

**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
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**ORDER AUTHORIZING THE DEBTORS AND DEBTORS-IN-POSSESSION
TO RETAIN AND EMPLOY KPMG LLP (US) AS TAX CONSULTANTS
NUNC PRO TUNC TO THE PETITION DATE**

Upon the application (the “*Application*”) of the above-captioned Debtors and Debtors-in-possession (collectively, the “*Debtors*”), for the entry of an order pursuant to section 327(a) and of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “*Bankruptcy Code*”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of New York (the “*Local Rules*”), authorizing them to employ and retain KPMG LLP (“*KPMG-US*”) as tax consultants to the Debtors in the above-captioned chapter 11 cases *nunc pro tunc* to the Petition Date;¹ and upon the Declaration of Mary C. Grande, a CPA and partner at KPMG-US (the “*Declaration*”) in support thereof; and the Court being satisfied based on the representations made in the Application and in the Declaration that KPMG-US represents no interest adverse to the Debtors’ estates with respect to the matters upon which they are to be engaged, that they are disinterested persons as that term is defined under section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy

¹ Capitalized terms not otherwise defined herein shall have the definitions ascribed to them in the Application.

Code, and that their employment is necessary and in the best interests of the Debtors' estates; and consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided; and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED that the Application is granted to the extent set forth herein; and it is further

ORDERED that in accordance with section 327(a) of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rule 2014, the Debtors are authorized to employ and retain KPMG-US as tax consultants to the Debtors on the terms set forth in the Application and the Engagement Letter, as modified by this Order; and it is further

ORDERED that all requests of KPMG-US for payment of indemnity pursuant to the Engagement Letter shall be made by means of an application and shall be subject to review by the Court to ensure that the payment of such indemnity conforms to the terms of the Engagement Letter and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought; and it is further

ORDERED that KPMG-US shall be compensated in accordance with the Engagement Letter, sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, this Order and any other applicable orders of this Court; and it is further

ORDERED that the terms and conditions of the Engagement Letters, as modified by this Order, are approved and subject to the procedures set forth in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines and any other applicable orders of this Court; and it is further

ORDERED that to the extent the Debtors make payments to KPMG-US on account of fees and expenses incurred in the performance of services pursuant to the Engagement Letter and this Order for the benefit of AIHL or any subsidiary of AIHL, nothing herein shall be construed to affect any claims among the members of the Arcapita Group on account of such payments to KPMG-US; and it is further

ORDERED that notice shall be provided by KPMG-US to the Debtors, the U.S. Trustee and the Committee prior to any increases in the rates set forth in the Application and such notice must be filed with the Court; and it is further

ORDERED that to the extent the Debtors and KPMG-US enter into any additional engagement letter(s), the Debtors will file such engagement letter(s) with the Bankruptcy Court and serve such engagement letter(s) upon the United States Trustee and counsel to the Official Committee of Unsecured Creditors. To the extent any of such parties object, within 14 days of such new engagement letter(s) being served, to the additional services to be provided by KPMG-US, the Debtors will promptly schedule a hearing before the Court. All additional services will be subject to the provisions of this Order; and it is further

ORDERED that the following terms apply during the pendency of the Debtors' Chapter 11 Cases:

- (a) KPMG-US shall not be entitled to indemnification, contribution or reimbursement for services other than those described in the Engagement Letters and the Application, unless such services and indemnification therefor are approved by the Court; provided, that to the extent additional engagement letter(s) are filed with the Court and no parties object to such engagement letter(s) in accordance with the procedures described in the immediately preceding Ordered paragraph, such engagement letter(s) shall be deemed approved by the Court;
- (b) The Debtors shall have no obligation to indemnify KPMG-US, or provide contribution or reimbursement to KPMG-US, for any claim or expense

that is either: (i) judicially determined (the determination having become final) to have arisen from KPMG-US's bad faith, self-dealing, breach of fiduciary duty (if any such duty exists), gross negligence or willful misconduct; or (ii) judicially determined (the determination having become final), based on a breach of KPMG-US's contractual obligations to the Debtor; or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) immediately above, but determined by the Court, after notice and a hearing to be a claim or expense for which KPMG-US should not receive indemnity, contribution or reimbursement under the terms of KPMG-US's retention by the Debtors pursuant to the terms of the Engagement Letters and Application, as modified by this Order; and

- (c) If, before the earlier of: (i) the entry of an order confirming a chapter 11 plan in this case (that order having become a final order no longer subject to appeal); and (ii) the entry of an order closing these chapter 11 cases, KPMG-US believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Letter (as modified by this Order) and Application, including without limitation the advancement of defense costs, KPMG-US must file an application therefor in this Court. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by KPMG-US for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify KPMG-US. All parties in interest shall retain the right to object to any demand by KPMG-US for indemnification, contribution or reimbursement; and it is further

ORDERED that the Debtors shall comply with the notice requirement set forth in paragraph 4(c) of KPMG-US's Standard Terms and Conditions for Advisory and Tax Services (the "*Standard Terms and Conditions*"), including providing written notice to KPMG-US prior to disseminating or advancing any of KPMG-US's advice, recommendations, information, or work product to third parties; and it is further

ORDERED that during the pendency of the Chapter 11 Cases, paragraph 6 of the Standard Terms and Conditions is deleted; and it is further

ORDERED that notwithstanding anything in the Application or the Engagement Letter to the contrary, prior to the earlier of (i) entry of an order confirming a chapter 11 plan in this case (that order having become a final order no longer subject to appeal); and (ii) the entry of an order closing these chapter 11 cases, this Court shall retain exclusive jurisdiction over all matters arising out of and/or pertaining to KPMG-US's engagement; and it is further

ORDERED that during the pendency of the Chapter 11 Cases, this Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

Dated: July 11, 2012
New York, New York

/s/ Sean H. Lane
THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE