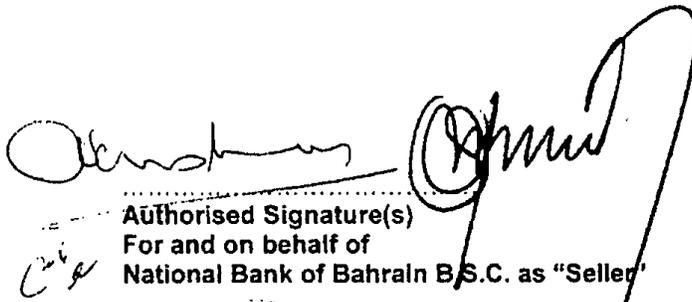
**5. Fees**

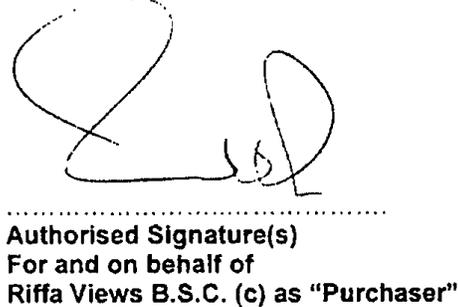
The Purchaser shall pay to the Seller all reasonable costs and expenses incurred by the Seller in connection with negotiation, preparation, drafting and execution of this Fourth Amendment Agreement including the Upfront Profit Payment

**6. Governing Law and Jurisdiction**

This Fourth Amendment shall be governed by and construed in accordance with the law of Kingdom of Bahrain and shall be subject to the jurisdiction of Bahraini courts.

This Fourth Amendment has been entered into on the date stated at the beginning of this Fourth Amendment.

  
.....  
Authorized Signature(s)  
For and on behalf of  
National Bank of Bahrain B.S.C. as "Seller"

  
.....  
Authorized Signature(s)  
For and on behalf of  
Riffa Views B.S.C. (c) as "Purchaser"



**Schedule -1**  
**Repayment Schedule**

(BDs in Millions)

Date	Minimum Repayment	Facility Limit
On Agreement Date		49.91
June 15, 2011	1.00	48.91
Dec 15, 2011	2.00	46.91
June 15, 2012	8.00	38.91
Dec 15, 2012	8.00	30.91
June 15, 2013	10.00	20.91
Dec 15, 2013	10.00	10.91
June 15, 2014	10.91	0
<b>Total</b>	<b>49.91</b>	

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*W* *Q*

**Schedule – 2**  
**Form of Arcapita Guarantee**

**IRREVOCABLE GUARANTEE TO NATIONAL BANK OF BAHRAIN B.S.C.**

In consideration of National Bank of Bahrain BSC (the "Seller") granting to Riffa Views B.S.C.(c) (the "Purchaser") a Murabaha facility pursuant to the terms and conditions of the Master Murabaha Facility Agreement dated 30 July 2007 ("Master Agreement") as amended by the Amendment Agreements and the Fourth Amendment Agreement dated 6 February 2011 ("Fourth Amendment") each made between the Seller and the Purchaser (collectively, the "Enhanced Facility"), Arcapita Bank B.S.C.(c) ("Arcapita") hereby as primary obligor irrevocably and unconditionally undertakes:

1. To pay and satisfy to the Seller within three (3) Business Days of first written demand by the Seller, the entire outstanding due and payable but unpaid balance due to the Seller from the Purchaser under the Enhanced Facility in case the Purchaser breaches or violates any Covenant or defaults in payment of any installment or Profit on the Enhanced Facility, in such manner and on such dates specified in the Mile-Stones
2. Arcapita further undertakes to pay to the Seller within three (3) Business Days of first written demand by the Seller the entire Enhanced Facility amount within the Guaranteed Obligation (as defined below) in case Arcapita default or fail to make payment of any sum or amount specified as per clause 1 above which has become over due and payable but has not been paid.
3. Arcapita hereby irrevocably authorizes the Seller to debit all amounts due to the Seller under this Guarantee to Arcapita account(s) with the Seller without reference to Arcapita, and to set off its liability hereunder within the Guaranteed Obligation against any monies in whatsoever currency available in such accounts.
4. That Arcapita's liabilities under this Guarantee shall be within a limit of BD 49,906,331/- (Forty Nine Million Nine Hundred Six Thousand Three Hundred Thirty One Bahraini Dinars) (the "Guaranteed Obligation") in addition to the profit rates thereon at the relevant Profit Rate applicable to the Enhanced Facility together with any costs and other expenses (including legal expenses) actually incurred by the Seller in connection with the preservation or enforcement of its rights under this Guarantee.

5. This Guarantee is a continuing security for all the Purchaser's obligations under the Enhanced Facility and shall remain in full force and effect until all amounts due from the Purchaser to the Seller under the Enhanced Facility are fully and finally settled notwithstanding any agreement, arrangement, compromise, adjustment, forbearance, waiver, release, discharge, extension of time or any other indulgence granted to the Purchaser, bankruptcy, liquidation or winding up, change in the ownership, management, constitution of the Purchaser or any waiver by the Seller of any remedy it may have against the Purchaser. Arcapita agrees that this Guarantee shall not be discharged by any intermediate discharge or any settlement of accounts between the Seller and the Purchaser or any other person.
6. This Guarantee shall be in addition to and shall not in any way prejudice or affect or be in any way prejudiced or affected by any collateral or other security now or hereafter held by the Seller for all or any of the obligations hereby guaranteed, and all moneys received by the Seller from Arcapita or the Purchaser or any person or persons liable to pay the same may be applied by the Seller to any account or item of account of the Purchaser or to any transaction of the Purchaser to which the same may be applicable.
7. Arcapita obligations shall be primary and not necessarily secondary and the Seller may, at its option, proceed in the first instance against Arcapita without first proceeding against the Purchaser or any other person and without resorting to any property held by the Seller as collateral security.
8. Arcapita further undertake as primary obligor and not merely as a surety, within three (3) Business Days of first written demand by the Seller, to indemnify the Seller against any actual loss, cost or liability suffered by the Seller as a result of the Purchaser failing to pay any amount due or as a result of the Guaranteed Obligation or any part thereof becomes unenforceable, invalid, void or illegal.
9. Until the Purchaser's obligations under the Enhanced Facility shall have been paid and discharged in full, Arcapita obligations hereunder shall remain valid unconditional, absolute and hereby waive all rights of subrogation, set off or any other defenses generally available to guarantors.
10. This Guarantee is entered into by Arcapita and shall continue to be in full force in all respects and bind its successors, assigns and administrators until all monies and obligations hereunder have been paid and satisfied.
11. This guarantee shall repeal, invalidate and cancel the notarized Guarantee dated 23 December 2009 and the Amendment Guarantee dated 29 June 2010.

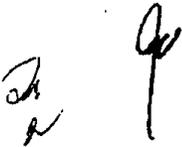
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12. The Seller's statement as to any amount due from Arcapita under this Guarantee shall (in the absence of manifest error) be binding on Arcapita.
13. Any notice in writing (including notices by fax or E-mail) served hereunder shall be sufficiently served if addressed to Arcapita at its address as notified to the Seller from time to time. A notice sent by post shall be deemed to have been given at the time when it is delivered at the address to which it is sent; a notice by fax shall be deemed served at the time of transmission, if an E-mail, once the sender having received the electronic acknowledgement of receipt of the receiver, and immediately if delivered personally.
14. In this Guarantee, unless otherwise defined, defined terms shall have the meanings given to them in the Master Agreement, Amendment Agreements and the Fourth Amendment.
15. This Guarantee shall be governed by and construed in accordance with the laws of the Kingdom of Bahrain and Arcapita hereby submit to the non-exclusive jurisdiction of the courts of the Kingdom of Bahrain and the competent courts of any other jurisdiction in which any of Arcapita assets may from time to time be found.

.....  
Authorized Signature(s)  
For and on behalf of  
Arcapita Bank B.S.C.(c)

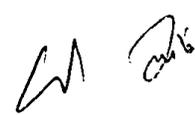


### Schedule – 3

#### Conditions Precedent

1. Board Resolution authorizing the company to convert the USD Murabaha Facility to BD Facility and avail an enhancement of BD 20 Million, approving the terms of this Agreement and approving the amendment to the Master Murabaha Facility Agreement.
2. Guarantee from Arcapita Bank for BD 49,906,331/- guaranteeing the repayment of the principal and profit as per agreed schedule and stating that in the event of default in payment of profit or principal on the due dates by the borrower/ guarantor, the entire outstanding loan will become due and payable immediately under the guarantee.
3. Subordination Letter to subordinate all Arcapita's past, present and future dues from Riffa Views, to the dues to NBB.
4. Payment of upfront profit payment of BD 190,000/-.
5. A copy of any other authorisation or other document, opinion or assurance which Seller has notified the Purchaser is necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, any Finance Document or for the validity and enforceability of any Finance Document.

**EXHIBIT G**





**IRREVOCABLE GUARANTEE TO NATIONAL BANK OF BAHRAIN B.S.C.**

In consideration of National Bank of Bahrain BSC (the "Seller") granting to Riffa Views B.S.C.(c) (the "Purchaser") a Murabaha facility pursuant to the terms and conditions of the Master Murabaha Facility Agreement dated 30 July 2007 ("Master Agreement") as amended by the Amendment Agreements and the Fourth Amendment Agreement dated 6 February 2011 ("Fourth Amendment") each made between the Seller and the Purchaser (collectively, the "Enhanced Facility"), Arcapita Bank B.S.C.(c) ("Arcapita") hereby as primary obligor irrevocably and unconditionally undertakes:

1. To pay and satisfy to the Seller within three (3) Business Days of first written demand by the Seller, the entire outstanding due and payable but unpaid balance due to the Seller from the Purchaser under the Enhanced Facility in case the Purchaser breaches or violates any Covenant or defaults in payment of any installment or Profit on the Enhanced Facility, in such manner and on such dates specified in the Mile-Stones.
2. Arcapita further undertakes to pay to the Seller within three (3) Business Days of first written demand by the Seller the entire Enhanced Facility amount within the Guaranteed Obligation (as defined below) in case Arcapita default or fail to make payment of any sum or amount specified as per clause 1 above which has become over due and payable but has not been paid.
3. Arcapita hereby irrevocably authorizes the Seller to debit all amounts due to the Seller under this Guarantee to Arcapita account(s) with the Seller without reference to Arcapita, and to set off its liability hereunder within the Guaranteed Obligation against any monies in whatsoever currency available in such accounts.
4. That Arcapita's liabilities under this Guarantee shall be within a limit of BD 49,906,331/- (Forty Nine Million Nine Hundred Six Thousand Three Hundred Thirty One Bahraini Dinars) (the "Guaranteed Obligation") in addition to the Profit Element thereon at the relevant Profit Rate applicable to the Enhanced Facility together with any costs and other expenses (including legal expenses) actually incurred by the Seller in connection with the preservation or enforcement of its rights under this Guarantee.
5. This Guarantee is a continuing security for all the Purchaser's obligations under the Enhanced Facility and shall remain in full force and effect until all amounts due from the Purchaser to the Seller under the Enhanced Facility are fully and finally settled notwithstanding any agreement, arrangement, compromise,



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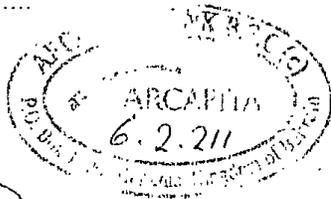
# ARCAPITA

Arcapita.

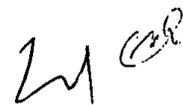
13. Any notice in writing (including notices by fax or E-mail) served hereunder shall be sufficiently served if addressed to Arcapita at its address as notified to the Seller from time to time. A notice sent by post shall be deemed to have been given at the time when it is delivered at the address to which it is sent; a notice by fax shall be deemed served at the time of transmission, if an E-mail, once the sender having received the electronic acknowledgement of receipt of the receiver, and immediately if delivered personally.
14. In this Guarantee, unless otherwise defined, defined terms shall have the meanings given to them in the Master Agreement, Amendment Agreements and th Fourth Amendment.
15. This Guarantee shall be governed by and construed in accordance with the laws of the Kingdom of Bahrain and Arcapita hereby submit to the non-exclusive jurisdiction of the courts of the Kingdom of Bahrain and the competent courts of any other jurisdiction in which any of Arcapita assets may from time to time be found.



By: Hisham Al-Rae  
Authorized Signatory  
For and on behalf of  
Arcapita Bank B.S.C.(c)



By: Abdulhameed Juma  
Authorized Signatory  
For and on behalf of  
Arcapita Bank B.S.C.(c)



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**EXHIBIT H**

A handwritten signature in black ink, appearing to be 'C. J. ...', located in the bottom right corner of the page.

DATED 15<sup>th</sup> DECEMBER 2009

ARCAPITA INVESTMENT HOLDINGS LIMITED,

WATERWARF HOLDINGS LIMITED

AND

NATIONAL BANK OF BAHRAIN B.S.C.

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PROMISE TO SELL SHARES AGREEMENT

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PLG  
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**THIS PROMISE TO SELL SHARES AGREEMENT** (the "Agreement") is made on this day the  
15<sup>th</sup> of December 2009.

BETWEEN:

- (1) **ARCAPITA INVESTMENT HOLDINGS LIMITED**, a company organised under the laws of the Cayman Islands, with its principal place of business at Boundary Hall, Cricket Square, P.O. Box 1111, Grand Cayman KYI-1102, Cayman Islands (the "**Company**");
- (2) **WATERWARF HOLDINGS LIMITED**, a company organised under the laws of the Cayman Islands, with its principal place of business at Boundary Hall, Cricket Square, P.O. Box 1111, Grand Cayman KYI-1102, Cayman Islands ("**Target**"); and
- (3) **NATIONAL BANK OF BAHRAIN B.S.C.** with its principal place of business at the P.O. Box 106, Manama, Kingdom of Bahrain ("**NBB**").

**WHEREAS**

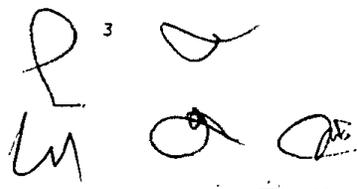
- (A) The Company is wholly owned by Arcapita Bank B.S.C.(c) and holds 100% of shares in the Target, which holds an indirect interest of 7.5% in Bahrain Bay Development B.S.C.(c).
- (B) The Company and NBB are entering into this Agreement to set out the terms and conditions upon which the Company agrees, in certain circumstances, to sell an agreed value of shares in the Target to NBB.

**THE PARTIES AGREE** as follows:

1. **INTERPRETATION**

- 1.1 Except where the context requires otherwise, the following terms used in this Agreement have the meanings set out below:

"Business Day"	means a day on which businesses are generally open in the Kingdom of Bahrain and the Cayman Islands.
"Completion"	means completion of the exercise of the right but not the obligation to acquire the Promised Shares in accordance with this Agreement.
"Dollar" and "US\$"	means the lawful currency for the time being of the United States of America.

Handwritten initials and signatures, including a large 'L' with a '3' above it, and several other scribbles.

- "Encumbrance"** means a mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption (other than any rights of pre-emption imposed by any applicable laws), third party right or interest, other encumbrance or security interest of any kind, or another type of preferential arrangement.
- "Exercise Date"** means a date falling within the Purchase Period.
- "Fair Market Value"** means the fair market value of each Share as determined by mutual agreement between NBB and the Company or, in the event of disagreement, by a reputable and appropriately qualified independent expert, appointed jointly by NBB and the Company.
- "Guarantee"** means the guarantee entered into between Arcapita Bank B.S.C.(c) and NBB dated [on or about the date of this Agreement][ ] 2009.
- "Material Adverse Effect"** means:
- (a) a material adverse effect on the ability of the Company or Target to perform and comply with their obligations under this Agreement; or
  - (b) a material adverse effect on the business, operations, property, condition (financial or otherwise) or prospect of the Company; or
  - (d) an adverse effect on the legality, validity and/or enforceability of this Agreement.
- "Purchase Right"** means the right granted by the Company to NBB under clause 2 of this Agreement.
- "Promised Shares"** means that number of Shares available at the Purchase Price Per Share for a value of up to US\$10,000,000.

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- "Promise to Sell Shares Notice"** means the written notice in the form set out in **Schedule 1** from NBB to the Company exercising the Promise to Sell Shares pursuant to **clause 3.1**.
- "Purchase Period"** means the period during which the Guarantee will remain valid and binding on Arcapita until all amounts due to NBB under the Guarantee are fully settled.
- "Purchase Price"** means the total price payable by NBB for the Promised Shares at the Purchase Price Per Share.
- "Purchase Price Per Share"** means an amount in USD\$ to be determined on or around the Exercise Date which amount reflects the Fair Market Value of the Target's shares on the Exercise Date.
- "Share" or "Shares"** means: (a) fully paid ordinary voting share in the capital of Target carrying all of the associated rights and powers; or  
(b) the securities which result if the shares referred to in paragraph (a) of this definition are at any time after the date of this Agreement subdivided, consolidated or reclassified.
- "Shareholders"** means the shareholders of Target as at the date of this Agreement.
- "Target"** means WaterWarf Holdings Limited.
- "Trigger Event"** means a failure by Arcapita Bank B.S.C.(c) to pay, within five (5) Business Days of demand from NBB, any sums which become due and payable to NBB under the Guarantee.

1.2 In this Agreement, a reference to a clause, paragraph or schedule, unless the context otherwise requires, is a reference to a clause or paragraph of, or schedule to, this Agreement.

1.3 The headings in this Agreement do not affect its interpretation.

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2. **GRANT OF PROMISE TO BUY THE PROMISED SHARES**

In consideration of the payment by NBB of US\$10 to the Company (receipt of which is hereby taken to be acknowledged) the Company grants to NBB the right, but not the obligation, during the Purchase Period to acquire the Promised Shares at the Purchase Price Per Share on the terms set out in this Agreement upon the occurrence of a Trigger Event.

3. **EXERCISE OF PROMISE**

3.1 Upon the occurrence of a valid Trigger Event during the Purchase Period, NBB may exercise its Purchase Right by serving the Company and the Target with a Promise to Sell Shares Notice specifying NBB's preferred date of Completion, which must be a Business Day within the Purchase Period.

3.2 If NBB either fails to exercise the Purchase Right during the Purchase Period or Completion does not occur before the expiry of the Purchase Period, then the Purchase Right will expire and this Agreement will automatically come to an end without any further notice or action being required by either party.

3.3 Until such time as NBB exercises its Purchase Right, the Company and the Target agree and undertake that the Target will not, without the prior written consent of NBB (such consent not to be unreasonably withheld or delayed):

3.3.1 Take any matters which require special resolution, as more fully described in the companies law applicable to the Target and in the Target's Memorandum of Association;

3.3.2 Create or permit to subsist any Encumbrance over the Promised Shares;

3.3.3 Make any loans, grant any credit or make any other financial arrangements having a similar effect or give any guarantees or indemnities; or

3.3.4 Except where necessary to effect the transaction contemplated by this Agreement, approve share splits, share dividends or other corporate actions which may result in increasing or reducing the price per share at any time.

4. **COMPLETION**

4.1 Completion will take place by 3.00 p.m. on the date specified in the Promise to Sell Shares Notice at the Company's registered office, or at another place agreed by the Company and NBB.

4.2 At Completion:

4.2.1 The Company and the Target will take all necessary steps to effect the transfer of the Promised Shares to NBB and assume the cost of such Transfer and obtaining the transfer

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and registration of the relevant Promised Shares in the Target's register of members including any government and registration fees;

- 4.2.2 NBB will pay the Purchase Price to the Company on or before the date of Completion (and may, at its sole discretion, elect to deduct or set-off from the Purchase Price any amounts due by Arcapita Bank B.S.C.(c) to NBB);
- 4.2.3 the Company and the Target undertake not to enter into any shareholder agreements relating to the rights and obligations of shareholders in the Target, without first obtaining the prior written consent of NBB (such consent not to be unreasonably withheld or delayed).

5. **REPRESENTATIONS AND WARRANTIES**

To the best of their knowledge as at the date of this Agreement, the Company and the Target respectively (where the context so requires) represent and warrant the following.

5.1 **Status**

- 5.1.1 They are corporations, duly incorporated and validly existing under the law of each of their respective jurisdictions of incorporation.
- 5.1.2 They have the power to own their assets and carry on their business as it is being conducted.

5.2 **Non-conflict with other obligation**

The obligations expressed to be assumed by them under this Agreement will not conflict with:

- 5.2.1 Their constitutional documents; or
- 5.2.2 Any agreement or instrument binding upon them or any of their assets where such conflict would have a Material Adverse Effect.

5.3 **Power and authority**

They have the power to enter into, perform and deliver, and have taken all necessary action and consents to authorise the entry into, performance and delivery of, this Agreement and the execution and performance of their obligations under this Agreement will not constitute a breach under any law or regulation by which they are bound, including their constitutional documents.

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5.4 **Validity and admissibility in evidence**

5.5 All authorisations required to enable them to lawfully enter into, exercise their rights and comply with their respective obligations under this Agreement and have been obtained or effected and are in full force and effect. The obligations expressed to be assumed by it pursuant to this Agreement are valid, legally binding, direct and unconditional obligations enforceable in accordance with their terms.

5.6 **Governing law and enforcement**

5.6.1 The choice of English law as the governing law of this Agreement will be recognised and enforced in their respective jurisdictions of incorporation and their obligations under this Agreement are legally binding and enforceable.

5.6.2 Any judgment obtained in the England in relation to this Agreement will be recognised and enforced in each of their respective jurisdictions of incorporation.

5.7 **No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, would have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it.

5.8 **Winding-up**

5.8.1 No resolution has been passed for their winding-up or dissolution or for the appointment of a liquidator, administrator, receiver, trustee, judicial manager, compulsory manager or other similar officer of them or any of their assets and no such resolution is intended by them.

5.8.2 So far as they are aware, no petition, application or the like is outstanding for their winding-up or for the appointment of a liquidator, administrator, receiver, trustee, judicial manager, compulsory manager or other similar officer.

5.9 **Immunity**

The Company and the Target (or any of their assets) are not entitled to any immunity from suit, execution, attachment or other legal process and in any proceedings taken in their respective jurisdictions of incorporation in relation to this Agreement and, they will not be entitled to claim immunity for themselves or any of their assets arising from suit, execution or other legal process.

5.10 **Existing Encumbrance**

The Company is not aware of any Encumbrances existing on the any of the Shares at the date of this Agreement.

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6. **UNDERTAKINGS**

The undertakings in this clause 6 remain in force from the date of this Agreement for so long as any amount is outstanding under this Agreement is in force.

6.1 **Authorisation**

The Company and Target will:

- 6.1.1 Obtain, comply with and do all that is necessary to maintain in full force and effect their corporate existence and will not amalgamate, merge or consolidate with any person unless there is a solvent reconstruction or solvent amalgamation of the Target where the successor to the Target assumes the obligations of the Target under this Agreement; and
- 6.1.2 Supply certified copies to NBB of any authorisation required under any law or regulation of their respective jurisdictions of incorporation to enable them to perform their obligations under this Agreement and to ensure the legality, validity, enforceability or admissibility in evidence in their respective jurisdictions of incorporation of this Agreement.

6.2 **Compliance with the law**

The Company and Target will comply in all respects with all laws to which they may be subject, if failure so to comply would materially impair its ability to perform its obligations under this Agreement.

6.3 **Conduct of Affairs and Accounts**

- 6.3.1 The Target will at all times carry on and conduct its affairs in a manner customary for companies in the same business.
- 6.3.2 The Company and Target will obtain or make provisions satisfactory to NBB to obtain all governmental corporate creditors shareholders' or other necessary licences, approvals and consents hereunder for the carrying on of its business and the due observance and performance of all their obligations and covenants under this Agreement and duly comply with all laws pertaining to the same and notify NBB forthwith if such licences, consents, approvals, waivers or authorizations or any of them are withdrawn, modified, revoked or terminated or expired and is not renewed or is otherwise not in full force and effect.

6.4 **Further Assurance**

The Company and the Target will do or procure the doing of all such acts and will execute or procure the execution of all such documents may reasonably be required for the giving of full effect to this Agreement or securing to NBB the full benefits of all rights, powers and remedies conferred upon NBB under this Agreement.

*Handwritten initials and signatures:*  
D<sup>s</sup>  
W a  
Jb

7. **GENERAL**

7.1 A variation of this Agreement is valid only if it is in writing and signed by or on behalf of each party.

7.2 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not impair or constitute a waiver of the right or remedy or an impairment of or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

7.3 Each party's rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by law.

7.4 Each date, time or period referred to in this Agreement is of the essence. If the parties agree in writing to vary a date, time or period, the varied date, time or period is of the essence.

8. **ASSIGNMENT**

This Agreement is personal to the parties to it and each party acknowledges and agrees that it may not assign, novate or otherwise deal with any of its rights, interests or obligations under this Agreement in whole or in part.

9. **Notices**

9.1 **Communications in writing**

Any communication to be made under or in connection with this Agreement will be made in writing and, unless otherwise stated, may be made by fax, e-mail or letter.

9.2 **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is that identified with its name below or any substitute address or fax number or department or officer as the Party may notify to the other by not less than five (5) Business Days' notice.

**NBB:**

Address: P.O. Box 106  
Manama  
Kingdom of Bahrain

Fax:  
Attention:

**Company:**

Address: Boundary Hall  
Cricket Square  
P.O. Box 1111  
Grand Cayman KY1-1102  
Cayman Islands

Fax: +1 345-949-7920  
Attention: General Counsel

**Target:**

Address: Boundary Hall  
Cricket Square  
P.O. Box 1111  
Grand Cayman KY1-1102  
Cayman Islands

Fax: +1 345-949-7920  
Attention: General Counsel

**9.3 Delivery**

9.3.1 Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

9.3.1.1 If by way of fax, when received in legible form; or

9.3.1.2 If by way of letter, when it has been left at the relevant address provided such delivery was by way of an internationally reputable courier company which retains proof of delivery, and

9.3.1.3 If a particular department or officer is specified as part of its address details provided under Clause 9.2 (Addresses), if addressed to that department or officer.

9.3.2 Any communication or document to be made or delivered to NBB will be effective only if it is expressly marked for the attention of the department or officer identified with NBB's signature below (or any substitute department or officer as NBB will specify for this purpose).

**9.4 English language**

9.4.1 Any notice given under or in connection with this Agreement must be in English.

9.4.2 All other documents provided under or in connection with this Agreement must be:

9.4.2.1 In English; or

9.4.2.2 If not in English, and if so required by the Seller, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

10. **GOVERNING LAW**

This Agreement, and any non-contractual obligations arising out of or in connection with it, shall be governed by, and shall be construed in accordance with English law

11. **JURISDICTION**

11.1 **English Courts**

The courts of England have non-exclusive jurisdiction to settle any dispute (a "Dispute") arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity).

11.2 **Convenient Forum**

The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

11.3 **Non-Exclusive Jurisdiction**

This clause 11.3 is for the benefit of NBB only. As a result and notwithstanding clause 11.1, it does not prevent NBB from taking proceedings relating to a Dispute ("Proceedings") in any other courts with jurisdiction. To the extent allowed by law, NBB may take concurrent Proceedings in any number of jurisdictions.

12. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original and all of which together evidence the same agreement.

13. **INVALIDITY**

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

13.1 The legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

13.2 The legality, validity or enforceability under the law of any other jurisdiction of that or another provision of this Agreement.

This Agreement has been executed as a deed by the parties listed on the execution page at the end of this Agreement on the date stated at the beginning of this Agreement.

*[Handwritten mark]*

*[Handwritten signatures and initials]*  
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**SCHEDULE 1**

**Form of promise to sell shares notice**

**[NBB'S LETTERHEAD]**

To: [Arcapita Investment Holdings Limited]

[WaterWarf Holdings Limited]

Date: [insert date]

**BY HAND**

**BY REGISTERED/RECORDED DELIVERY POST**

**PROMISE TO SELL SHARES NOTICE**

1. We refer to the Promise to Sell Shares Agreement between us, dated [insert date 20XX] between us (the "Agreement").
2. Terms defined in the Agreement will have the same meanings in this Promise to Sell Shares Notice unless the context requires otherwise. References to a clause are to a clause of the Agreement.
3. We hereby notify you pursuant to clause 3.1 of the Agreement that a Trigger Event has occurred and that we wish to exercise our Purchase Right granted under clause 2 of the Agreement to acquire the Promised Shares at the Purchase Price.

Our preferred date of Completion is [insert date].

.....  
Signed by [ ]

for and on behalf of National Bank of Bahrain B.S.C.

{Authorised signatory}

Name:

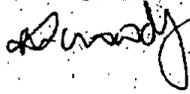
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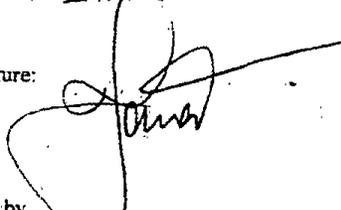
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*M* *Q* *ab*

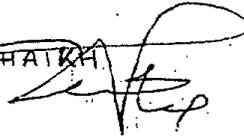
SIGNATURES

Executed as a Deed by  
ARCAPITA INVESTMENT HOLDINGS LIMITED  
Acting by two Directors

Name MOHAMMED CHOWDHURY  
Authorised Signature: 

Name Essa Zainal  
Authorised Signature: 

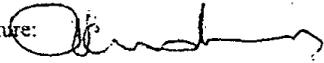
Executed as Deed by  
WATERWARF HOLDINGS LIMITED  
Acting by two Directors

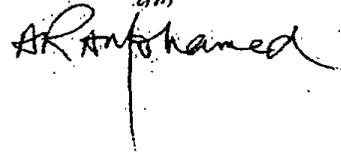
Name SALAH AL SHAIKH  
Authorised Signature: 

Name: ESSA ZAINAL  
Authorised Signature:

For and on behalf of  
NATIONAL BANK OF BAHRAIN BSC

Name and Position: R. KRISHNAN  
SPM

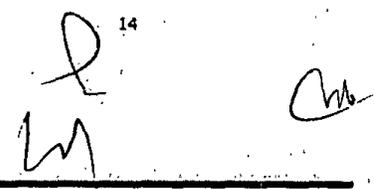
Authorised Signature: 

A. RAHMAN ABJULLA  
GM  


Witness Name and Position:

Witness Signature:

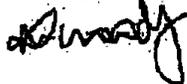


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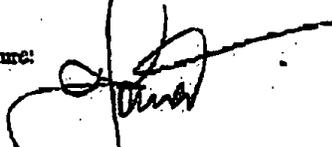
**SIGNATURES**

Executed as a Deed by  
**ARCAPITA INVESTMENT HOLDINGS LIMITED**  
Acting by two Directors

Name **MOHAMMED CHANDHURY**

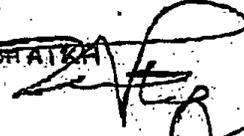
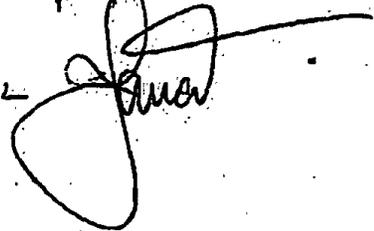
Authorised Signature: 

Name **Essa Zainal**

Authorised Signature: 

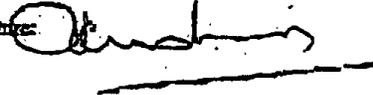
Executed as Deed by  
**WATERWARP HOLDINGS LIMITED**  
Acting by two Directors

Name **SALAH AL-SHAIKH**

Authorised Signature:   
Name: **ESSA ZAINAL**  
Authorised Signature: 

For and on behalf of  
**NATIONAL BANK OF BAHRAIN BSC**

Name and Position: **R. KRISHNAN**  
**S.A.M**

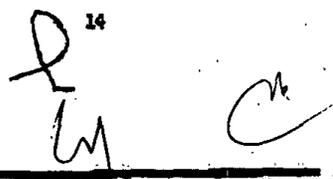
Authorised Signature: 

**A. RAHMAN ADHUNA**  
**AKRahmanad**

Witness Name and Position:

Witness Signature:







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National Bank of Bahrain B.S.C.  
PO Box 106  
Manama  
Kingdom of Bahrain

your ref.  
our ref: RAP:80491:24  
direct dial: +44 (0)20 7423 8394  
email: rpicken@trowers.com  
date: 21 December 2009

Dear Sirs

Arcapita Investment Holdings Limited  
Promise to Sell Shares Agreement dated 15 December 2009

1 Introduction

1.1 Parties We have acted as English legal advisers to Arcapita Investment Holdings Limited (AIHL) in connection with a promise to sell shares agreement dated 15 December 2009 (the Agreement) between AIHL, WaterWarf Holdings Limited (WHL) and National Bank of Bahrain B.S.C. (NBB).

1.2 Application This opinion is given in connection with the Agreement.

1.3 Purpose We are giving our opinion to you in connection with the Agreement only, and you must not rely on it (or any part of it) for any other purpose.

1.4 Definitions Save as expressly defined herein, words and expressions defined in the Agreement shall have the same meanings and be construed in the same manner when used herein unless otherwise defined in this opinion.

1.5 English law We are qualified solicitors practising English law and this opinion concerns only English law as currently applied in the English courts. We have not made any investigation of, and do not express any opinion on, the law of any jurisdiction other than England.

2 Documents

2.1 Documents For the purpose of issuing this opinion, we have reviewed only the Agreement.

2.2 Other documents Save for the Agreement we have not examined any other contracts, instruments or documents entered into by or affecting AIHL or WHL or other records of AIHL or WHL nor have we made any other enquiries concerning AIHL or WHL or any other person.

LONDON MANCHESTER EXETER ABU DHABI BAHRAIN CAIRO DUBAI OMAN

Trowers & Hamlin LLP DX 774 Lon/Chy  
Sceptre Court t +44 (0)20 7423 8000  
40 Tower Hill f +44 (0)20 7423 8001  
London  
EC3N 4DX www.trowers.com

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BAHRAIN 230474.2



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date 21 December 2009

3 **Interpretation**

In this opinion:

- 3.1 **Agreement** means the document referred to in schedule 1 to this opinion;
- 3.2 **Official Consent** means a consent, permit, licence, approval, authorisation of or filing or registration with any governmental, judicial, regulatory or other authority of England;
- 3.3 **References** each reference to a person is deemed to include a reference to a company, partnership, unincorporated body and any other entity and vice versa;
- 3.4 **Statutes** any reference to a statutory enactment is to a statutory enactment as amended or re-enacted from time to time;
- 3.5 **Tax** includes any form of taxation, duty, stamp duty, stamp duty reserve tax, stamp duty land tax, levy, charge, contribution, withholding or impost of whatever nature (including any applicable fine, penalty, surcharge or interest) imposed by any local, municipal, governmental, state, federal, or other fiscal, revenue, customs and/or excise authority, body or official in England competent to impose tax; and
- 3.6 **Title** the title of any paragraph shall not affect the meaning of that or any other paragraph.

4 **Assumptions and Qualifications**

- 4.1 In giving this opinion, we have assumed the matters (without further investigation or inquiry) set out in schedule 2 to this opinion (the **Assumptions**);
- 4.2 Our opinions set out in paragraph 5 are subject to the qualifications set out in schedule 3 to this opinion (the **Qualifications**).

5 **Opinion**

- 5.1 Based upon and subject to the Assumptions, the Qualifications, the specific exceptions set out in paragraph 5.2 and the other matters set out in paragraph 6, we are of the opinion that on the basis of English law as it exists at today's date:
- 5.1.1 **Obligations binding** the obligations expressed to be assumed by each of AIHL and WHL under the Agreement constitute legally valid, binding, and enforceable obligations;

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date 21 December 2009

- 5.1.2 **Official consent** no Official Consent is required in connection with the entry into the Agreement by AIHL or WHL or the execution, delivery, performance, observance, or validity of the Agreement;
- 5.1.3 **Governing law** in any proceedings for the enforcement of the obligations of AIHL and WHL, the English courts would give effect to the choice of English law as the governing law of the Agreement;
- 5.1.4 **Registrations** no registrations or filings with any governmental or other authority or agency of or in England are required by law or regulation in relation to or in connection with the execution and delivery by AIHL and WHL of the Agreement;
- 5.1.5 **Stamp duties** no stamp, registration or similar tax is payable in England in respect of the filing or registration of the Agreement; and
- 5.1.6 **Submission to the jurisdiction** the submission by AIHL and WHL to the non-exclusive jurisdiction of the English courts will be recognised by the English courts as a valid and binding submission to such jurisdiction;
- 5.2 **Cayman Islands law** NBB has not obtained any separate legal opinion on (i) the due incorporation of AIHL and WHL, (ii) AIHL's and WHL's respective powers to enter into the Agreement, (iii) whether each of AIHL and WHL has duly approved the terms of the Agreement and authorised named persons to execute the Agreement as a deed and (iv) whether the Agreement has been duly executed as a deed by such named persons, and the opinions given at paragraphs 5.1.1 to 5.1.6 (and particularly that given at paragraph 5.1.1) are subject to the Assumptions, and in particular the assumptions set out in paragraphs 1.1-1.4 of schedule 2 to his opinion.
- 6 **Miscellaneous**
- 6.1 **Reliance/disclosure** This opinion is addressed to NBB for its sole benefit and may not without our prior written consent:
- 6.1.1 be relied upon by any other person;
- 6.1.2 be disclosed, except to persons who in the ordinary course of your business have access to your records on the basis that they will make no further disclosure; or

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date 21 December 2009

- 6.1.3 be filed with any person or quoted or referred to in any public document.
- 6.2 **Scope** This opinion is strictly limited to the matters stated in it and does not apply by implication to other matters.
- 6.3 **Tax** No opinion is given as to the incidence of Tax on the Agreement or any of the transactions contemplated thereunder.
- 6.4 **Future events** We do not undertake any responsibility to advise you of any change to this opinion (including any changes in law or in its interpretation) after the date of this opinion.
- 6.5 **Parties' intentions** We express no opinion as to whether or not the Agreement reflects the parties' commercial intentions or correctly documents the parties' agreement.
- 6.6 **Commercial risk** We express no opinion on any commercial risk including any fiscal, economic, financial, technical, environmental or political or other risk issues which may directly or indirectly affect any of the Agreement.
- 6.7 **Limitation** Subject to the provisions of schedule 4 to this opinion, our total aggregate liability in respect of all or any Losses (as defined in schedule 4 to this opinion) is limited to US\$ 10,000,000.
- 6.8 **Islamic Shari'ah** This opinion does not address whether the Agreement complies with any provision of the Islamic Shari'ah and we give no opinion as to whether or not an English court would enforce the provisions of the Agreement to give effect to the Islamic Shari'ah or any of its underlying principles.
- 6.9 **Law** This opinion, and any non-contractual obligations arising out of or in connection with it, is governed by the law of England and Wales.
- 6.10 **Courts** The courts of England and Wales will have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims) in relation to this opinion. You and we irrevocably agree to submit to their jurisdiction and irrevocably waive any objection to any action or proceeding being brought in those courts or any claim that any such action or proceeding has been brought in an inconvenient forum.

Yours faithfully

*Trowers & Hamlin LLP*



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page :5  
date :21 December 2009

Schedule 1

Agreement

A copy of an executed original of the Agreement dated 15 December 2009 which has been executed by AIHL, WHL and NBB.

[Redacted content]

[Redacted line]

[Redacted line]

[Redacted line]



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date 21 December 2009

**Schedule 2**

**1 Assumptions**

In giving this opinion, we have assumed that:

- 1.1 **Due incorporation** each of AIHL and WHL is duly incorporated, validly existing and in good standing in the Cayman Islands;
- 1.2 **Capacity, power and authority** each of NBB, AIHL and WHL has the requisite capacity, power and authority to execute, deliver and perform its respective obligations under the Agreement;
- 1.3 **Corporate approvals** each of NBB, AIHL and WHL has taken all necessary board and other corporate action to authorise the execution, delivery and performance of the Agreement;
- 1.4 **Execution** each of NBB, AIHL and WHL has duly executed and delivered the Agreement;
- 1.5 **Authenticity of original documents** all signatures, stamps, seals and markings on original documents and such documents themselves are genuine and authentic;
- 1.6 **Translations** all translations examined are accurate and complete;
- 1.7 **Conformity of copies** each copy document (including an electronic copy) conforms to its original and no change to any document has been made since the date upon which the copies were certified and such documents continue to be up to date;
- 1.8 **Bad faith** no party to the Agreement has entered into it or any transaction contemplated thereby in consequence of bad faith or fraud, coercion, duress, misrepresentation or undue influence or on the basis of a mistake of fact or law or believing the Agreement to be fundamentally different in substance or in kind from what it is;
- 1.9 **No restrictions** at the time the Agreement was entered into no party who can take the benefit of this opinion was on actual notice of any prohibition or restriction on any of the other parties to the Agreement entering into them (nor did any such party deliberately refrain from making enquiries in circumstances where it had any suspicion of such matters);



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- 1.10 **Solvency** each of AIHL and WHL is solvent and will not be unable to pay its debts as they fall due at the time AIHL enters into the Agreement;
- 1.11 **Insolvency** no step has been taken by any person or by AIHL or WHL, as the case may be, in any jurisdiction (including without limitation the presentation of a petition, the making of an application, the passing of a resolution or the filing or service of a notice) with a view to winding up or dissolution, or appointing an administrator, receiver, administrative receiver, liquidator or supervisor or the equivalent in any jurisdiction with respect to AIHL or any of its property or assets and that no voluntary arrangement has been made or moratorium imposed in respect of each of AIHL and WHL;
- 1.12 **Enforceable obligations** all the obligations of NBB thereunder are its legally valid, binding and enforceable obligations;
- 1.13 **Due execution** all parties to the Agreement have duly executed and delivered the Agreement;
- 1.14 **Facts and documents** all material facts and documents relevant to this opinion have been disclosed to us and all facts which are stated in or can be inferred from the Agreement or which are stated in any official public record or other document supplied by a public official are correct and we have assumed the truth, correctness and completeness of all statements, representations and warranties as to matters of fact contained in the Agreement;
- 1.15 **Amendments** the Agreement has not been amended since its execution and that no event occurs after today's date which could affect the conclusions contained in this opinion;
- 1.16 **Commercial reasons** the Agreement has been entered into for bona fide commercial reasons and on arm's length terms by each of the parties thereto and is of material commercial benefit to that party and is in the best interests of that party and its shareholders and the board of each of AIHL and WHL has acted in good faith in approving the transactions contemplated by the Agreement;
- 1.17 **Foreign laws** none of the opinions expressed in this opinion would be affected by the laws (including public policy) of any jurisdiction outside England and that, in so far as any obligation under the Agreement falls to be performed in, or is otherwise subject to, any jurisdiction other than England, its performance will not be illegal or ineffective by virtue of the laws of that jurisdiction which have been or will be complied with;



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- 1.18 **No other documents** save for the Agreement, there is no other agreement, instrument or other arrangement between any of the parties to any of the Agreement which modifies or supersedes any of the Agreement;
- 1.19 **AIHL's and WHL's registrations and consents** AIHL and WHL has obtained and continues to maintain all registrations, consents, approvals, permissions and licences (including waivers and exemptions from any of the same) necessary or desirable in order to undertake its business in any relevant jurisdiction, and fully and effectively to perform all its statutory, contractual and other obligations and commitments as provided for in or contemplated by the Agreement; and
- 1.20 **Fees** all fees (if any) properly payable in relation to the registration, recording, validation and enforceability of the Agreement and other documentation reviewed, have been paid or will be paid at the material time.

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### Schedule 3

Although paragraph 5.1 confirms that the obligations of AIHL and WHL under the Agreement are legally valid, binding and enforceable in the English courts, it should not be assumed that they will be enforced in all circumstances or by or against any person not a party to the Agreement or that any particular remedy will be available. In particular, enforcement may be affected by:

#### General Qualifications

- 1.1 **Insolvency laws** laws relating to bankruptcy, liquidation, administration, schemes of arrangement, voluntary arrangements, and moratoria or the equivalent in any jurisdiction and other insolvency and similar laws, including (without limitation) as to:
  - 1.1.1 unlawful preferences;
  - 1.1.2 undervalue transactions;
  - 1.1.3 the avoidance of floating charges;
  - 1.1.4 the mandatory set-off of mutual obligations between two parties in the liquidation of one of them;
  - 1.1.5 restrictions on enforcement of security by creditors; and
  - 1.1.6 the prior ranking in an insolvency situation of certain creditors preferred by law;
- 1.2 **Equitable principles** general principles of equity, including (without limitation) the principle that remedies such as specific performance and injunction, being discretionary remedies, are not available where damages are considered to be an adequate remedy;
- 1.3 **Undertakings and indemnities** undertakings and indemnities contained in the Agreement may not be enforceable before an English court in so far as they purport to require payment or reimbursement of the costs of any unsuccessful litigation brought before an English court;
- 1.4 **Time-barred claims** claims becoming time-barred by limitation, prescription or laches;



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- 1.5 **Set-off** defences of set-off or counterclaim, whether or not any such defence is waived in the Agreement and any provision in the Agreement which confers, purports to confer or waives a right of set-off or similar right may be ineffective against a liquidator or creditor;
- 1.6 **Estoppel** the conduct of a person being such that such person is estopped from enforcing such rights;
- 1.7 **Frustration** the occurrence of certain circumstances (essentially where it becomes impossible to perform a contract or where it can only be performed in a way radically different from the way the parties originally intended); so that a contract can be held to have been frustrated, releasing the parties from further performance under it;
- 1.8 **Misrepresentation** a misrepresentation whereby a party to a contract may be able to avoid its obligations under that contract (and may have other remedies) where it has been induced to enter into that contract by a misrepresentation and the English courts will generally not enforce an obligation if there has been fraud;
- 1.9 **Delays** delays in the exercise of a right of action which might prevent that right from being exercised at all. Any provision in the Agreement purporting to dis-apply this general rule would not necessarily be effective; and;
- 1.10 **Exclusions** the effectiveness of certain provisions excluding or limiting a liability otherwise owed may be limited by law, for example, certain types of exclusion clause in the Agreement (and certain provisions having a similar effect) may be unenforceable except to the extent that they satisfy the requirement of reasonableness under the Unfair Contract Terms Act 1977.
- 2 **Specific Qualifications**
- This opinion is also subject to the following further specific qualifications that under English law:
- 2.1 **The rule against perpetuities** we express no opinion as to whether the Agreement constitutes a trust for the purpose of the rule against perpetuities;
- 2.2 **Discretions** any party which under the Agreement is vested with a discretion or may determine any matter in its opinion may be required to exercise such discretion reasonably or to base its opinion in good faith and on reasonable grounds;



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- 2.3 **Certificates** any provision of the Agreement to the effect that a calculation, determination or certificate will be conclusive, binding or final will not be effective to prevent judicial enquiry into its accuracy if it concerns a point of law or is made unreasonably, fraudulently, arbitrarily, incorrectly or without good faith and an English court may regard any certification, determination or calculation as no more than prima facie evidence;
- 2.4 **Penalties** we express no opinion as to the validity or the binding effect of any obligations insofar as they provide for payment of interest on overdue amounts. An English court would not give effect to such a provision if it could be established that the amount expressed as being payable was such that the provision was in the nature of a penalty rather than a genuine pre-estimate of loss; that is to say a requirement for a stipulated sum to be paid irrespective of, or necessarily greater than, the loss likely to be sustained;
- 2.5 **Severability** any provision of the Agreement allowing an invalid, illegal or unenforceable provision to be severed from other provisions may be disregarded by a court;
- 2.6 **Oral amendments** any provision of the Agreement may be amended or waived orally despite any provision to the contrary. Prior representations, oral agreements and related agreements may be incorporated into an agreement or operate so as to modify its terms notwithstanding provisions therein to the contrary;
- 2.7 **Future agreements** a provision in an agreement may be unenforceable or void for uncertainty where it provides that a matter is to be determined or settled by future agreement or negotiation;
- 2.8 **Costs** an undertaking in the Agreement by one party to pay another's costs may be unenforceable to the extent that the amount of such costs are reduced by operation of the taxation provisions of the Solicitors Act 1974;
- 2.9 **Post judgment** there is some possibility that an English court would hold that a judgment on the Agreement, whether given in an English court or elsewhere, would supersede the Agreement so that any obligations relating to the payment of interest after judgment or any currency indemnities would not be held to survive judgment;
- 2.10 **Title** we express no opinion as to AIHL's title to or the value or marketability of any of the property which is the subject of the Agreement;



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- 2.11 **Factual matters** we express no opinion on matters of fact and no opinion is expressed on matters of opinion by any other professional adviser;
- 2.12. **Foreign laws generally** this opinion does not concern the enforceability in England of any of the general laws of any other jurisdiction or any particular provision of them, including (without limitation) a provision of a penal, revenue or other public law and a provision which is manifestly incompatible with English public policy or contrary to a rule of English law which is mandatory irrespective of any law which may otherwise be applicable;
- 2.13 **Foreign currency, judgments and proofs** an English court may decline to give judgment in respect of an obligation under the Agreement in any currency other than sterling and any judgment other than in sterling may be converted to sterling for enforcement purposes; in an English liquidation, foreign currency claims must be converted into sterling at the rate prevailing at the commencement of liquidation for the purpose of proving for such claims;
- 2.14 **Choice of law**
- 2.14.1 **contractual obligations** under Article 3 of Regulation (EC) No. 593/2008 on the law applicable to contractual relations (Rome I), the parties to a contract are entitled to choose the governing law of the contract. Accordingly, the express choice of English law to govern the Agreement is permitted by Article 3 of Rome I. Notwithstanding the ability of the parties to a contract to make an express choice of law:
- (a) where all other elements relevant to the situation at the time a choice of law is made are located in a country whose law has been chosen, the choice will not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement;
  - (b) an express choice of law under Rome I cannot derogate from mandatory rules of the forum state, so that the English courts are entitled under Rome I to give effect to their own mandatory rules even if the parties to a contract have made an express choice of a foreign law as the governing law of the contract;
  - (c) effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract

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have to be or have been performed, in so far as those overriding provisions render the performance of the contract unlawful.

- (d) the English courts are entitled under Rome I to refuse to apply any rule of the law of a chosen state which is manifestly incompatible with English public policy;
- (e) Rome I does not apply to insolvency proceedings, which are governed by the EC Insolvency Regulation (1346/2000); and
- (f) in cases not covered by Rome I, the English courts would apply English rules of private international law to determine the applicable law; and

2.14.2 **non-contractual obligations** under Regulation (EC) No. 864/2007 (Rome II) parties are entitled to choose the governing law which is applicable to any non-contractual obligations which may arise between them. The non-contractual obligations must, however, be within the scope of Rome II and not fall within the expected circumstances set out in it.

2.15 **Foreign judgments** a final judgment by a court of a foreign jurisdiction has no direct operation as a judgment in England, but may be enforceable, by application to the English court, under the Administration of Justice Act 1920, the Foreign Judgments (Reciprocal Enforcements) Act 1933 or the EEC Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 1968 (as amended) or the Civil Jurisdiction and Judgments Act 1982 (as amended) or the Brussels Regulation, or it may form the basis of an action or be conclusive evidence of an issue in an action.

Enforcement would not be available, inter alia, where: (1) the foreign court was not duly invested with jurisdiction under English conflict of laws rules; or (2) the judgment had been obtained by fraud or in a manner opposed to natural justice; or (3) enforcement or recognition of the judgment would be contrary to public policy or to Section 5 of the Protection of Trading Interests Act 1980; or (4) enforcement or recognition of the judgment would involve the enforcement of foreign revenue or penal or other public laws.

In addition an English court may exercise a general discretion as to whether to grant permission to enforce which could in practice be affected by political considerations, particularly where the enforcement sought is against a foreign state or in relation to

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assets held by a foreign state. In such a case an English court may inform the Foreign and Commonwealth Office for them to comment upon the appropriateness or otherwise of giving permission to enforce;

2.16 **Concurrent proceedings** an English court may decline jurisdiction or stay proceedings if concurrent proceedings are being brought elsewhere.

(a) with regard to EU Member States, and Iceland, Norway, Switzerland and Liechtenstein, the position is broadly as follows:

The court's power to stay an action is governed by the Brussels Regulation applied by virtue of the Civil Jurisdiction and Judgments Order 2001 with regard to all EU Member States (except Denmark); by the Brussels Convention 1968 applied by the Civil Jurisdiction and Judgments Act 1982 (as amended) in respect of Denmark; and by the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1988 applied by virtue of the Civil Jurisdiction and Judgments Act 1991 in respect of Iceland, Norway, Switzerland and Liechtenstein. Broadly, the effect of these provisions is that the courts of any jurisdiction in which the proceedings were not first brought into effect, as pending proceedings, must stay their proceedings if they involve the same parties and cause of action as the first proceedings and may stay their proceedings if they are related to the first proceedings.

(b) In relation to other countries, the position is that an English court, in most circumstances, has power to stay an action where it is shown that there is some other forum, having competent jurisdiction, which is more suitable for the interests of all the parties and the ends of justice. Where there is an express jurisdictional submission in the relevant documents, the English courts may nonetheless stay an action brought in England in order that it may be heard in that other court if the grounds in favour of that other court are very strong;

2.17 **Submission to jurisdiction** whether a submission by any party in the Agreement to the jurisdiction of the English courts is considered exclusive or non-exclusive will not necessarily depend on the existence or absence of the words "exclusive" and "non-exclusive"; if an English court decides that a submission is exclusive it cannot decline jurisdiction, but if it decides that a submission is non-exclusive it may decline jurisdiction if (without limitation) it considers another forum to be convenient. Under

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the provisions of the Brussels Regulation applied by virtue of the Civil Jurisdiction and Judgments Order 2001 with regard to all EU Member States (except Denmark), the Brussels Convention 1968 applied by the Civil Jurisdiction and Judgments Act 1982 (as amended) in respect of Denmark, and the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1988 applied by virtue of the Civil Jurisdiction and Judgments Act 1991 in respect of Iceland, Norway, Switzerland and Liechtenstein, the English courts may be required to decline jurisdiction in the circumstances specified therein; and

- 2.18 **Public policy** where an obligation is to be performed or observed or is based upon a matter arising in a jurisdiction outside England or obligations are subject to the laws of a jurisdiction outside England, such obligations may not be enforceable under English law if the same would be unlawful, unenforceable or contrary to public policy under the law of such jurisdiction.

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**Schedule 4**

1 **Losses** means any loss, liability or damage arising out of, or in, connection with this opinion, however it is caused and whether in contract (by way of indemnity or otherwise), in tort (including negligence) or in misrepresentation, restitution or otherwise (in each case, whether caused by negligence or not), including costs and expenses relating to or arising out of the same.

2 **Liability** The limit on losses referred to in paragraph 6 is the limit of our liability to all persons purporting to rely on our opinion collectively. Any amount paid by us in respect of liabilities to any such person will be allocated among all such persons, as appropriate. This allocation is entirely a matter for the relevant persons and there is no obligation to inform us of the allocation.

3 **Recoverability** The extent to which any Losses will be recoverable from us will also be limited so as to be in proportion to our contribution to the overall fault for such Losses as ascribed to us by a court of competent jurisdiction, taking into account any contributory negligence by the claimant, its other advisers and/or any other third party responsible to the claimant and/or liable in respect of such Losses.

For the purposes of determining our proportionate liability no account shall be taken of any limitations of liability which you have agreed with any other person or to that person's inability to pay for any reason.

4 **Claims** No person is permitted to bring any claim in respect of Losses against any of our members, partners, employees or agents in their own name as individuals even where our members, partners, employees or agents have been negligent. This restriction will not operate to exclude any liability which cannot be excluded at law or to exclude the liability of Trowers & Hamlins LLP for the acts or omissions of any of our members, partners, employees or agents. Each of our members, partners, employees and agents will have the right to enforce these provisions pursuant to the Contracts (Rights of Third Parties) Act 1999.

5 **Limitation** Nothing will affect any liability which we have at any time in respect of any Losses caused by our fraud, fraudulent misrepresentation or reckless disregard of our professional obligations or any other situation where the law prohibits us from excluding or limiting our liability.

MINUTES OF A MEETING  
OF THE BOARD OF DIRECTORS OF  
ARCAPITA INVESTMENT HOLDINGS LIMITED (THE "COMPANY")  
HELD BY CONFERENCE TELEPHONE  
ON DECEMBER 15, 2009

---

Present by  
Conference telephone: Henry A. Thompson,  
Asim Zafar  
Salah Al-Shaikh  
Mohammed Chowdhury  
Essa Zainal

Mustafa Aramaz - BY INVITATION

---

It was agreed that Mr. Mohammed Chowdhury would act as the Chairman of the meeting. Mr. Chowdhury took the chair of the meeting and asked Mr. Mustafa Aramaz to keep the minutes of the meeting.

**1. NOTICE**

The Chairman confirmed that all of the Directors of the Company being present by telephone conference call had agreed to waive formal notice of the meeting. There being a quorum present, he declared the meeting duly constituted.

**2. DIRECTORS' INTERESTS**

The Chairman noted that each of the Directors, to the extent, if any, that such Directors had an interest in the matters which are subject of this Board meeting, had declared his interest in such matters. The Chairman further noted that, in accordance with the Articles of Association of the Company, the

Directors are, notwithstanding any interest declared, entitled to vote as Directors in the matters which are subject of this Board meeting.

3. TRANSACTION DOCUMENTS

WHEREAS, each of the Directors had received copies of the document mentioned below (together, the "Transaction Document") and whereas it is both advantageous and in the best interest of the Company to approve the Transaction Document:

No.	Transaction Document
1	Promise to Sell Shares Agreement among WaterWarf Holdings Limited, National Bank of Bahrain B.S.C and the Company (the "Promise to Sell Agreement")

After full and complete discussion and upon motion made and duly carried, it was:

"RESOLVED, that the Company approves the terms of, and the transactions contemplated by, the Promise to Sell Agreement, and any actions hereinbefore taken by the directors and officers of the Company in connection therewith be and are hereby ratified and confirmed in every respect."

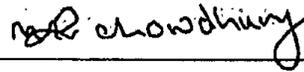
"FURTHER RESOLVED, that any one of Henry A. Thompson, Asim Zafar, Salah Al-Shaikh, Mohammed Chowdhury, Essa Zainal or any of their designees (each an "Authorized Agent") be and each one of them hereby is individually and singly authorized, empowered and directed on behalf of and in the name of the Company, to take or cause to be taken all such further actions and to execute and deliver or cause to be executed and delivered the Promise to Sell Agreement as authorized and approved by the Board of Directors today, subject to such amendments, revisions and additions thereto the Authorized Agent should in his sole and absolute discretion and opinion deem appropriate, the signature of the Authorized Agent on any of the



Documents being due evidence for all purposes of his approval of any such amendment, revision or addition and the final terms thereof on behalf of the Company; and that all actions heretofore taken by any of Henry A. Thompson, Asim Zafar, Salah Al-Shaikh, Mohammed Chowdhury, Essa Zainal or any of their designees or other directors or officers of the Company in connection with the foregoing resolutions are hereby approved, ratified and confirmed in all respects.”

**4. TERMINATION OF MEETING**

There being no further business to discuss, the meeting then terminated.



Chairman of the meeting



*W*

**REGISTER OF DIRECTORS**

**COMPANY NAME:** Arcapita Investment Holdings Limited  
 Formerly Named: First Islamic Investment Holdings Limited

**FILE NO:** 6234

NAME AND ADDRESS	OCCUPATION	ELECTED	RESIGNED
The Director, Ltd. PO Box 1111 Grand Cayman KY-1-1102 Cayman Islands	Corporate Director	02-Jan-1998	02-Jan-1998
Adif A. Abdullmalik PO Box 1406 Manama Bahrain	Businessman	02-Jan-1998	25-Apr-2003
Edward Linnar Underwood PO Box 1406 Manama Bahrain	Businessman	02-Jan-1998	28-Jun-2001
Henry Alexander Thompson PO Box 1406 Manama Bahrain	Businessman	02-Jan-1998	
Alan John Barreley PO Box 1406 Manama Bahrain	Businessman	28-Jun-2001	17-Mar-2004
Asim Zafar PO Box 1406 Manama Bahrain	Businessman	25-Apr-2003	
Mohamed Abdulla Nooruddin PO Box 1406 Manama Bahrain	Businessman	25-Apr-2003	30-Nov-2008
Mohammed Abdul Muiz Chowdhury PO Box 1406 Manama Bahrain	Businessman	17-Mar-2004	

*Handwritten initials/signature*

**REGISTER OF DIRECTORS**

**COMPANY NAME:** Arcapita Investment Holdings Limited  
Formerly Named: First Islamic Investment Holdings Limited

**FILE NO:** 6234

NAME AND ADDRESS	OCCUPATION	ELECTED	RESIGNED
Essa Zahal P.O. Box 1406 Manama Bahrain	Businessman	11-Oct-2007	
Salah M Al-Shaikh P.O. Box 1406 Manama Bahrain	Businessman	30-Nov-2008	

Printed On: December 11, 2008

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**EXHIBIT I**

4 *Chs*

National Bank of Bahrain BSC  
PO Box 106  
Manama  
Kingdom of Bahrain  
T: 17228800

بنك البحرين الوطني ش.م.ب.  
ص.ب: ١٠٦  
المنامة  
مملكة البحرين  
ت.هـ: ١٧٢٢٨٨٠٠



29 May 2012

Riffa Views B.S.C. (c)  
P O Box 3050  
Manama  
Kingdom of Bahrain

Attention: Mr. Yasser Abdulrahman Al Raei, Managing Director

Dear Sir,

**Master Murabaha Facility Agreement between National Bank of Bahrain BSC and Riffa Views BSC(C) - NOTICE OF DEFAULT**

This is in reference to the Master Murabaha Facility Agreement dated 30 July 2007 between National Bank of Bahrain BSC ("National Bank of Bahrain") and Riffa Views BSC(C) ("Riffa Views") as amended by the First Amendment Agreement dated 19 March 2009, Second Amendment Agreement dated 15 December 2009, Third Amendment Agreement dated 29 June 2010, Fourth Amendment Agreement dated 6 February 2011 as further amended by the amendment to the Fourth Amendment Agreement dated 28 November 2011 ("Murabaha Agreement"). Capitalized terms used herein but not defined shall have the same meanings as ascribed in the Murabaha Agreement.

National Bank of Bahrain hereby formally notifies Riffa Views that the following events of default have occurred (and are continuing) as set out in Clause 12 of the Murabaha Agreement:

**(a) Event of Default under Clause 12.1.1 (Non-Payment)**

Riffa Views has not paid the agreed profit due on the Facility for the months of April 2012 (BD 312,709) and May 2012 (BD 312,709).

**(b) Event of Default under Clause 12.1.14 (Material Adverse Change)**

Arcapita Bank BSCC ("Guarantor") has provided an irrevocable guarantee dated 6 February 2011 ("Guarantee") to the National Bank of Bahrain to secure the payments to be made by Riffa Views pursuant to the Murabaha Agreement. The Guarantor has applied for Chapter 11 Bankruptcy protection in New York which has resulted in a worldwide temporary stay on the enforcement of any agreements (including the Guarantee) against the Guarantor. Thus, in the opinion of the National Bank of Bahrain, there is a valid material adverse change as per clause (d) of the definition of Material Adverse Change since the Guarantee is one of the Transaction Documents.



*Handwritten signature*

To



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رقم الصفحة:

**(c) Event of Default under Clause 12.1.16 (Cost Overrun)**

There has been a substantial ongoing cost overrun and Riffa Views has been unable to fund any actual overrun in the costs of completing the Riffa Views Project from its own resources or by way of subordinated loan or equity contribution.

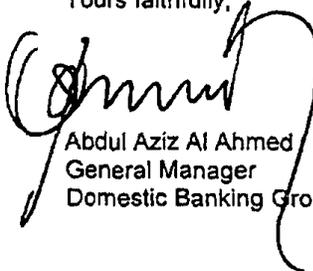
Since multiple Events of Default have occurred, in exercise of its rights under Clause 12.2 of the Murabaha Agreement and without prejudice to any other rights or remedies that it may have under the Transaction Documents (including the Mortgage Deed and the Guarantee) or the applicable laws, the National Bank of Bahrain demands that Riffa Views abide by the following with immediate effect:

- (i) Riffa Views immediately make full payment to National Bank of Bahrain of the Deferred Sale Price (amounting to BD 47,698,526) together with all other sums payable under the Murabaha Agreement and under each Purchase Agreement.
- (ii) Riffa Views not make any withdrawals from the Project Account without the prior written consent of the National Bank of Bahrain.
- (iii) Riffa Views not sell or enter into any agreement to sell any of the unsold villas in the Riffa Views Project without the prior written consent of the National Bank of Bahrain.
- (iv) All payments received hereinafter by Riffa Views from any source shall be deposited in the following bank account 0099563932 and shall not be subject to any withdrawal by Riffa Views without the prior written consent of the National Bank of Bahrain.

Please be informed that since an Event of Default has occurred, in exercise of our rights under Clause 9 of the Mortgage Deed, National Bank of Bahrain shall not execute any further Property Release unless and until all the payments outstanding and due to the National Bank of Bahrain under the Murabaha Agreement have been paid in full to National Bank of Bahrain. You are directed to inform your customers accordingly.

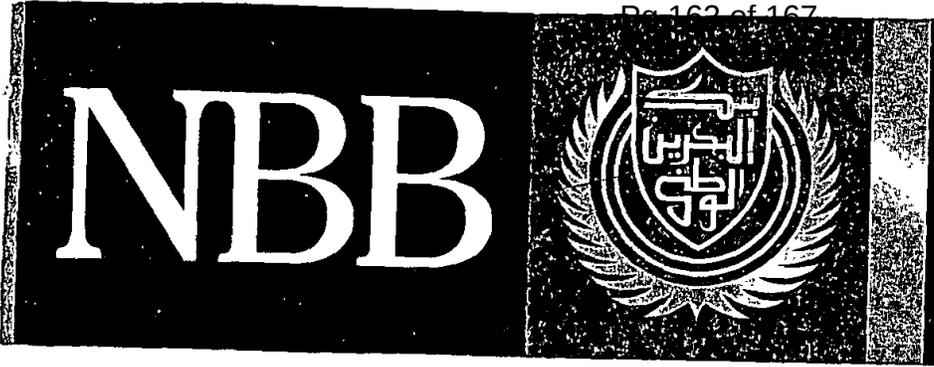
Please acknowledge the receipt of this notice and confirm that Riffa Views shall abide by the above terms.

Yours faithfully,

  
Abdul Aziz Al Ahmed  
General Manager  
Domestic Banking Group

cc: Mr. Atif A. Abdulmalik, Chief Executive Officer, Arcapita Bank BSCC  
P. O. Box 1406, Manama, Kingdom of Bahrain



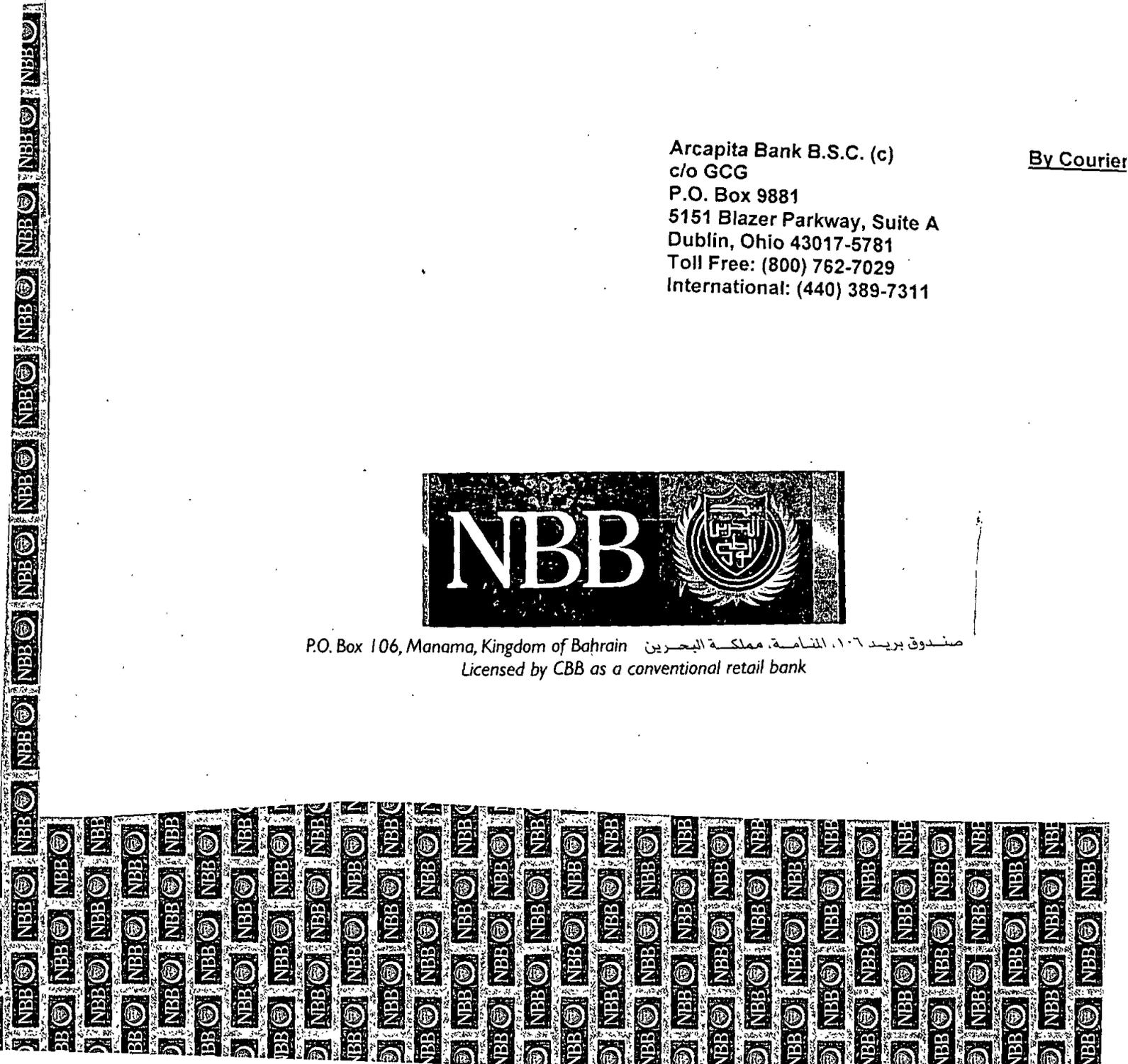


Arcapita Bank B.S.C. (c)  
c/o GCG  
P.O. Box 9881  
5151 Blazer Parkway, Suite A  
Dublin, Ohio 43017-5781  
Toll Free: (800) 762-7029  
International: (440) 389-7311

By Courier



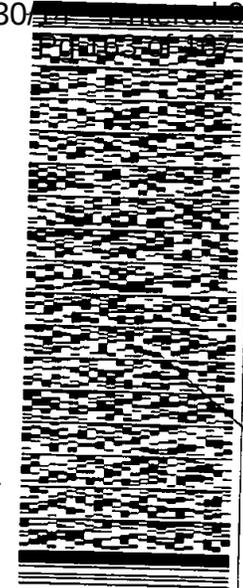
P.O. Box 106, Manama, Kingdom of Bahrain صندوق بريد ١٠٦، المنامة، مملكة البحرين  
Licensed by CBB as a conventional retail bank



AI  
 INTL PRIORITY CLR  
 ISR CLR  
 43017  
 OH US  
 LCK  
 XX CMHA  
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 TRK# 5346 2107 3561  
 0430



FedEx  
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 PM



FedEx  
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 J11131106068125

ARCAPITA BANK B.S.C. (C) C/O GCG  
 P.O. BOX 9881  
 5151 BLAZER PARKWAY, SUITE A  
 DUBLIN, OHIO 43017-5781  
 DUBLIN 43017  
 (440) 389-7311  
 TRAN

ORIGIN ID: BHRH 17205741  
 MAHMOOD BURSHAD  
 NATIONAL BANK OF BAHRAIN  
 P.O. BOX 106  
 MINGMA, 99999  
 BAHRAIN BH

SHIP DATE: 09RUG12  
 ACTWT: 5.0 KG MNL  
 CAD: 98057311/GSM10463

BILL SENDER

Sender: MAHMOOD BURSHAD  
 MNB# 534621073561  
 TtlWgt: 5.00  
 DimWgt: 5.0

Track: 5346 2107 3561

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TRANSIT  
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**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
	:	
-----	X	

**ORDER GRANTING RELIEF  
WITH RESPECT TO CLAIM NO. 46**

Upon consideration of (i) the objection to the proof of claim no. 46 (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 and Rule 3007(d) of the Federal Rules of Bankruptcy Procedure, disallowing Claim No. 46, (ii) the Declaration of Samuel E. Star (the “Star Declaration”) and the Declaration of Anne Davey (the “Davey Declaration”), both dated April 30, 2014 and filed concurrently with the Objection, and (iii) the presentation of counsel at the hearing held on June 10, 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 to be heard 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 Star Declaration, in the Davey 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 to the extent set forth herein.
2. **ORDERED** that, pursuant to section 502(b) of the Bankruptcy Code, Claim No. 46 is hereby disallowed in its entirety and shall be expunged from the claims register.

3. **ORDERED** that Garden City Group, Inc. is hereby directed to adjust the claims register to reflect 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