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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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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

**NOTICE OF MOTION FOR ORDER MODIFYING THE AUTOMATIC STAY
PURSUANT TO SECTION 362 OF THE BANKRUPTCY CODE**

PLEASE TAKE NOTICE that on June 26, 2013, Arcapita Bank B.S.C.(c) Arcapita Investment Holdings Limited, Arcapita LT Holdings Limited, WindTurbine Holdings Limited, AEID II Holdings Limited and RailInvest Holdings Limited, as debtors and debtors in possession (collectively, the “*Debtors*”) in the above-captioned chapter 11 cases filed the annexed *Motion for Order Modifying the Automatic Stay Pursuant to Section 362 of the Bankruptcy Code* (the “*Motion*”).

PLEASE TAKE FURTHER NOTICE that any and all objections to the Motion shall be filed electronically with the Court on the docket of *Arcapita Bank B.S.C.(c), et al.*, Ch. 11 Case

No. 12-11076 (SHL), pursuant to the Case Management Procedures approved by this Court¹ and 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 (a) counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, 10166 (Attn: Michael A. Rosenthal, Esq.); (b) the Office of the United States Trustee for the Southern District of New York, (i) if prior to July 1, 2013, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.) and (ii) if on or after July 1, 2013, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Richard Morrissey, Esq.); (c) 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.); and (d) Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019 (Attn: Sarah Campbell, Esq.), so as to be received no later than **July 10, 2013 at 4:00 p.m. (prevailing U.S. Eastern time)** (the "***Objection Deadline***").

PLEASE TAKE FURTHER NOTICE that if no objections to the Motion are timely filed and served by the Objection Deadline, the Debtors shall submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion and request that it be

¹ 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 (Dkt. No. 21).

entered under Rule 4001(d)(3) of the Federal Rules of Bankruptcy Procedure without a hearing and with no further notice or other opportunity to be heard.

If an objection to the Motion is filed and served prior to the Objection Deadline, then the Debtors will give further notice that the Motion shall be heard by the Bankruptcy Court on July 18, 2013 at 11:00 a.m.

Dated: New York, New York
June 26, 2013

/s/ Craig H. Millet

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

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In re	: Chapter 11 Case
	: :
ARCAPITA BANK B.S.C.(c), et al.,	: Case No. 12-11076 (SHL)
	: :
Debtors.	: Jointly Administered
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**MOTION FOR ORDER MODIFYING THE AUTOMATIC STAY PURSUANT TO
SECTION 362 OF THE BANKRUPTCY CODE**

Arcapita Bank B.S.C.(c) (“*Arcapita Bank*”) and its affiliated debtors and debtors in possession (collectively, the “*Debtors*” and each, a “*Debtor*”) in the above-captioned chapter 11 cases (collectively, the “*Chapter 11 Cases*”) hereby submit this Motion (the “*Motion*”) to obtain relief from the automatic stay to allow the International Chamber of Commerce (the “*ICC*”) to conclude a pending arbitration by issuing a final arbitration award thereby liquidating a disputed claim filed against Arcapita Bank by G.P. Zachariades Overseas, Ltd. (“*GPZ*”).

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are section

362(d)(1) of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rule 4001(d) of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

2. In 2007, Arcapita Bank’s non-debtor affiliate Riffa Views B.S.C.(c) (“*Riffa*”) and a joint venture comprised of GPZ and Sembawang Engineers and Constructors Pte. Ltd. (“*SEC*”) entered into a contract dated July 15, 2007 (“*Contract*”) pursuant to which the GPZ/SEC joint venture was to construct 323 residential villas (the “*Villas*”) for Riffa in the Kingdom of Bahrain.

3. Subsequently, GPZ, SEC and Riffa entered into a supplemental agreement (the “*Supplemental Agreement*”) and a novation agreement, each dated December 7, 2009, pursuant to which, among other things, GPZ replaced the GPZ/SEC joint venture as the contractor designated in the Contract to construct the Villas.

4. As part of the Supplemental Agreement, On December 7, 2009, Arcapita Bank executed an undertaking in favor of GPZ pursuant to which Arcapita Bank guaranteed the obligations of Riffa to GPZ under the Contract and the Supplemental Agreement up to a maximum of BD 5,000,000 (approximately \$13,263,000.00) in connection with the construction of the Villas (the “*Guarantee*”).

5. GPZ contends that, under the terms of the Contract and the Supplemental Agreement, GPZ was entitled to receive monthly payments, in an amount to be certified each month by an independent engineer appointed by Riffa.

6. GPZ contends that Riffa failed to make certain payments due to GPZ on or before April 27, 2010, May 27, 2010 and June 28, 2010, which totaled approximately BD 2,329,773. GPZ claims it gave notice of each alleged payment default by Riffa to Arcapita Bank.

7. The Contract contained an alternate dispute resolution clause providing for the resolution of disputes through mandatory binding arbitration before the ICC.

8. On March 30, 2011, GPZ submitted a “Request for Arbitration” against Arcapita Bank to the ICC as to the three unpaid payments allegedly due GPZ from Riffa thereby commencing an arbitration proceeding entitled *In the Matter of an Arbitration Under the Rules of Arbitration of the International Chamber of Commerce; G.P. Zachariades Overseas Ltd. vs. Arcapita Bank B.S.C.(c); Case No. 17855/ARP* (the “**ICC Arbitration**”).

9. In addition to the alleged unpaid three payments, GPZ’s claims in the ICC Arbitration also included (a) a claim for damages for breach of the Guarantee calculated as contractual interest (at an annual rate of 7.30%) from the dates of Riffa’s alleged payment defaults; and (b) a claim for costs in the amount of BD 178,730.67 (plus any additional fees and expenses charged by the ICC and the arbitral tribunal). GPZ has claimed that the foregoing claims total no less than BD 2,822,024.873, or approximately \$7,485,703.18.

10. On March 19, 2012 (the “**Petition Date**”), Arcapita Bank and five of its affiliates commenced cases under chapter 11 of the Bankruptcy Code.

11. As of the Petition Date, all filings and hearings in the ICC Arbitration had been completed and only the issuance of the final award by the ICC Arbitration panel remained pending. However, the ICC Arbitration was automatically stayed upon commencement of the Chapter 11 Cases pursuant to section 362 of the Bankruptcy Code.

12. On August 29, 2012, GPZ filed proof of claim number 383 (the “**Filed Claim**”), asserting a claim against Arcapita Bank based on the Guarantee for (a) BD 2,822,024.873 plus additional interest, fees, costs and expenses which is currently the subject of the ICC Arbitration (“**Claim In Arbitration**”) and (b) a contingent and unliquidated claim for the difference between any amount awarded by the ICC Arbitration panel on the Claim In Arbitration and the full BD

5,000,000 of the Guarantee under which Arcapita Bank may be liable for other unpaid amounts due from Riffa to GPZ under the Contract (the “*Remaining Contingent Claim*”).

13. On April 26, 2013, the Debtors filed their Third Omnibus Objection to Claims (Dkt. No. 1051) (the “*Claim Objection Proceeding*”), pursuant to which they objected to the Filed Claim on the basis that it is contingent and unliquidated, and that a material portion of the claim is the subject of the pending ICC Arbitration.

14. On June 17, 2013, this Court entered an order (Dkt. No. 1261) confirming the Debtors *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, modified or supplemented, the “*Plan*”).

RELIEF REQUESTED

THE AUTOMATIC STAY SHOULD BE MODIFIED TO ALLOW THE ISSUANCE OF THE ICC ARBITRATION AWARD

15. By this Motion, Arcapita Bank requests that the Court modify the automatic stay solely to allow the ICC Arbitration panel to complete the ICC Arbitration by issuing its final award and to thereby liquidate the Claim In Arbitration portion of GPZ’s Filed Claim. Arcapita Bank is informed that GPZ, as well, supports the entry of the Order requested by this Motion.

16. The proposed modification of the automatic stay is very limited in scope. Relief from stay is requested solely to allow the ICC Arbitration panel to complete the ICC Arbitration as to the Claim In Arbitration and to issue its final award liquidating the amounts of the Claim In Arbitration. The stay shall remain in place as to the Remaining Contingent Claim. Further, the stay shall continue to apply to (a) the enforcement of any remedies as to the Claim In Arbitration and the Remaining Contingent Claim and (b) the liquidation of the Remaining Contingent Claim in any proceeding other than one before this Court. The Filed Claim of GPZ, once it becomes an

Allowed Claim (as such term is used in the Plan), shall be administered solely through the Bankruptcy Court and as provided in the Plan.

17. Upon review of the final award of the ICC Arbitration Panel, the Parties are hopeful that they will reach agreement as to any components of the ICC Arbitration award that should not be included in an Allowed Claim against Arcapita Bank (e.g. post-petition interest) and thereby will reach agreement on the amount of the Claim in Arbitration that should be an Allowed Claim in Class 5(a) under the Plan. However, if the parties cannot agree, then the resolution of any dispute as to any part of the ICC Arbitration award that should not be included in the allowed amount of the Claim In Arbitration of GPZ shall be determined by this Court as part of the Claim Objection Proceeding.

18. The Parties are also hopeful that, by applying the results and reasoning in the final award of the ICC Arbitration panel as to the Claim In Arbitration, they will be able to liquidate the Remaining Contingent Claim by agreement and without further proceedings before this Court or the ICC. If the Parties cannot reach agreement as to the Allowed amount of the Remaining Contingent Claim, then the liquidated Remaining Contingent Claim shall be determined by this Court as part of the Claim Objection Proceeding or other proceeding as furthered ordered by this Court.

19. Section 362(a)(1) of the Bankruptcy Code provides that the filing of a bankruptcy petition operates as a stay of all “judicial, administrative, or other action or proceeding against the debtor.” 11 U.S.C. § 362(a)(1). Relief from the stay may be granted by the Court, however, for “cause.” 11 U.S.C. § 362(d)(1). For the reasons set forth below, the Parties agree and stipulate that such relief is warranted here.

20. The Bankruptcy Code does not define “cause,” and Courts look to several factors in determining whether relief from the automatic stay should be granted. *See Sonnax Indus. Inc. v. Tri Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280 (2d Cir. 1990).

Applying the relevant *Sonnax* factors, this Court has held that relief from the automatic stay to arbitrate a dispute is appropriate where arbitration does “not interfere with the bankruptcy case” and encourages “complete resolution of the issues.” *Continental Casualty Co. v. Pfizer, Inc. (In re Quigley Co., Inc.)*, 361 B.R. 723, 734 (Bankr. S.D.N.Y. 2007).

21. The modification of the automatic stay requested in this Motion will resolve the Omnibus Objection with respect to a significant part of the Filed Claim without interfering with the Plan or wasting the scarce resources of this Court. Allowing the ICC Arbitration to be completed also furthers the policy of the Bankruptcy Court of enforcing arbitration agreements.

22. Allowing the ICC Arbitration to be completed will liquidate the currently contested Filed Claim and help the Debtors and GPZ reach a speedy resolution of the claims administration process with respect to the Filed Claim without impairing the jurisdiction of this Court with respect to the allowance or disallowance of claims. Absent the relief requested, the parties will have to liquidate the Filed Claim before this Court rather than the ICC.

NOTICE

23. 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: (a) 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.); (b) 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; (c) Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019 (Attn: Sarah Campbell, Esq.), counsel to GPZ; and (d) 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.

NO PRIOR REQUEST

24. No prior application for the relief requested herein 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
June 26, 2013

Respectfully submitted,

/s/ Craig H. Millet

Michael A. Rosenthal (MR-7006)

Craig H. Millet (admitted *pro hac vice*)

Matthew J. Williams (MW-4081)

Joshua Weisser (JW-0185)

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ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

Exhibit A

Order

2. Upon entry of this Order, the automatic stay arising under Section 362(a)(1) of the Bankruptcy Code (the “**Stay**”) shall be modified forthwith to the extent necessary to allow the issuance of the final award *In the Matter of an Arbitration Under the Rules of Arbitration of the International Chamber of Commerce; G.P. Zachariades Overseas Ltd. vs. Arcapita Bank B.S.C.(c); Case No. 17855/ARP* (the “**ICC Arbitration Award**”).

3. The Stay is modified only to the extent necessary to allow the issuance of the ICC Arbitration Award. Further administration and disposition of the Filed Claim asserted by GPZ against the Debtors (including any portion of the Filed Claim that may be liquidated by the ICC Arbitration Award) shall occur solely before this Court and as provided in the Debtors’ Plan.

4. The Stay shall remain unmodified and in effect to prevent any action to enforce the ICC Arbitration Award, any actions to collect on or execute on any assets based on the ICC Arbitration Award, any claim asserted by GPZ against any of the Debtors or any action to commence further arbitration proceedings or any other proceeding with respect to any claim asserted by GPZ against the Debtors that is not the subject of the ICC Arbitration Award, including, without limitation, the Remaining Contingent Claim of GPZ’s Filed Claim as referenced in the Motion.

5. The amount of any Allowed Claim, in whole or in part, on account of GPZ’s Filed Claim shall be determined by further order of this Court after the issuance of the ICC Arbitration Award.

6. Nothing in this Order adjudicates or resolves the issues arising as a result of the Debtors’ pending *Third Omnibus Objection to Claims* (Dkt. No. 1051), which includes an objection to GPZ’s Filed Claim.

7. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order, including, without limitation, in connection with any dispute arising in connection with the Remaining Contingent Claim of the Filed Claim.

Dated: July __, 2013
New York, New York

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE