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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  
FOR AN ORDER APPROVING EXPENSE REIMBURSEMENT IN  
CONNECTION WITH PROSPECTIVE POST-PETITION FINANCING**

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 For An Order Approving Expense Reimbursement In Connection With Prospective Post-Petition Financing* (the "*Expense Reimbursement Motion*"), filed

concurrently herewith and incorporated by reference.<sup>1</sup> In support of the Motion, the Debtors respectfully represent:

### **BACKGROUND**

1. On March 19, 2012 (the “*Petition Date*”), Arcapita and five of its affiliates (collectively, the “*Initial Debtors*”) commenced cases under chapter 11 of the Bankruptcy Code. On April 30, 2012, Falcon Gas Storage Co., Inc. commenced a case under chapter 11 of the Bankruptcy Code (along with the cases of the Initial Debtors, the “*Chapter 11 Cases*”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On April 5, 2012, the United States Trustee for Region 2 appointed the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the “*Committee*”) [Dkt. No. 60] pursuant to sections 1102(a) and (b) of the Bankruptcy Code.

3. Founded in 1996, Arcapita, through its Debtor and non-Debtor subsidiaries (collectively, with Arcapita, the “*Arcapita Group*”), is a leading global manager of Shari’ah-compliant alternative investments and operates as an investment bank. Arcapita is not a domestic bank licensed in the United States, nor does it have a branch or agency in the United States as defined in section 109(b)(3)(B) of the Bankruptcy Code. Arcapita is headquartered in Bahrain and is regulated under an Islamic wholesale banking license issued by the Central Bank of Bahrain.

4. The Arcapita Group provides investors the opportunity to co-invest with the Arcapita Group on a deal-by-deal basis across three global asset classes: real estate; infrastructure and private equity; and venture capital. Typically, the Arcapita Group, through its

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

non-Debtor subsidiaries, takes an indirect 10-20% equity stake alongside its third-party investors in non-Debtor holding companies that directly own operating portfolio companies in the United States, Europe and the Middle East.

### **JURISDICTION AND VENUE**

5. 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.

### **RELIEF REQUESTED**

6. By this Motion, the Debtors request that the Court enter an order (a) shortening the notice period for the Expense Reimbursement Motion such that it may be heard by the Court no later than September 5, 2012 at 2:00 p.m., and (b) requiring that objections to the Expense Reimbursement Motion, if any, be filed and served so that they are received in accordance with this Motion no later than September 4, 2012, at 12:00 p.m.

### **BASIS FOR RELIEF**

7. 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. FED. R. BANKR. P. 2002(a)(2). 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. FED. R. BANKR. P. 9006(c)(1); Local Rules, at 9006-1(b).

8. Ample cause exists to shorten the time for notice of the Expense Reimbursement Motion and to grant this Motion on an *ex parte* basis. As described more fully in the Expense Reimbursement Motion, the Expense Reimbursement constitutes an important

incentive in connection with the Debtors' post-petition financing. To the Debtors' knowledge, the Proposed Transaction is the first attempt by any debtor to consummate post-petition Shari'ah compliant financing. For the Expense Reimbursement to prove an effective incentive, however, it must be made available prior to September 7, 2012. In that regard, it is necessary for this Court to hear the Expense Reimbursement Motion on a shortened notice.

9. As discussed in greater length in the Expense Reimbursement Motion, the Debtors and their advisors engaged in a two stage solicitation process in connection with the Proposed Transaction. On or around September 7, 2012, the Debtors expect to receive two Firm Proposals from Potential Lenders. The Potential Lender with the best offer will be chosen as the Selected Lender.

10. The Debtors seek an order authorizing Arcapita to reimburse the Selected Lender for a limited portion of its actual and reasonable costs and expenses incurred in connection with final documentation in respect of the Proposed Transaction. As discussed in the Expense Reimbursement Motion, the Expense Reimbursement is necessary to entice the Selected Lender to proceed to final documentation because of the unique nature of both the Debtors' collateral pool (equity interests in levered portfolio companies) and the transaction itself. As such, the Debtors believe that approving the Expense Reimbursement Motion will encourage Potential Lenders to submit their best offers as part of the financing solicitation process.

11. Timing with respect to the Expense Reimbursement is critical. Because of liquidity issues, the Debtors will seek to have a motion for post-petition financing heard by the court at the October 2, 2012 omnibus hearing. To accomplish that task, the Debtors and the Selected Lender will have to move quickly to draft, negotiate and finalize the required financing documentation. The Selected Lender, in particular, must resolve all outstanding legal issues

regarding the nature of the Proposed Transaction. The Debtors believe that the Expense Reimbursement will provide an important incentive to push Potential Lenders to put forth their best offers and close the transaction expediently, subject to Court approval. However, for the Expense Reimbursement to constitute an effective incentive, it must be approved and available at the selection of the Selected Lender, by September 7, 2012. Absent prior approval, Arcapita's promise of an Expense Reimbursement will be illusory and have no effect.

12. The Debtors have discussed the Expense Reimbursement with the Committee. As of the date of the filing of the Expense Reimbursement Motion, the Committee has taken no position with respect to the Expense Reimbursement Motion. Because the Debtors believe that the Expense Reimbursement is crucial to the post-petition financing process, they are committed to reaching a resolution with the Committee with respect to any issue that the Committee may have in respect of the Expense Reimbursement Motion.

13. For the foregoing reasons, it is imperative that the Expense Reimbursement Motion be approved on an expedited basis. To this end, *ex parte* relief is warranted so that the Expense Reimbursement Motion may be heard no later than on September 5, 2012.

14. 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**

15. 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 F. Dunne, Esq., Abhilash M. Raval, Esq., and Evan R. Fleck, Esq.), counsel for the Committee; and (iii) 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**

16. 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 29, 2012

/s/ Michael A. Rosenthal  
Michael A. Rosenthal (MR-7006)  
Craig H. Millet (admitted *pro hac vice*)  
Janet M. Weiss (JW-5460)  
Matthew K. Kelsey (MK-3137)  
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ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION

PROPOSED HEARING DATE AND TIME: September 5, 2012 at 11:00 a.m. (Eastern Time)

PROPOSED OBJECTION DEADLINE: September 4, 2012 at 12:00 p.m. (Eastern Time)

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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>
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<b>ARCAPITA BANK B.S.C.(c), et al.,</b>	:	<b>Case No. 12-11076 (SHL)</b>
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<b>Debtors.</b>	:	<b>Jointly Administered</b>
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**NOTICE OF HEARING ON DEBTORS' EX PARTE MOTION FOR ORDER  
SHORTENING THE NOTICE PERIOD WITH RESPECT TO THE DEBTORS'  
MOTION FOR AN ORDER APPROVING EXPENSE REIMBURSEMENT IN  
CONNECTION WITH PROSPECTIVE POST-PETITION FINANCING**

PLEASE TAKE NOTICE that a hearing on the annexed Motion, dated August 29, 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 **September 5, 2012 at 11:00 a.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.). The proposed deadline for Objections is **September 4, 2012 at 12:00 p.m. (Eastern Time)** (the “**Proposed Objection Deadline**”).

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

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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].

Dated: New York, New York  
August 29, 2012

/s/ Michael A. Rosenthal

Michael A. Rosenthal (MR-7006)

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

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ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION

**EXHIBIT A**

**PROPOSED ORDER**



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 Expense Reimbursement Motion shall be held on \_\_\_\_\_, 2012, at \_\_\_\_\_ (prevailing 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 Expense Reimbursement 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 Expense Reimbursement 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 \_\_\_\_\_, 2012, at \_\_\_\_\_ (prevailing Eastern Time):
  - (a) counsel to the Debtors, attention: Michael A. Rosenthal, Janet M. Weiss 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) 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