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Attorneys for the Debtors and Debtors in Possession

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

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<b>IN RE:</b>	:	<b>Chapter 11</b>
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<b>ARCAPITA BANK B.S.C.(c), et al.,</b>	:	<b>Case No. 12-11076 (SHL)</b>
	:	
<b>Debtors.</b>	:	<b>Jointly Administered</b>
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**DEBTORS' EX PARTE MOTION FOR ORDER  
SHORTENING THE NOTICE PERIOD WITH RESPECT TO  
THE DEBTORS' MOTION PURSUANT TO SECTIONS 365(d)(3)  
AND 363(b)(1) OF THE BANKRUPTCY CODE FOR AUTHORIZATION  
FOR ARCAPITA TO FUND LUSAIL JOINT VENTURE LEASE PAYMENT**

Arcapita Bank B.S.C.(c) ("*Arcapita*") and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "*Debtors*" and each, a "*Debtor*"), submit this motion (the "*Motion*") for entry of an order substantially in the form annexed hereto as **Exhibit A** pursuant to Rule 9006(c) of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*") and Rule 9006-1(b) of the Local Bankruptcy Rules for the Southern District of New York (the "*Local Rules*") shortening the time for notice of the hearing to consider the *Debtors' Motion Pursuant to Sections 365(d)(3) and 363(b)(1) of the Bankruptcy Code for Authorization for Arcapita to Fund Lusail Joint Venture Lease Payment* [Dkt. No. \_\_ ]

(the “*Lusail Motion*”), filed concurrently herewith and incorporated by reference.<sup>1</sup> In support of the Motion, the Debtors respectfully represent:

### **JURISDICTION AND VENUE**

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

### **THE LUSAIL MOTION**

2. By the Lusail Motion, the Debtors are requesting authorization to fund a rent payment of \$10 million on or around September 5, 2012 (the “*September Lease Obligation*”) due and owing under the Lease governing Arcapita’s use of the Lusail Land in order to preserve Arcapita’s indirect interest in the Lusail Joint Venture via the 2012 Transactions.<sup>2</sup> Failure to make a rent payment due under the Lease could result in Arcapita’s loss of its Option to repurchase the Shares. Both the Committee and the JPLs generally support the relief requested by the Lusail Motion, and also support the shortening of the notice period with respect to the Lusail Motion as requested in this Motion.

3. The Lusail Motion constitutes the Debtors’ second request for authorization to fund a payment to support the Debtors’ interest in the Lusail Joint Venture. On May 17, 2012, the Debtors filed the May Lusail Motion requesting authority to fund a payment of \$30.4 million on or around June 1, 2012 due and owing under the Lease (the “*June Funding*”).

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Lusail Motion.

<sup>2</sup> A detailed summary of the circumstances surrounding and leading up to the 2012 Transactions, including the history and ownership structure of the Lusail Joint Venture and the significant value of the Lusail Land, is provided in the *Debtors’ Motion Pursuant to Sections 365(d)(3) and 363(b)(1) of the Bankruptcy Code for Authorization for Arcapita to Make Investment to Support the Lusail Joint Venture* [Dkt. No. 150] (as supplemented on May 24, 2012 [Dkt. No. 177], the “*May Lusail Motion*”) and expressly incorporated herein.

*Obligation*”). The Committee filed a statement in support of the May Lusail Motion on May 30, 2012 [Dkt. No. 191]. No objections were filed to the May Lusail Motion, and, on May 31, 2012, the Court entered an order that granted the May Lusail Motion and authorized Arcapita to fund the June Funding Obligation [Dkt. No. 196] (the “*June Lusail Order*”). As of the date hereof, to the Debtors’ knowledge, the Debtors remain in compliance with the terms of the Lease and retain all rights under the Option.

**RELIEF REQUESTED**

4. By this Motion, the Debtors request that the Court enter an order:

(a) shortening the notice period for the Lusail Motion such that it may be heard by the Court no later than on August 16, 2012, at a time convenient to the Court; and (b) requiring that objections to the Lusail Motion, if any, be filed and served so that they are received in accordance with this Motion no later than August 10, 2012 (prevailing U.S. Eastern Time).

**BASIS FOR RELIEF**

5. Bankruptcy Rule 2002(a)(2) requires a debtor to provide 21 days’ notice by mail of a motion proposing to use, sell or lease property of the estate other than in the ordinary course of business unless the court, for cause shown, shortens the notice period required for a hearing. Bankruptcy Rule 9006(c)(1) and Local Rule 9006-1(b) authorize the Court, for cause shown, to reduce the notice period required for a hearing.

6. By the Lusail Motion, the Debtors seek an order authorizing Arcapita to fund the payment of the September Lease Obligation as required under the Lease. Compliance with the Lease constitutes a required ordinary course transaction under section 365(d)(3) of the Bankruptcy Code to the extent the Lease is a true lease. Accordingly, Arcapita’s compliance with the Lease by funding the September Lease Obligation would not be subject to Bankruptcy

Rule 2002(a), and service of the Lusail Motion would be governed by and shall be in compliance with this Court's Case Management Order, making this Motion superfluous.<sup>3</sup>

7. The Debtors submit this Motion in an abundance of caution in the event that this Court holds that the September Lease Obligation does not constitute a required lease obligation under section 365(d)(3) and is instead subject to section 363(b), thus making service of the Lusail Motion subject to the 21-day notice requirement of Bankruptcy Rule 2002. Should the Court hold that the Lusail Motion is subject to section 363(b) and Bankruptcy Rule 2002, the Debtors submit this Motion seeking to shorten the time for notice of the hearing to consider the Lusail Motion.

8. Ample cause exists to shorten the time for notice of the Lusail Motion and to grant this Motion on an *ex parte* basis. Granting this Motion and conducting the hearing on the Lusail Motion on shortened notice does not impair any party's rights in connection with the Lusail Land or the Lusail Motion. Notably, both the Committee and the JPLs are generally supportive of Arcapita's satisfaction of the September Lease Obligation and also support the shortening of notice with respect to the Lusail Motion as requested in this Motion. The Committee agrees with the Debtors that funding the September Lease Obligation preserves the value of the estates and, therefore, is in the best interests of the Debtors, their estates and their creditors. The JPLs also agree with the Debtors that funding the September Lease Obligation is in the best interests of AIHL, its estate and its creditors.

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<sup>3</sup> The "**Case Management Order**" means the Order (A) Waiving the Requirement that Each Debtor File a List of Creditors and Equity Security Holders and Authorizing Maintenance of Consolidated List of Creditors in Lieu of Matrix; (B) Authorizing Filing of a Consolidated List of Top 50 Unsecured Creditors; and (C) Approving Case Management Procedures [Dkt. No. 21].

9. The reason that the Committee and the JPLs generally support the relief requested by the Lusail Motion is that the Lease obligates Arcapita to fund the September Lease Obligation on or around September 5, 2012. *See* Lease § 2.3. Failure to satisfy this obligation would constitute a default under the Lease and impair or potentially eliminate Arcapita's Option to repurchase the Shares, which Option is already well "in the money." *See* Option § 2.5. Loss of the Option would strip Arcapita of a critical estate asset. Thus, the Debtors' receipt of an order of the Court granting the Lusail Motion by August 16, 2012, and subsequent performance under the Lease, are crucial to preserving the value of the Debtors' estates for creditors.

10. For the foregoing reasons, it is imperative that the Lusail Motion be approved on an expedited basis. To this end, *ex parte* relief is warranted so that the Lusail Motion may be heard no later than on August 16, 2012.

11. No parties in interest would be prejudiced by the shortened notice requested herein or by the approval of this Motion on an *ex parte* basis.

#### **NOTICE**

12. No trustee or examiner has been appointed in the Chapter 11 Cases. The Debtors have provided notice of filing of the Motion by electronic mail, facsimile and/or overnight mail to: (i) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); (ii) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis Dunne, Esq. and Evan Fleck, Esq.); (iii) counsel to Qatar Islamic Bank, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Marcia L. Goldstein); and (iv) all parties listed on the Master Service List established in these

Chapter 11 Cases. A copy of the Motion is also available on the website of the Debtors' notice and claims agent, GCG, at [www.gcginc.com/cases/arcapita](http://www.gcginc.com/cases/arcapita).

**NO PRIOR REQUEST**

13. No prior motion for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
August 2, 2012

Respectfully submitted,

/s/ Michael A. Rosenthal

Michael A. Rosenthal (MR-7006)

Craig H. Millet (admitted *pro hac vice*)

Matthew J. Williams (MW-4081)

Matthew K. Kelsey (MK-3137)

**GIBSON, DUNN & CRUTCHER LLP**

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ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION

## **EXHIBIT A**

### **Proposed Order**



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

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IN RE: : **Chapter 11**  
ARCAPITA BANK B.S.C.(c), *et al.*, : **Case No. 12-11076 (SHL)**  
Debtors. : **Jointly Administered**  
: :  
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**ORDER SHORTENING THE NOTICE PERIOD WITH  
RESPECT TO THE DEBTORS' MOTION PURSUANT TO  
SECTIONS 365(d)(3) AND 363(b)(1) OF THE BANKRUPTCY  
CODE FOR AUTHORIZATION FOR ARCAPITA TO  
FUND LUSAIL JOINT VENTURE LEASE PAYMENT**

Upon consideration of the motion (the "**Motion**")<sup>1</sup> of Arcapita Bank B.S.C.(c) ("**Arcapita**") and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "**Debtors**" and each, a "**Debtor**") in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), for entry of an order shortening the notice period with respect to the *Debtors' Motion Pursuant to Sections 365(d)(3) and 363(b)(1) of the Bankruptcy Code for Authorization for Arcapita to Fund Lusail Joint Venture Lease Payment* (the "**Lusail Motion**"); and the Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of Debtors' estates, their creditors, and other parties in interest; and it appearing that no other or further notice is necessary except as provided herein; and the Court having reviewed the Motion and having considered statements in

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

support of the relief requested therein; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED:**

1. The Motion is granted to the extent set forth below.

2. The hearing to consider the Lusail Motion shall be held on August 16, 2012, at 2:00 p.m. (prevailing U.S. Eastern Time) before the Honorable Sean H. Lane, United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408, Courtroom 701. The hearing on the Lusail Motion may be adjourned from time to time without further notice other than an announcement of the adjourned date or dates in open court. Notice of such adjourned date(s) will be available on the electronic case filing docket.

3. The Debtors shall serve a copy of this Order within one day of entry thereof, by electronic mail, facsimile and/or overnight mail, on the Notice Parties (as defined below).

4. Any and all objections to the Lusail Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and Local Rules of the Court, and shall be filed, with proof of service, with the Clerk of the Court and served on the following parties (the "*Notice Parties*") so as to be received by August 10, 2012 (prevailing U.S. Eastern Time):

- (a) counsel to the Debtors, attention: Michael A. Rosenthal, Matthew J. Williams and Matthew K. Kelsey, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193;
- (b) counsel to the Committee, attention: Dennis Dunne, Esq. and Evan Fleck, Esq., Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005;
- (c) counsel to Qatar Islamic Bank, attention: Marcia L. Goldstein, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153; and

- (d) the Office of the United States Trustee for the Southern District of New York, attention: Richard Morrissey, 33 Whitehall Street, New York, New York 10004,

with a courtesy copy delivered to the chambers of the Honorable Sean H. Lane, United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408.

5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York  
\_\_\_\_\_, 2012

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THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

HEARING DATE AND TIME: August 16, 2012 at 2:00 p.m. (Eastern Time)

OBJECTION DEADLINE: August 10, 2012 (Eastern Time)

**GIBSON, DUNN & CRUTCHER LLP**

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

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

**NOTICE OF HEARING ON DEBTORS' EX PARTE MOTION FOR ORDER SHORTENING THE NOTICE PERIOD WITH RESPECT TO THE DEBTORS' MOTION PURSUANT TO SECTIONS 365(d)(3) AND 363(b)(1) OF THE BANKRUPTCY CODE FOR AUTHORIZATION FOR ARCAPITA TO FUND LUSAIL JOINT VENTURE LEASE PAYMENT**

PLEASE TAKE NOTICE that a hearing on the annexed Motion, dated August 2, 2012 (the "*Motion*") of Arcapita Bank B.S.C.(c) and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "*Debtors*") will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court for the Southern District of New York (the "*Bankruptcy Court*"), One Bowling Green, New York, New York 10004, on **August 16, 2012 at 2:00 p.m. (Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion (the “**Objections**”) shall be filed electronically with the Court on the docket of *In re Arcapita Bank B.S.C.(c), et al.*, Ch. 11 Case No. 12-11076 (SHL) (the “**Docket**”), pursuant to the Case Management Procedures approved by this Court<sup>1</sup> and the Court’s General Order M-399 (available at <http://nysb.uscourts.gov/orders/orders2.html>), by registered users of the Court’s case filing system and by all other parties in interest on a 3.5 inch disk, preferably in portable document format, Microsoft Word, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 on (i) counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Michael A. Rosenthal, Esq., Janet M. Weiss, Esq. and Matthew K. Kelsey, Esq.); (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); and (iii) the Official Committee of Unsecured Creditors, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq. and Evan R. Fleck, Esq.) so as to be received no later than **August 10, 2012 (Eastern Time)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to

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

the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard.

Dated: New York, New York  
August 2, 2012

/s/ Michael A. Rosenthal

Michael A. Rosenthal (MR-7006)  
Craig H. Millet (admitted *pro hac vice*)  
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