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

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IN RE:	:	Chapter 11
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ARCAPITA BANK B.S.C.(c), et al.,	:	Case No. 12-11076 (SHL)
	:	
Debtors.	:	Jointly Administered
	:	
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**DEBTORS’ MOTION TO AMEND SECOND ORDER EXTENDING
EXCLUSIVE PERIODS TO FILE A PLAN OR PLANS OF REORGANIZATION
AND TO SOLICIT ACCEPTANCES THEREOF AND FURTHER
EXTENDING THE EXCLUSIVE PERIODS**

Arcapita Bank B.S.C.(c) (“*Arcapita Bank*”) and certain of its subsidiaries and affiliates (collectively, the “*Debtors*”) hereby submit this motion (the “*Motion*”) pursuant to Rule 9024 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), Rule 60 of the Federal Rules of Civil Procedure, and section 1121(d) of title 11 of the United States Code (the “*Bankruptcy Code*”), for an order amending the Second Order Extending the Debtors’ Exclusive Periods to File a Plan or Plans of Reorganization and to Solicit Acceptances Thereof [Docket No. 568] (the “*Second Exclusivity Order*”) and further extending the Debtors’ exclusive period to file a plan or plans of reorganization and to solicit acceptances thereof. In support thereof, the Debtors respectfully represent:

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, Arcapita Bank and five of its affiliates commenced cases under chapter 11 of the Bankruptcy Code. On April 30, 2012, Falcon Gas Storage Company, Inc. commenced a case under chapter 11 of the Bankruptcy Code. The Debtors have continued to operate their business and manage 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 in the Chapter 11 Cases (the “*Committee*”) [Docket No. 60] pursuant to sections 1102(a) and (b) of the Bankruptcy Code. Of the six current members of the Committee, three members are primarily creditors of only Arcapita Bank and three members are also creditors that have substantial claims against Arcapita Bank’s subsidiary, Arcapita Investment Holdings Limited (“*AIHL*”). Arcapita Bank owns the majority of the assets of the Arcapita Group through AIHL and as a result of the Debtors’ corporate structure, the claims of AIHL’s creditors are in large part structurally senior to the claims of Arcapita Bank’s creditors. Nonetheless, there are a variety of legal and factual arguments and considerations that must be taken into account when allocating the overall value of the Debtors’ estates between the creditors of Arcapita Bank and the creditors of AIHL.

4. By order dated July 11, 2012, the Court granted the Debtors a 90-day extension of the initial 120-day period during which the Debtors have the exclusive right to file a chapter 11

plan or plans (the “*Exclusive Filing Period*”) and the 180-day period to obtain acceptances of that plan or plans (the “*Exclusive Solicitation Period*,” and together with the Exclusive Filing Period, the “*Exclusive Periods*”), through and including October 15, 2012 and December 14, 2012, respectively.

5. Although the Debtors made substantial progress towards developing a strategy for a successful exit from these chapter 11 cases during the initial extension of the Exclusive Periods, the Debtors filed a second motion to extend the Exclusive Periods (the “*Second Exclusivity Motion*”) because they required additional time to handle the sheer complexity of legal and business issues presented by their chapter 11 cases. However, the Debtors agreed that they would not seek further extensions of their exclusive right to file a plan.

6. On October 12, 2012, the Court granted the Debtors’ Second Exclusivity Motion and extended the Exclusive Filing Period to and including December 15, 2012, and the Exclusive Solicitation Period to and including February 12, 2013. As agreed upon by the Debtors, the Second Exclusivity Order states that “the Debtors shall not request a further extension of the Exclusive Filing Period beyond the extension to December 15, 2012” (Docket. No. 568 at 2.)

7. Since the Second Exclusivity Order was entered, the Debtors, the Committee, and the Joint Provisional Liquidators of AIHL (the “*JPLs*”) have diligently worked to develop a feasible plan of reorganization. As a result of these efforts, and although some open issues remain unresolved, the Debtors are ready and willing to file a plan by the December 15, 2012 deadline. However, the Committee has requested that the Debtors refrain from filing a plan for one more week to allow the continuation of further discussions among the Debtors, the Committee, and various other constituencies regarding a proposed settlement of intercreditor

issues. Throughout the process of evaluating various options for reorganization, the Debtors, the Committee, and the JPLs have engaged in an ongoing analysis of how to allocate the assets between the creditors of Arcapita Bank and the creditors of AIHL. Indeed, the Debtors, the Committee, and the JPLs have worked jointly in an attempt to develop a value allocation model that is reasonably acceptable to both groups of creditors. Most recently, the parties met substantially all of last week regarding this model and the parameters of a plan based on it. After these meetings, the Committee advised the Debtors that its members would be unable to reach an internal consensus regarding value allocation by the expiration of the current Exclusive Filing Period, but would likely be able to reach a resolution if given an additional short period of time. Accordingly, the Committee requested that the Debtors postpone filing a plan of reorganization by one week (until December 22, 2012), during which time the Committee agreed that the Exclusive Filing Period would not lapse.

8. Given that the requested delay is minimal, but increases the probability that the Debtors will be able to file a plan of reorganization with the Committee's and JPLs' support, the Debtors are willing to accommodate the Committee's request for an additional time even though they are prepared to file a plan of reorganization by the current deadline.¹ However, the Second Exclusivity Order currently precludes the Debtors from seeking an extension of the Exclusive

¹ On September 18, 2012, the Debtors filed the *Debtors' Motion for an Order Pursuant to Sections 363(b) and 503(c) of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing Debtors to Implement Global Settlement of Senior Management Claims* [Docket No. 487] (the "**Senior Management Global Settlement Approval Motion**"). In the Senior Management Global Settlement Approval Motion the Debtors identified filing an Eligible Plan (as defined in the Senior Management Global Settlement Approval Motion) by December 15, 2012 as the "Milestone." Because the Committee has requested the extension of the Exclusive Filing Period sought herein, the Debtors hereby amend the Senior Management Global Settlement Approval Motion to make the "Milestone" described therein the filing of an Eligible Plan by the Debtors by December 22, 2012.

Filing Period, and accordingly, the Debtors believe that they must file their plan for reorganization by the current deadline, December 15, unless the relief requested herein is granted.

RELIEF REQUESTED

9. To increase the likelihood that the Debtors will be able to file a consensual plan of reorganization, with the support of the Committee and the JPLs, the Debtors request that the Court (i) amend the Second Exclusivity Order to allow the Debtors to request an additional extension, (ii) further extend the Exclusive Filing Period through and including December 22, 2012, and (iii) further extend the Exclusive Solicitation Period through and including February 19, 2013.

BASIS FOR RELIEF REQUESTED

10. Even if the Second Exclusivity Order was the equivalent of a “final judgment,” “[t]he Court may grant a party relief from a final judgment for “any . . . reason that justifies relief.” Fed. R. Civ. P. 60(b)(6); Fed. R. Bankr. P. 9024. However, an order extending the exclusive period to file a plan under section 1121(d) is an interlocutory order rather than a final judgment. *See Official Comm. of Unsecured Creditors v. Henry Mayo Newhall Mem’l Hosp. (In re Henry May Newhall Mem’l Hosp.)*, 282 B.R. 444, 448 (B.A.P. 9th Cir. 2002). The Court also has the inherent power to revisit any order and to modify or vacate that order. *See City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001) (“As long as a district court has jurisdiction over the case, then it possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient.”) (quoting *Melancon v. Texaco, Inc.*, 659 F.2d 551, 553 (5th Cir. 1981)). The determination of cause under section 1121(d) is a fact-specific inquiry in which the court has broad discretion in

extending or terminating exclusivity. *See In re Adelpia Commc'ns Corp.*, 352 B.R. 578, 586 (Bankr. S.D.N.Y. 2006) (“A decision to extend or terminate exclusivity for cause is within the discretion of the bankruptcy court, and is fact specific.”).

11. The Second Exclusivity Order’s prohibition on further unilateral requests by the Debtors alone to extend the Exclusive Filing Period was designed to ensure that a plan was filed in a timely fashion and to prevent the Debtors from using the Exclusive Periods as leverage to extract concessions from creditors. However, the present relief essentially presents a joint request by the Committee and the Debtors and is supported by the JPLs. Although the Debtors are prepared to file a plan and it is the Committee, not the Debtors, that now requires one additional week to resolve remaining issues regarding value allocation, the resulting delay is not the type of delay that the Second Exclusivity Order’s prohibition on further requests to extend the Exclusive Filing Period was intended to avoid.

12. Furthermore, the Court may extend the Exclusive Periods for cause. *See* 11 U.S.C. § 1121(d). The same factors described in the Second Exclusivity Motion that gave rise to cause to extend the Exclusive Periods still exist. This short extension will increase the likelihood that the Debtors will be able to file a consensual reorganization plan and because the extension sought here is only one week, it will not prejudice any interested party.

13. In this instance, it is also clear that the Debtors are not seeking to use exclusivity as a method of pressuring creditors into accepting their demands. One factor that courts analyze when determining whether to extend the exclusive periods is “whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor’s reorganization demands.” *In re Adelpia Commc'ns Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006). Here, this request for an extension is an accommodation to the Committee and is supported by the

JPLs. The Debtors are not leveraging the extension as a means to pressure the Committee into accepting any particular terms. Indeed, should the Court deny the relief requested herein, the Debtors remain poised to file a plan of reorganization by the close of the current Exclusive Filing Period.

14. The Ad Hoc Group of Holders of the Arcapita Bank Syndicated Facility do not oppose this motion.

NOTICE

15. No trustee or examiner has been appointed in these 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.); 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, Inc., at www.gcginc.com/cases/arcapita.

16. If the Court amends its Second Exclusivity Order to permit the Debtors to seek a further extension of the Exclusive Filing Period, this Motion is the Debtors' third request for an extension of the Exclusive Filing Period.

CONCLUSION

For the reasons set forth herein, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit A, amending the Court's Second Exclusivity Order, extending the Debtors' Exclusive Filing Period through and including

December 22, 2012, extending the Debtors' Exclusive Solicitation Period through and including February 19, 2013, and granting the Debtors such other and further relief as is just and proper.

Dated: New York, New York
December 11, 2012

Respectfully submitted,

/s/ Michael A. Rosenthal

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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**

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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

**ORDER GRANTING DEBTORS' MOTION TO AMEND SECOND ORDER
EXTENDING EXCLUSIVE PERIODS TO FILE A PLAN OR PLANS OF
REORGANIZATION AND TO SOLICIT ACCEPTANCES THEREOF AND FURTHER
EXTENDING THE EXCLUSIVE PERIODS**

Upon consideration of the Motion (the "*Motion*")¹ of Arcapita Bank B.S.C.(c), and certain of its subsidiaries and affiliates, as debtors and debtors-in-possession herein (collectively, the "*Debtors*" and each, a "*Debtor*"), for entry of an order pursuant to Rule 9024 of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*"), Rule 60 of the Federal Rules of Civil Procedure, and section 1121(d) of title 11 of the United States Code (the "*Bankruptcy Code*"), for an order (i) amending the Second Exclusivity Order to permit the Debtors to request an extension of the Exclusive Filing Period (ii) further extending the Debtors' Exclusive Filing Period through and including December 22, 2012, and (iii) further extending the Debtors Exclusive Solicitation Period through and including February 19, 2013, and the evidence in support thereof; the Court finds that:

- a) It has jurisdiction to consider this Motion pursuant to 28 U.S.C. sections 157 and 1334;

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

b) Venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409;

c) Notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances of these cases; and,

d) The relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest.

After the consideration of any objections to the Motion; all proceedings that have occurred before the Court in the above-captioned chapter 11 cases; and having determined after due deliberation that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED:

1. The Motion is granted to the extent set forth herein.
2. The Second Exclusivity Order is amended to permit the Debtors to request an extension of the Exclusive Filing Period.
3. Pursuant to section 1121(d) of the Bankruptcy Code, the Debtors' Exclusive Filing Period in which to file a chapter 11 plan or plans is extended to and including December 22, 2012.
4. Pursuant to section 1121(d) of the Bankruptcy Code, the Debtors' Exclusive Solicitation Period in which to solicit acceptances of their chapter 11 plan or plans is extended through and including February 19, 2013.
5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
_____, 2012

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE