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Proposed 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 FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF CRITICAL AND FOREIGN VENDORS; AND (B) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

PLEASE TAKE NOTICE that a hearing on the annexed motion, dated March 26, 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 **March 29, 2012 at 11:00 a.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 (“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., 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.); (iii) Kasowitz Benson Torres & Friedman LLP, 1633 Broadway, New York, New York 10019 (Attn: David Friedman, Esq. and David Mark, Esq.) as attorneys for Euroville, S.a.r.l.; and (iv) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Stephen Karotkin, Esq.), as attorneys for Midtown Acquisitions, LLC so as to be received no later than **March 28, 2012 at 12:00 p.m. (Eastern Time)** (the “**Objection Deadline**”).

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].

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
March 26, 2012

/s/ Michael A. Rosenthal
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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 INTERIM AND FINAL ORDERS (A)
AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF
CRITICAL AND FOREIGN VENDORS; AND (B) AUTHORIZING FINANCIAL
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

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*”), submit this motion (the “*Motion*”) for entry of interim and final orders substantially in the forms annexed hereto as *Exhibit A* (the “*Interim Vendor Order*”) and *Exhibit B* (the “*Final Vendor Order*”), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “*Bankruptcy Code*”), (a) authorizing the Debtors to pay all or a portion of the prepetition obligations owed to certain Critical Vendors and Foreign Vendors (each, as defined below), (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks and transfers issued in relation to the foregoing and to rely on the representations of the Debtors as to

which checks and transfers are authorized to be paid in accordance with this Motion, and (c) to the extent necessary, authorizing the Debtors to issue replacements for any dishonored check or transfer related to the foregoing. In support thereof, the Debtors respectfully represent:

BACKGROUND

1. On the date hereof (the “*Petition Date*”), each of the Debtors commenced cases (the “*Chapter 11 Cases*”) under chapter 11 of the Bankruptcy Code. 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 an examiner in these Chapter 11 Cases. No official committee has yet been appointed by the Office of the United States Trustee.

2. 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. In addition to its Bahrain headquarters, the Arcapita Group, together with the other Debtors and their non-Debtor Subsidiaries, has offices in Atlanta, London, Hong Kong, and Singapore. 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.

3. The Arcapita Group has approximately \$7 billion in assets currently under management. As of the Petition Date, on a consolidated basis, the Arcapita Group owns assets

valued at approximately \$3.06 billion² and has liabilities of approximately \$2.55 billion.

Approximately \$1.1 billion of the Debtors' prepetition liabilities are comprised of that certain murabaha, Shari'ah-compliant syndicated facility, issued on March 28, 2007, and maturing on March 28, 2012.

JURISDICTION AND VENUE

4. The 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)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

5. As a leading global manager of Shari'ah-compliant alternative investments and an investment bank, the Debtors service a diverse set of clients and customers located throughout the world and, in particular, the Middle East. The successful operation of the Debtors' business depends on providing these clients and customers the high quality service and financial products that they have come to expect from the Debtors. Any interruption in the provision of these services could be disastrous to the Debtors' business. Maintaining the operational capability to provide these products and services, in turn, depends on the Debtors' ability to obtain essential goods and services from select and often irreplaceable vendors.

6. Failure to pay critical and foreign vendors could have disastrous results. Many of these vendors – especially vendors in foreign countries with little to no contacts in the United States – may not be willing to do business with a “Chapter 11 Debtor” absent payment of their prepetition claims. Additionally, despite the global reach of the automatic stay, it is possible (if not likely) that certain Foreign Vendors could seek to enforce their claims versus the

² This includes Arcapita's beneficial interest in assets under management.

Debtors in foreign jurisdictions or otherwise interfere with the Debtors' business outside the United States. Such actions would have both an immediate impact on the Debtors' ability to operate and would have long term effects on the Debtors' ability to attract new business. Simply put, the Debtors' clients and customers will be wary (at best) of entrusting their assets and investments to the Debtors if these parties perceive a risk that such assets and investments might be subject to liens or other enforcement actions by the Debtors' creditors.

7. As a result of the foregoing, and pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors seek interim and final orders (a) authorizing the Debtors, in their sole discretion, to pay all or a portion of the prepetition obligations of certain Critical Vendors and Foreign Vendors, (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks and transfers issued in relation to the foregoing and to rely on the representations of the Debtors as to which checks and transfers are authorized to be paid in accordance with this Motion, and (c) to the extent necessary, authorizing the Debtors to issue replacements for any dishonored check or transfer related to the foregoing.

THE CRITICAL VENDORS

8. In preparation for the Chapter 11 Cases, the Debtors reviewed their contracts with third party contract counterparties to analyze which vendors could be identified as critical. For a vendor to be identified as a "*Critical Vendor*" by the Debtors, it had to meet one of the following two general criteria: either (a) the vendor provides unique or specifically engineered goods or services that are crucial to the continued operation of the Debtors' business, and for which no ready alternative vendors can be found with reasonable diligence; or (b) the vendor provides essential goods and services, for which replacement with alternative vendors would be prohibitively expensive due to the lead time required to change vendors, the alternative vendors' geographical remoteness from the Debtors' operations, and/or the preferential terms

that have been locked in with the current vendor. After considerable analysis, the Debtors have identified a number of Critical Vendors. Many of these parties are also likely Foreign Creditors inasmuch as they provide services to the Debtors in a foreign jurisdiction and, to the Debtors' knowledge, fail to maintain sufficient contacts with the United States to subject themselves to United States jurisdiction.

9. Critical Vendors provide the Debtors with a wide array of services, including: (a) utility services; (b) credit card services; (c) auditing services; (d) building management services; (e) telecommunications services; and (f) security services. Absent these services, the Debtors' operations would be severely impaired. In addition, given the locale, these service providers may be difficult (if not impossible) or cost prohibitive to replace. Below is a brief description of certain services provided by the Critical Vendors:

- Building Management: In the ordinary course of business, the Debtors engage certain professionals to manage and provide services related to their home office. These services range from security to maintenance to technical support. It would be prohibitively expensive to replace these service providers at this time. In addition, the Debtors are currently building quay wall protection around the building. To date, the builder has supplied all required materials and completed approximately 70% of the work related to that project. Non-payment, therefore, could cause the builder to cease work, damaging the Debtors' previous investment in the protection wall.
- Utilities: Multiple local service providers supply the Debtors with various utility services, including electricity and cooling. Continuing receipt of these services is critical to maintaining the Debtors' current operations.
- Credit Cards: In addition to American Express, consistent with past practices, the Debtors also receive local credit card services from one service provider. These credit cards are required for a variety of local, smaller purchases required for the daily operation of the Debtors' businesses.
- Telecommunications: Finally, the Arcapita Group operates worldwide and has offices in numerous countries. Maintaining an

effective telecommunication system which links the headquarters with other offices and travelling employees is crucial to the Debtors' business. Replacement of the current telecommunication providers, thus, would disrupt the Debtors' efforts to coordinate work streams between offices and disrupt the Debtors' businesses.

10. While multiple critical vendors may qualify as foreign vendors, the Debtors have only identified one Critical Vendor that has contacts in the United States and is subject to United States jurisdiction, American Express. The successful operation of the Debtors' business requires the use of American Express credit card services, without which the Debtors could not continue to operate their businesses, or at the very least, would result significant business disruption and likely reduced profitability. American Express provides the Debtors with services worldwide and the Debtors are unaware of anyone in Bahrain other than American Express that offers dollar denominated credit cards. The Debtors have reviewed their business relationships and believe American Express is so essential to operations that the loss of its services would cause immediate and irreparable harm to the Debtors' businesses and operations. Further, replacement of the services provided by American Express, if possible, would only come at a significant cost to the Debtors. Thus, it is essential to the reorganization efforts that the Debtors be allowed to pay American Express.

THE FOREIGN VENDORS

11. Given the global nature of their services, the Debtors must necessarily procure a significant amount of goods and services from vendors with little to no connection with the United States, and for which they may incur fees from foreign governmental and licensing authorities outside the United States (the "*Foreign Vendors*" and, together with the Critical Vendors, the "*Critical and Foreign Vendors*").

12. While the automatic stay is not, by its terms, limited in its geographical scope, as a practical matter, the ability to enforce its provisions may be limited to: (a) creditors

that are subject to the jurisdiction of the United States bankruptcy courts, or (b) creditors in jurisdictions that have agreed to give effect, by comity or treaty, to the bankruptcy laws of the United States. The Debtors provide services to customers across the globe and, in particular, the Middle East. Accordingly, many of the Foreign Vendors lack minimum contacts with the United States and, therefore, are not likely to be subject to the jurisdiction of the Court to enforce the provisions of the automatic stay to protect the Debtors' assets and business operations.

13. Based on the substantial experience of the Debtors' management in the industry and their knowledge of the Foreign Vendors, the Debtors believe there is a significant risk that the Foreign Vendors may consider themselves beyond the jurisdiction of this Court, disregard the automatic stay, and engage in conduct that would disrupt the Debtors' operations. Indeed, among other things, Foreign Vendors may exercise self-help (if permitted under local law), which could include reclaiming vital goods already in the Debtors' possession and shutting down the Debtors' access to essential goods and services needed to maintain the Debtors as a going concern. As noted above, a number of the Foreign Vendors are also Critical Vendors. The Debtors accordingly would be challenged to maintain operations absent the relief sought herein.

14. Foreign Vendors may also attach or foreclose on the Debtors' assets outside the United States, or sue or otherwise initiate legal actions against one or more of the Debtors in a foreign court to recover prepetition amounts owed to them. If these Foreign Vendors were successful in obtaining a judgment against the Debtors, the Foreign Vendors may exercise post-judgment remedies. Because the Debtors may have only limited effective and timely recourse and no practical ability to remedy this situation (absent payment of amounts

sought by Foreign Vendors), their businesses could be irreparably harmed by any such action to the detriment of their estates and their creditors.³

15. As an additional cost of operating an international business, the Debtors incur fees, assessments and other charges (“*Government Fees*”) from various governmental authorities, including Bahraini authorities. The failure by the Debtors to pay relevant and undisputed Government Fees could prove disruptive to the ongoing operation of the Debtors’ business postpetition. While not permitting the Debtors to continue to do business in any relevant country would be a violation of the automatic stay, the disruption to the Debtors’ business caused by any such action outside the jurisdiction of the United States could be significant and immediate and have lasting consequences for ongoing operations. Such possible disruptions would be avoided by permitting the Debtors to pay all Government Fees as they occur in the ordinary course of business. Such payments would also help prevent the Debtors from being unnecessarily audited by foreign authorities, which would divert the Debtors’ attention from the reorganization process. Further, by paying Government Fees, the Debtors would reduce or avoid penalties and interest that might accrue otherwise.

16. Accordingly, the payment of prepetition amounts due to the Foreign Vendors, and the payment of Government Fees, will allow the Debtors to continue to receive goods and services from Foreign Vendors, continue to operate successfully and without disruption in foreign countries, and greatly decrease the risk of potential collection attempts and commencement of involuntary foreign insolvency proceedings.

³ Even if Foreign Vendors stop short of exercising self-help remedies against, foreclosing on, attaching liens on the Debtors’ assets, or commencing litigation or insolvency proceedings, they could cut off trade credit and demand Cash on Delivery terms. This is likely to occur early in the Chapter 11 Cases because Foreign Vendors will be uncertain about what to expect from a U.S. bankruptcy proceeding. Elimination of trade credit could impair the Debtors’ liquidity to the detriment of their reorganization.

PAYMENT OF CRITICAL AND FOREIGN VENDOR CLAIMS

17. The Debtors and their advisors have examined whether the payment of prepetition claims of Critical Vendors, for Critical Goods and Services (the “*Critical Vendor Claims*”), and Foreign Vendors (the “*Foreign Vendor Claims*”) is necessary. Specifically, the Debtors and their advisors have reviewed their accounts payable and undertaken a process to identify those vendors that are essential to the Debtors’ operations. The Debtors have further developed certain procedures (for which they seek the Court’s approval herein) that, when implemented, will ensure that vendors receiving payment of Critical and Foreign Vendor Claims will continue to supply trade credit necessary to the Debtors’ postpetition operations.

18. Based on historical practices, the Debtors estimate that the outstanding prepetition obligations to the Critical Vendors (who are not also Foreign Vendors) is \$150,000. The Debtors currently estimate that amounts owed to all Foreign Vendors total approximately \$1.55 million. This estimate is based on a review of all vendor transactions, identifying all outstanding claims from the vendors that most likely fit within the criteria for a Foreign Vendor. Accordingly, the Debtors estimate the maximum amount needed to pay the Critical and Foreign Vendor Claims is approximately \$2.0 million (the “*Critical and Foreign Vendor Claims Cap*”). The Critical and Foreign Vendor Claims Cap represents the Debtors’ best estimate as to the maximum amount the Debtors must pay to continue the supply of critical goods and services (although the Debtors hope to pay much less) based on payables received through March 2012. In calculating the amounts owed to Critical and Foreign Vendors and setting the Critical and Foreign Vendor Claims Cap, the Debtors have added a modest cushion⁴ to known current

⁴ This cap includes an approximately cushion of less than 20% above the known claims of Critical and Foreign Vendors and is approximately \$300,000.

payables to take into account outstanding pre-petition invoices from both Critical and Foreign Vendors that have not yet been received and/or processed.

19. To determine the amount of the Critical and Foreign Vendor Claims Cap, the Debtors considered, among other things: (a) which vendors/service providers the Debtors absolutely needed to continue to operate without disruption; (b) which vendors/service providers would be prohibitively expensive to replace; (c) which vendors/service providers present an unacceptable risk should they threaten not to provide services or supplies postpetition; (d) which vendors/service providers may have lien rights; and (e) which vendors/service providers may maintain little or no contacts with the United States such that the automatic stay may be rendered ineffective against them. Once they accumulated this information, the Debtors estimated the amounts they believed would be required to pay each vendor/service provider to ensure the continued supply of critical goods and services. The Critical and Foreign Vendor Claims Cap represents this estimated amount.

20. The Debtors' proposed Critical and Foreign Vendor Claims Cap is within the range of amounts awarded by courts in other cases in this District. *See, e.g., In re Old Carco LLC (f/k/a Chrysler LLC)*, Case No. 09-50002 (AJG) (Bankr. S.D.N.Y. May 20, 2009) [Docket No. 1318] (granting the debtor authority to pay approximately \$2.3 billion in essential supplier claims); *In re Lyondell Chemical Company, Inc.*, Case No. 09-10023 (REG) (Bankr. S.D.N.Y. January 23, 2009) [Docket No. 360] (granting the debtor authority to pay \$30,000,000 in critical vendor claims); *In re Dana Corp.*, Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. March 29, 2006) [Docket No. 722] (granting the debtor authority to pay prepetition claims of essential suppliers up to \$52.1 million); *In re Calpine Corp.*, Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. Dec. 21, 2005) [Docket No. 30] (court granted the debtor authority to pay \$20,000,000 in critical vendor claims); *In re Delphi Corp.*, Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 13, 2005) [Docket

No. 197] (court granted debtor authority to pay \$90,000,000 in the debtors' vendor rescue program); *In re WorldCom, Inc.*, Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Jul. 22, 2002) [Docket No. 64] (court granted debtor authority to pay \$70,000,000 in critical vendor claims); *In re Enron Corp.*, Case No. 01-16034 (AJG) (Bankr. S.D.N.Y. Dec. 3, 2001) [Docket No. 35] (court approved \$48,000,000 in critical vendor claims).⁵

CONDITIONS OF CRITICAL VENDOR PAYMENT

21. To minimize the amount of payments required, the Debtors request authority to identify Critical Vendors (who are not also Foreign Vendors) in the ordinary course of their businesses rather than simply listing them in this Motion. Identifying the Critical Vendors now would likely cause all such vendors to demand payment in full, resulting in either a disruption in the Debtors' operations or a further depletion of estate assets. The Debtors propose to pay, in their sole discretion, the Critical Vendor Claims of each Critical Vendor (who is not also a Foreign Vendor) that agrees to continue to supply goods or services to the Debtors on either the Critical Vendor's "Customary Trade Terms" or on other favorable terms as are acceptable to the Debtors. As used herein, "Customary Trade Terms" means, with respect to a Critical Vendor: (a) the normal trade terms, practices, and programs that were most favorable to the Debtors in effect prior to the Petition Date; or (b) such other trade terms as agreed by the Debtors and Critical Vendor so long as the Critical Vendor extends trade credit to the Debtors.

22. If a Critical Vendor (who is not also a Foreign Vendor) refuses to continue to supply goods or services to the Debtors on the Customary Trade Terms, then the Debtors may, in their discretion and without further order of the Court, exercise the following rights: (a)

⁵ The Debtors have not annexed copies of the unreported orders cited herein because of their size. Copies of these orders, however, are available upon request of the Debtors' counsel, including at the hearing to consider the Motion.

declare the payment of the Critical Vendor Claim a voidable postpetition transfer under section 549(a) of the Bankruptcy Code that the Debtors may seek to avoid and recover in cash or goods; and (b) return the parties to their original positions (i.e., immediately prior to the entry of the order approving the relief sought herein) by reinstating the Critical Vendor Claim and demanding the immediate return of the Debtors' payment of the Critical Vendor Claim (to the extent that the amounts exceed post-petition amounts owed by the Debtors without giving effect to setoff, recoupment, adjustments, etc.).

23. To ensure Critical Vendors transact business as set forth herein, the Debtors propose to implement the following procedures as a condition precedent to paying any Critical Vendor (who is not also a Foreign Vendor): (a) the Debtors shall deliver a letter agreement (the "Critical Vendor Letter Agreement") substantially in the form attached hereto as Exhibit B to the Critical Vendors, which must be executed thereby and returned to the Debtors, together with a copy of the order granting this Motion; and (b) payment of Critical Vendor Claims is accompanied by the following statement (which may be printed on the back of the check):

By accepting this payment, the payee agrees to the terms of the Order of the U.S. Bankruptcy Court for the Southern District of New York, dated _____, 2012, in the chapter 11 cases of **Arcapita Bank B.S.C.(c)** (Cases No. 12-11076 (SHL) through 12-11081 (SHL)), entitled "Order Authorizing (A) Debtors To Pay Certain Prepetition Claims Of Critical and Foreign Vendors And Certain Administrative Claimholders, And (B) Financial Institutions To Honor And Process Related Checks And Transfers" and submits to the jurisdiction of such Bankruptcy Court for enforcement thereof.

24. As an additional condition precedent to payment of the Critical Vendor Claims, the Debtors submit that a Critical Vendor must agree to remove any existing trade liens or encumbrances against any property of any Debtors (or affiliates thereof) at such Critical

Vendor's sole cost and expense, and waive any right to assert a trade lien on account of the paid Critical Vendor Claim.

THE FINANCIAL INSTITUTIONS SHOULD BE AUTHORIZED TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

25. In connection with the foregoing, the Debtors respectfully request that the Court enter interim and final orders: (a) authorizing all applicable banks and other financial institutions to receive, process, honor, and pay all checks and transfers issued by the Debtors in connection with the payment of the Critical and Foreign Vendor Claims, without regard to whether any check or transfer was issued before or after the Petition Date; (b) providing that all banks and other financial institutions may rely on the representations of the Debtors with respect to whether any check or transfer issued or made by the Debtors before the Petition Date should be honored pursuant to this Motion, and such banks and other financial institutions shall not have any liability to any party for relying on such representations by the Debtors as provided for herein; and (c) authorizing the Debtors to issue replacement checks or transfers, to the extent any check or transfer in relation to the Critical and Foreign Vendor Claims is dishonored or rejected by the banks and other financial institutions.

BASIS FOR RELIEF REQUESTED

26. The payment of Critical Vendors is necessary to preserve operations and successfully reorganize. If the relief sought in this Motion is not granted, Critical Vendors may attempt to assert their considerable leverage and deny the Debtors essential goods and services going forward. Moreover, Critical Vendors would have no incentive to continue to finance the Debtors on Customary Trade Terms.

27. Similarly, the failure to pay Foreign Vendors would result in a serious disruption to the Debtors' substantial foreign operations, since these Foreign Vendors are least

likely to recognize a foreign stay or the authority of the Court. Likewise, foreign authorities may seek to impose penalties and interest or other burdens on vessels that could impair the Debtors' ability to operate if necessary Government Fees are not paid. As stated, by the very nature of their business, the Debtors operate worldwide and, in particular, the Middle East, and while some of these jurisdictions may recognize the authority of this Court and/or the automatic stay, such recognition is likely to come only after substantial cost, delay and effort by the Debtors at the expense of impairment to their going operations. Other jurisdictions may simply ignore this Court and our bankruptcy laws. More importantly, many of these Foreign Vendors may also be Critical Vendors that supply the Debtors with Critical Goods and Services that Debtors would be impaired without access to.

28. Accordingly, upon the exercise of their business judgment, the Debtors believe that the payment of the Critical and Foreign Vendor Claims as set forth herein is necessary to a successful chapter 11 reorganization and in the best interests of the Debtors' estates and creditors.

A. The Court May Authorize Payment of Critical and Foreign Vendor Claims and Taxes and Fees Pursuant to Section 105(a) of the Bankruptcy Code and the "Necessity of Payment" Doctrine

29. The Court may authorize the Debtors to pay the prepetition Critical and Foreign Vendor Claims pursuant to section 105 of the Bankruptcy Code and the "doctrine of necessity." Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). "Under [section] 105, the court can permit pre-plan payment of a

pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177); accord *In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (“To invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is ‘critical to the debtor’s reorganization.’”) (quoting *In re Financial News Network, Inc.*, 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991)); see also *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.”).

30. Federal courts have consistently permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. See, e.g., *Miltenberger v. Logansport Ry.*, 106 U.S. 286, 311-12 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent “stoppage of [crucial] business relations”); *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that “if payment of a claim which arose prior to reorganization is essential to the continued operation of the...[business] during reorganization, payment may be authorized even if it is made out of [the] corpus”); *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945), cert. denied 325 U.S. 873 (1945) (extending doctrine for payment of prepetition claims beyond railroad reorganization cases); *Michigan Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285-87 (S.D.N.Y. 1987), appeal dismissed, 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

31. The “doctrine of necessity” functions in a chapter 11 reorganization as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. See *In re Boston &*

Me. Corp., 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors' continued operation); *In re Just for Feet, Inc.*, 242 B.R. at 824 (“[C]ourts have used their equitable power under section 105(a) of the Code to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization.”). The court in *In re Structurelite Plastics Corp.* observed the decisional authority which supports “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.’” 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (quoting *In re Chateaugay Corp.*, 80 B.R. at 287). Indeed, the *Structurelite Plastics* Court stated that “a *per se* rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *Id.* at 932. The rationale for the doctrine of necessity rule is consistent with the paramount goal of chapter 11: “facilitating the continued operation and rehabilitation of the debtor” *Ionosphere Clubs*, 98 B.R. at 176.

B. Payment of Prepetition Critical and Foreign Vendor Claims and Government Fees Is Authorized Under Section 363 of the Bankruptcy Code

32. The Court may authorize the Debtors to pay the prepetition Critical and Foreign Vendor Claims pursuant to section 363 of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s decision to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of that debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Co. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992)

(holding that a court determining an application pursuant to section 363(b) must find from the evidence a good business reason to grant such application); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003) (same); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (standard for determining a section 363(b) motion is whether the debtor has a “good business reason” for the requested relief). In addition, section 363(c) allows a debtor-in-possession to enter into transactions involving property of the estate in the ordinary course of business without an order of the court. *See, e.g., Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 395 n.2 (S.D.N.Y. 1983) (“Insofar as transactions are actually in the ordinary course, they are authorized automatically by § 363(c)(1) and § 1107(a), and do not require Bankruptcy Court approval.”).

33. The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). Significantly, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this district have consistently been unwilling to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and will uphold a board’s

decisions as long as they are attributable to any “rational business purpose.” *Integrated Res. Inc.*, 147 B.R. at 656.

C. Bankruptcy Courts in This District Routinely Grant Motions to Pay Prepetition Critical and Foreign Vendor Claims and Government Fees Under Similar Circumstances and Should Do So in the Instant Case

34. Courts in this district have routinely authorized the payment of prepetition claims of critical vendors in complex reorganizations where such payment is: (a) in the best interest of the estate and its creditors; and (b) essential to maintaining the debtor’s operations. *See, e.g., In re TBS Shipping Services Inc.*, No. 12-22224 (RDD) (Bankr. S.D.N.Y. 2012) [Docket No. 87]; *In re General Maritime Corporation*, No. 11-15285 (MG) (Bankr. S.D.N.Y. December 15, 2011) [Docket No. 138]; *In re Sbarro, Inc.*, No. 11-11527 (SCC) (Bankr. S.D.N.Y. Apr. 5, 2011) [Docket No. 162]; *In re Great Atlantic & Pacific Tea Co.*, No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 13, 2011) [Docket No. 504]; *In re Old Carco LLC (f/k/a Chrysler LLC)*, Case No. 09-50002 (AJG) (Bankr. S.D.N.Y. May 20, 2009) [Docket No. 1318]; *In re Lyondell Chemical Company, Inc.*, Case No. 09-10023 (REG) (Bankr. S.D.N.Y. January 23, 2009) [Docket No. 360].⁶

35. Courts in this district have similarly authorized payment to foreign creditors (including foreign governments) in complex reorganizations where such payment is: (i) in the best interest of the estate and its creditors; (ii) essential to maintaining the debtor’s operations; and (iii) imperative to preventing foreign creditors from taking action against the debtor in foreign countries. *See, e.g., In re Marco Polo Seatrade, B.V.*, No-13634 (JMP) (Bankr. S.D.N.Y. Sept. 15, 2011) [Docket No. 142]; *In re Almatris B.V.*, Case No. 10-12308 (MG)

⁶ The Debtors have not annexed copies of the unreported orders cited herein because of their size. Copies of these orders, however, are available upon request of the Debtors’ counsel, including at the hearing to consider the Motion.

(Bankr. S.D.N.Y. May 17, 2010) [Docket No. 117]; *In re Lyondell Chemical Company, Inc.*,
Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 23, 2009) [Docket No. 364].

36. In the instant case, the Debtors firmly believe that the uninterrupted supply of goods and services provided by the Critical and Foreign Vendors are imperative to their ongoing operations and viability, and to a successful reorganization. As the foregoing authority amply supports, where the ability to pay promptly prepetition claims of Critical Vendors and the Foreign Vendors as well as the Government Fees is necessary to prevent disruption to the Debtors' business operations, courts are fully empowered to authorize such payments. Further, the satisfaction of the prepetition claims of Critical Vendors and Foreign Vendors will enable the Debtors to preserve their business operations and safeguard the confidence and goodwill of their suppliers and service providers. Without the requested relief, which is sought based on a rational exercise of the Debtors' business judgment, the interests of all creditors and the Debtors' reorganization efforts could be jeopardized. Therefore, the Debtors respectfully submit that the relief sought herein is fully justified by sections 105 and 363 of the Bankruptcy Code, as well as the "doctrine of necessity."

37. The relief sought herein, however, shall not be construed to limit, or in any way affect, the Debtors' ability to contest any invoice or other charge or claim of any Critical Vendor Claim on any grounds.

**IMMEDIATE RELIEF IS NECESSARY TO AVOID IMMEDIATE
AND IRREPARABLE HARM**

38. Bankruptcy Rule 6003 provides that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that

arose before the filing of the petition” Fed. R. Bankr. P. 6003(b). As described herein, the Debtors will suffer immediate and irreparable harm without Court authorization to pay the Critical Vendor Claims and Foreign Vendor Claims. Consequently the relief requested herein is consistent with Bankruptcy Rule 6003.

REQUEST FOR WAIVER OF STAY

39. To implement the foregoing immediately, the Debtors respectfully request a waiver of the notice requirements under Bankruptcy Rule 6004(a).

40. Furthermore, to implement the foregoing immediately, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), any “order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth above, proposed payment of the prepetition claims of the Critical and Foreign Vendors is essential to prevent potentially irreparable damages to the Debtors’ operations, value and ability to reorganize. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h).

DEBTORS’ RESERVATION OF RIGHTS

41. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors; a waiver of the Debtors’ rights to dispute any claim; or an approval, assumption or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any invoice or claim with respect to Critical Vendors and the Foreign Vendors in accordance with applicable non-bankruptcy law, and to assume or reject any agreements with Critical Vendors and the Foreign Vendors in accordance with the applicable provisions of the

Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

NOTICE

42. No trustee, examiner, or official committee of unsecured creditors 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 (Attn: Richard Morrissey, Esq.), (ii) Kasowitz Benson Torres & Friedman LLP, 1633 Broadway, New York, New York 10019 (Attn: David Friedman, Esq. and David Mark, Esq.) as attorneys for Euroville, S.a.r.l., (iii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Stephen Karotkin, Esq.), as attorneys for Midtown Acquisitions, LLC, and (iv) all parties listed on the Master Service List established in these Chapter 11 Cases. A copy of this Motion is also available on GCG's case administration website, www.gcginc.com/cases/arcapita.

NO PRIOR REQUEST

43. 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
March 26, 2012

Respectfully submitted,

/s/ Michael A. Rosenthal

Michael A. Rosenthal (MR-7006)

Janet M. Weiss (JW-5460)

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PROPOSED ATTORNEYS FOR THE DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

Proposed Interim 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		

**INTERIM ORDER AUTHORIZING (A) DEBTORS TO
PAY CERTAIN PREPETITION CLAIMS OF CRITICAL AND
FOREIGN VENDORS; AND (B) FINANCIAL INSTITUTIONS TO
HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

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 (collectively, the “*Debtors*” and each, a “*Debtor*”) in the above-captioned chapter 11 cases (the “*Chapter 11 Cases*”), for entry of interim and final orders (a) authorizing the Debtors to pay all or a portion of the prepetition claims of critical and foreign vendors (the “*Critical and Foreign Vendors*”); (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks and transfers issued in relation to the foregoing and to rely on the representations of the Debtors as to which checks and transfers are authorized to be paid in accordance with this Motion; and (c) to the extent necessary, authorizing the Debtors to issue replacements for any dishonored check or transfer related to the foregoing; and upon the Thompson Declaration in support thereof; and the Court having found that it has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that 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

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

found that the relief requested in the Motion is in the best interests of 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 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 Motion is granted to the extent set forth herein on an interim basis.
2. The Debtors are authorized to pay in the ordinary course of the Debtors' businesses some or all of the prepetition claims that are due and owing to the Critical and Foreign Vendors (the "**Critical and Foreign Vendor Claims**"), in an aggregate amount not to exceed \$2.0 million (the "**Critical and Foreign Vendor Claims Cap**").
3. Notwithstanding anything contained herein to the contrary, with respect to Critical Vendors (that are not also Foreign Vendors), the Debtors are authorized to pay Critical Vendors (subject to the Critical and Foreign Vendor Claims Cap) that agree to continue to supply goods or services to the Debtors on such Critical Vendor's "**Customary Trade Terms**" or on other such favorable terms as are acceptable to the Debtors. As used herein, "**Customary Trade Terms**" means, with respect to a Critical Vendor: (a) the normal trade terms, practices and programs that were most favorable to the Debtors in effect prepetition; or (b) such other trade terms as agreed by the Debtors and Critical Vendor so long as the Critical Vendor extends trade credit to the Debtors.

4. This Order is entered without prejudice to the Debtors' right to request further authority from this Court, after notice and a hearing, to pay any amounts owed to Critical Vendors or Foreign Vendors in excess of the Critical and Foreign Vendor Claims Cap.

5. The Debtors shall determine, in the ordinary course of business, the Critical Vendors by considering, among other things: (a) which vendors/services providers supply goods or services to the Debtors needed to continue to operate their businesses without disruption; (b) which vendors/service providers would be prohibitively expensive to replace; and (c) which vendors/ service providers present an unacceptable risk should they threaten not to provide services or supplies postpetition.

6. The Debtors shall determine, in the ordinary course of business, Foreign Vendors by considering, among other things, which vendors/service providers may have lien rights, and which vendors/service providers may maintain little or no contacts with the United States such that the automatic stay may be rendered ineffective against them.

7. The Debtors shall undertake all appropriate efforts to cause Critical Vendors (who are not also Foreign Vendors) to enter into a letter agreement (the "***Critical Vendor Letter Agreement***") substantially in the form attached to the Motion as ***Exhibit C***.

8. The Debtors are authorized to enter into Critical Vendor Letter Agreements when the Debtors determine, in the exercise of their reasonable business judgment, that it is appropriate to do so.

9. The Debtors' inability to enter into a Critical Vendor Letter Agreement shall not preclude them from paying a Critical Vendor Claim when, in the exercise of their reasonable business judgment, such payment is necessary to the Debtors' operations.

10. If the Debtors determine that a Critical Vendor has not complied with the terms and provisions of the Critical Vendor Letter Agreement or has failed to continue to provide Customary Trade Terms following the date of such agreement, or on such terms as were otherwise agreed to between the Debtors and such critical vendor, the Debtors may terminate a Critical Vendor Letter Agreement, together with the other benefits to the Critical Vendor as contained in this Order, *provided, however*, that the Critical Vendor Letter Agreement may be reinstated if: (a) such determination is subsequently reversed by the Court for good cause after it is shown that the determination was materially incorrect after notice and a hearing following a motion from the Critical Vendor; (b) the underlying default under the Critical Vendor Letter Agreement is fully cured by the Critical Vendor not later than five business days after the date the initial default occurred; or (c) the Debtors, in their sole and absolute discretion, reach a subsequent agreement with the Critical Vendor.

11. If a Critical Vendor Letter Agreement is terminated as set forth above, or if a Critical Vendor that has received payment of a prepetition claim later refuses to continue to supply goods or services in compliance with the Critical Vendor Letter Agreement, on the Customary Trade Terms, or on such other favorable credit terms as were agreed to between the Debtors and such Critical Vendor, then the Debtors may, in their discretion and without further order of the Court, exercise the following rights: (a) declare the payment of the Critical Vendor Claim a voidable postpetition transfer under section 549(a) of the Bankruptcy Code that the Debtors may seek to avoid and recover in cash or goods; and (b) return the parties to their original positions (*i.e.*, immediately prior to the entry of this Order) by reinstating the Critical Vendor Claim and demanding the immediate return the Debtors' payment of the Critical Vendor

Claim (to the extent that the amounts exceed postpetition amounts owed by the Debtors without giving effect to setoff, recoupment, adjustments, etc.).

12. All Critical Vendor Letter Agreements shall be deemed to have terminated, together with the other benefits to Critical Vendors as contained in this Order, upon entry of an order converting the Debtors' Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

13. The Debtors are authorized to pay fees, assessments and other charges ("*Fees*") from various governmental and licensing authorities that are necessary to continue the Debtors' international operations.

14. This Order shall not be construed to limit, or in any way affect, the Debtors' ability to contest any invoice or other charge or claim of any Critical or Foreign Vendor.

15. All applicable banks and other financial institutions are hereby authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfers regarding amounts authorized to be paid by the Debtors under this Order, without regard to whether any check or transfer was issued before or after the Petition Date. Such banks and other financial institutions may rely on the representations of the Debtors with respect to whether any check or transfer issued by the Debtors before the Petition Date should be honored pursuant to this Order, and shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

16. The Debtors are authorized, in their sole discretion and to the extent necessary, to issue checks and transfers postpetition to replace any checks or transfers in respect of the Foreign Vendors' claims that are dishonored or rejected.

17. Nothing contained in this Order shall be deemed to constitute an assumption of any executory contract or to require the Debtors to make any of the payments authorized herein.

18. Any payment made pursuant to this Order is not, and shall not be, deemed an admission to the validity of the underlying obligation or waiver of any rights the Debtors may have to subsequently dispute such obligation.

19. Notwithstanding entry of this Order, the Debtors' rights to seek enforcement of the automatic stay provisions of section 362(a) of the Bankruptcy Code with respect to any creditor that demands payment of their prepetition debts as a condition to doing business with the Debtors postpetition are preserved.

20. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

21. The final hearing on the relief requested in the Motion shall be on April 17, 2012 at 11:00 a.m. (prevailing Eastern Time). The deadline by which objections to entry of the Final Order must be filed is April 8, 2012 at 4:00 p.m. (prevailing Eastern Time) and served upon (i) proposed counsel to 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 (Attn: Richard Morrissey, Esq.), (iii) Kasowitz Benson Torres & Friedman LLP, 1633 Broadway, New York, New York 10019 (Attn: David Friedman, Esq. and David Mark, Esq.) as attorneys for Euroville, S.a.r.l.; and (iv) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Stephen Karotkin, Esq.), as attorneys for Midtown Acquisitions,

LLC. If no objections are timely filed, the Court may enter the Final Order without further notice or hearing.

22. Notwithstanding Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

23. The notice requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

24. 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

EXHIBIT B

Proposed Final 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

**FINAL ORDER AUTHORIZING (A) DEBTORS TO PAY CERTAIN
PREPETITION CLAIMS OF CRITICAL AND FOREIGN VENDORS;
AND (B) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS
RELATED CHECKS AND TRANSFERS**

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 (collectively, the “*Debtors*” and each, a “*Debtor*”) in the above-captioned chapter 11 cases (the “*Chapter 11 Cases*”), for entry of interim and final orders (a) authorizing the Debtors to pay all or a portion of the prepetition claims of critical and foreign vendors (the “*Critical and Foreign Vendors*”); (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks and transfers issued in relation to the foregoing and to rely on the representations of the Debtors as to which checks and transfers are authorized to be paid in accordance with this Motion, and (c) to the extent necessary, authorizing the Debtors to issue replacements for any dishonored check or transfer related to the foregoing; and upon the Thompson Declaration in support thereof; and the Court having found that it has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that venue of this proceeding and the

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

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 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 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 Motion is granted to the extent set forth herein on a final basis.
2. The Debtors are authorized to pay in the ordinary course of the Debtors' businesses some or all of the prepetition claims which are due and owing to the Critical and Foreign Vendors (the "**Critical and Foreign Vendor Claims**"), in an aggregate amount not to exceed \$2.0 million (the "**Critical Vendor Claims Cap**").
3. Notwithstanding anything contained herein to the contrary, with respect to Critical Vendors (who are not also Foreign Vendors), the Debtors are authorized to pay Critical Vendors (subject to the Critical and Foreign Vendor Claims Cap) who agree to continue to supply goods or services to the Debtors on such Critical Vendor's "**Customary Trade Terms**" or on other such favorable terms as are acceptable to the Debtors. As used herein, "**Customary Trade Terms**" means, with respect to a Critical Vendor: (a) the normal trade terms, practices and programs that were most favorable to the Debtors in effect prepetition; or (b) such other

trade terms as agreed by the Debtors and Critical Vendor so long as the Critical Vendor extends trade credit to the Debtors.

4. This Order is entered without prejudice to the Debtors' right to request further authority from this Court, after notice and a hearing, to pay any amounts owed to Critical and Foreign Vendors in excess of the Critical and Foreign Vendor Claims Cap.

5. The Debtors shall determine, in the ordinary course of business, who is a Critical or Foreign Vendor by considering, among other things: (a) which vendors/service providers the Debtors absolutely need to continue to operate without disruption; (b) which vendors/service providers would be prohibitively expensive to replace; and (c) which vendors/service providers present an unacceptable risk should they threaten to not provide services or supplies postpetition.

6. The Debtors shall determine, in the ordinary course of business, who is a Foreign Vendor by considering, among other things, which vendors/service providers may have lien rights and which vendors/service providers may maintain little or no contacts with the United States such that the automatic stay may be rendered ineffective against them.

7. The Debtors shall undertake all appropriate efforts to cause Critical Vendors (who are not also Foreign Vendors) to enter into a letter agreement (the "***Critical Vendor Letter Agreement***") substantially in the form attached to the Motion as ***Exhibit C***.

8. The Debtors are authorized to enter into Critical Vendor Letter Agreements when the Debtors determine, in the exercise of their reasonable business judgment, that it is appropriate to do so.

9. The Debtors' inability to enter into a Critical Vendor Letter Agreement shall not preclude them from paying a Critical Vendor Claim when, in the exercise of their reasonable business judgment, such payment is necessary to the Debtors' operations.

10. If the Debtors determine that a Critical Vendor has not complied with the terms and provisions of the Critical Vendor Letter Agreement or has failed to continue to provide Customary Trade Terms following the date of such agreement, or on such terms as were otherwise agreed to between the Debtors and such critical vendor, the Debtors may terminate a Critical Vendor Letter Agreement, together with the other benefits to the Critical Vendor as contained in this Order, *provided, however*, that the Critical Vendor Letter Agreement may be reinstated if: (a) such determination is subsequently reversed by the Court for good cause after it is shown that the determination was materially incorrect after notice and a hearing following a motion from the Critical Vendor ; (b) the underlying default under the Critical Vendor Letter Agreement is fully cured by the Critical Vendor not later than five business days after the date the initial default occurred; or (c) the Debtors, in their sole and absolute discretion, reach a subsequent agreement with the Critical Vendor .

11. If a Critical Vendor Letter Agreement is terminated as set forth above, or if a Critical Vendor that has received payment of a prepetition claim later refuses to continue to supply goods or services in compliance with the Critical Vendor Letter Agreement, on the Customary Trade Terms, or on such other favorable credit terms as were agreed to between the Debtors and such Critical Vendor , then the Debtors may, in their discretion and without further order of the Court, exercise the following rights: (a) declare the payment of the Critical Vendor Claim a voidable post-petition transfer under section 549(a) of the Bankruptcy Code that the Debtors may seek to avoid and recover in cash or goods; and (b) return the parties to their

original positions (*i.e.*, immediately prior to the entry of this Order) by reinstating the Critical Vendor Claim and demanding the immediate return the Debtors' payment of the Critical Vendor Claim (to the extent that the amounts exceed post-petition amounts owed by the Debtors without giving effect to setoff, recoupment, adjustments, etc.).

12. All Critical Vendor Letter Agreements shall be deemed to have terminated, together with the other benefits to Critical Vendors as contained in this Order, upon entry of an order converting the Debtors' Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

13. The Debtors are authorized to pay fees, assessments and other charges ("*Fees*") from various governmental and licensing authorities that are necessary to continue the Debtors' international operations.

14. This Order shall not be construed to limit, or in any way affect, the Debtors' ability to contest any invoice or other charge or claim of any Critical Vendor or any Foreign Vendor.

15. All applicable banks and other financial institutions are hereby authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfers regarding amounts authorized to be paid by the Debtors under this Order, without regard to whether any check or transfer was issued before or after the Petition Date. Such banks and other financial institutions may rely on the representations of the Debtors with respect to whether any check or transfer issued by the Debtors before the Petition Date should be honored pursuant to this Order, and shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

16. The Debtors are authorized, in their sole discretion and to the extent necessary, to issue checks and transfers postpetition to replace any checks or transfers in respect of the Critical and Foreign Vendors' claims that are dishonored or rejected.

17. Nothing contained in this Order shall be deemed to constitute an assumption of any executory contract or to require the Debtors to make any of the payments authorized herein.

18. Any payment made pursuant to this Order is not, and shall not be, deemed an admission to the validity of the underlying obligation or waiver of any rights the Debtors may have to subsequently dispute such obligation.

19. Notwithstanding entry of this Order, the Debtors' rights to seek enforcement of the automatic stay provisions of section 362(a) of the Bankruptcy Code with respect to any creditor that demands payment of their prepetition debts as a condition to doing business with the Debtors postpetition are preserved.

20. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

21. Notwithstanding Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

22. The notice requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

23. 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

EXHIBIT C

Proposed Form of Critical Vendor Letter Agreement

[DEBTORS' LETTERHEAD]

_____, 2012

TO: [Critical Vendor]

[Name]

[Address]

Dear Vendor:

As you are no doubt aware, Arcapita Bank B.S.C.(c) and certain of its affiliates (collectively, the "**Company**") filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") on March 19, 2012 (the "**Petition Date**"). Despite the commencement of the Debtors' chapter 11 cases ("**Bankruptcy Cases**") the Debtors continue to operate their businesses and manage their properties as debtors in possession as allowed by the Bankruptcy Code. On the Petition Date, in addition to requesting other time-sensitive relief, the Company requested that the Bankruptcy Court authorize the Company to pay pre-bankruptcy claims of certain U.S. and foreign vendors and service providers in recognition of the importance of the Company's relationship therewith and its desire that the Bankruptcy Cases have as little effect on the Company's ongoing business operations as possible. On [_____, 2012], the Bankruptcy Court entered an order (the "**Order**") authorizing the Company, under certain conditions, to pay the prepetition claims of certain critical suppliers and service providers that are essential to the Company's reorganization (the "**Critical Vendor(s)**"). However to receive treatment as a Critical Vendor, you must (a) agree to the terms set forth below and (b) to be bound by the terms of the enclosed Order.

As a condition for the Company's payment of your prepetition claims as a Critical Vendor, you must agree to continue to supply goods and services to the Company based on "**Customary Trade Terms**," which is defined in the Order as: (a) the normal trade terms, practices and programs that were most favorable to the Debtors in effect prior to the Petition Date; or (b) such other trade terms as agreed by the Debtors and Critical Vendor so long as the Critical Vendor extends trade credit to the Debtors.

For purposes of administration of this Critical Vendor program as authorized by the Bankruptcy Court, you and the Company both agree as follows:

1. The estimated amount of the prepetition claim (net of any setoffs, credits or discounts) (the "**Critical Vendor Claim**") for which you are seeking payment from the Company is \$_____.

2. You expressly waive any general unsecured claim on account of the Critical Vendor Claim against the Company.
3. You will provide an open trade balance or credit line to the Company for shipment of postpetition goods in the amount of \$_____ (which shall not be less than the greater of the open trade balance outstanding on: (a) _____; or (b) normal and customary terms on a historical basis before and up to the Petition Date).
4. The terms of such open trade balance or credit line are as follows (if more space is required, attach continuation pages):

5. During the pendency of the Bankruptcy Cases you agree to continue to extend to the Company all Customary Trade Terms (as defined in the Order).
6. You will not demand a lump sum payment upon consummation of a plan of reorganization in these chapter 11 cases on account of any administrative expense priority claim you assert, but instead agree that such claims will be paid in the ordinary course of business after consummation of a plan under applicable Customary Trade Terms, if the plan provides for the ongoing operations of the Company.
7. The undersigned, a duly authorized representative of [Critical Vendor], has reviewed the terms and provisions of the Order and agrees that [Critical Vendor] is legally bound by such terms.
8. You will not separately seek payment for reclamation and similar claims outside of the terms of the Order unless your participation in the Critical Vendor payment program authorized by the Order (the "***Critical Vendor Payment Program***") is terminated.
9. You will not file or otherwise assert against the Company, the estates or any other person or entity or any of their respective assets or property (real or personal) any lien (regardless of the statute or other legal authority upon which such lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to you by the Company arising from agreements entered into prior to the Petition Date. Furthermore, you agree to take (at your own expense) all necessary steps to remove any such lien as soon as possible.

10. If either the Critical Vendor Payment Program or your participation therein terminates as provided in the Order, or you later refuse to continue to supply goods and services to the Company on Customary Trade Terms during these Bankruptcy Cases, you must immediately repay to the Company any and all payments made to you on account of your Critical Vendor Claim to the extent that the amounts exceed postpetition amounts owed to you by the Company without giving effect to setoff, recoupment, adjustments, etc. Upon repayment, your Critical Vendor Claim will be reinstated in such an amount so as to restore the Company and you to the same positions as would have existed if payment of the Critical Vendor Claim had not been made. Failure to immediately return the Critical Vendor Claim payments will result in the payments being deemed voidable postpetition transfers under section 549(a) of the Bankruptcy Code, which are recoverable by the estate.

11. Any dispute with respect to this letter agreement, the Order and/or your participation in the Critical Vendor Payment Program shall be determined by the Bankruptcy Court.

If you have any questions about the foregoing terms of our agreement, the Critical Vendor Payment Program, the Order, or our Bankruptcy Cases, please do not hesitate to call.

Sincerely,

[NAME OF DEBTOR]

By: _____

Name:

Title:

ACCEPTED AND AGREED BY:

[NAME OF CRITICAL VENDOR]

By: _____

Its: _____

Dated: _____, 2012