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**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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**LIMITED OBJECTION OF MOUNZER NASR TO SECOND AMENDED JOINT PLAN
OF REORGANIZATION OF ARCAPITA BANK B.S.C.(c) AND RELATED DEBTORS
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Mounzer Nasr for himself, and as authorized agent for his spouse, Beatriz Flecha de Lima Nasr (collectively, “Nasr”), by and through his counsel, hereby asserts this limited objection (the “Limited Objection”) to confirmation of the Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code (as may

be amended, the “Plan”¹ [Dkt. No. 1036] propounded by the Debtors. In further support of the Limited Objection, Nasr states as follows:

BACKGROUND

1. On March 19, 2012 (and April 30, 2012 with respect to Falcon Gas Storage Co., Inc.) (the “Petition Date”), the Debtors commenced cases under chapter 11 of the Bankruptcy Code.

2. Prior to the Petition Date, Nasr was employed as an executive director at Arcapita Bank B.S.C.(c). In connection with his employment relationship, Nasr entered into a number of agreements with certain of the Debtors and their affiliates, including certain employment agreements and letter agreements. Nasr filed proofs of claims against each of the Debtors, the scope of which includes, but is not limited to, claims resulting from these agreements.²

3. In addition, by each of the Proofs of Claims, Nasr explicitly claimed and reserved the right to “any equity investments or interests in the Debtors or any . . . portfolio company or other investment made by the Debtors, including, without limitation, on account of distributions, dividends, sale proceeds, liquidation proceeds, rights to return based on investments, participation and co-invest rights, and any related rights with respect to co-investment or alternative investment vehicle.” (See Proofs of Claims Nos. 269, 270, 271, 272, 273, 274, and 275.) These claims specifically reserve, among other things, causes of action and any available remedies for recovery of investments made by Nasr, together with certain of the Debtors in private equity vehicles controlled by third-parties. These investments, their proceeds, as well as

¹ Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Plan and the Uniform Glossary of Defined Terms for Plan Documents annexed to the Plan as Appendix A.

² See Proofs of Claims Nos. 269, 270, 271, 272, 273, 274, and 275 (collectively, the “Proofs of Claims”), which are incorporated into this Limited Objection by reference.

certain other funds are believed to be held (and managed) in trust by certain of the Debtors (or their affiliates) for Nasr's benefit.³

LIMITED OBJECTION

4. By this Limited Objection, Nasr seeks to protect his rights by requesting that any order confirming the Plan include the proposed language set forth below. To be clear, Nasr does not believe the Plan, Plan Documents, or any order confirming the Plan alters, impairs, or in any way affects Nasr's rights and title to investment funds or proceeds from equity interests held in trust by the Debtors on behalf of Nasr relating to ongoing investments or funds. Indeed, it is well-established that funds held in trust for third parties do not constitute property of the Debtors' estates in any event. *See, e.g., Daly v. Kennedy*, 279 B.R. 455, 459 (Bankr. D. Conn. 2002) ("It is axiomatic that funds held in trust by one person for another do not constitute the beneficial property of the former . . . Consequently, funds held in trust by a debtor are not the property of his bankruptcy estate . . .").

5. To the extent, however, that the Plan may be read to impair these rights, Nasr seeks additional language clarifying and affirming (a) title and ownership of the property by Mr. Nasr, (b) the availability of any and all remedies with respect to such property including declaration of a constructive trust under applicable state law, and (c) the Debtors' ongoing fiduciary obligations emanating from custody of these funds and supervision of the investments made jointly by Nasr and certain of the Debtors in third-party funds. Certain language set forth in section 9.1.2 of the Plan concerning the Debtors' proposed discharge injunction or otherwise could be read to impair Nasr's right to such funds.

³ At present, Nasr is unaware of the status of these investments and, therefore, cannot be certain whether the investments or their proceeds are currently held by any of the Debtors. As such, he asserts this Limited Objection out of an abundance of caution and to protect his rights and property. Indeed, since the claims process in these chapter 11 cases is scheduled by the Debtors to be commenced in earnest only after confirmation, Nasr is filing this Limited Objection to preserve any such rights in the absence of information regarding the status of his investments and other amounts he is due.

6. In addition, Nasr expects that certain of the Reorganized Debtors, the New Holding Companies, or affiliates thereof may receive distributions from outside investment vehicles on account of investments made by Nasr. In this circumstance, the funds attributable to Nasr should be held in trust until such funds are distributed as soon as practicable. Nasr merely seeks to preserve and affirm such entities' obligations (fiduciary or otherwise) with respect to such investment proceeds. This request is warranted in light of the fact that Nasr seeks only the return of his property, not property of the estate, as and when appropriate.

7. To this end, Nasr's counsel recently has suggested inclusion of the following two paragraphs in the Debtors' proposed confirmation order. Inclusion of this language would resolve Nasr's Limited Objection:

Notwithstanding anything to the contrary in the Confirmation Order, the Plan, or the Plan Documents, or any other order of the Court:

(A) nothing in the Confirmation Order, the Plan, or the Plan Documents shall prejudice or impair any of the rights or remedies of Mounzer Nasr or Beatriz Flecha de Lima Nasr (collectively "Nasr") with respect to the fact that any amounts the Debtors or their affiliates received, held, or hold: (1) on account of any equity investments or interests of Nasr in any entity other than the Debtors (the "Non-Debtor Equity Interests"); or (2) on account of amounts paid by Nasr or withheld from payments due to Nasr, are not property of the Debtors' estates or have been or are being improperly or wrongfully withheld from Nasr; or prejudice any entity's right to dispute such arguments; and

(B) no claim, interest, right of recovery, right to proceeds, right to turnover of property or investment proceeds, or any other right, or any cause of action respecting the same with respect to distributions, dividends, payments, funds, rights, interests, sale proceeds, liquidation proceeds, rights to returns based on investments, participation and co-invest rights, and any related rights with respect to co-investment or alternative investment vehicle or third-party investor funds held by any entity, including, without limitation, in trust or on deposit for the benefit of Nasr for the purpose of future investment or disposition (the "Non-Debtor Equity Interests Proceeds") or other property received by the Debtors or the Reorganized Debtors or any existing or future affiliates thereof on account of the Non-Debtor Equity Interests is or shall be waived, discharged, enjoined, released, or in any other way prejudiced or impaired by the Confirmation Order, the Plan, the Plan Documents, or any order of the Court, and such Non-Debtor Equity Interests Proceeds received after the date hereof shall be held in trust for

the benefit of Nasr and distributed to Nasr by such Debtor or Reorganized Debtor or affiliate thereof as soon as practicable.

8. The above language resolves ambiguity relating to the disposition of Nasr's funds and co-investments with the Debtors, without unduly prejudicing the Debtors' estates or creditors. Indeed, the language only clarifies that such funds are held in trust and are not part of the Debtors' estates, and affirms the Debtors' obligations with respect to investment funds and the proceeds of such investments.

CONCLUSION

For all the foregoing reasons, Nasr respectfully requests that the Court sustain the Limited Objection, condition confirmation on the inclusion of reasonable language as set forth above, and grant Nasr such other and further relief as the Court deems necessary.

Dated: May 30, 2013

Respectfully Submitted,

/s/ Bryan R. Kaplan _____

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ATTORNEYS FOR MOUNZER NASR

CERTIFICATE OF SERVICE

The undersigned counsel for Mounzer Nasr certifies:

On May 30, 2013, I caused to be filed true and correct copies of the following document via the CM/ECF system and served the same by e-mail, hand delivery or by UPS overnight mail as indicated, on the Notice Parties listed below.

1. Limited Objection of Mounzer Nasr to Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code.

By E-mail and Hand Delivery

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Dated: May 30, 2013

/s/ Bryan R. Kaplan
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