

HEARING DATE AND TIME: March 29, 2012 at 11:00 a.m. (Eastern Time)

OBJECTION DEADLINE: March 28, 2012 at 12:00 p.m. (Eastern Time)

**GIBSON, DUNN & CRUTCHER LLP**

Michael A. Rosenthal (MR-7006)

Janet M. Weiss (JW-5460)

Matthew K. Kelsey (MK-3137)

200 Park Avenue

New York, New York 10166-0193

Telephone: (212) 351-4000

Facsimile: (212) 351-4035

Proposed Attorneys for the Debtors  
and Debtors in Possession

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

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

**NOTICE OF HEARING ON DEBTORS' MOTION FOR ENTRY OF INTERIM  
AND FINAL ORDERS AUTHORIZING THE DEBTORS TO (A) PAY  
CERTAIN PREPETITION WAGES, SALARIES, AND REIMBURSABLE  
EMPLOYEE EXPENSES, (B) PAY AND HONOR EMPLOYEE MEDICAL  
AND SIMILAR BENEFITS, AND (C) CONTINUE EMPLOYEE  
COMPENSATION AND EMPLOYEE BENEFIT PROGRAMS**

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 Court<sup>1</sup> 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, 21<sup>st</sup> 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**”).

---

<sup>1</sup> 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  
Michael A. Rosenthal (MR-7006)  
Janet M. Weiss (JW-5460)  
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

**PROPOSED ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION**

**GIBSON, DUNN & CRUTCHER LLP**

Michael A. Rosenthal (MR-7006)

Janet M. Weiss (JW-5460)

Matthew K. Kelsey (MK-3137)

200 Park Avenue

New York, New York 10166-0193

Telephone: (212) 351-4000

Facsimile: (212) 351-4035

Proposed Attorneys for the Debtors  
and Debtors in Possession

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

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

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS AUTHORIZING THE DEBTORS TO (A) PAY CERTAIN  
PREPETITION WAGES, SALARIES, AND REIMBURSABLE EMPLOYEE  
EXPENSES, (B) PAY AND HONOR EMPLOYEE MEDICAL AND SIMILAR  
BENEFITS, AND (C) CONTINUE EMPLOYEE COMPENSATION  
AND EMPLOYEE BENEFIT PROGRAMS**

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 an interim order, substantially in the forms annexed hereto as *Exhibit A* (the "*Interim Order*") and a final order, substantially in the form annexed hereto as *Exhibit B* (the "*Final Order*"), authorizing the Debtors to (a) pay certain prepetition wages, salaries, and reimbursable employee expenses, (b) pay and honor employee medical and

similar benefits, and (c) continue employee compensation and employee benefit programs. In support thereof, the Debtors respectfully represent:

### **BACKGROUND**

1. On March 19, 2012 (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 billion<sup>2</sup> 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.<sup>3</sup>

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. section 157(b)(2). Venue is proper pursuant to 28 U.S.C. sections 1408 and 1409.

### **RELIEF REQUESTED**

2. By this Motion, the Debtors seek entry of an Interim Order authorizing them to pay prepetition claims, honor obligations, and/or continue certain employee-related programs, in the ordinary course of business, including with respect to:

- (a) Employee Compensation, including Unpaid Wages, Allowances, Independent Contractor Obligations, and Reimbursable Expenses (up to \$1,000), Vacation Time, and Sick Leave (each, as defined below);
- (b) Deductions (as defined below); and
- (c) Employee Benefits (as defined below and collectively, the "***Interim Obligations***").

---

<sup>2</sup> This includes Arcapita's beneficial interest in assets under management.

<sup>3</sup> A description of the Debtors' business and the reasons for filing these Chapter 11 Cases is set forth in the *Declaration of Henry A. Thompson in Support of (I) Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to (A) Pay Certain Prepetition Wages, Salaries, and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Similar Benefits, and (C) Continue Employee Compensation and Employee Benefit Programs; (II) 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; and (III) Debtors' Motion for Interim and Final Orders (A) Authorizing the Debtors to Continue Insurance Coverage Entered Into Prepetition and to Pay Obligations Relating Thereto; and (B) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers*, executed on March 26, 2012 (the "***Thompson Declaration***"). This Motion is supported by the Thompson Declaration.

3. The Debtors also seek entry of a Final Order authorizing them to pay prepetition claims, honor obligations, and/or continue certain employee-related benefits and programs, including with respect to the Reimbursable Expenses in excess of \$1000, all in the ordinary course of business (each, as defined below, and together with the Interim Obligations, collectively, the “*Employee Obligations*”).

4. To enable the Debtors to carry out the relief requested, the Debtors also request that the Court authorize all applicable banks, financial institutions, and Keypoint Consulting, the Debtors’ payroll processor (the “*Payroll Processor*”), to receive, process, honor, and pay all checks presented for payment and all electronic payment requests made by the Debtors relating to the Employee Obligations, whether such checks were presented or electronic-payment requests were submitted prior to or after the date hereof.

### **EMPLOYEE WAGES AND BENEFITS**

#### **A. Employee Compensation**

5. The Debtors employ 191 employees (collectively, the “*Employees*”), including 189 full-time employees (including, four interns, collectively, the “*Full-Time Employees*”), and two part-time employees (collectively, the “*Part-Time Employees*”).<sup>4</sup> All Employees are salaried. In the ordinary course of business, the Debtors pay Employees, among other things, salaries, expense reimbursement and allowances, officer compensation, independent contractor compensation, and certain other forms of compensation described herein, depending on the services provided by the Employee to the Debtors. The following

---

<sup>4</sup> Bahrain labor law defines full-time employees as employees who work 40 hours per week.

summarizes the various types of employee compensation offered by the Debtors (collectively, the “*Employee Compensation*”).

**1. Wages and Reimbursable Expenses**

6. Wages. All Employees receive a basic salary, paid monthly. The Debtors’ next scheduled payroll date is on or about April 25, 2012. On average, the Debtors’ monthly gross payroll expense for Employees is approximately \$1.178 million, broken down as follows: approximately \$221,000<sup>5</sup> for the Chief Executive Officer and the Debtors’ executive directors (the “*Executive Directors*”), \$737,000 for management staff (“*Management Staff*”), and \$220,000 for non-management employees (“*Non-Management Employees*”). As of the Petition Date, the Debtors do not believe that there are any outstanding payments on account of salaries and other compensation earned prior to the Petition Date (“*Unpaid Wages*”).<sup>6</sup> On or about March 15, 2012, the Debtors distributed to the Payroll Processor funds meant to be deposited to accounts of all Full-Time Employees other than the interns for services performed before March 18, 2012, to be credited to the applicable Employees’ bank accounts by no later than 12:01 a.m. on March 18, 2012. The four interns and two Part-Time Employees are paid in cash and were paid in full prior to the Petition Date. Nonetheless, a few Employees may be entitled to compensation for services provided before

---

<sup>5</sup> For ease of review, many figures in this Motion are expressed in United States Dollars using the following currency conversion rate, 1 Bahraini Dinar to 2.65957 United States Dollars.

<sup>6</sup> The Debtors’ current incentive programs are not subject of this motion and the Debtors are not seeking relief with respect to any such programs in this Motion. For instance, Employees are eligible for an annual discretionary performance bonus. In addition, since 2006, the Debtors have maintained an employee Stock Purchase Plan (the “*SPP*”), which provides Employees with indirect equity ownership in the Arcapita Group. Also, prior to the Petition Date and in the ordinary course of business, members of senior staff were permitted to participate in the Debtors’ Investment Incentive Program (the “*IPP*”). The IPP facilitates indirect co-investment in the Arcapita Group’s portfolio companies. The Debtors are reviewing each of these plans and may seek authority to continue or modify in a subsequent motion to the Court.



March 19, 2012 because discrepancies may exist as to amounts paid or payments not having cleared the banking system at the Petition Date.

7. To the extent there are any Unpaid Wages, the Debtors do not believe that Unpaid Wages as to any individual Employee exceeds the priority cap of \$11,725 under section 507(a)(4) of the Bankruptcy Code and, thus, seek authority to pay any Unpaid Wages in the ordinary course of business and consistent with past practices.

8. Allowance: In the ordinary course, the Debtors pay members of the Management Staff in Bahrain a fixed allowance (equal to between 25% and 40% of the applicable Employee's basic salary) to pay costs relating to housing, utilities, annual air tickets and other living expenses in Bahrain (the "*Allowance*"). For the second half of 2012, the Debtors estimate that the Debtors' Allowance obligation will approximate to \$2.12 million. The Allowance is used to offset the costs incurred by many Employees in connection with their employment with the Debtors. Because it is paid primarily to Bahrain-based Management Staff, the Allowance constitutes an important component of the Debtors' recruitment of new employees and compensation structure for existing ones. Discontinuance of Allowance payments could have a destabilizing effect of the Debtors' workforce.

9. Because the Allowance is paid semi-annually in advance, the Debtors believe, at the Petition Date, there were no outstanding payments on account of the Allowance. Nonetheless, in an abundance of caution, the Debtors seek authority to pay any unpaid amounts arising in connection with the Allowance in the ordinary course of business and consistent with past practices. In addition, the Debtors request authority as part of the Final Order to continue paying the Allowance in the ordinary course of business. The Debtors are not seeking approval for the Allowance in the Interim Order.

10. Independent Contractor. In addition to their Employees, in the ordinary course of business, the Debtors employ one independent contractor (the “***Independent Contractor***”). The Independent Contractor is vital to the Debtors’ businesses and provides a wide array of valuable services relating to the Debtors’ real estate holdings. On average, the Debtors incur expenses of £12,000 for Independent Contractor compensation per month (the “***Independent Contractor Obligations***”). The Debtors do not believe that they have unpaid prepetition amounts on account of Independent Contractor Obligations. Nonetheless, in an abundance of caution, the Debtors seek authority to pay any unpaid amounts arising in connection with the Independent Contractor Obligations in the ordinary course of business and consistent with past practices and to continue to incur Independent Contractor Obligations in the ordinary course of business.

11. Reimbursable Expenses. Prior to the Petition Date and in the ordinary course of business, the Debtors reimbursed Employees for approved, legitimate expenses incurred on behalf of the Debtors in the scope of the Employees’ employment (the “***Reimbursable Expenses***”). The Reimbursable Expenses include travel expenses incurred in compliance with corporate guidelines set forth in the Debtors’ travel and entertainment policy (the “***Travel and Entertainment Policy***”). The vast majority of the Reimbursable Expenses relates to travel expenses, which are reimbursed directly to travel agents or to American Express. The remaining non-travel Reimbursable Expenses are reimbursed directly to the Employees after the Debtors process and approve related expense receipts. Reimbursement is thus contingent on the Debtors’ determination that the charges are for legitimate, reimbursable business expenses or, in the case of travel expenses, the Debtors having directed the applicable Employee to embark on the business trip.

12. The Debtors' incurrence of Reimbursable Expenses varies from month to month. As a result, the Debtors cannot accurately estimate prepetition, unpaid Reimbursable Expenses in aggregate. Reimbursable Expenses approximate to \$3.705 million per year (or approximately \$308,000 per month).

13. Employees incurred the Reimbursable Expenses as business expenses on the Debtors' behalf and with the understanding that they would be reimbursed. To avoid harming Employees who incurred the Reimbursable Expenses, the Debtors request authority to (a) continue reimbursing the Reimbursable Expenses in accordance with prepetition practices, including payment to and in adherence with the Travel and Entertainment Policy, and honor any prepetition obligations related thereto, (b) modify their prepetition policies relating thereto as they deem appropriate, and (c) pay all Reimbursable Expenses to Employees that (i) accrued prepetition and (ii) accrue postpetition but relate to the prepetition period; provided that, by the Interim Order, the Debtors request to directly reimburse Employees in amounts of only up to \$1,000 in Reimbursable Expenses per Employee.

14. Director Compensation. The Debtors compensate members of the board of directors of Arcapita Bank B.S.C.(c) for such members' attendance of board meetings with between \$400 and \$800 per member per board meeting ("**Board Attendance Fees**"). In addition, the Debtors reimburse board members for any travel expenses incurred in connection with such board meetings ("**Board Expenses**"). At the Petition Date, the Debtors believe no amount was outstanding with respect to either Board Attendance Fees or Board Expenses. Nonetheless, in the abundance of caution, the Debtors request authority to repay any Board Attendance Fees and Board Expenses that were outstanding at the Petition Date. In addition, the Debtors further request authority to continue paying Board Attendance Fees and Board

Expenses consistent with past practices and in the ordinary course of business during the Chapter 11 Cases.

15. Vacation and Sick Days. The Debtors provide vacation time to all Full-Time Employees and one Part-Time Employee as a time-off benefit (“*Vacation Time*”). Executive Directors are entitled to 25 days of paid Vacation Time per calendar year and all other Full-Time Employees and the one Part-Time Employee are entitled to 22 days of paid Vacation Time per calendar year. When an Employee elects to take Vacation Time, that Employee is paid his or her regular salaried rate. An Employee is only entitled to a cash payment for unused Vacation Time in the event that such Employee is terminated from the Debtors’ employment or leaves the Debtors’ employment, in either case, prior to using accrued Vacation Time. In such cases, Vacation Time accrues pro rata during the year. Accrued Vacation Time is not carried over between calendar years. At the Petition Date, the Debtors estimate that their accrued liability in connection with Vacation Time equaled approximately \$44,000 and over-utilized Vacation Time (which would be an asset of the Debtors) equaled approximately \$40,000.

16. In addition, in accordance with local labor law, Employees are eligible for sick leave due to illness or injury (“*Sick Leave*”). Employees are permitted to take up to 15 days of paid Sick Leave, 15 days of half-salary Sick Leave, and 15 days of unpaid Sick Leave per year. Employees take an average of 3 days of Sick Leave per year. Employees are not entitled to cash payments in the event they do not to take Sick Leave. As of the Petition Date, the Debtors owed no amount in connection with their Sick Leave policy.

17. The Debtors request that they be authorized, but not directed, to continue to honor their Vacation Time and Sick Leave policies in the ordinary course of business, and to honor and pay any prepetition amounts related thereto.

**B. Deductions**

18. During each applicable payroll period, the Debtors routinely deduct certain amounts from Employees' paychecks, including, without limitation, deductions payable pursuant to Employees' share of pension plan and unemployment contributions, as defined below (collectively, the "***Deductions***").

- a. Government Pension. In accordance with governing law, all Gulf Cooperation Council (*i.e.* Bahrain, Kuwait, Saudi Arabia, Oman, Qatar and the United Arab Emirates) nationals are eligible for pension payments as part of Government Social Insurance (the "***Government Pension Plan***"). The Government Pension Plan is funded by 6% deductions from the applicable Employees' salaries and 8% from the Arcapita Group.
- b. Non-Management Pension. In addition, the Debtors maintain a private pension scheme for Non-Management Employees ("***Private Pension Plan***" and together with the Government Pension Plan, the "***Pension Plans***"). Under the Private Pension Plan, Non-Management Employees may contribute up to 5% of their basic salary with a matching contribution from the Debtors. The contributions earn a return based on Islamically acceptable profit rates.
- c. Unemployment. In addition, 1% is deducted from the salary of Employees to fund the national unemployment scheme for Bahrani nationals.

19. On average, the annual Deductions are approximately (a) \$720,000 for the Government Pension Plan, (b) \$118,000 for the Private Pension Plan, and (c) \$140,000 for unemployment insurance. In addition, other Deductions are performed on an irregular basis in connection with the repayment of loans made by the company to its staff. As of the Petition Date, the Debtors owed no amount in connection with the Deductions (though as

discussed below, there is a prepetition liability associated with the Debtors' required contribution under the Government Pension Plan statutory scheme). Accordingly, the Debtors seek authority to continue deducting amounts from the applicable Employees' salaries and forwarding Deductions to the appropriate third-party recipients on a postpetition basis, in the ordinary course of business, and consistent with past practices. The Deductions represent earnings that applicable authorities have designated for deduction from Employees' paychecks and thus, may not be property of the Debtors' estates. The failure to transfer the Deductions could result in severe hardship to Employees.

**C. Employee Benefit Programs**

20. The Debtors offer their Full-Time Employees and one Part-Time Employee the opportunity to participate in a number of insurance and benefit programs, including medical insurance, life and disability insurance, pension plans, indemnity programs, government social insurance, school fees, interest-free loans, education assistance, and other employee benefit plans as described below (collectively, the "*Employee Benefits*"). Maintaining these benefits and honoring obligations thereunder is necessary to preserve employee morale and maintain the stability of the Debtors' workforce during the Chapter 11 Cases.

**1. Medical Insurance**

21. The Debtors offer all Employees medical and dental insurance benefits ("*Medical Insurance*") whereby the Debtors reimburse employees for medical costs according to a prescribed schedule. Pursuant to the Medical Insurance plan, (a) Executive Directors may be reimbursed up to approximately \$400,000 per year and (b) all other Employees may be reimbursed up to approximately \$265,000 per year. Each Employee will also be reimbursed for approximately \$800 per year for expenses related to dental care and

approximately \$530 every two years for expenses related to vision care. The Debtors' Medical Insurance is administered by Takaful. Takaful invoices the Debtors directly each quarter. The Debtors' annual cost to administer the Medical Insurance is approximately \$95,000 in fixed premiums plus approximately \$133,000 quarterly.

22. Because the invoice for the first calendar quarter of 2012 has not yet been received, the Debtors estimate that, at the Petition Date, the Debtors owed approximately \$102,000 on account of their Medical Insurance. The Debtors request authority to (a) continue the Medical Insurance in the ordinary course of business, (b) continue making the above-described contributions to the Medical Insurance, and (c) pay any amounts related thereto, including premiums, claim amounts, and administration fees, to the extent that they remain unpaid as of the Petition Date in the ordinary course of business.

## **2. Life Insurance & Disability**

23. The Debtors provide Employees with life insurance that covers accidental death and disability ("*Accidental Death and Disability Insurance*"). In the event of the accidental death of an Employee, the policy provides benefits equal to five times the annual salary for Executive Directors and three times the annual salary for all other Employees. In the event of a disability due to an accident, a prescribed schedule dictates the percentage benefit, based on the degree of disability. The cost of coverage by these various policies approximates to \$100,000 per year. The Debtors pay for the Accidental Death and Disability Insurance policy annually at the end of the third calendar quarter. As a result, at the Petition Date, the Debtors owed no amount in connection with their Accidental Death and Disability Insurance. The Debtors hereby seek authority to maintain the Accidental Death and Disability Insurance.

### **3. Pension Plans and Obligations**

24. As noted above, in accordance with local laws, the Government Pension Plan is funded via deductions from applicable Employees' salaries plus an 8% (or approximately \$1.5 million) contribution from the Debtors. In addition, the Private Pension Plan is funded via non-management Employee contributions and deductions. The Debtors hereby seek authority to comply with applicable law and continue providing benefits under the Pension Plans.

### **4. Indemnity**

25. In accordance with local law, the Debtors provide indemnity payments to non-Gulf Cooperation Council Employees (to whom the General Pension Plan and unemployment benefits would not apply). Bahrain labor law obligates the Debtors to provide such Employees, upon termination of employment, with a leaving indemnity calculated on the basis of (a) fifteen days' wages for each year of the first three years of service and (b) one month's wages for each year of service thereafter. The rate of accrual is also based on statute. At the Petition Date, the Debtors estimate that their accrued indemnity obligations equal approximately \$3,525,000.

### **5. Relocation Expenses**

26. The Debtors provide certain, generally non-Bahrani, Employees with relocation-related expenses (collectively, the "*Relocation Expenses*") to incentivize desirable candidates to accept positions with the Debtors or existing Employees to accept transfers to other locations operated by the Debtors. Relocation Expenses relate to, among other things, airfare, temporary living expenses, the purchase of a new residence, initial accommodation costs for the first two months. New employees often accept an offer of employment with the



Debtors, and existing employees relocate at the Debtors' behest in reliance on the Debtors' promise to reimburse such Employees for the attendant expenses. It would be unfair to force Employees to bear the burden of payment and could destabilize and demoralize the Employees' morale. For example, absent the authority sought by this paragraph, items belonging to relocating Employees may not be delivered or Employees may be unable to find temporary housing. No Employees are currently receiving Relocation Expenses from the Debtors. Nonetheless, the Debtors seek authority to pay Relocation Expenses on a postpetition basis, in the ordinary course of business, and consistent with past practice.

#### **6. Other Employee Programs**

27. The Debtors also have in place miscellaneous practices, programs, and policies described in detail below that provide benefits and incentives to various groups of Employees, including, but not limited to, a tuition reimbursement program and interest-free loans (collectively, the "*Other Employee Programs*").

28. In the ordinary course of business, the Debtors reimburse Management Staff for the cost of education for up to two children from ages 4.5 until 18; the Debtors reimburse Executive Directors for the same education expenses for up to three children (in either case, "*School Fees*"). Payment of these School Fees is a major component of the Debtors' recruitment and employment practices. Many Employees agree to work for the Debtors based in large part on the assurance that the company will pay for their children's schooling. Payment of these expenses as an employment benefit is common in this regional job market. Based on historical practices, the Debtors estimate that School Fees approximate to \$1.04 million per year. As of the Petition Date, the Debtors estimate that they owe approximately \$100,000 in connection with School Fees.

29. In the ordinary course of business, at the Debtors' discretion, the Debtors reimburse Employees for tuition fees ("***Tuition Fees***") for educational programs meant to improve the Employee's expertise in their current position with the Debtors. Tuition Fees provide the Debtors with two clear benefits: a better-trained workforce and improved employee loyalty. Tuition Fees must be repaid if the Employee's employment is terminated within a defined timeframe. As of the Petition Date, the Debtors owe no amount in connection with Tuition Fees.

30. Employees may also apply for interest-free loans ("***Interest-Free Loans***") from the Debtors. Such loans are granted at the discretion of the Debtors, and are granted under only extenuating circumstances. Repayment of the Interest-Free Loans has historically been made by offsetting these loans against the Employee's end-of-year performance bonus. The maximum loan that may be granted to an Employee is the equivalent of six months of salary. As of the Petition Date, the Debtors do not believe that there were any outstanding loan applications. The Debtors estimate that approximately \$1.5 million in Interest-Free Loans remains outstanding.

31. The Debtors believe that the Other Employee Programs play a vital role in maintaining Employee morale and performance. Indeed, the Debtors believe that a failure to honor the Other Employee Programs would have adverse effects on morale and performance that far outweigh the monetary costs of maintaining them. Accordingly, the Debtors request authority to pay any prepetition amounts relating to such programs and continue such programs postpetition consistent with past practices.

**D. The Payroll Processor**

32. As noted above, the Debtors utilize the services of the Payroll Processor to facilitate the administration of employee wages and benefits to their Employees. The Payroll

Processor's responsibilities include processing payroll and transferring funds from the Debtors to their Employees. For these services, the Debtors pay the Payroll Processor approximately \$200,000 per year. Payment for the Payroll Processor's services is made contemporaneously with funding the Payroll Processor account to pay wages. The Debtors estimate that, as of the Petition Date, approximately \$5,700 in total fees to the Payroll Processor remains unpaid. Because the services provided by the Payroll Processor are crucial to the smooth functioning of the Debtors' payroll system, the Debtors request permission to pay any unpaid Payroll Processor fees and to continue to pay the Payroll Processor fees that accrue during the ordinary course of business.

### **BASIS FOR RELIEF REQUESTED**

#### **A. Ample Authority and Cause Exists for the Court to Authorize the Payment of Prepetition Claims in Circumstances Such as These**

33. Courts generally acknowledge that it is appropriate to authorize the payment or other special treatment of prepetition obligations in appropriate circumstances, such as when necessary to preserve the going concern value of a debtor's business, thus facilitating its reorganization. *See, e.g., Miltenberger v. Logansport, Crawfordsville & Sw. Ry. Co.*, 106 U.S. 286, 311 (1882) (holding that "[m]any circumstances may exist which may make it necessary and indispensable to . . . the preservation of the property, for the receiver to pay preexisting debts of certain classes, out of the earnings of the receivership . . ."); *see also In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (noting that the "'necessity of payment' doctrine . . . permit[s] immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid") (citations and internal quotations omitted); *In re Chateaugay Corp.*, 80 B.R. 279, 285-87 (S.D.N.Y. 1987) (finding

that a court's equitable powers include the authority to authorize a debtor to pay prepetition debts). In authorizing payments of certain prepetition obligations, courts rely on several legal theories rooted in sections 1107(a), 1108, 363(b), and 105(a) of the Bankruptcy Code.

34. The Debtors believe that payment of the Employee Obligations is critical to the ongoing operation of the Debtors' businesses. If the Employee Obligations are not paid, the Debtors will risk tangible and intangible loss of the value of their businesses, including, among other things, losses relating to the cost of replacing Employees who seek alternative employment and losses related to the disruption of, and lower productivity in, the Debtors' business operations resulting from low employee morale and high turnover.

**1. A Significant Portion of the Employee Obligations are Entitled to Priority Treatment**

35. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle the majority of the Unpaid Wages and other employee-related obligations to priority treatment. To confirm a chapter 11 plan, the Debtors must pay priority claims in full. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for (a) wages, salaries or commissions, including vacation, severance, and sick leave pay earned by an individual, and (b) contributions to an employee benefit plan). Thus, granting the vast majority of the relief sought herein only affects the timing of payments to Employees, and does not negatively impact recoveries for general unsecured creditors. Indeed, the Debtors submit that payment of Employee claims at this time enhances value for the benefit of the Debtors and all interested parties.

36. Amounts that are paid on account of priority claims for Employee Obligations would not otherwise be available for distribution to unsecured creditors. Therefore, no prejudice would be caused to the Debtors' unsecured creditors by permitting

priority obligations to be satisfied in the ordinary course of business during the Debtors' Chapter 11 Cases rather than at the conclusion of the cases pursuant to a plan of reorganization.

**2. Payment of Certain of the Employee Obligations is Required by Law**

37. The Debtors also seek authority to pay the Deductions to the appropriate entities. These amounts principally represent the Employees' earnings that governments, the Employees, and judicial authorities have designated for deduction from the Employees' paychecks, most notably for the Pension Plans (which benefits the applicable Employees) and national unemployment insurance. Indeed, certain deductions are not property of the Debtors' estates because the Debtors have withheld such amounts from Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541; *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95 (3d Cir. 1994) (observing the "well-settled principle that debtors do 'not own an equitable interest in property . . . [they] hold[] in trust for another,' and that therefore funds held in trust are not 'property of the estate.'" (quoting *Begier v. IRS*, 496 U.S. 53, 59 (1990))). Because the Deductions are not property of the Debtors' estates, the Debtors request that the Court authorize them to transmit these amounts to the appropriate parties in the ordinary course of business.

**3. The Court May Authorize Payment of the Employee Obligations Pursuant to Section 363 of the Bankruptcy Code**

38. Courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of prepetition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397

(S.D.N.Y. 1983) (relying on section 363 to authorize a contractor to pay prepetition claims of some suppliers who were potential lien claimants because payments were necessary for general contractors to release funds owed to the debtors). 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., In re James A. Phillips*, 29 B.R. at 395 n.2 (“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.”).

39. The majority of the Debtors’ Employees rely exclusively on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses and maintain their health and well-being. Consequently, these Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for Unpaid Wages (to the extent there are any), health and welfare Employee Benefits, and Reimbursable Expenses. Moreover, if any of the Debtors were unable to satisfy such obligations, Employee morale and loyalty would be jeopardized at a time when Employee support is critical. Furthermore, if the Court does not authorize the Debtors to honor their various obligations under the Employee Benefit plans, the Employees’ health coverage could be threatened, potentially burdening individual Employees with the costs of health care. At minimum, the loss of health care coverage, or uncertainty regarding coverage, would result in considerable anxiety for Employees at a time when the Debtors need their Employees to perform their jobs at peak efficiency.

40. For all of the foregoing reasons, a sound business purpose exists to pay the Employee Obligations. In the absence of such payments, the Debtors believe that their Employees may seek alternative employment opportunities, perhaps with the Debtors’

competitors. Such a development would deplete the Debtors' workforce, hinder the Debtors' ability to meet their client obligations, and likely diminish creditors' confidence in the Debtors. Moreover, the loss of valuable Employees and the recruiting efforts that would be required to replace such Employees would be a massive and costly distraction at a time when the Debtors should be focusing on continuing to strengthen their operations and succeeding in their reorganization efforts. Accordingly, the Debtors must be able to pursue all reasonable measures to retain the Employees by, among other things, continuing to honor all wages, benefits, and related obligations, including those that accrued prior to the Petition Date.

41. In addition, because the Debtors pay the Employee Obligations in the ordinary course of business, the Debtors submit that Court approval to continue its existing policies, programs, and related payments postpetition is not necessary because of the authority granted to it by section 363(c) of the Bankruptcy Code. Nonetheless, for the avoidance of doubt, the Debtors request that the Court grant the relief requested herein and enter an order authorizing them to pay the Employee Obligations, as consistent with their compensation, vacation, and other benefit policies and plans, and to permit, but not require, the Debtors, in their discretion, to continue their practices, programs, policies, and plans for their Employees as those practices, programs, policies, and plans were in effect as of the Petition Date, as may be modified, terminated, amended, or supplemented from time to time hereafter.

**4. The Court May Authorize Payment of the Employee Obligations Pursuant to Section 105(a) of the Bankruptcy Code and the Doctrine of Necessity**

42. The Debtors' proposed payment of the Employee Obligations should also be authorized pursuant to section 105(a) 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*, 98 B.R. at 175. “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, 826 (D. Del. 1999) (“To invoke the necessity of payment doctrine, a debtor must show that payment of the pre-petition claims is ‘critical to the debtor’s reorganization.’”) (quoting *In re Fin. 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.”); *In re Chateaugay Corp.*, 80 B.R. at 279 (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

43. 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*, 242 B.R. at 824 (“[C]ourts have used their equitable power under section 105(a) of the Code to authorize the payment of prepetition claims when such payment is deemed necessary to the survival of a



debtor in a chapter 11 reorganization.”). The doctrine is frequently invoked early in a chapter 11 case.

44. Taken together, the nature of the Employee Obligations, the substantial harm to the Debtors’ businesses that would be caused if those obligations were not honored, the related potential for loss of value in the Debtors’ estates, and the fact that a significant portion of the obligations in question relates either to priority wage claims or to funds held in trust for the benefit of Employees, lead to the conclusion that the Employee Obligations fall well within the scope of obligations whose payments may be authorized pursuant to the doctrine of necessity.

45. Courts in this district previously have recognized the importance of a debtor’s employees to its operations and the validity of the foregoing justifications in connection with the payment of prepetition employee obligations such as the Employee Obligations.<sup>7</sup> *See, e.g., TBS Shipping Services Inc.*, Case No. 12-22224 (RDD) (Bankr. S.D.N.Y. Feb. 6, 2012) [Docket No. 35]; *In re The Great Atl. & Pac. Tea Co.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 13, 2011) [Docket No. 497]; *In re St. Vincent’s Catholic Medical Centers of New York*, No. 10-11963 (CGM) (Bankr. S.D.N.Y. May 7, 2010); *In Almatris B.V.*, Case No. 10-12308 (MG) (Bankr. S.D.N.Y. April 30, 2010) [Docket No. 118]; and *In re Chrysler LLC*, Case No. 09-50002 (AJG) (Bankr. S.D.N.Y. May 4, 2009) [Docket No. 208].

---

<sup>7</sup> 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.

**B. The Debtors Have Sufficient Funds to Make the Payments Requested**

46. The Debtors represent that they have sufficient cash to pay the amounts described herein in the ordinary course of business by virtue of unencumbered cash on hand and expected cash flows from ongoing business operations. Also, under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an authorized payment in respect of the Employee Obligations particularly because of the Debtors' use of the Payroll Processor. Accordingly, the Debtors believe there is little risk that checks or wire transfer requests unrelated to authorized payments would be honored inadvertently, and that all applicable banks and other financial institutions should be authorized and directed, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the Employee Obligations.

**C. The Court Should Authorize Applicable Banks to Honor and Pay Checks Used and Make Other Transfers to Pay the Employee Obligations**

47. In connection with the foregoing, the Debtors respectfully request that the Court enter an order (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 payment of the claims the Debtors request authority to pay in this Motion, 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 claims the Debtors request authority to pay in this Motion is dishonored or rejected by the banks and other financial institutions.

**DEBTORS' RESERVATION OF RIGHTS**

48. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to dispute any claim asserted by an Employee under applicable non-bankruptcy law. 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.

**REQUEST FOR WAIVER OF STAY**

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

50. 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), "[a]n 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, the immediate payment of amounts owed to Employees is essential to prevent potentially irreparable damage 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).

**NOTICE**

51. 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 the Motion is also available on the website of the Debtors' notice and claims agent, GCG, Inc., at [www.gcginc.com/cases/arcapita](http://www.gcginc.com/cases/arcapita).

**NO PRIOR REQUEST**

52. 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)

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

PROPOSED ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION

## **EXHIBIT A**

### **Proposed Order**

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

-----X  
: **Chapter 11**  
: **Case No. 12-11076 (SHL)**  
: **Jointly Administered**  
:   
:   
-----X

**IN RE:**

**ARCAPITA BANK B.S.C.(c), et al.,**

**Debtors.**

**INTERIM ORDER (A) AUTHORIZING THE DEBTORS TO  
(A) PAY CERTAIN PREPETITION WAGES, SALARIES, AND  
REIMBURSABLE EMPLOYEE EXPENSES, (B) PAY AND HONOR  
EMPLOYEE MEDICAL AND SIMILAR BENEFITS, AND (C) CONTINUE  
EMPLOYEE COMPENSATION AND EMPLOYEE BENEFIT PROGRAMS**

Upon consideration of the motion (the “*Motion*”)<sup>1</sup> of Arcapita Bank B.S.C.(c), and certain of its subsidiaries and affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*” and each, a “*Debtor*”), for entry of an interim and final orders authorizing Debtors to (a) pay certain prepetition wages, salaries, and reimbursable employee expenses, (b) pay and honor employee medical and similar benefits, and (c) continue employee compensation and employee benefit programs; 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 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

---

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

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 on an interim basis to the extent set forth below.
2. The Debtors are authorized, in their sole discretion, to pay the Employee Obligations and/or honor their wage and benefit obligations in accordance with their stated policies and in the ordinary course of their businesses, including amounts owing as of the Petition Date on account of: (a) the Payroll Processor; (b) Employee Compensation (except with respect to the Reimbursable Expenses of any individual Employee in excess of \$1,000), including Independent Contractor Obligations, Board Attendance Fees and Board Expenses; (c) Deductions; and (d) the Employee Benefits, as set forth in the Motion and as provided herein.
3. Except as otherwise provided herein, the Debtors are authorized to make payments on account of Employee Compensation in accordance with the Debtors’ ordinary course of business and stated policies, as set forth in the Motion.
4. The Debtors are authorized to make payments to applicable third parties from the Deductions, in accordance with the Debtors’ ordinary course of business and stated policies, as set forth in the Motion.
5. The Debtors are authorized, but not directed, to continue to honor their Employee Benefits, make necessary contributions to such programs, and pay any unpaid premium, claim, or amount owed in connection therewith as of the Petition Date in accordance with the Debtors’



ordinary course of business and stated policies as set forth in the Motion; *provided that* the Debtors shall not make any payments with respect to a Severance Plan pending entry of the Final Order.

6. The banks and financial institutions (including the Payroll Processor) on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, including all checks issued prepetition and presented for payment postpetition, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

7. The Debtors are authorized to reissue any check or electronic payment that originally was given in payment of any prepetition amount authorized to be paid under this Order and is not cleared by the applicable bank or other financial institution.

8. Nothing in the Motion or this Order, nor the Debtors' payment of any claims pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors or an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

10. The requirements of Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

11. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

12. 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 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, 21<sup>st</sup> 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. If no objections are timely filed, the Court may enter the Final Order without further notice or hearing.

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  
: **Chapter 11**  
: **Case No. 12-11076 (SHL)**  
: **Jointly Administered**  
: X

**IN RE:**  
**ARCAPITA BANK B.S.C.(c), et al.,**  
**Debtors.**

**FINAL ORDER AUTHORIZING THE DEBTORS TO  
(A) PAY CERTAIN PREPETITION WAGES, SALARIES, AND  
REIMBURSABLE EMPLOYEE EXPENSES, (B) PAY AND HONOR  
EMPLOYEE MEDICAL AND SIMILAR BENEFITS, AND (C) CONTINUE  
EMPLOYEE COMPENSATION AND EMPLOYEE BENEFIT PROGRAMS**

Upon consideration of the motion (the “*Motion*”)<sup>1</sup> 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 authorizing the Debtors to (a) pay certain prepetition wages, salaries, and reimbursable employee expenses, (b) pay and honor employee medical and similar benefits, and (c) continue employee compensation and employee benefit programs; 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 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

---

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

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 on a final basis to the extent provided herein.
2. The Debtors are authorized, in their sole discretion, to pay the Employee Obligations and/or honor their wage and benefit obligations as set forth in the Motion in accordance with their stated policies and in the ordinary course of their businesses, including amounts owing as of the Petition Date on account of: (a) the Payroll Processor; (b) Employee Compensation (except with respect to the Reimbursable Expenses of any individual Employee in excess of \$1,000 and Allowance); (c) Reimbursable Expenses; (d) Deductions; and (e) the Employee Benefits, as set forth in the Motion and as provided herein.
3. Except as otherwise provided herein, the Debtors are authorized to make payments to pay Employee Compensation in accordance with the Debtors’ ordinary course of business and stated policies, as set forth in the Motion.
4. The Debtors are authorized to make payments to applicable third parties from the Deductions, in accordance with the Debtors’ ordinary course of business and stated policies, as set forth in the Motion.
5. The banks and financial institutions (including the Payroll Processor) on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks

and electronic payment requests when presented for payment, including all checks issued prepetition and presented for payment postpetition, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

6. The Debtors are authorized to reissue any check or electronic payment that originally was given in payment of any prepetition amount authorized to be paid under this Final Order and is not cleared by the applicable bank or other financial institution.

9. Nothing in the Motion or this Final Order, nor the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors or an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

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

12. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

Dated: New York, New York  
\_\_\_\_\_, 2012

---

THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE