

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

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

:  
: Chapter 11

:  
: Case No. 12-11076

:  
: Jointly Administered  
:  
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**DECLARATION OF LAWRENCE R. HIRSH IN SUPPORT OF  
(1) DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS  
(A) AUTHORIZING DEBTORS TO (I) CONTINUE EXISTING  
CASH MANAGEMENT SYSTEM, BANK ACCOUNTS, AND BUSINESS  
FORMS AND (II) CONTINUE ORDINARY COURSE INTERCOMPANY  
TRANSACTIONS; AND (B) GRANTING AN EXTENSION OF TIME TO  
COMPLY WITH THE REQUIREMENTS OF SECTION 345(b) OF THE  
BANKRUPTCY CODE AND (2) THE THIRD PROPOSED INTERIM BUDGET**

1. I, Lawrence R. Hirsh, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge and belief:

2. I am authorized to submit this Declaration on behalf of Arcapita Bank B.S.C.(c) ("*Arcapita Bank*") and its affiliated debtors and debtors in possession (collectively, the "*Debtors*") and together with their non-Debtor affiliates, "*Arcapita*"), in support of the *Debtors' Motion for Interim and Final Orders (A) Authorizing Debtors to (I) Continue Existing Cash Management System, Bank Accounts, and Business Forms and (II) Continue Ordinary Course Intercompany Transactions; and (B) Granting an Extension of Time to Comply with the Requirements of Section 345(b) of the Bankruptcy Code* [Docket No. 12] (the "*Cash Management Motion*") and the third interim budget submitted for the Court's approval in

connection therewith [Docket No. 72] (the “*Third Interim Budget*”).<sup>1</sup> I offer this Declaration to (a) provide the Court with detail concerning the Debtors’ proposed transfer of cash to non-Debtor entities in order to preserve the value of the Debtors’ assets and (b) explain the irreparable harm that would result if the Debtors could not transfer the funds requested in the Third Interim Budget.

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, information learned from my review of relevant documents, and information supplied to me by professionals at Alvarez & Marsal (“*A&M*”) who are under my supervision and by members of the Debtors’ management and the Debtors’ other advisors. If called upon to testify, I could and would testify to the facts set forth herein on that basis.

#### **QUALIFICATIONS**

4. I am a Managing Director in the restructuring group of A&M, the Debtors’ proposed financial advisor. My business address is 3424 Peachtree Road NE, Suite 1500, Atlanta, Georgia 30326.

5. I have extensive experience with chapter 11 cases and other distressed restructurings, principally advising debtors and various other stakeholders in the chapter 11 process. I have approximately 20 years of experience in advising troubled companies and their stakeholders with restructuring their operational and financial positions. Since joining A&M in 2002, I have advised companies on numerous in-court and out-of-court restructurings, recapitalizations, and reorganizations.

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<sup>1</sup> The Proposed Budget is annexed hereto as Exhibit A. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Proposed Budget.

6. Before joining A&M, I was a Partner in the Corporate Restructuring Practice at Arthur Andersen LLP. In such capacity, I provided financial advisory services to distressed companies or their creditors and other stakeholders. Prior to that, I worked as an associate at Bankers Trust Company where I specialized in structuring leveraged buyouts, mergers and acquisitions, and debt restructurings and preparing business valuations.

7. I received my Bachelor of Arts degree from the University of Florida in 1984. I am a Certified Public Accountant, licensed to practice in Georgia, and a Certified Turnaround Professional. In addition, I am a member of the Georgia Society of Certified Public Accountants and the Turnaround Management Association.

8. Founded in 1983, A&M is a global professional services firm specializing in turnaround and interim management, performance improvement and business advisory services. A&M delivers specialist operational, consulting and industry expertise to management and investors seeking to accelerate performance, overcome challenges and maximize value across the corporate and investment lifecycles.

#### **PROCEDURAL HISTORY OF THE CASH MANAGEMENT MOTION**

9. The Debtors filed the Cash Management Motion on March 20, 2012, one day after the commencement of their chapter 11 cases (the date of such commencement, the “*Petition Date*”). By the Cash Management Motion, the Debtors sought authority to continue using their existing bank accounts, business forms and investment practices and to continue performing intercompany transactions in the Debtors’ ordinary course of business, consistent with past practices. An order was entered on March 22, 2012 [Docket No. 22] (the “*First Interim Order*”) approving the Cash Management Motion on an interim basis. The First Interim Order authorized the Debtors to continue performing intercompany transactions in the ordinary course of business

and to honor and pay obligations in connection therewith in an amount not to exceed \$10 million through the next hearing date on March 29, 2012 (the “*Second Hearing*”). After careful review and deferral of all non-essential costs, the Debtors initiated less than \$60,000 of disbursements between the Petition Date and the Second Hearing.

10. As required by the First Interim Order, two days prior to the Second Hearing, on March 27, 2012, the Debtors submitted a revised proposed interim budget for the period from the Second Hearing through April 21, 2012 [Docket No. 31] (the “*Second Interim Budget*”). After consideration at the Second Hearing, on April 6, 2012, this Court entered a second interim order approving the Motion on a further interim basis and approved the Second Interim Budget [Docket No. 62]. On April 13, 2012, the Debtors filed the Third Interim Budget [Docket No. 72].

11. The Debtors are seeking approval, among other things, to make intercompany transfers from Debtors to non-Debtor entities as set forth in the Third Interim Budget

**THE DEBTORS’ PRE-PETITION FUNDING PRACTICES**

12. The vast majority of the Debtors’ value is held by non-Debtor, indirect subsidiaries in the form of varying percentage ownership interests in, and certain loans to, investment vehicles (the “*Investment Assets*”). The Investment Assets are in four different categories: (i) real estate; (ii) private equity; (iii) infrastructure and (iv) venture capital investments. Certain, Investment Assets require funding before such investments can be monetized by selling them. Since the Petition Date, the primary source of the Debtors’ cash flow

has been cash proceeds of Investment Assets.<sup>2</sup> Additional funds are generated by certain non-Debtor affiliates through management and other fees. In general, such fees partially support the operating expenses of the non-Debtor management companies. However, payment of the management fees is often not timed to enable the non-Debtor management companies to fund their own expenses. Prior to the Petition Date, the development costs and funding for the Investment Assets were primarily funded by customer deposits, funded debt and proceeds from the syndication of investments. In the post-Petition period, as the Debtors represented in open Court and in accordance with this Court's direction at the Second Interim Hearing, the Debtors have deposited the Debtors' portion of the proceeds from the sale of Investment Assets into a JP Morgan Chase account located in New York (the "*AIHL JP Morgan Account*") established in the name of Arcapita Investment Holding Limited ("*AIHL*"). The Debtors seek approval to transfer cash as specified in the Third Interim Budget to indirect, non-Debtor subsidiaries of Arcapita Bank to fund operating expenses for management of the Investment Assets and to indirect, non-Debtor subsidiaries of AIHL to fund developments costs and expenses of the Investment Assets. The Third Interim Budget includes receipts and disbursements (i) on a consolidated basis of Debtor and non-Debtor entities, (ii) on a Debtor only basis and (ii) on a non-Debtor only basis.

### **THE PROPOSED BUDGET**

#### **I. Funding to Non-Debtor Affiliates is Minimal Under the Third Interim Budget**

13. The Third Interim Budget shows that the Debtors are requesting an aggregate of approximately \$4 million between April 22 through June 2, 2012 to be transferred to non-

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<sup>2</sup> As example of cash proceeds from Investment Assets is the proceeds from sales of individual condominiums in the Elysian project.

Debtors. Of this amount, approximately \$2.7 million will be used to fund critical payments and expenditures to preserve the value of the Investment Assets, prevent irreparable harm and prevent the incurrence of unnecessary expenses, as further explained below. Out of the \$2.7 million requested in this category, approximately \$1.1 million was contained in the Second Interim Budget, and previously approved by the Court, but the Debtors were successful in delaying \$1.1 million of this payment. An additional approximately \$1.3 million will be used to fund operating costs and expenses, including salaries (“*SG&A*”) of the non-Debtor management companies. The aggregate amount budgeted for non-Debtor SG&A is approximately \$4.5 million, with \$1.3 million funded by the Debtors and the remainder funded by the non-Debtor management companies from pre-petition funds in their accounts. The management companies are essential to preserve the value of the Investment Assets, because these management companies employ the individuals who manage the portfolio of Investment Assets. The Third Interim Budget also shows that Arcapita Bank will use approximately \$3.6 million from its own funds to pay for the cost of its operations.

