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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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: **Chapter 11**  
: **Case No. 12-11076 (SHL)**  
: **Jointly Administered**  
: X  
-----X

<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>

**NOTICE OF DEBTORS' EX PARTE MOTION FOR  
ORDER SHORTENING THE NOTICE PERIOD WITH RESPECT TO THE  
DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE  
DEBTORS TO ENTER INTO A FINANCING COMMITMENT LETTER AND INCUR  
RELATED FEES, EXPENSES AND INDEMNITIES IN CONNECTION THEREWITH**

PLEASE TAKE NOTICE that the annexed *ex parte* Motion (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**") was filed on dated September 25, 2012.

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.); (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.); and (iv) counsel to Silver Point Finance, LLC, White & Case LLP, 1155 Avenue of the America, New York, NY 10036-2787 (Attn: Scott Greissman, Esq. and Andrew Zatz, Esq.).

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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  
September 25, 2012

/s/ Michael A. Rosenthal  
Michael A. Rosenthal (MR-7006)  
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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>
	:	
-----X	:	

**DEBTORS' *EX PARTE* MOTION FOR ORDER  
SHORTENING THE NOTICE PERIOD WITH RESPECT TO THE  
DEBTORS' MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING THE DEBTORS TO ENTER INTO A  
FINANCING COMMITMENT LETTER AND INCUR RELATED  
FEES, EXPENSES AND INDEMNITIES**

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 Entry of an Order Authorizing the Debtors to Enter into a Financing Commitment Letter and Incur Related Fees, Expenses and Indemnities* (the

“*Commitment Letter 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.

### **JURISDICTION AND VENUE**

3. 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**

4. By this Motion, the Debtors request that the Court enter an order (a) shortening the notice period for a hearing on the Commitment Letter Motion such that it may be heard by the Court as soon as practicable, and (b) requiring that objections to the Commitment Letter Motion, if any, be filed and served so that they are received no later than two business days prior to the hearing date at 4:00 p.m.

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

**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. 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).

6. Pursuant to the Commitment Letter Motion, the Debtors are seeking Court authority to enter into a commitment letter (the "***Commitment Letter***") with Silver Point Finance, LLC ("***Silver Point***") to provide necessary debtor in possession financing (the "***Proposed DIP Financing***")<sup>2</sup> to the Debtors, and to incur fees and expenses related thereto. Hence, pursuant to Bankruptcy Rule 2002(a), a 21-day notice period typically would be required prior to a hearing on the motion.

7. The Debtors respectfully submit that cause exists for the Court, on an *ex parte* basis, to shorten the time for notice of the hearing on the Commitment Letter Motion. As noted in the Commitment Letter Motion, the Proposed DIP Financing contemplated by the Commitment Letter will enable the Debtors to continue to fund their business operations, maximize the value of their portfolio companies and exit Chapter 11 in an expeditious and successful manner. In the exercise of their business judgment, the Debtors have determined that the Proposed DIP Financing contemplated by the Commitment Letter is not only necessary, but also the best post-petition financing available to the Debtors.

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<sup>2</sup> For ease of reference, the transaction contemplated by the Commitment Letter is referred to simply as a financing. In actuality, any Arcapita post-petition financing transaction will be in the form of a Shari'ah compliant Murabaha, or commodities transaction, not a loan.

8. The Commitment Letter, however, remains subject to due diligence and Silver Point's internal credit committee approval. While Silver Point has agreed to conduct due diligence and negotiate definitive documentation in a commercially reasonable manner, it is only required to do so after this Court has entered an order authorizing the Debtors to execute the Commitment Letter.<sup>3</sup> As such, to ensure that Silver Point expeditiously completes its diligence and negotiates definitive documentation, the Debtors request that this Court shorten the notice period with respect to the hearing on the Commitment Letter Motion. Any delay in hearing the Commitment Letter Motion could delay completion of Silver Point's due diligence and negotiation of the underlying documentation regarding the Proposed DIP Financing, which in turn might delay the Debtors' receipt of such financing.<sup>4</sup>

9. In addition to the fact that Silver Point is not contractually obligated to complete its diligence or negotiate documentation until the Commitment Letter is approved, shortened notice is warranted by the terms of the Commitment Letter itself. For instance, pursuant to the Commitment Letter, Silver Point's financing commitment itself may be terminated by Silver Point upon the later of (a) October 15, 2012 or (b) 21 days after Silver Point has notified the Debtors that it has satisfactorily completed its due diligence and received credit committee approval. Moreover, a condition precedent to consummation of the proposed Silver Point financing is that a final order approving the Proposed DIP Financing be entered on or

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<sup>3</sup> The Debtors remain hopeful that Silver Point will continue its due diligence prior to approval of the Commitment Letter given that the Debtors have agreed to provide Silver Point with a \$500,000 expense deposit pursuant to the *Order Approving Expense Reimbursement in Connection with Prospective Post-Petition Financing* [Docket No. 500]. Nonetheless, as noted above, Silver Point is not required to conduct due diligence or negotiate definitive documentation until the Commitment Letter is approved.

<sup>4</sup> While the Debtors have sufficient available funds through the end of October, there is much to be done before the Proposed DIP Financing can be presented to the Court for approval. The sooner the Court can rule on the Commitment Letter Motion, the sooner Silver Point will be contractually obligated to perform under the Commitment Letter and the Debtors will be in a position to present a motion to approve the Proposed DIP Financing to the Court. The Court has set aside time slots for the Debtors' cases on October 2<sup>nd</sup> and 9<sup>th</sup>.

before November 30, 2012. Any material delay in approving the Commitment Letter could make it difficult to meet that outside date.

10. For the foregoing reasons, the Debtors request that the Commitment Letter Motion be heard on an expedited basis. To this end, *ex parte* relief with respect to this Motion is warranted so that the Commitment Letter Motion may be heard as soon as practicable.

#### **NOTICE**

11. 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; (iii) White & Case LLP, 1155 Avenue of the America, New York, NY 10036-2787 (Attn: Scott Greissman, Esq. and Andrew Zatz, Esq.), counsel to Silver Point, 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**

12. 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  
September 25, 2012

/s/ Michael A. Rosenthal  
Michael A. Rosenthal (MR-7006)  
Craig H. Millet (admitted *pro hac vice*)  
Matthew J. Williams (MW 4081)  
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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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<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>
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**ORDER SHORTENING THE NOTICE  
PERIOD WITH RESPECT TO THE DEBTORS'  
MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
THE DEBTORS TO ENTER INTO A FINANCING  
COMMITMENT LETTER AND INCUR RELATED  
FEES, EXPENSES AND INDEMNITIES**

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 for Entry of an Order Authorizing the Debtors to Enter Into a Financing Commitment Letter and Incur Related Fees, Expenses and Indemnities* (the “*Commitment Letter 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 support of the relief requested therein; and the Court having determined that the

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

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 Commitment Letter 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 Commitment Letter 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 Commitment Letter 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, Matthew J. Williams and Matthew K. Kelsey, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193, and Craig H. Millet, Gibson, Dunn & Crutcher LLP; 3161 Michelson Drive, Irvine, CA 92612-4412.
  - (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 Silver Point, attention: Scott Greissman, Esq. and Andrew Zatz, Esq., White & Case LLP 1155 Avenue of the America, New York, NY 10036-2787.
- (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