

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

I, Henry A. Thompson, hereby declare under penalty of perjury:

1. I am the Executive Director, Head of Legal, of Arcapita Bank B.S.C.(c) (“*Arcapita*”), a Bahrain closed joint stock company, one of the above-captioned debtors and debtors in possession (collectively, with Arcapita, the “*Debtors*”) and the corporate parent to the other Debtors. In this capacity, I am generally familiar with the Debtors’ operations, business, financial affairs, and books and records.

2. I submit this Declaration in support of three motions filed by the Debtors on March 26, 2012 and scheduled to be heard by the Court on March 29, 2012: (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 [Docket No. 24] (the “**Employee Wage and Benefits Motion**”), (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* [Docket No. 23] (the “**Foreign Creditors Motion**”), 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* [Docket No. 25] (the “**Insurance Motion**” and together with the Employee Wage Motion and the Foreign Creditors Motion, the “**Motions**”). As described in greater detail below, because all of the Motions are central to the Debtors’ efforts to maintain their operational capabilities in bankruptcy, I believe they should be approved.

3. Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors’ operations and finances, information learned from my review of relevant documents, information supplied to me by other members of the Debtors’ management team or the Debtors’ advisors, or reflects my opinion based upon my knowledge and experience or information I have reviewed concerning the Debtors’ operations and financial condition. I am authorized to submit this Declaration on behalf of the Debtors and, if called upon to testify, I could and would testify competently to the facts set forth herein.

A. 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 (the "*Employee Wage and Benefits Motion*")

4. Pursuant to the Employee Wage and Benefits Motion, the Debtors request entry of interim and final orders authorizing the Debtors to (a) pay certain prepetition salaries, allowances, and reimbursable employee expenses, (b) pay and honor employee medical and similar benefits, and (c) continue employee compensation and employee benefit programs.

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 (together, the "*Part-Time Employees*"). All Employees are salaried. No Employee is represented by a union or covered by a collective bargaining agreement.

6. All Employees are paid monthly, either by direct deposit or in cash. The Part-Time Employees and the four interns are paid in cash. All other Employees are paid by direct deposit by the Debtors' Payroll Processor. The Debtors' next scheduled payroll date is on or about April 25, 2012.

7. On average, the Debtors' monthly gross payroll expense for Employees is approximately \$1.178 million. As of the Petition Date, however, 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*"). On or about March 15, 2012, the Debtors distributed to the Payroll Processor funds meant to be deposited to accounts of Employees accepting direct deposit or paid all other Employees cash, in each case, for prepetition services performed. In the case of direct deposit Employees, payment was to be credited to the applicable Employees' bank

accounts by no later than 12:01 a.m. on March 18, 2012. Nonetheless, a few Employees may be entitled to compensation for prepetition services because (a) discrepancies may exist as to amounts paid or (b) some payroll checks issued prior to the Petition Date may not have been presented for payment or may not have cleared the banking system as of the Petition Date. In addition, certain members of the Management Staff in Bahrain received a fixed subsistence allowance, paid semi-annually, to pay housing, utilities, air travel and other living expenses. At the Petition Date, no amount has outstanding in respect of such allowance. By the Motion, the Debtors seek to continue to make payments to salaried Employees, including in respect of the Allowance, in the ordinary course of business and consistent with past practices.

8. The Debtors also reimburse Employees for approved, legitimate expenses incurred on behalf of the Debtors in the scope of the Employees' employment (the "*Reimbursable Expenses*"). The Reimbursable Expenses primarily include business travel expenses incurred in compliance with the Debtor's Travel and Entertainment Policy (payments for which are primarily remitted to American Express or one of multiple travel agents). In aggregate, the Debtors pay approximately \$308,000 per month on account of Reimbursable Expenses. Although the Debtors request that Employees submit reimbursement requests promptly, given the nature and scope of the Debtors' business around the world, not all Employees are able to do so; it is therefore difficult for the Debtors to precisely calculate the amount of Reimbursable Expenses outstanding as of the Petition Date. Accordingly, the Debtors are seeking authority to repay their employees for any outstanding Reimbursable Expenses (provided that such request is limited to a request for reimbursements of up to \$1,000 pursuant to the Interim Order).

9. 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**") and 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. By the Motion, the Debtors also seek authority to continue to make payments to salaried Employees, including in respect of the Allowance, in the ordinary course of business and consistent with past practices.

10. The Debtors also maintain Vacation Time and Sick Leave policies in the ordinary course of business, and the Debtors estimate that as of the Petition Date, they owed Employees approximately \$4,000 in accrued net Vacation Time (taking into account the Debtors' "claims" versus Employees who have used more than their allotted vacation days so far in the 2012 calendar year), but no amount in connection with the Sick Leave policy.

11. During each applicable payroll period, the Debtors routinely deduct certain amounts from Employees' paychecks for unemployment insurance, the Government Pension Plan, and the Private Pension Plan (collectively, the "**Deductions**"). The Deductions are subsequently forwarded to the appropriate third party recipients. On average, the Deductions are approximately \$978,000 per year. As of the Petition Date, the Debtors estimate that there were no accrued but unpaid Deductions.

12. Finally, the Debtors offer their Employees the opportunity to participate in a number of insurance and benefit programs, including medical and dental plans, life and disability insurance, tuition reimbursement, and other employee benefit plans (collectively, the

“Employee Benefits”).

13. In addition to its Employees, in the ordinary course of business, the Debtors employ 1 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 approximately £12,000 in the aggregate of monthly Independent Contractor compensation (collectively, the *“Independent Contractor Obligations”*). The Debtors believe that there are no unpaid prepetition amounts on account of Independent Contractor Obligations.

14. The Debtors believe that payment of the Employee Obligations, including Unpaid Wages, the Allowance Reimbursable Expenses, and Independent Contractor 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. The Debtors are also required to pay by applicable law certain of the Employee Obligations, such as the Deductions. The Debtors therefore submit that a sound business purpose exists for the continued payment of Employee Obligations and maintenance of the various Employee Benefits plans.

15. I have reviewed the Employee Wage and Benefits Motion and believe that the facts stated therein are accurate to the best of my knowledge, information and belief. I further believe the relief requested in the Employee Wage and Benefits Motion is in the best interests of the Debtors’ estates, their creditors, and all other parties in interest, and will enable

the Debtors to continue to operate their businesses in Chapter 11 without disruption.

Accordingly, on behalf of the Debtors, I respectfully submit that the Employee Wage and Benefits Motion should be approved.

B. 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 (the "*Foreign Creditors Motion*")

16. The successful operation of the Debtors' business requires them to purchase goods and services from the Critical Vendors, which are select third party vendors and independent contractors, without which the Debtors could not continue to operate their businesses, or the loss of which would result in their operation at significantly reduced profitability. Each of the Critical Vendors provides critical and necessary services to the Debtors. The Debtors have reviewed their business relationships and identified the Critical Vendors that are so essential that the loss of their particular goods or services would cause immediate and irreparable harm to the Debtors' businesses and market share. For a vendor to be identified as critical 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 by the alternative 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. It is essential to the reorganization efforts that the Debtors are allowed to pay the Critical Vendors.

17. 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. 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. 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. 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. Finally, the Arcapita Group operates worldwide and has offices in numerous countries. Maintaining an effective telecommunication system which links foreign offices and travelling employees with the home office 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.

18. While multiple foreign vendors may qualify as critical vendors, the

Debtors have only identified one Critical Vendor that is definitely subject to United States jurisdiction, American Express. The successful operation of the Debtors' business requires them to utilize the credit card services of American Express, without which the Debtors could not continue to operate their businesses, or the loss of which would result in their operation at significantly 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 that the loss of its particular services would cause immediate and irreparable harm to the Debtors' businesses and operations, and replacement of those services would only come at a large cost to the Debtors. Thus, it is essential to the reorganization efforts that the Debtors are allowed to pay American Express.

19. In addition, the Debtors, as an international investment firm and a leading global manager of Shari'ah-compliant alternative investments, must necessarily procure a significant amount of goods and services from Foreign Vendors, who are vendors with little to no connection with the United States, as well as foreign governmental and licensing authorities outside the United States that may levy certain fees upon the Debtors. These Foreign Vendors may well have lien rights under the law of the applicable foreign jurisdiction. Whether these lien rights exist or not, however, 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 disrupts the Debtors' operations. The Foreign Vendors may exercise self-help (if permitted under local law), 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. Such actions would deprive the Debtors of vital goods already in the Debtors' possession through reclamation or shut down the Debtors' access to essential goods and services needed to maintain the Debtors as a going concern, and the Debtors' businesses could be irreparably harmed by any such action, to the detriment of their estates and their creditors.

20. The Debtors request authority to pay the Critical and Foreign Vendors all prepetition amounts due to them in an aggregate amount not to exceed \$1.7 million (the "***Critical and Foreign Vendor Claims Cap***"). 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 to not 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.

21. To minimize the amount of payments required, and to ensure Critical Vendors transacts business on customary terms, the Debtors propose to pay, in the Debtors' sole discretion, Critical Vendors' claims only if they agree to continue to supply goods or services to the Debtors on customary trade terms or other such favorable terms acceptable to the Debtors. The payment of any amounts to Critical Vendors will be further conditioned on: (a) the delivery

by the Debtors of a letter agreement together with a copy of the order granting this Motion, which must be executed thereby by the Critical Vendor and returned to the Debtors; and (b) the accompaniment of payment of Critical Vendor Claims with a statement that notifies the Critical Vendor that acceptance of the payment constitutes agreement to the terms of the order entered by the Court granting the Critical and Foreign Vendors Motion.

22. I have reviewed the Critical and Foreign Vendors Motion and believe that the facts stated therein are accurate to the best of my knowledge, information and belief. I further believe that the relief requested in the Critical and Foreign Vendors Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption.

Accordingly, on behalf of the Debtors, I respectfully submit that the Critical and Foreign Vendors Motion should be approved.

C. 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 (the "*Insurance Motion*")

23. The Debtors request entry of interim and final orders (a) authorizing the Debtors to continue prepetition insurance policies and programs and to pay obligations relating thereto; and (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with the Insurance Motion.

24. In the ordinary course of business, the Debtors maintain a number of insurance Policies (as defined in the Insurance Motion) that benefit, among others, the Debtors. The Policies are essential to the preservation of the value of the Debtors' businesses, properties,

and assets. In many cases, insurance coverage such as that provided by the Policies is required by the diverse regulations, laws, and contracts that govern the Debtors' commercial activities.

25. The Debtors pay Insurance Obligations (as defined in the Insurance Motion) in the ordinary course of business and only pay those Insurance Obligations when they become due and owing. The Debtors need their insurance to remain in place uninterrupted. Accordingly, to the extent that the Debtors are required to make any premium payments with respect to the Policies or are required to take steps to renew any of the Policies, the Debtors request interim authority to make such payments or to effectuate such renewals.

26. I have reviewed the Insurance Motion and believe that the facts stated therein are accurate to the best of my knowledge, information and belief. I further believe that the relief requested in the Insurance Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Insurance Motion should be approved.

I declare under penalty of perjury that the foregoing is true and correct to the best
of my knowledge, information, and belief.

Dated: New York, New York
March 28, 2012

/s/ Henry A. Thompson