14. The Debtors anticipate that AIHL will fund the costs required by Investment Assets from funds on deposit in the AIHL JP Morgan Account prior to seeking authority to borrow funds from Arcapita Bank.

## **II. Deal Funding Expenses Necessary to Prevent Irreparable Harm**

15. I and other members from my team at A&M were intimately involved in the formulation of the Second and Third Interim Budgets. As described below, I, along with members of my team at A&M, assisted the Debtors in identifying which expenditures were necessary to prevent irreparable harm, preserve the value of the Investment Assets and prevent

the incurrence of unnecessary costs and expenses (the “*Deal Funding Expenses*”).<sup>3</sup> I believe that payment of these expenses is in the best interests of the Debtors and their stakeholders.

16. In formulating the proposed budgets, the Debtors and their advisors expended a significant amount of time reviewing upcoming Deal Funding & Expenses and the effect of their non-payment on the Debtors’ business. In the course of such review, the Debtors and A&M analyzed the following issues to determine the necessity of particular Deal Funding Expenses:

- the supporting documents and information for each funding request including, but not limited to, invoices, financing documentation, and contracts;
- the potential risks, incremental costs and impairment to the value of the investment if the funding request was deferred;
- the ability to utilize alternative sources of cash (non-Debtor cash on-hand, third party financing, etc.) to satisfy the funding request; and
- the ability to defer the timing of the funding request without impairing the value of the investment by extending or modifying the payment terms of the third party obligations that necessitated the funding request.

After evaluation, the Debtors and their advisors significantly reduced the upcoming funding to approximately \$2.7 million of proposed intercompany transfers to fund Deal Funding Expenses for four Investment Assets.

17. The approximately \$2.7 million will be used to fund a variety of critical payments related to the Investment Assets or the holdings thereof, including:

- pay vendor invoices for critical services to non-Debtors;
- pay required and scheduled loan amounts due;
- fund operating and development costs of the Investment Assets; and

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<sup>3</sup> Deal Funding Expense corresponding to the line item entitled “Deal Funding & Expenses” in the Third Interim Budget.

- pay property maintenance costs, taxes and management costs resulting from the Investment Assets.

18. After considerable analysis, the Debtors and A&M concluded that these payments are required to maintain the Investment Assets in good standing and protect the value of the Investment Assets for the following reasons:

- failure to pay the specified costs and expenses could impair the viability of the project;
- failure to make the scheduled payments of certain financial debts could result in defaults under the applicable loan documentation, unwinding previous lender concessions and potentially permitting the lender to enforce remedies against Investment Asset;
- failure to pay the requested amounts could result in the imposition of liens that would impair the Investment Assets; and
- failure to pay the requested amounts could result in damages to counterparties, which could result in possible law suits against non-Debtors or even Arcapita for any losses.

19. The Debtors have shared confidential information with the Official Committee of Unsecured Creditors and the Provisional Liquidator regarding the use of funds requested in the Third Interim Budget that further justifies approval of the requested funds in order to preserve the value of the Debtors' assets, to prevent irreparable harm and to prevent the incurrence of unnecessary costs and expenses.

### **SUMMARY**

20. Based on the foregoing, I submit that the Third Interim Budget resulted from the exercise of the Debtors' good business judgment, and in my opinion should be approved by the Court. The Debtors and their professionals spent considerable time and effort evaluating various funding obligations of the non-Debtor affiliates. As a result, the Debtors were able to delay the vast majority of initial funding obligations and focus on funding obligations that were



immediately required to protect the value of the Investment Assets. Failure to pay the requested Deal Funding Expenses set forth in the Third Interim Budget could likely impair the value of the Investment Assets as described herein.

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

Executed on April 16, 2012

/s/ Lawrence R. Hirsh

Lawrence R. Hirsh