

GIBSON, DUNN & CRUTCHER LLP

Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
Matthew J. Williams (MW-4081)
Matthew K. Kelsey (MK-3137)
200 Park Avenue
New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

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 Case
	:
ARCAPITA BANK B.S.C.(c), et al.,	Case No. 12-11076 (SHL)
	:
Debtors.	Jointly Administered
	:
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**DEBTORS’ MOTION PURSUANT TO SECTIONS 365(d)(3) AND
363(b)(1) OF THE BANKRUPTCY CODE FOR AUTHORIZATION
FOR ARCAPITA TO FUND LUSAIL JOINT VENTURE LEASE PAYMENT**

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 \$10,000,000¹ (ten million dollars) to support its indirect interest in Lusail Golf Development LLC, a Qatari limited liability company (the “*Lusail Joint Venture*”) which owns a 3,659,080 square meter plot of land in Lusail City, Qatar known as Golf-REC/01 (the “*Lusail Land*”). 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.

JURISDICTION

1. 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. The statutory predicates are sections 365(d)(3) and 363(b) of title 11 of the United States Code (the “*Bankruptcy Code*”).

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*”). 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.

3. On April 5, 2012, the United States Trustee for Region 2 appointed the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the “*Committee*”) [Dkt. No. 60] pursuant to sections 1102(a) and (b) of the Bankruptcy Code.

4. 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.

5. 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 MAY LUSAIL MOTION

6. On May 17, 2012, the Debtors moved for authority to fund an intercompany loan of up to \$30,400,000 (thirty million and four hundred thousand dollars) to both fund payments due and owing under a Lease governing Arcapita's use of the Lusail Land and maintain Arcapita's indirect interest in the Lusail Joint Venture under the 2012 Transactions [Dkt. No. 150] (as supplemented on May 24, 2012 [Dkt. No. 177], the "***May Lusail Motion***").² A detailed summary of the circumstances surrounding and leading up to the 2012 Transactions, including the history and ownership structure of the Lusail Joint Venture and the significant value of the Lusail Land, is provided in the May Lusail Motion and expressly incorporated

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

herein.³ The Committee filed a statement in support of the May Lusail Motion on May 30, 2012 [Dkt. No. 191]. No objections were filed to the May Lusail Motion, and, on May 31, 2012, the Court entered an order approving the May Lusail Motion and authorizing Arcapita's funding the then proposed intercompany loan (the "***June Lusail Order***") [Dkt. No. 196].

7. As previously noted to the Court, at its core, the 2012 Transactions comprised a sale leaseback of Shares pursuant to which Arcapita agreed to make rent payments on the underlying Lease. The next rent payment becomes due and payable on or around September 5, 2012 (the "***September Lease Obligation***"). Failure to make rent payments due under the Lease could result in Arcapita's loss of its right to repurchase the Shares.

RELIEF REQUESTED

8. By this Motion, the Debtors seek entry of an order substantially in the form of the Proposed Order authorizing Arcapita to fund an intercompany loan to satisfy the September Lease Obligation on or around September 5, 2012 pursuant to sections 365(d)(3) and 363(b)(1) of the Bankruptcy Code. The Debtors have discussed the September Funding Obligation with the Committee and the Joint Provisional Liquidators of Arcapita Investment Holdings Limited (the "***JPLs***"). Both the Committee and the JPLs generally support Arcapita's advancing funds to satisfy the September Lease Obligation. The Committee and the JPLs have also reviewed, and generally support, the form of the Proposed Order.

3 Copies of the agreements underlying the 2012 Transactions were filed under seal as exhibits to the May Lusail Motion. At the direction of the Court, the Debtors summarized the relevant provisions of each such agreement in the *Notice Relating to Debtors' Motion for an Order Authorizing the Debtors to File Under Seal References to Terms of Confidential Lusail Agreements* filed on June 13, 2012 [Dkt. No. 248].

BASIS FOR RELIEF REQUESTED

I. Arcapita Is Obligated To Timely Perform All Lease Obligations Under the Lease to the Extent It Is a True Lease⁴

9. 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).

10. 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 September Lease Obligation falls over 60 days after the March 19 Petition Date, and, moreover, is expressly required under the Lease. *See* Lease § 2.3.2. Hence, Arcapita should be authorized to fund as required under the Lease pursuant to Bankruptcy Code Section 365(d)(3).

⁴ 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).

II. Advancing the September Lease Obligation Is a Sound Exercise of Business Judgment

11. In any event, were the Court to nonetheless rule that satisfaction of the September Lease 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 September Lease Obligation still constitutes an act of good business judgment and should be approved under Bankruptcy Code section 363(b)(1).

12. 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 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).

13. 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”).

14. For the reasons set forth in the May Lusail Motion, the Debtors believe that the Option has substantial value over and above the \$220 million exercise price. Therefore, the Debtors believe they have a fiduciary obligation to do everything reasonably necessary to protect the Debtors’ interest in the Lusail Land for the benefit of Arcapita’s stakeholders. The Committee agrees that making the Lease payment at this time is in the best interests of the Debtors, their estates and their creditors. The JPLs agree that making the Lease payment at this time is in the best interests of Arcapita Investment Holdings Limited (“*AIHL*”), its estate and its creditors

NOTICE

15. 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 F. Dunne, Esq., Abhilash M. Raval, Esq., and Evan R. Fleck, Esq.), counsel for the Committee; (iii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Marcia L. Goldstein), counsel to Qatar Islamic Bank; 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

16. 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
August 2, 2012

/s/ Michael A. Rosenthal
Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
Matthew J. Williams (MW-4081)
Matthew K. Kelsey (MK-3137)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

ATTORNEYS FOR THE DEBTORS
AND DEBTORS IN POSSESSION

Exhibit A

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

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

**ORDER PURSUANT TO SECTIONS 365(d)(3) AND 363(b)(1)
OF THE BANKRUPTCY CODE AUTHORIZING ARCAPITA
TO FUND LUSAIL JOINT VENTURE LEASE PAYMENT**

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 of up to \$10,000,000 (ten million dollars) in connection with a payment obligation under the Lease due on or around September 5, 2012 (the “*September Lease 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 September Lease Obligation is a required payment under section 365(d)(3) of the Bankruptcy Code or, in the alternative, an exercise of sound business judgment under section 363(b)(1) 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 fund an intercompany loan to satisfy the September Lease Obligation. The intercompany loan shall be made on the same terms as the loan authorized by the June Lusail Order.
4. The Debtors shall, and shall use their good faith efforts to have their non-debtor affiliates, continue to comply with the letter agreement dated as of May 30, 2012 between the Committee and the Debtors.
5. 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.
6. 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.
7. Nothing contained herein shall be deemed to constitute a waiver or the relinquishment of any pre-petition or post-petition rights, claims, interests, obligations, benefits, or remedies that the Debtors or any party-in-interest may have or choose to assert on behalf of the Debtors' estates under any provision of the Bankruptcy Code or applicable law, including

against each other or third parties, with respect to the Lusail Joint Venture, including any argument that future rent payments under the Lease or any other payments due on account of the Lusail Joint Venture are not in the ordinary course of business and therefore subject to the requirements of section 363(b) of the Bankruptcy Code, or any action relating to the administration or disposition of interests in the Lusail Joint Venture, and nothing herein shall change the burden of proof or other presumption with respect to any disputed issue that would have existed absent either the June 1 Order or this Order.

8. Nothing contained herein shall be deemed a determination as to the allocation of proceeds of the 2012 Transactions or any disposition of the Arcapita Group's interests in the Lusail Joint Venture as among the members of the Arcapita Group, and all rights of each of the Debtors, the Committee, the JPLs or any party in interest with respect thereto are expressly reserved.

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

10. 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.

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

12. 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

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GIBSON, DUNN & CRUTCHER LLP

Michael A. Rosenthal (MR-7006)
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Matthew J. Williams (MW-4081)
Matthew K. Kelsey (MK-3137)
200 Park Avenue
New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

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 HEARING ON DEBTORS' MOTION PURSUANT
TO SECTIONS 365(d)(3) AND 363(b)(1) OF THE BANKRUPTCY
CODE FOR AUTHORIZATION FOR ARCAPITA TO FUND
LUSAIL JOINT VENTURE LEASE PAYMENT**

PLEASE TAKE NOTICE that a hearing on the annexed Motion, dated August 2, 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 **August 16, 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 Court¹ 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) the Official Committee of Unsecured Creditors, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq. and Evan R. Fleck, Esq.) so as to be received no later than **August 10, 2012 (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.

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 [Docket No. 21].

Dated: New York, New York
August 2, 2012

/s/ Michael A. Rosenthal
Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
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