

**GIBSON, DUNN & CRUTCHER LLP**

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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>
	:	
<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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**STIPULATED ORDER RESOLVING OBJECTION TO CLAIM**

This Stipulation (the “*Stipulation*”) is entered into as of May 28, 2013 by and among Arcapita Bank B.S.C.(c) (“*Arcapita*” and collectively with the other debtors and debtors in possession in the above captioned chapter 11 cases, the “*Debtors*”), on the one hand; and the claimant set forth in *Schedule A* annexed hereto (the “*Claimant*”), on the other hand. The Claimant and the Debtors are collectively referred to herein as the “*Parties*”.

**RECITALS:**

WHEREAS, on March 19, 2012, Arcapita and five of its affiliates commenced cases under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”), and, on April 30, 2012, Falcon Gas Storage Co., Inc. commenced a case under chapter 11 of the Bankruptcy Code, and all of the foregoing chapter 11 cases (collectively, the “*Chapter 11*”

*Cases*”) have been administratively consolidated under Case No. 12-11076(SHL) and are pending before the United States Bankruptcy Court for the Southern District of New York (the “*Court*”);

WHEREAS, the Debtors are operating their businesses and managing their assets as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, on July 11, 2012, the Court entered an order (Dkt. No. 308) establishing August 30, 2012 at 5:00 p.m. (prevailing U.S. Eastern Time) as the deadline for non-governmental persons or entities to file proofs of claim in the Chapter 11 Cases;

WHEREAS, on January 18, 2013, the Court entered its *Order Granting Debtors’ Motion for Entry of an Order pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 3007 Approving Claim Objection Procedures* (Dkt. No. 785) (the “*Claims Procedure Order*”);

WHEREAS, the Claimant has filed the proof of claim set forth on *Schedule A* against the Debtors (the “*Filed Claim*”);

WHEREAS, on April 25, 2013, the Debtors filed their *Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code* (Dkt. No. 1036) (as may be amended or modified from time to time, the “*Plan*”) and a related disclosure statement (Dkt. No. 1038) (as may be amended or modified from time to time, the “*Disclosure Statement*”), and on April 26, 2013, the Court entered an order approving the Disclosure Statement and establishing certain solicitation and voting procedures with respect to the Plan (Dkt. No. 1045) (the “*Voting Procedures Order*”);

WHEREAS, on April 26, 2013, in accordance with the Claims Procedure Order, the Debtors filed the *Debtors’ Second Omnibus Objection to Claims* (Dkt. No. 1050) (the “*Claim Objection*”) pursuant to which the Debtors objected to the Filed Claim;

WHEREAS, as a result of the filing of the Claim Objection, paragraph 15 of the Voting Procedures Order prohibits the Claimant from casting a vote on the Plan in respect of the Filed Claim; and

WHEREAS, after good-faith arm's-length negotiations, the Parties have reached an agreement to resolve the Claim Objection as it relates to the Filed Claim on the terms forth below;

NOW, THEREFORE, in consideration of the foregoing, it is hereby stipulated and agreed that:

**TERMS**

1. Stipulation. This Stipulation shall become effective upon the Court's entry of an order approving it, which may include the Court's "SO ORDERED" execution of this Stipulation (the date of such order, the "*Effective Date*").

2. Allowed Claim. At the Effective Date, (a) the Claimant's claim listed on *Schedule B* shall be an allowed general unsecured claim against Arcapita in the class and amount set forth in *Schedule B* (the "*Allowed Claim*"), which Allowed Claim shall receive the same treatment as all other similarly situated allowed claims under the Plan, and (b) the Claimant shall be permitted to vote the Allowed Claim to accept or reject the Plan, which vote shall be counted as a vote to accept or reject the Plan in the class of claims set forth in Schedule B.

3. Objection Resolved. Upon entry of an order approving it, this Stipulation shall fully resolve the Claim Objection as it relates to the Filed Claim.

4. Claims Register. GCG, Inc., as the claims agent appointed in the Chapter 11 Cases, shall be authorized and empowered to adjust the claims register to reflect the withdrawal of the Filed Claim with prejudice and the allowance of the Allowed Claim pursuant

to paragraph 2.

5. Authority to. The party signing on behalf of the Claimant (the “*Signatory*”) expressly represents and warrants that (a) the Claimant is the lawful owner of the Filed Claim; (b) the Claimant has given the Signatory full capacity and authority to settle and compromise the Filed Claim and to enter into this Stipulation; and (c) no other person or entity has acquired or has been assigned, or will in the future acquire or have any right to assert, against any of the Debtors any portion of the Filed Claim.

6. Representations and Warranties. The Parties intend this Stipulation to be a final and complete resolution the Filed Claim and the Claim Objection in respect thereof. The Parties agree that this Stipulation was negotiated in good faith by the Parties and reflects an agreement that was reached voluntarily after consultation with competent legal counsel. The Parties represent and warrant that (a) they are not relying on any statements, understandings, representations, expectations, or agreements other than those expressly set forth herein; (b) to the extent they elected to retain legal counsel, they have been represented and advised by legal counsel in connection with this Stipulation, which they make voluntarily and of their own choice and not under coercion or duress; (c) they have made their own investigation of the facts and are relying upon their own knowledge and the advice of counsel; and (d) they knowingly waive any and all claims that this Stipulation was induced by any misrepresentation or nondisclosure and knowingly waive any and all rights to rescind or avoid this Stipulation based upon presently existing facts, known or unknown. These representations and warranties shall survive the execution of this Stipulation.

7. Successors, Assigns, and Third Party Beneficiaries. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns to the Claimant and the Debtors.

8. GOVERNING LAW AND JURISDICTION. THIS STIPULATION SHALL BE EXCLUSIVELY GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE UNITED STATES BANKRUPTCY CODE AND THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF. The Court shall retain exclusive jurisdiction over any and all disputes arising out of or otherwise relating to this Stipulation.

9. Entire Agreement. This Stipulation contains the entire agreement between the Parties as to the subject matter hereof and supersedes all prior agreements and undertakings between the Parties relating thereto. There are no representations, agreements, or inducements, except as set forth expressly and specifically in this Stipulation.

10. Severability. If any provision hereof is invalid or unenforceable, then, to the fullest extent permitted by law, the other provisions hereof shall remain in full force and effect.

11. Amendments in Writing. This Stipulation may not be amended or modified other than by signed writing executed by the Parties hereto or by order of the Court.

12. Construction. Each of the Parties understands, agrees, and acknowledges that all of the Parties shall be deemed to be the drafters of this Stipulation and any ambiguity in or dispute regarding the interpretation of this Stipulation shall not be resolved by any rule of interpretation providing for interpretation against the party that causes the uncertainty to exist or against any party as the drafter. Further, words in this Stipulation of the male, female, or neuter

gender shall be construed to include any other gender where appropriate. Words used in this Stipulation that are either singular or plural shall be construed to include the other where appropriate.

13. Headings. Headings are for convenience only and shall not limit, expand, affect, or alter the meaning of any text.

14. Multiple Counterparts. This Stipulation may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Stipulation to present any copy, copies, or facsimiles signed by the Parties hereto to be charged.

15. Facsimile Signatures. This Stipulation may be executed by facsimile or electronically transmitted signatures, and such facsimile or electronically transmitted signatures will be deemed to be as valid as an original signature whether or not confirmed by delivering the original signatures in person, by courier or by mail, although it is the Parties' intentions to deliver original signatures after delivery of facsimile or electronically transmitted signatures.

*[The remainder of this page is intentionally left blank.]*

Dated: May 29, 2013  
New York, New York

Dated: May 28, 2013  
New York, New York

/s/ Joshua Weisser  
Name: Joshua Weisser

/s/ David A. Hammerman  
Name: David A. Hammerman

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ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION

ATTORNEYS FOR CLAIMANT

**SO ORDERED,**

/s/ Sean H. Lane  
THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

Dated: June 10, 2013

# **Schedule A**

## **Filed Claim**

<b><u>FILED CLAIM NO.</u></b>	<b><u>APPLICABLE DEBTOR</u></b>	<b><u>CLAIMANT</u></b>
258	Arcapita Bank B.S.C.	Overseas Funds Co. S.P.C.



# **Schedule B**

## **Allowed Claim**

<b><u>FILED CLAIM NO.</u></b>	<b><u>APPLICABLE DEBTOR</u></b>	<b><u>CLAIMANT</u></b>	<b><u>VOTING CLASS</u></b>	<b><u>AMOUNT</u></b>
258	Arcapita Bank B.S.C.	Overseas Funds Co. S.P.C.	5(a)	\$40,275,555.56