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

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

DEBTORS’ MOTION TO FURTHER EXTEND EXCLUSIVE PERIODS TO FILE A PLAN OR PLANS OF REORGANIZATION AND TO SOLICIT ACCEPTANCES THEREOF

Arcapita Bank B.S.C.(c) (“*Arcapita Bank*”) and certain of its subsidiaries and affiliates (collectively, the “*Debtors*”) hereby submit this motion (the “*Motion*”) pursuant to section 1121(d) of title 11 of the United States Code (the “*Bankruptcy Code*”), for an order further extending the Debtors’ exclusive period to file a plan or plans of reorganization and to solicit acceptances thereof. In support thereof, the Debtors respectfully represent:

JURISDICTION

1. This Court has jurisdiction to consider this matter 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 before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. 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.

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

4. 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.

5. 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. In the Second Exclusivity Motion, the Debtors agreed that they would not seek further extensions of their exclusive right to file a plan.

6. On October 12, 2012, the Court granted the Second Exclusivity Motion by its *Second Order Extending the Debtors’ Exclusive Periods to File a Plan or Plans of Reorganization and to Solicit Acceptances Thereof* [Docket No. 568] (the “**Second Exclusivity Order**”) and thereby extended the Exclusive Filing Period to and including December 15, 2012, and the Exclusive Solicitation Period to and including February 12, 2013.¹

7. Since the Second Exclusivity Order was entered, the Debtors, the Committee, and the Joint Provisional Liquidators of AIHL (the “**JPLs**”) have diligently worked to develop a plan of reorganization that incorporates input from the Committee and the JPLs, and various other constituencies, regarding resolution of certain inter-creditor and inter-estate issues. 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.

¹ 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

8. As a result of these efforts, and although some issues remained unresolved, the Debtors were ready and willing to file a plan by the December 15, 2012 deadline. However, the Debtors and the Committee agreed that the Debtors should refrain from filing a plan for a limited period of time to allow the continuation of further discussions among the Debtors, the Committee, and the other constituencies. To facilitate additional discussions with the Committee and other constituencies, the Committee and the Debtors, with the support of the JPLs and no opposition from the Ad Hoc group, agreed that it was in the best interests of the estates to request the Court to extend the Exclusive Periods for an additional week—until December 22, 2012 for the Exclusive Filing Period, and February 19, 2013 for the Exclusive Solicitation Period. Implementing this agreement, the Debtors filed 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* [Docket No. 701] (the “**Third Exclusivity Motion**”) seeking an extension of the Exclusive Periods by a week.

9. Prior to the hearing on the Third Exclusivity Motion, the Committee and the Debtors, with input from the JPLs, discussed an additional two-week extension of the Exclusive Periods to continue negotiations regarding the allocation model, among other issues. This additional extension was discussed on the record with the Court at the December 18, 2012 hearing to consider the Third Exclusivity Motion.

10. The Court approved of the Third Exclusivity Motion by its *Order Granting 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*

December 15, 2012” (Docket. No. 568 at 2.)

[Docket No. 725] (the “**Third Exclusivity Order**”)² and thereafter the Debtors filed their *Debtors’ Motion to Further Extend Exclusive Periods to File a Plan or Plans of Reorganization and to Solicit Acceptances Thereof* [Docket No. 728] (the “**Fourth Exclusivity Motion**”) seeking an additional two-week extension of the Exclusive Periods. The Court approved of the Fourth Exclusivity Motion by its *Order Granting Debtors’ Motion to Extend Exclusive Periods to File a Plan or Plans of Reorganization and to Solicit Acceptances Thereof* [Docket No. 743] (the “**Fourth Exclusivity Order**”).

11. Although the Debtors were informed that significant progress had been made in the negotiations among creditors with respect to various inter-creditor issues since the Fourth Exclusivity Order was entered, most of those discussions occurred within the confines of the Committee room. However, the Committee informed the Debtors that it needed more time to provide the Debtors with additional input regarding these inter-creditor issues. Accordingly, the Debtors agreed, with Committee support, to seek a short extension of the Exclusive Periods—for an additional nine-day period—to give the Committee additional time to provide the Debtors with input regarding value allocation and other issues. Consequently, the Debtors filed their *Debtors’ Motion to Further Extend Exclusive Periods to File a Plan or Plans of Reorganization and to Solicit Acceptances Thereof* [Docket No. 759] (the “**Fifth Exclusivity Motion**”) seeking this nine-day extension.

12. Prior to the hearing on the Fifth Exclusivity Motion, the Committee and the Debtors, with input from the JPLs, discussed another two-week extension of the Exclusive Periods to continue discussions regarding the plan. This additional extension was discussed on

² The Third Exclusivity Order also amends the Second Exclusivity Order to permit the Debtors to request further extensions of the Exclusive Filing Period.

the record with the Court at the January 9, 2013 hearing to consider the Fifth Exclusivity Motion. The Court approved of the Fifth Exclusivity Motion by its *Order Granting Debtors' Motion to Extend Exclusive Periods to File a Plan or Plans of Reorganization and to Solicit Acceptances Thereof* [Docket No. 768] (the "***Fifth Exclusivity Order***") and thereby extended the Exclusive Filing Period until January 14, 2013 and the Exclusive Solicitation Period through March 14, 2013.

RELIEF REQUESTED

13. To increase the likelihood that the Debtors will be able to file a consensual plan of reorganization, with the support of the Committee, the Debtors request that the Court (i) further extend the Exclusive Filing Period through and including January 28, 2013, and (ii) further extend the Exclusive Solicitation Period through and including March 28, 2013.³

BASIS FOR RELIEF REQUESTED

14. The Court may extend the Exclusive Periods for cause. *See* 11 U.S.C. § 1121(d). The same factors described in the Second Exclusivity Motion, the Third Exclusivity Motion, the Fourth Exclusivity Motion, and the Fifth Exclusivity Motion that gave rise to cause to extend the Exclusive Periods still exist. This additional, short extension of the Exclusive Periods increases the probability that the Debtors will be able to file a plan of reorganization with the Committee's

³ Notwithstanding the Debtors' intention during the extended Exclusive Filing Period to engage in good faith negotiations with the various constituencies related to a consensual plan of reorganization, nothing in this Motion is intended, nor should it be construed, to condition or limit the Debtors' right to file a plan of reorganization absent a consensual agreement with the Committee, the JPLs or any other constituency on the terms of such plan.

and JPLs' support,⁴ and because the extension sought here is only two weeks, it will not prejudice any interested party.

15. In this instance, it is also clear that the Debtors are not seeking to use exclusivity as a method of pressuring creditors into accepting their demands. One factor that courts analyze when determining whether to extend the exclusive periods is "whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands." *In re Adelpia Commc'ns Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006). Here, this request for an extension is being made with the Committee's support. The Debtors are not leveraging the extension as a means to pressure the Committee into accepting any particular terms. Indeed, should the Court deny the relief requested herein, the Debtors remain poised to file a plan of reorganization by the close of the current Exclusive Filing Period.

NOTICE

16. No trustee or examiner has been appointed in these 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

⁴ On September 18, 2012, the Debtors filed the *Debtors' Motion for an Order Pursuant to Sections 363(b) and 503(c) of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing Debtors to Implement Global Settlement of Senior Management Claims* [Docket No. 487] (the "**Senior Management Global Settlement Approval Motion**"). In the Senior Management Global Settlement Approval Motion the Debtors identified filing an Eligible Plan (as defined in the Senior Management Global Settlement Approval Motion) by December 15, 2012 as the "Milestone." As a result of the requested extension of the Exclusive Filing Period sought herein, the Debtors hereby amend the Senior Management Global Settlement Approval Motion to make the "Milestone" described therein the filing of an Eligible Plan by the Debtors by January [28], 2013.

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.

17. This Motion is the Debtors' sixth request for an extension of the Exclusive Filing Period.

CONCLUSION

For the reasons set forth herein, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit A, extending the Debtors' Exclusive Filing Period through and including January 28, 2013, extending the Debtors' Exclusive Solicitation Period through and including March 28, 2013, and granting the Debtors such other and further relief as is just and proper.

Dated: New York, New York
January 11, 2013

Respectfully submitted,

/s/ Michael A. Rosenthal

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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 GRANTING DEBTORS' MOTION TO EXTEND EXCLUSIVE
PERIODS TO FILE A PLAN OR PLANS OF REORGANIZATION
AND TO SOLICIT ACCEPTANCES THEREOF**

Upon consideration of the Motion (the "*Motion*")¹ of Arcapita Bank B.S.C.(c), and certain of its subsidiaries and affiliates, as debtors and debtors-in-possession herein (collectively, the "*Debtors*" and each, a "*Debtor*"), for entry of an order pursuant to section 1121(d) of title 11 of the United States Code (the "*Bankruptcy Code*"), for an order (i) further extending the Debtors' Exclusive Filing Period through and including January 28, 2013, and (ii) further extending the Debtors' Exclusive Solicitation Period through and including March 28, 2013, and the evidence in support thereof; the Court finds that:

- a) It has jurisdiction to consider this Motion pursuant to 28 U.S.C. sections 157 and 1334;
- b) Venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409;
- c) Notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances of these cases; and,

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

d) The relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest.

After the consideration of any objections to the Motion; all proceedings that have occurred before the Court in the above-captioned chapter 11 cases; and having determined after due deliberation that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED:

1. The Motion is granted to the extent set forth herein.
2. Pursuant to section 1121(d) of the Bankruptcy Code, the Debtors' Exclusive Filing Period in which to file a chapter 11 plan or plans is extended to and including January 28, 2013.
3. Pursuant to section 1121(d) of the Bankruptcy Code, the Debtors' Exclusive Solicitation Period in which to solicit acceptances of their chapter 11 plan or plans is extended through and including March 28, 2013.
4. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
_____, 2013

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE