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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DEBTORS' MOTION PURSUANT TO SECTIONS 365(d)(3) AND 363(b)(1) OF THE BANKRUPTCY CODE FOR AUTHORIZATION FOR ARCAPITA TO MAKE INVESTMENT TO SUPPORT THE LUSAIL JOINT VENTURE

Arcapita Bank B.S.C.(c) ("***Arcapita***") and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "***Debtors***" and each, a "***Debtor***") hereby submit this Motion (the "***Motion***") for entry of an order, substantially in the form annexed hereto as **Exhibit A** (the "***Proposed Order***"), pursuant to sections 365(d)(3) and 363(b)(1) of title 11 of the United States Code (the "***Bankruptcy Code***"), authorizing Arcapita to fund an intercompany loan of up to $30,400,000[1] (thirty million and four hundred thousand dollars) to support its indirect interest in Lusail Golf Development LLC, a Qatari limited liability company (the "***Lusail Joint Venture***") which owns extremely valuable real property in Lusail City, Qatar. In support of the Motion, the Debtors respectfully state as follows:

1 Unless otherwise stated, all dollar amounts referenced herein are in United States dollars.

PRELIMINARY STATEMENT[2]

1. Approximately two months ago, the Debtors commenced these chapter 11 cases to stabilize their businesses, continue negotiations with major creditor constituencies and address a then-projected near-term maturity under a $1.1 billion loan facility. Much has already been accomplished. The Debtors successfully transitioned their operations into chapter 11, maintained investor relations, negotiated with creditors regarding potential cost-cutting measures (which could save the estates millions of dollars annually) and, at least on an interim basis, have agreed with creditors over the Debtors' continued funding of their non-Debtor affiliates.

2. The Debtors, the official committee of unsecured creditors and their respective advisors continue to analyze the value of the Debtors' operations and expected returns on future investments in the non-Debtor subsidiaries. Nonetheless, the connection between the Debtors' ability to spend and/or invest money on behalf of non-Debtors and preserving the value of the Debtors' estates for the benefit of creditors remains a fact of life. Arcapita is an investment bank. Its future cash flows, and ultimately its value as a going concern, derive from its management of its and its co-investors' investments.

3. One of the key assets the Debtors seek to preserve is the Debtors' Option (as defined in paragraph 25 below) to repurchase Shares (as defined in paragraph 23 below) representing a 50% interest in the Lusail Joint Venture. That Option, which is already well "in the money," arises out of a series of agreements pursuant to which Arcapita, in a Shari'ah compliant manner, implemented a prepetition financing transaction with the QIB Group which raised roughly $200 million; for Shari'ah reasons, the transaction was structured as a sale of the

2 Capitalized terms not otherwise defined in the Preliminary Statement shall have the meanings ascribed to them in the Section of this Motion entitled "Background Regarding the Chapter 11 Cases."

Shares, together with a right to lease back the underlying land held by the Lusail Joint Venture. A crucial component of that transaction was Arcapita's receipt of a right to buy back the Shares at any time prior to March 5, 2015, for a strike price of only $220 million. In effect, the sale of the Shares provided necessary working capital for the operation of Arcapita and its affiliates, the combination of the lease payments and the Option exercise price compensates QIB for entering into these series of agreements, and the Option effectively enables Arcapita and its affiliates to maintain their interest in the Lusail Joint Venture and realize the underlying value of the Shares for the benefit of stakeholders of the Arcapita Group. This is a structure that has frequently been used by Arcapita, including in a prior agreement with QIB with respect to the very same Shares, to provide financing for Arcapita's business operations and investments in portfolio companies.

4. By this Motion, Arcapita requests authority to fund up to $30.4 million, the proceeds of which will ultimately be used to fund land payments owed by the Lusail Joint Venture under its Land Purchase Agreement. Numerous direct benefits will inure to the estates if the relief is granted, chief among them being (a) Arcapita's Option to repurchase the valuable Shares will be preserved; (b) the Arcapita Group's equity interest in the Lusail Joint Venture will not be diluted by its joint venture partner; (c) Arcapita will not be compelled to sell its interests to its joint venture partner at an unreasonably low price; and (d) the value of the non-Debtor joint venture will be preserved by avoiding a potential default on the Land Purchase Agreement.

5. The Debtors' ability to maintain and support their indirect interest in the Lusail Joint Venture is crucial to the successful resolution of the Chapter 11 Cases. The Debtors' interest in the Lusail Joint Venture is one of the Arcapita Group's most valuable assets, and a decision not to satisfy the Funding Obligation – which at best, runs the risk of serious dilution of the Debtors' interests in the Lusail Joint Venture, and at worst, could result in the

Debtors losing the benefits of the Option to repurchase the Shares altogether – would constitute a waste of estate assets, irreparably and materially impairing creditor recoveries in the Chapter 11 Cases.

6. For these reasons and the reasons that follow, the Court should approve the relief requested by this Motion as a sound exercise of the Debtors' business judgment and as being in the best interest of the Debtors, their creditors and all other parties in interest.

JURISDICTION

7. This 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 before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The statutory predicates for the relief requested herein are sections 365(d)(3) and 363(b)(1) of the Bankruptcy Code.

BACKGROUND REGARDING THE CHAPTER 11 CASES

9. On March 19, 2012 (the "***Petition Date***"), Arcapita and five of its affiliates (collectively, the "***Initial Debtors***") commenced cases under chapter 11 of the Bankruptcy Code. On April 30, 2012, Falcon Gas Storage Co., Inc. commenced a case under chapter 11 of the Bankruptcy Code (along with the cases of the Initial Debtors, the "***Chapter 11 Cases***"). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

10. On April 5, 2012, the United States Trustee for Region 2 appointed an Official Committee of Unsecured Creditors [Dkt. No. 60] pursuant to sections 1102(a) and (b) of the Bankruptcy Code (the "***Committee***").

11. Founded in 1996, Arcapita, through its Debtor and non-Debtor subsidiaries (collectively, with Arcapita, the "***Arcapita Group***"), is a leading global manager of Shari'ah-compliant alternative investments and operates as an investment bank. Arcapita is not a domestic bank licensed in the United States, nor does it have a branch or agency in the United States as defined in section 109(b)(3)(B) of the Bankruptcy Code. Arcapita is headquartered in Bahrain and is regulated under an Islamic wholesale banking license issued by the Central Bank of Bahrain (the "***CBB***"). The Arcapita Group employs approximately 265 people and has offices in Atlanta, London, Hong Kong, and Singapore in addition to its Bahrain headquarters. The Arcapita Group's principal activities include investing for its own accounts and providing investment opportunities to third-party investors in conformity with Islamic Shari'ah rules and principles. The Arcapita Group also derives revenue from managing assets for its third-party investors.

12. The Arcapita Group provides investors the opportunity to co-invest with the Arcapita Group on a deal-by-deal basis across three global asset classes: real estate; infrastructure and private equity; and venture capital. Typically, the Arcapita Group, through its non-Debtor subsidiaries, takes an indirect 10-20% equity stake alongside its third-party investors in non-Debtor holding companies that directly own operating portfolio companies in the United States, Europe and the Middle East. Sometimes, as in the case with the Lusail Joint Venture, the Arcapita Group owns a much larger equity stake; the Arcapita Group owns 87.5% of the Arcapita Group non-Debtor holding company that directly owns the Arcapita Group's interest in the Lusail Joint Venture. The underlying investments made by the Arcapita Group are generally medium- to long-term projects that have limited value in the short term, and often require significant on-going capital funding to complete in order to realize the value of the investment.

THE LUSAIL TRANSACTIONS

Origin of the Debtors' Investment in the Lusail Land

13. On June 6, 2008, Al-Imtiaz Investment Co. K.S.C.(c) ("***Al-Imtiaz***") entered into a Land Purchase Agreement (the "***Land Purchase Agreement***") with state-controlled developer Qatari Diar Real Estate Investment Company ("***Qatari Diar***"). Pursuant to the Land Purchase Agreement, Al Imtiaz acquired an interest in a 3,659,080 square meter plot of land in Lusail City, Qatar known as Golf-REC/01 (the "***Lusail Land***"). Despite the execution of the Land Purchase Agreement, Qatari Diar still maintains the deed of title with respect to the Lusail Land.

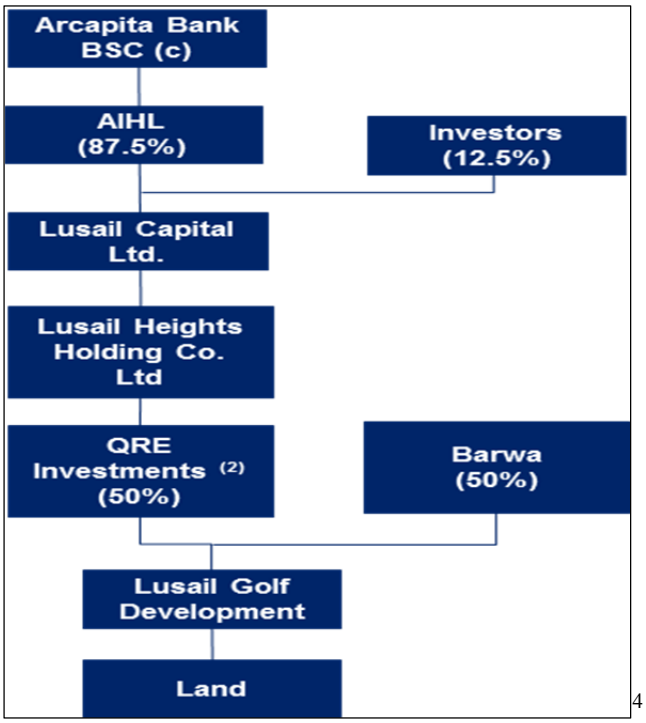
14. The Lusail Land is currently undeveloped. The Land Purchase Agreement provides that Qatari Diar will only transfer deed of title upon (a) Qatari Diar's approval of a detailed master plan for the site and infrastructure schedule and (b) payment in full of all installment payments due under the Land Purchase Agreement. The Lusail Land is located within the only master-planned development in Lusail City, which is located approximately 15 miles from Doha, the largest city in Qatar. It is currently contemplated that the Lusail Land will be developed into a residential real estate golf community. Significantly, this use could change in a way highly beneficial to the Debtors based on ongoing developments in connection with the selection last year of Qatar as the site of the 2022 World Cup.

15. On October 28, 2008, Al Imtiaz sold 50% of its interest in the Lusail Land to QRE Investment W.L.L. ("***QRE***"), an Arcapita Group investment vehicle. The purchase price of QRE's interest in the Lusail Land was $274 million;[3] half of which ($137 million) was paid in

3 All amounts set forth herein are in United States Dollars even though payments due under the Land Purchase Agreement and certain other documents related to the Lusail Land are denominated in Qatari Riyals.

cash on closing and half of which was to be paid by QRE in future installments through QRE's assumption of certain of Al Imtiaz's obligations under the Land Purchase Agreement (the "***QRE Land Payments***").

16. As highlighted by the simplified organizational chart below, Arcapita indirectly owns an 87.5% interest in QRE. Outside investors indirectly own the remaining 12.5%.



[4]

17. To facilitate the purchase, QRE and Al Imtiaz formed the Lusail Joint Venture, and each transferred its interests in the Lusail Land to the joint venture in exchange for a 50% shareholder interest in the joint venture. Among other things, the Lusail Joint Venture agreed to make the remaining $274 million in land payments under the Land Purchase

4 Arcapita's indirect investment in the Lusail Joint Venture has been structured using an "Istisna" Islamic finance structure for legal, tax and Islamic finance reasons. As a result, Lusail Heights Holding Company Limited holds 100% of the economic and beneficial interests in QRE through an Istisna development agreement and through a call option exercisable at any time for a nominal amount. In addition, the board of directors of QRE is comprised of Arcapita management representatives.

Agreement (including the $137 million in QRE Land Payments) to Qatari Diar. The Lusail Joint Venture's commitment to make the QRE Land Payments was supported by QRE's simultaneous promise to advance shareholder loans to the joint venture in the same amount.[5]

18. On April 16, 2011, Al-Imtiaz sold its remaining 50% interest in the Lusail Joint Venture to Barwa Real Estate Company ("***Barwa***"). Barwa and QRE simultaneously executed a shareholders agreement (the "***Shareholders Agreement***") wherein both agreed to fund the Lusail Joint Venture with shareholder loans necessary to fund remaining payments outstanding under the Land Purchase Agreement pursuant to a schedule (the "***Drawdown Schedule***"). The Drawdown Schedule obligated QRE to make the following payments on the following dates:

June 1, 2012 – $30.4 million
June 1, 2013 – $30.4 million
June 1, 2014 – $30.4 million
June 1, 2015 – $15.2 million
June 1, 2016 – $15.2 million
June 1, 2017 – $15.2 million

19. As would be expected, the Drawdown Schedule corresponds to remaining payments due from the Lusail Joint Venture to Qatari Diar under the Land Purchase Agreement. In the event the joint venture fails to timely make such payments, Qatari Diar may call a default under the Land Purchase Agreement, permitting Qatari Diar to permanently refuse to transfer the Lusail Land deed to the Lusail Joint Venture, thereby eliminating any value of the Lusail Joint Venture (which exists for the sole purpose of owning and developing the Lusail Land).

5 The Shareholders Agreement contemplates that 50% of the shares held by QRE Investments W.L.L. (*i.e.*, 25% of the total shares of the Lusail Golf Joint Venture) would be transferred to QRE Acquisitions W.L.L. That transfer ultimately did not take place.

The Lusail Land Has Significant Value

20. Lusail City (in which the Lusail Land is situated) is the newest planned city in Qatar, located on the coast in the northern part of the municipality of Al Kheisa and approximately 15 miles from Doha, the largest city in Qatar. Construction of Lusail City is ongoing. Lusail City has marinas, residential areas, island resorts, public ports, commercial districts, luxury shopping and leisure facilities.

21. The Lusail Land, in particular, is especially valuable because of its location, approximately five kilometers from the Lusail Iconic Stadium, the site of the opening, semi-finals and finals match of the 2022 World Cup, one of the most, if not the most, significant sporting events in the world. The 2022 World Cup has generated substantial infrastructure and government spending commitments throughout the region surrounding Lusail. The economy in the Lusail region is also expected to experience substantial growth fueled by population growth, economic diversification and oil and natural gas exports.

22. Valuations obtained by Arcapita indicate that QRE's 50% interest in the joint venture may be worth multiples of the remaining amounts due under the Drawdown Schedule, and Arcapita remains committed to ensuring that this value is captured for stakeholders of the Arcapita Group.[6]

The 2009 Sale-Leaseback Transactions

23. In December of 2009, as a means to generate liquidity, Arcapita and QRE entered into a series of transactions (the "***2009 Transactions***") among themselves and with Qatar Islamic Bank ("***QIB***") and QInvest LLC (collectively, the "***QIB Group***"). The net effect of the

6 Valuation materials related to the Lusail Joint Venture and Arcapita's interest therein have been provided to the Committee on a confidential basis.

2009 Transactions was a sale-leaseback transaction pursuant to which the QIB Group purchased QRE's 50% interest in the Lusail Joint Venture (the "***Shares***") for $75 million and simultaneously provided Arcapita with a 6-month leasehold interest in the Lusail Land along with an option to repurchase the Shares.

24. The 2009 Transactions provided the Arcapita Group with approximately $75 million in short-term liquidity. In May of 2010, in accordance with the 2009 Transactions' governing documents, Arcapita exercised the option to repurchase the Shares for QRE's benefit, thereby retaining the value of the Lusail Joint Venture for the benefit of the Arcapita Group and its stakeholders.

The 2012 Sale-Leaseback Transactions

25. Given the success of the 2009 Transactions, it was logical that, when the Arcapita Group began experiencing liquidity issues in 2012, it would again utilize a sale-leaseback structure to obtain additional liquidity. In March of 2012, as a means to raise cash for the Arcapita Group, in general, and, in particular, to ensure that QRE would have the cash available to fund the upcoming payments due under the Drawdown Schedule, Arcapita and QRE entered into a similar series of transactions (the "***2012 Transactions***") among themselves and with QIB that, at their core, also comprised a sale-leaseback of the Shares. The 2012 Transactions were basically structured as follows:[7]

(a) Sale of Shares to QIB: QRE sold the Shares to QIB for approximately $200 million, and QIB, as the new 50% shareholder in the Lusail Joint Venture, agreed to assume QRE's obligations under the Shareholders Agreement (a copy of the share purchase agreement ("***Share Purchase Agreement***") is attached hereto as "**Exhibit B**").

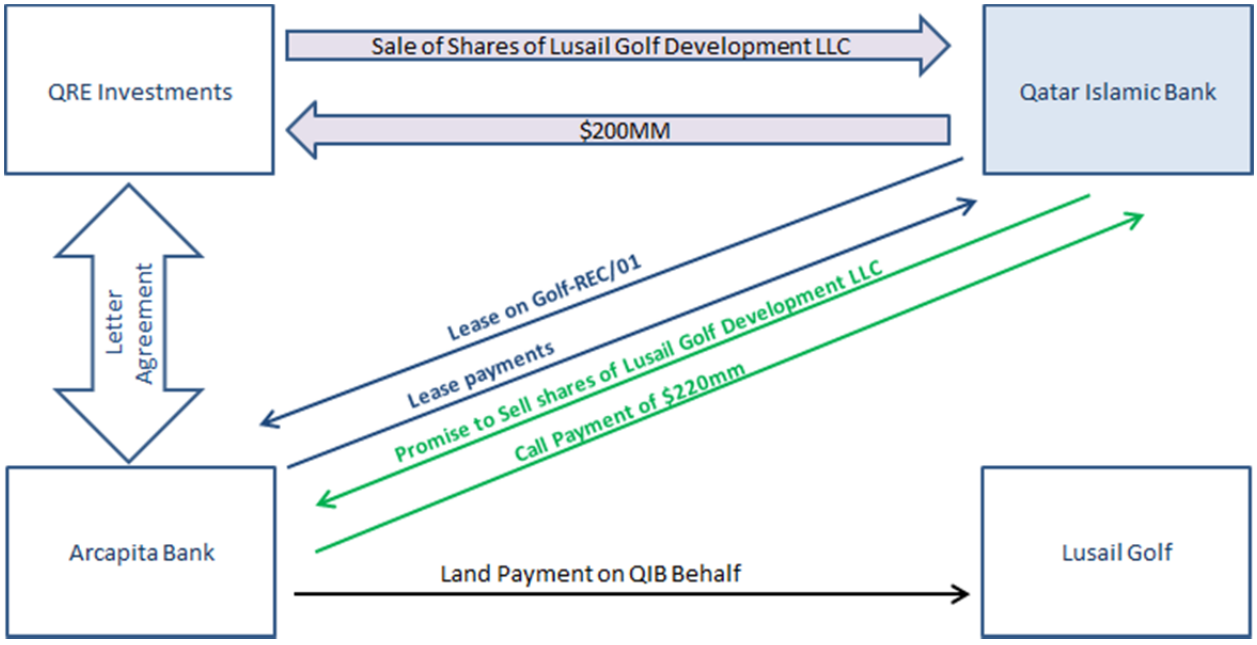
7 The summary of the 2012 Transactions contained in this Motion is provided for convenience only. To the extent that this summary conflicts with the actual documentation governing the 2012 Transactions, which is attached hereto, the governing documentation controls.

(b) Leaseback of Lusail Land to Arcapita: QIB leased back its interest in the Lusail Land to Arcapita for 3 years, and in return Arcapita agreed to pay semi-annual rent payments of $10 million and further agreed to make all payments due from QIB under the Shareholders Agreement, expressly including those set forth in the Drawdown Schedule (a copy of the lease agreement (the "***Lease***") is attached hereto as "**Exhibit C**").[8]

(c) Option of Arcapita to Buy Back Shares: QIB granted Arcapita an option ("***Option***") to repurchase the Shares at any time during the lease period for $220 million (*i.e.*, the original purchase price plus a $20 million call premium (the "***Call Premium***")) (a copy of the agreement memorializing the Option (the "***Promise to Sell***") is attached hereto as "**Exhibit D**"). The Option ceases to be exercisable at the termination of the Lease. Promise to Sell § 2.5.

(d) QRE Deposits Funds with Arcapita in Exchange for Agreement to Pay Lease Payments: QRE deposited the sale proceeds with Arcapita and in return, Arcapita agreed to (i) hold the Option for QRE's benefit, and exercise the Option at QRE's direction; (ii) make payments as required under the Lease; and (iii) pay the $20 million Call Premium with respect to the Option (a copy of the applicable agreement (the "***QRE Letter Agreement***") is attached hereto as "**Exhibit E**").

The following chart summarizes the 2012 Transactions:



8 The Lease provides that it shall be a termination event if Arcapita files for bankruptcy. Lease § 4.1.

26. The 2012 Transactions were almost identical in structure to the 2009 Transactions, but for the fact that the 2012 Transactions provided the Arcapita Group with greater liquidity (approximately $200 million as opposed to $75 million) for a longer time period (three years as opposed to six months). The 2012 Transactions provided the Arcapita Group with an immediate infusion of significant liquidity and simultaneously ensured that the Arcapita Group's stakeholders would retain the opportunity to realize value from the Lusail Joint Venture through the ability to exercise the Option.

Failure to Make the June Funding Obligation Could Significantly Impair Arcapita's Ability to Exercise the Option and/or Its Value in the Lusail Joint Venture

27. As noted above, the Drawdown Schedule provides that QIB, in its capacity as the 50% shareholder in the Lusail Joint Venture, is obligated to fund a $30.4 million shareholder loan to the Lusail Joint Venture on June 1, 2012 (the "***June Funding Obligation***"). Yet, pursuant to section 6.1 of the Lease, Arcapita assumes the obligation to make that payment on QIB's behalf. Arcapita's assumption of this obligation makes perfect sense because it is Arcapita – not QIB – that ultimately benefits from payment of the QRE Land Payments associated with the Drawdown Schedule; the Arcapita Group (through QRE) – not QIB – will own the Shares upon exercise of the Option.

28. Failure to satisfy the June Funding Obligation could impair Arcapita's interest in the Lusail Land. First, to the extent that Arcapita fails to fund, QIB could seek to call an event of default under and to terminate, the Lease. *See* Lease § 4.1.2 (providing for immediate Lease termination upon Arcapita's failure to meet any of its Lease obligations). To the extent QIB terminates the Lease, the Option would also be terminated, stripping Arcapita of

an extremely valuable estate asset. *See* Promise to Sell § 2.5 (providing that Option shall cease to be exercisable upon date of termination of Lease).

29. Second, even if, for some reason, QIB did not seek to terminate the Option upon a failure by Arcapita to satisfy the June Funding Obligation, such a failure would still have serious and detrimental repercussions to the Debtors' estates. Unless QIB could be further convinced to make the funding itself, Arcapita's failure to fund would, at a minimum, allow Barwa (the other 50% shareholder) to fund, thereby diluting QRE's Shareholder interests on a pro rata basis (*see* Shareholders Agreement § 7.1.6). Worse, Barwa could assert a "Material Breach" under the Shareholders Agreement, which, if left unremedied, could trigger Barwa's ability to buy back the Shares from QIB at substantial discount to market, again, terminating the Option. *See* Shareholders Agreement § 15.3. Because the current shareholder (QIB) is not a debtor in possession, the automatic stay might not prohibit such actions. Equally troubling, Arcapita's failure to satisfy the June Funding Obligation could render the Lusail Joint Venture unable to make the corresponding payments under the Land Purchase Agreement, thereby triggering a default under such agreement. Such a default would eliminate any value inherent in the Lusail Joint Venture that inures to the Debtors under the Option.

RELIEF REQUESTED

30. By this Motion, the Debtors seek entry of an order substantially in the form of the Proposed Order authorizing Arcapita to fund a loan to support the Lusail Joint Venture's payment of $30,400,000 to Qatari Diar due June 1, 2012, thereby preventing a

substantial loss of net value for Arcapita and maximizing the assets in the Debtors' estates for distribution to creditors, pursuant to sections 363(b) and 365(d)(3) of the Bankruptcy Code.[9]

BASIS FOR RELIEF REQUESTED

I. Arcapita is Obligated to Timely Perform All Lease Obligations Under the Lease to the Extent It is a True Lease[10]

31. Section 365(d)(3) of the Bankruptcy Code provides, in relevant part, that:

> The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period.

11 U.S.C. § 365(d)(3).

32. The obligation to timely perform a debtor's post-petition obligations under its executory lease is mandatory, and runs for the period from the bankruptcy petition date through and until the date that such lease is rejected. *In re Almacs, Inc.*, 196 B.R. 244, 248 (Bankr. N.D.N.Y. 1996); *In re Calder, Inc.*, 217 B.R. 116, 120 (Bankr. S.D.N.Y. 1998); *In re CSVA, Inc.*, 140 B.R. 116, 119 (Bankr. W.D.N.C. 1992). Here, the requirement that Arcapita fund the June Funding Obligation falls over 60 days after the March 19 Petition Date, and, moreover, is expressly required to be made pursuant to the Lease. *See* Lease § 6.1.1. Hence,

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9 Upon entry of the order, Arcapita would provide a $30.4 million interest-free loan to QRE. QRE will, in turn, make the shareholder loan to the Lusail Joint Venture on QIB's behalf, which, in turn, will use the $30.4 million to make the Land Payments due as set forth in the Land Purchase Agreement.

10 Nothing herein shall be construed as an admission that the Lease constitutes a true lease. *See In re PCH Associates*, 804 F.2d. 193 (2d Cir. NY 1986) (holding that section 365(d)(3) only applies to true leases and not financings). Nonetheless, given, among other things, the compelling business case for making the payment currently due under the Lease, the Debtors do not believe it would be a sound use of estate resources to seek to recharacterize the Lease at this time.

Arcapita should be authorized to fund as required under the Lease pursuant to Bankruptcy Code Section 365(d)(3).

33. It is worth noting that, although the June Funding Obligation is not "rent" *per se*, Arcapita's satisfaction of the June Funding Obligation is nonetheless required under the terms of the Lease, and hence, required to be paid under Bankruptcy Code Section 365(d)(3). *See* 3-365 Collier on Bankruptcy P 365.04 (the trustee's obligation under § 365(d)(3) is "not . . . limited to rent payment obligations" and extends to all obligations contained in a lease); *Full House Foods, Inc. v. 33rd Street Enters.* (*In re Full House Foods, Inc.*), 279 B.R. 71, 79 (Bankr. S.D.N.Y. 2002) (applying the same proposition and explaining that § 365(d)(3) "does not distinguish between rent and other lease obligations"); *Cukierman v. Uecker* (*In re Cukierman*), 265 F.3d 846, 851 (9th Cir. 2001) (applying a "bright-line rule" pursuant to which § 365(d)(3) "encompass[es] all obligations contained in a bargained-for agreement"); *Urban Retail Props. v. Loews Cineplex Entm't Corp.*, 2002 U.S. Dist. LEXIS 6186, at *17 (S.D.N.Y. Apr. 8, 2002) (quoting *Cukierman* for its "bright-line rule").

34. Moreover, this requirement set forth in the Lease makes perfect and reasonable sense from a business perspective. As a result of the 2012 Transactions, Arcapita holds the Option to repurchase the Shares, and Arcapita ultimately obtains the benefit from any corresponding paydown of debt owed under the Land Purchase Agreement. QIB (which is only the temporary owner of the Shares) receives no such benefit because it will (assuming the Option is exercised) transfer the Shares to Arcapita. Indeed, it is for this very reason that, if QIB voluntarily funds the June Funding Obligation, the Option price will increase by the amount of such payment. *See* Promise to Sell § 2.3.

35. Yet, as discussed earlier, there can be absolutely no assurance that (a) QIB will actually fund such payment on Arcapita's behalf or (b) if QIB did so, that it would not seek to terminate the Option and/or call a default under the Lease. At best, Arcapita's failure to satisfy the June Funding Obligation results in an increased Option price; at worst, it results in a loss of the Option altogether.

36. Viewed either holistically or purely contractually, the June Funding Obligation constitutes an obligation of Arcapita under the Lease. Arcapita's failure to advance these funds – like a failure to make any other Lease payment – could result in a default under the Lease and, potentially, Arcapita's loss of rights under the Option. Arcapita should therefore be authorized to make the payment pursuant to section 365(d)(3) of the Bankruptcy Code.

II. Advancing the June Funding Obligation Is a Sound Exercise of Business Judgment[11]

37. Should the Court find that satisfaction of the June Funding Obligation does not constitute a Lease obligation the timely satisfaction of which is required under section 365(d)(3) of the Bankruptcy Code, Arcapita's satisfaction of the required June Funding Obligation still constitutes an act of good business judgment and should be approved under Bankruptcy Code section 363(b)(1).

38. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Section 363(b)(1) does not specify a standard for determining when a court should authorize the use, sale or lease of property of the

11 In the abundance of caution, the Debtors hereby seek relief under section 363(b)(1) of the Bankruptcy Code in addition to section 365(d)(3) of the Bankruptcy Code. To the extent the Court finds that consideration of this Motion under section 363(b)(1), not section 365(d)(3) of the Bankruptcy Code, is appropriate, the Debtors are concurrently filing an *ex parte* motion, pursuant to Rule 9006(c) of the Federal Rules of Bankruptcy Procedure and Rule 9006-1(b) of the Local Bankruptcy Rules for the Southern District of New York, shortening the time for notice of the hearing to consider this Motion.

estate. However, the Second Circuit has held that a bankruptcy court should approve a debtor's sale or use of property outside the ordinary course of business if the debtor can demonstrate a sound business justification for the proposed transaction. *See Committee of Equity Sec. Holders v. Lionel Corp.* (*In re Lionel Corp.*), 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (quoting *Lionel*); *see also The Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc.* (*In re Continental Air Lines, Inc.*), 780 F.2d 1223, 1226 (5th Cir. 1986); *In re Martin* (*Myers v. Martin*), 91 F.3d 389, 395 (3d Cir. 1990); *Fulton State Bank v. Schipper* (*In re Schipper*), 933 F.2d 513, 515 (7th Cir. 1991); *240 North Brand Partners v. Colony GFP Partners, L.P.* (*In re 240 North Brand Partners*), 200 B.R. 653, 659 (B.A.P. 9th Cir. Cal. 1996).

39. Once a debtor articulates a valid business justification for the proposed transaction, significant weight is given to the debtor's business judgment. "The business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'" *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkam*, 488 A.2d 858, 872 (Del. 1985)). Courts apply the business judgment rule within the context of a chapter 11 case to shield a debtor's management from judicial second-guessing. *Id.*; *see also In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bank. S.D.N.Y. 1986) ("the Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions").

40. Allowing Arcapita to fund the June Funding Obligation makes perfect business sense. For the reasons stated above in detail, the Debtors believe that the Option to purchase the Shares has substantial value over and above the $220 million exercise price. The

Lusail Land is ideally situated in a growing city and is only approximately five kilometers away from the home of the 2022 World Cup. Moreover, the World Cup has already sparked substantial infrastructure growth and government spending commitments. The Debtors believe they have a fiduciary obligation to do everything possible to ensure that the Option, the means by which the Debtors will unlock this substantial value, is not needlessly put into jeopardy to the detriment of Arcapita's stakeholders. Yet for the reasons discussed above, QIB will almost certainly take the view that a failure by Arcapita to satisfy the June Funding Obligation terminates the Lease and Option. The Debtors, in a sound exercise of their business judgment, do not believe it is prudent to run this material risk.

41. Even if QIB were willing to concede that it would not seek to cancel the Option upon a default under the Lease, or even were this Court to take the position that such a cancellation was barred by the automatic stay, neither "solution" would even come close to solving the myriad of significant problems and disputes that could, and likely will, arise if Arcapita is precluded from advancing the June Funding Obligation. For example, as noted above, such a failure could result in Barwa (the other 50% shareholder) either diluting Arcapita's interest or, worse, buying that interest from QIB at a discount. *See* Shareholders Agreement §§ 7.1.6, 15.3.2. Because the Shares are technically not property of the Debtors (ownership currently is held by non-debtor QIB), it is entirely unclear whether the automatic stay could be used to preclude Barwa from taking action to dilute or even purchase the Shares that, upon exercise of the Option, would rightfully belong to Arcapita. Even worse, unless Barwa and/or QIB were willing to step into Arcapita's breach and fund Arcapita's obligation, the Lusail Joint Venture would be left wholly unable to make the payments due under the Land Purchase Agreement altogether. In such an instance, the automatic stay would likely not preclude Qatari

Diar (the seller of the Lusail Land) from taking action with respect to a breach of the Land Purchase Agreement which, again, is a contract among non-Debtor entities.

42. For the reasons set forth above, the Debtors' use of loans to enable the Lusail Joint Venture to fund the land payments under the Land Purchase Agreement is the product of sound business judgment and serves to preserve the value of the Debtors' estates.

NOTICE

43. 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.); (iii) counsel to Qatar Islamic Bank, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Marcia L. Goldstein); and (iv) 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

44. No prior application for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of an Order substantially similar to the Proposed Order attached hereto as **Exhibit A**, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
May 17, 2012

/s/ Michael A. Rosenthal
Michael A. Rosenthal (MR-7006)
Matthew J. Williams (MW-4081)
Matthew K. Kelsey (MK-3137)
GIBSON, DUNN & CRUTCHER LLP
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Telephone: (212) 351-4000
Facsimile: (212) 351-4035

ATTORNEYS FOR THE DEBTORS
AND DEBTORS IN POSSESSION

HEARING DATE AND TIME: May 31, 2012 at 2:00 p.m. (Eastern Time)
PROPOSED OBJECTION DEADLINE: May 24, 2012 at 2:00 p.m. (Eastern Time)

GIBSON, DUNN & CRUTCHER LLP
Michael A. Rosenthal (MR-7006)
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Attorneys for the Debtors and
Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

NOTICE OF HEARING ON DEBTORS' MOTION PURSUANT TO SECTIONS 365(d)(3) AND 363(b)(1) OF THE BANKRUPTCY CODE FOR AUTHORIZATION FOR ARCAPITA TO MAKE INVESTMENT TO SUPPORT THE LUSAIL JOINT VENTURE

EVIDENTIARY HEARING REQUESTED

PLEASE TAKE NOTICE that a hearing on the annexed Motion, dated May 17, 2012 (the "***Motion***") of Arcapita Bank B.S.C.(c) and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "***Debtors***") will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court for the Southern District of New York (the "***Bankruptcy Court***"), One Bowling Green, New York, New York, 10004, on **May 31, 2012 at 2:00 p.m. (Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion (the "***Objections***") shall be filed electronically with the Court on the docket of *In re*

Arcapita Bank B.S.C.(c), et al., Ch. 11 Case No. 12-11076 (SHL) (the "***Docket***"), pursuant to the Case Management Procedures approved by this Court[1] and the Court's 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 ("PDF"), 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 (i) proposed counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, 10166 (Attn: Michael A. Rosenthal, Esq., Matthew J. Williams, Esq. and Matthew K. Kelsey, Esq.); (ii) 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.); (iii) counsel for the Official Committee of Unsecured Creditors of Arcapita Bank B.S.C.(c), *et al.*, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York, 10005 (Attn: Dennis Dunne, Esq. and Evan R. Fleck, Esq.) and (iv) counsel to Qatar Islamic Bank, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Marcia L. Goldstein). The proposed deadline for Objections is **May 24, 2012 at 2:00 p.m. (Eastern Time)** (the "***Proposed Objection Deadline***").

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Motion, the Debtors may, on or after the objection deadline, submit to

[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].

the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard.

Dated: New York, New York
May 17, 2012

/s/ Michael A. Rosenthal
Michael A. Rosenthal (MR-7006)
Matthew J. Williams (MW-4081)
Matthew K. Kelsey (MK-3137)
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ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

101290735.1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER PURSUANT TO SECTIONS 365(d)(3) AND 363(b)(1) OF THE BANKRUPTCY CODE AUTHORIZING ARCAPITA TO MAKE INVESTMENT TO SUPPORT THE LUSAIL JOINT VENTURE

Upon the Motion (the "***Motion***") of the debtors in possession in the above-captioned case (collectively, the "***Debtors***" and each, a "***Debtor***") for an order pursuant to sections 363(b)(1) and 365(d)(3) of title 11 of the United States Code (the "***Bankruptcy Code***"), authorizing Arcapita to fund a loan $30,400,000 (thirty million and four hundred thousand dollars) in connection with payments under the Land Purchase Agreement due June 1, 2012 (the "***June Funding Obligation***"), this Court finds and concludes that: (a) the Court has jurisdiction over the subject matter of the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (c) the Debtors have demonstrated that payment of the June Funding Obligation under the Lease is a required payment under section 365(d)(3) of the Bankruptcy Code; (d) the legal and factual bases set forth in the Motion and on the record at the hearing (if any) establish just cause for the relief granted herein; (e) the relief requested in the Motion is in the best interests of the Debtors, the estate and its creditors; and (f) notice of the Motion was sufficient, and no other or further notice need be provided.

Based upon the above findings and conclusions, and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.

2. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

3. Arcapita is authorized to execute such documents and take such other actions as are reasonably necessary or appropriate to satisfy the June Funding Obligation.

4. Nothing in the Motion or this Order shall be construed as an assumption or rejection by the Debtors of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code.

5. Nothing in the Motion or this Order shall be construed as a finding that the Lease constitutes a true lease. All rights of the Debtors to seek recharacterization of the Lease are hereby preserved.

6. To the extent there is an inconsistency among the terms of the Motion and this Order, the terms of this Order shall govern.

7. The relief granted herein shall be binding upon any chapter 11 trustee appointed in the Chapter 11 Cases, or upon any chapter 7 trustee appointed in the event of a subsequent conversion of the Chapter 11 Cases to cases under chapter 7.

8. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: _____, 2012
New York, New York

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

FILED UNDER SEAL

Exhibit C

FILED UNDER SEAL

Exhibit D

FILED UNDER SEAL

Exhibit E

FILED UNDER SEAL