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and Debtors in Possession

**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), et al.,	:	Case No. 12-11076 (SHL)
	:	
Debtors.	:	Jointly Administered
	:	
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DEBTORS' *EX PARTE* MOTION FOR AN ORDER (I) SHORTENING THE NOTICE PERIOD WITH RESPECT TO THE DEBTORS' MOTION TO AMEND SECOND ORDER EXTENDING EXCLUSIVE PERIODS TO FILE A PLAN OR PLANS OF REORGANIZATION AND TO SOLICIT ACCEPTANCES THEREOF AND FURTHER EXTENDING THE EXCLUSIVE PERIODS, AND (II) EXTENDING THE EXCLUSIVE PERIOD TO FILE A PLAN OR PLANS OF REORGANIZATION PENDING A HEARING ON THE MOTION

Arcapita Bank B.S.C.(c) ("*Arcapita Bank*") and certain of its subsidiaries, 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 sections 105(a) and 1121(d) of title 11 of the United States Code (the "*Bankruptcy Code*"), 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*") (i) shortening the time for notice of the hearing to consider the *Debtors' Motion to*

Amend Second Order Extending Exclusive Periods to File a Plan or Plans of Reorganization and to Solicit Acceptances Thereof and Further Extending the Exclusive Periods (the “**Exclusivity Motion**”), filed concurrently herewith and incorporated by reference,¹ and (ii) extending the Exclusive Filing Period (defined below) until such time as the Court has entered an order determining the Exclusivity Motion. In support of the Motion, the Debtors respectfully represent:

BACKGROUND

1. On March 19, 2012, Arcapita Bank and five of its affiliates commenced cases under chapter 11 of the Bankruptcy Code. On April 30, 2012, Falcon Gas Storage Company, Inc. commenced a case under chapter 11 of the Bankruptcy Code. The Debtors have continued to operate their business and manage 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 in the Chapter 11 Cases (the “**Committee**”) [Docket No. 60] pursuant to sections 1102(a) and (b) of the Bankruptcy Code. Of the six current members of the Committee, three members are primarily creditors of only Arcapita Bank and three members are also creditors that have substantial claims against Arcapita Bank’s subsidiary, Arcapita Investment Holdings Limited (“**AIHL**”). Arcapita Bank owns the majority of the assets of the Arcapita Group through AIHL and as a result of the Debtors’ corporate structure, the claims of AIHL’s creditors are in large part structurally senior to the claims of Arcapita Bank’s creditors. Nonetheless, there are a variety of legal and factual arguments and considerations that must be

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Exclusivity Motion.

taken into account when allocating the overall value of the Debtors' estates between the creditors of Arcapita Bank and the creditors of AIHL.

3. By order dated July 11, 2012, the Court granted the Debtors a 90-day extension of the initial 120-day period during which the Debtors have the exclusive right to file a chapter 11 plan or plans (the "*Exclusive Filing Period*") and the 180-day period to obtain acceptances of that plan or plans (the "*Exclusive Solicitation Period*," and together with the Exclusive Filing Period, the "*Exclusive Periods*"), through and including October 15, 2012 and December 14, 2012, respectively.

4. Although the Debtors made substantial progress towards developing a strategy for a successful exit from these chapter 11 cases during the initial extension of the Exclusive Periods, the Debtors filed a second motion to extend the Exclusive Periods (the "*Second Exclusivity Motion*") because they required additional time to handle the sheer complexity of legal and business issues presented by their chapter 11 cases. However, the Debtors agreed that they would not seek further extensions of their exclusive right to file a plan.

5. On October 12, 2012, the Court granted the Debtors' Second Exclusivity Motion and extended the Exclusive Filing Period to and including December 15, 2012, and the Exclusive Solicitation Period to and including February 12, 2013. As agreed upon by the Debtors, the Second Exclusivity Order states that "the Debtors shall not request a further extension of the Exclusive Filing Period beyond the extension to December 15, 2012" (Docket. No. 568 at 2.)

JURISDICTION AND VENUE

6. 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

7. By this Motion, the Debtors request that the Court enter an order (i) shortening the notice period for the Exclusivity Motion such that it may be heard by the Court no later than December 18, 2012 at 11:00 a.m., (ii) requiring that objections to the Exclusivity Motion, if any, be filed and served so that they are received in accordance with this Motion no later than December 17, 2012, at 12:00 p.m., and (iii) extending the Exclusive Filing Period until such time as the Court has entered an order determining the Exclusivity Motion.

BASIS FOR RELIEF

8. Pursuant to the Case Management Procedures approved by this Court,² hearings on motions seeking relief other than under Bankruptcy Rule 2002(a) and (b) must be set with at least 14 days' notice. Local Rules, at 2002-2(b). 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).

9. Ample cause exists to shorten the time for notice of the Exclusivity Motion and to grant this Motion on an *ex parte* basis. As described more fully in the Exclusivity Motion, the Debtors, the Committee, and the Joint Provisional Liquidators of AIHL (the "**JPLs**") have diligently worked to develop a feasible plan of reorganization. As a result of these efforts, and

² 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].

although some open issues remain unresolved, the Debtors are ready and willing to file a plan by the current deadline of December 15, 2012. However, the Committee has requested that the Debtors refrain from filing a plan for one more week to allow the continuation of further discussions among the Debtors, the Committee, and various other constituencies regarding a proposed settlement of intercreditor issues.

10. Throughout the process of evaluating various options for reorganization, the Debtors, the Committee, and the JPLs have engaged in an ongoing analysis of how to allocate the assets between the creditors of Arcapita Bank and the creditors of AIHL. Indeed, the Debtors, the Committee, and the JPLs have worked jointly in an attempt to develop a value allocation model that is reasonably acceptable to both groups of creditors. Most recently, the parties met substantially all of last week regarding this model and the parameters of a plan based on it. After these meetings, the Committee advised the Debtors that its members would be unable to reach an internal consensus regarding value allocation by the expiration of the current Exclusive Filing Period, but would likely be able to reach a resolution if given an additional short period of time. Accordingly, the Committee requested that the Debtors postpone filing a plan of reorganization by one week (until December 22, 2012), during which time the Committee agreed that the Exclusive Filing Period would not lapse.

11. Given that the requested delay is minimal, but increases the probability that the Debtors will be able to file a plan of reorganization with the Committee's and JPLs' support, the Debtors are willing to accommodate the Committee's request for additional time even though the Debtors are prepared to file a plan of reorganization by the current deadline.

12. In order to have the Exclusivity Motion heard prior to the end of the requested extension of the Exclusive Filing Period, the Debtors respectfully request that the Exclusivity

Motion be set for hearing at the December 18, 2012 omnibus hearing. Additionally, the Debtors request that the Court extend the Exclusive Filing Period until such time as the Court has entered an order determining the Exclusivity Motion. Section 1121(d) of the Bankruptcy Code provides that the Court may extend the Exclusive Filing Period for cause, and section 105(a) states that the Court may issue any order “that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. §§ 105(a), 1121(d). The Debtors respectively submit that it is necessary to grant this Motion on an *ex parte* basis so that the Exclusivity Motion may be heard on December 18, 2012 and that the Exclusive Filing Period will not expire before the Court has entered an order determining the Exclusivity Motion.

13. 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

14. 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.); 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, Inc., at www.gcginc.com/cases/arcapita.

15. If the Court amends its Second Exclusivity Order to permit the Debtors to seek a further extension of the Exclusive Filing Period, this Motion, together with the Exclusivity Motion, is the Debtors’ third request for an extension of the Exclusive Filing Period.

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
December 11, 2012

/s/ Michael A. Rosenthal
Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
Matthew K. Kelsey (MK-3137)
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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
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ARCAPITA BANK B.S.C.(c), et al.,	:	Case No. 12-11076 (SHL)
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Debtors.	:	Jointly Administered
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**EX PARTE ORDER (I) SHORTENING THE NOTICE PERIOD WITH
RESPECT TO DEBTORS’ MOTION TO AMEND SECOND ORDER EXTENDING
EXCLUSIVE PERIODS TO FILE A PLAN OR PLANS OF REORGANIZATION
AND TO SOLICIT ACCEPTANCES THEREOF AND FURTHER
EXTENDING THE EXCLUSIVE FILING PERIOD AND (II) EXTENDING THE
EXCLUSIVE PERIOD FOR THE DEBTORS TO FILE A CHAPTER 11 PLAN**

Upon consideration of the motion (the “*Motion*”)¹ of Arcapita Bank B.S.C.(c) (“*Arcapita Bank*”) and certain of its subsidiaries, 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 (i) shortening the notice period with respect to the *Debtors’ Motion to Amend Second Order Extending Exclusive Periods to File a Plan or Plans of Reorganization and to Solicit Acceptances Thereof and Further Extending the Exclusive Filing Period* (the “*Exclusivity Motion*”) and (ii) extending the Exclusive Filing Period until such time as the Court has entered an order determining the Exclusivity 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

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

reviewed the Motion; 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 hearing to consider the Exclusivity Motion shall be held on **December 18, 2012**, at **11 a.m.** (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 Exclusivity 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.
2. Pursuant to Bankruptcy Code section 1121(d), the Debtors' Exclusive Filing Period is hereby extended through and including December 18, 2012.
3. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order
4. 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).
5. Any and all objections to the Exclusivity 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 **December 17**, at **12:00 p.m.** (prevailing Eastern Time):
 - (a) counsel to the Debtors, attention: Michael A. Rosenthal, Craig H. Millet 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; and
- (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.

6. 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

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE