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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
	: :
-----X	

**DEBTORS' MOTION FOR AN EXTENSION
OF THE TIME TO ASSUME OR REJECT UNEXPIRED
LEASES OF NONRESIDENTIAL REAL PROPERTY
PURSUANT TO 11 U.S.C. § 365(d)(4)(B)(i)**

Arcapita Bank B.S.C.(c) and certain of its subsidiaries, debtors and debtors in possession (collectively, the “*Debtors*” and each, a “*Debtor*”), submit this motion (the “*Motion*”), pursuant to section 365(d)(4)(B)(i) of title 11 of the United States Code (the “*Bankruptcy Code*”), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Order*”), extending the period within which Debtors may assume or reject unexpired leases of nonresidential real property.

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 (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*”).

3. 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. No request has been made for the appointment of a trustee or examiner in the Chapter 11 Cases. On April 5, 2012, the United States Trustee for Region 2 appointed an Official Committee of Unsecured Creditors [Dkt. No. 60] (the “*Committee*”).

RELIEF REQUESTED

4. The Debtors operate a large, multifaceted business with operations in several countries throughout the world. As part of their operations, the Debtors estimate that, as of the Petition Date, they were party to nine unexpired leases of nonresidential real property (individually, a “*Lease*” and collectively, the “*Leases*”), as set forth in **Exhibit B**, attached hereto.¹

¹ Note that the list of Leases provided in Exhibit B is intended for convenience only and the Debtors may be party to greater than or fewer than nine unexpired leases of nonresidential real property. Accordingly, the Debtors hereby reserve the right to modify or supplement the list of Leases provided in Exhibit B.

5. Pursuant to section 365(d)(4)(A), a debtor may assume or reject unexpired leases of nonresidential real property until the earlier of (i) the date that is 120 days after the date of the order for relief or (ii) the date of the entry of an order confirming a plan. 11 U.S.C. § 365(d)(4)(A). As a result, the current deadline for the Debtors to assume or reject the Leases is July 17, 2012 (the “*Current 365(d)(4) Deadline*”).

6. By this Motion, the Debtors seek authority under section 365(d)(4)(B)(i) of the Bankruptcy Code to extend the deadline by which the Debtors may assume or reject unexpired leases of nonresidential real property for an additional 90 days, up to and including October 15, 2012 (the “*Proposed 365(d)(4) Deadline*”).

CAUSE EXISTS TO GRANT AN EXTENSION OF THE 365(d)(4) DEADLINE

7. Section 365(d)(4) of the Bankruptcy Code provides in pertinent part that:

(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of•

(i) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming a plan.

(B) (i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

Also note that the list of Leases set forth in Exhibit B does not include leases in which a Debtor’s only interest is that of a guarantor because the Debtors believe such leases do not implicate section 365(d)(4) of the Bankruptcy Code. *See, e.g., In re Farley, Inc.*, 152 B.R. 516, 524 (Bankr. N.D. Ill. 1993) (“When a party has no right of possession, there is no lease, and § 365(d)(3) cannot apply except in the context of a lease.... Thus, § 365(d)(3) cannot be read more broadly than its terms to apply to debtors who merely guarantee another party’s obligations under a lease, but have no threshold interest of their own.”); *In re Leibinger-Roberts, Inc.*, 105 B.R. 208, 213 (Bankr. E.D.N.Y. 1989) (“A guaranty agreement is not executory because it holds no future benefit for the guarantor.”); *In re Unishops, Inc.*, 422 F. Supp. 75, 76 (S.D.N.Y. 1975) (same proposition); *In re Brooklyn Overall Co.*, 57 B.R. 999 (Bankr. E.D.N.Y. 1986) (same).

(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

11 U.S.C. § 365(d)(4).

8. Courts have analyzed what constitutes sufficient cause to extend the time period within which a debtor may assume or reject unexpired nonresidential real property leases. In *In re 611 Sixth Avenue Corp.*, 191 B.R. 295 (Bankr. S.D.N.Y. 1996), the court held that the following factors, among others, would indicate that “cause” exists to extend the time period:

- (i) the significance of the lease to the debtor’s business and the plan;
- (ii) whether the debtor has had sufficient time to appraise its financial situation and the potential value of the lease to the formulation of its plan; and
- (iii) whether the landlord has suffered damage that is not compensable under the Bankruptcy Code.

Id. at 298; *see also South St. Seaport L.P. v. Burger Boys, Inc.*, 94 F.3d 755, 761 (2d Cir. 1996) (considering the complexity of the debtors’ cases and the number of leases the debtors needed to evaluate); *In re Wedtech Corp.*, 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987) (considering case complexity, whether the debtor had time to intelligently appraise its financial situation and the importance of the leases to formulating a plan of reorganization); 130 Cong. Rec. S8894-95 (daily ed., June 29, 1984), reprinted at 1984 U.S.C.C.A.N. 590, 599 (remarks of Sen. Hatch) (stating that the sixty-day time period [then applicable under 365(d)(4)] can be extended in cases involving large numbers of leases).

9. Here, the Debtors have ample cause to justify an extension of the Current 365(d)(4) Deadline. First, the Chapter 11 Cases, while progressing rapidly, are still in their early stages. The Debtors are in the process of formulating a business plan and chapter 11 plan. Until a determination is made as to the nature of the Debtors’ business plan and resulting chapter 11

plan, it would be premature to make a decision with respect to the assumption or rejection of the Leases. In the absence of a formulated restructuring plan, the Debtors cannot discern the continued viability of the Leases or whether assumption and assignment issues will be implicated in connection with any such restructuring.

10. Second, given the size and complexity of these cases, the Current 365(d)(4) Deadline will not provide enough time for the Debtors to finally decide to assume their Leases. During the initial stages of these Chapter 11 Cases, the Debtors have worked tirelessly to stabilize their business and maximize the value of their estates. In addition, the Debtors have worked cooperatively with the Committee and the provisional liquidator appointed in the Cayman Islands to provide these creditor fiduciaries with a substantial amount of information regarding the Debtors' business. All of these efforts have helped the Debtors have a smooth transition into chapter 11. At this stage of the Chapter 11 Cases, however, it is simply premature to force the Debtors to make a decision as to the wisdom of assuming or rejecting the Leases. Requiring such a premature decision could hamper the Debtors' restructuring efforts and harm creditors.

11. Third, the extension proposed herein would not unduly prejudice lessors under the Leases because Debtors are currently paying all rent as it becomes due. The Debtors believe that they will have sufficient liquidity to remain current on their postpetition rent obligations under the Leases.

12. Finally, pursuant to section 365(d)(4)(B)(i) of the Bankruptcy Code, the requested extension is for only 90 days, and is made within the initial 120-day period to assume or reject the Leases specified by section 365(d)(4)(B)(i), during which the Debtors may request an extension for cause. Were the Court to grant the extension requested herein, any additional

extensions (if necessary at all) will require the consent of the applicable lessor pursuant to section 365(d)(4)(B)(ii) of the Bankruptcy Code.

13. The Debtors' requested extension of time to assume or reject the Leases comports with relief granted in other cases by courts in this district. *See, e.g., In re Almatris B.V.*, Case No. 10-12308 (MG) (Bankr. S.D.N.Y. Aug. 16, 2010) (granting 90-day extension); *In re Frontier Holdings, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. July 21, 2008) (granting 90-day extension); *In re Delphi*, No. 05-44481 (Bankr. S.D.N.Y. Apr. 30, 2008) (RDD) (granting extension until effective date of plan of reorganization); *In re Calpine Corp.*, No. 05-60200 (Bankr. S.D.N.Y. Apr. 11, 2006) (BRL) (granting 90-day extension); *In re Refco*, No. 05-60006 (Bankr. S.D.N.Y. Jan. 18, 2006) (RDD) (granting 90-day extension); *In re Dana*, No. 06-10354 (Bankr. S.D.N.Y. June 28, 2006) (BRL) (granting 90-day extension).²

RESERVATION OF RIGHTS TO SEEK RECHARACTERIZATION OF THE LEASES

14. The Second Circuit Court of Appeals in *In re PCH Associates*, 804 F.2d. 193 (2d Cir. 1986), held that section 365(d) of the Bankruptcy Code only applies to "true leases" and does not apply to financing arrangements. In the Court's *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* [Docket No. 196] (the "**Lusail Order**"), the Court expressly stated that it had not made a finding as to whether the Lease listed in Exhibit B in connection with lessor Qatar Islamic Bank constitutes a "true lease" and that the Debtors had preserved all rights to seek recharacterization of that Lease.

² The Debtors have not annexed copies of the unreported orders cited herein because of their voluminous size. Copies of these orders, however, are available upon request of the Debtors' counsel, including at the hearing to consider the Motion.

15. The Debtors do not believe it would be a sound use of estate resources to seek to recharacterize any Lease at this time. Therefore, by this Motion, the Debtors respectfully submit that, consistent with the Lusail Order: (a) nothing herein shall be construed as an admission that any Lease (listed in Exhibit B) constitutes a “true lease”; and (b) the Debtors hereby preserve the right to seek recharacterization of any Lease(s).

CONCLUSION

16. For the reasons set forth above, the Debtors respectfully submit that ample cause exists to extend the Current 365(d)(4) Deadline by 90 days to and including October 15, 2012.

NOTICE

17. 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.); 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, at www.gcginc.com/cases/arcapita.

NO PRIOR REQUEST

18. No prior motion for the relief sought in this Motion 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 12, 2012

Respectfully submitted,

/s/ Michael A. Rosenthal

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ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

Objection Deadline: June 19, 2012 at 12:00 p.m. (prevailing U.S. Eastern Time)
Hearing Date and Time: June 26, 2012 at 11:00 a.m. (prevailing U.S. Eastern Time)

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

**NOTICE OF DEBTORS' MOTION FOR AN EXTENSION
OF THE TIME TO ASSUME OR REJECT UNEXPIRED
LEASES OF NONRESIDENTIAL REAL PROPERTY
PURSUANT TO 11 U.S.C. § 365(d)(4)(B)(i)**

PLEASE TAKE NOTICE that on June 12, 2012, the above-captioned debtors and debtors in possession (the "**Debtors**") filed the annexed *Debtors' Motion for an Extension of the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property Pursuant to 11U.S.C. § 365(d)(4)(B)(i)* (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that a hearing (the "**Hearing**") to consider the Motion will take place before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court, One Bowling Green, New York, New York

10004-1408 (the “*Bankruptcy Court*”) on **June 26, 2012 at 11:00 a.m. (prevailing U.S. Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any and all objections to the Motion (the “*Objections*”) 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) (the “*Docket*”), pursuant to the Case Management Procedures approved by this Court 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, 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) counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, 10166 (Attn: Michael A. Rosenthal, Esq., Janet M. Weiss, 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.); and (iii) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis Dunne, Esq. and Evan Fleck, Esq.), so as to be received no later than **June 19, 2012 at 12:00 p.m. (prevailing U.S. Eastern Time)** (the “*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 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
June 12, 2012

/s/ Michael A. Rosenthal
Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
Janet M. Weiss (JW-5460)
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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**

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

**ORDER GRANTING DEBTORS’ MOTION FOR AN EXTENSION
OF THE TIME TO ASSUME OR REJECT UNEXPIRED
LEASES OF NONRESIDENTIAL REAL PROPERTY
PURSUANT TO 11 U.S.C. § 365(d)(4)(B)(i)**

Upon consideration of the motion (the “*Motion*”)¹ of Arcapita Bank B.S.C.(c) (“*Arcapita*”) and certain of its subsidiaries and affiliates, as debtors and debtors in possession in the above-captioned Chapter 11 Cases (collectively, the “*Debtors*” and each, a “*Debtor*”), for entry of an order pursuant to section 365(d)(4) of the Bankruptcy Code extending the time within which the Debtors may assume or reject unexpired leases of nonresidential real property,² and the Court having found that jurisdiction and venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion

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

² The Court agrees with the Debtors’ position, as set forth in the Motion, that a lease in which a Debtor’s only interest is that of a guarantor does not implicate section 365(d)(4) of the Bankruptcy Code.

and having considered the statements in support of the relief requested therein at a hearing before the Court (the "*Hearing*"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The relief requested in the Motion is granted.
2. The time within which the Debtors may assume or reject the Leases pursuant to section 365(d)(4) of the Bankruptcy Code is extended by 90 days to and including October 15, 2012.
3. The relief requested herein is without prejudice to the right of any lessor under a Lease to move the Court to fix an earlier date by which the Debtors must assume or reject its unexpired Leases (or for the Debtors to oppose any such request).
4. Nothing in the Motion or this Order shall be construed as a finding that any Lease (listed in Exhibit B to the Motion) constitutes a true lease. All rights of the Debtors to seek recharacterization of any Lease(s) are hereby preserved.

Dated: New York, New York
_____, 2012

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B
Leases

EXHIBIT B

Leases¹

<u>LESSOR</u>	<u>LESSOR ADDRESS</u>	<u>LESSEE</u>	<u>CO-DEBTORS /CO-OBLIGORS TO THE LEASE</u>	<u>DESCRIPTION</u>
AHQ Holding Company W.L.L.	PO Box 1406, Manama, Bahrain	Arcapita Bank B.S.C.(c)	AHQ Holding Company W.L.L.	Lease (Ijara)
Noon Investment Company	P.O. Box 26026, Manama, Bahrain	Arcapita Bank B.S.C.(c)		Store lease
Aramex	P.O. Box 26951, Manama, Bahrain	Arcapita Bank B.S.C.(c)		Store lease
Qatar Islamic Bank	P.O. Box 559, Doha, Qatar	Arcapita Bank B.S.C.(c)		Investment property lease
Arcapita, Inc.	75 14 th Street, 24 th Floor, Atlanta, GA 30309	AEID II Holdings Limited		Office lease
Arcapita, Inc.	75 14 th Street, 24 th Floor, Atlanta, GA 30309	Arcapita Investment Holdings Limited		Office lease
Arcapita, Inc.	75 14 th Street, 24 th Floor, Atlanta, GA 30309	Arcapita LT Holdings Limited		Office lease
Arcapita, Inc.	75 14 th Street, 24 th Floor, Atlanta, GA 30309	RailInvest Holdings Limited		Office lease
Arcapita, Inc.	75 14 th Street, 24 th Floor, Atlanta, GA 30309	WindTurbine Holdings Limited		Office lease

¹ Note that, as stated in the Motion, this list of Leases is intended for convenience only. The Debtors reserve the right to modify or supplement the list of Leases contained in this exhibit.