

SILVERMANACAMPORA LLP
Counsel to Kenneth P. Silverman, Esq.,
The Chapter 7 Trustee
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Ronald J. Friedman, Esq.
Jay S. Hellman, Esq.
David J. Mahoney, Esq.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
AT CENTRAL ISLIP

-----X
In re:

Chapter 7
Case No.: 09-70660 (DTE)
Substantively Consolidated

AGAPE WORLD, INC.,
AGAPE MERCHANT ADVANCE LLC,
AGAPE COMMUNITY LLC, AGAPE
CONSTRUCTION MANAGEMENT LLC,
AGAPE WORLD BRIDGES LLC, AND
114 PARKWAY DRIVE SOUTH LLC,

Debtors.

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**NOTICE OF HEARING ON TRUSTEE'S
APPLICATION FOR ENTRY OF AN ORDER *NUNC
PRO TUNC* EFFECTIVE AS OF MARCH 2, 2011, AUTHORIZING THE
RETENTION OF GRAY ROBINSON P.A., AS ATTORNEYS FOR THE
ESTATE, TO PROSECUTE ADVERSARY PROCEEDINGS IN THE STATE OF FLORIDA**

PLEASE TAKE NOTICE, that upon the attached application (the "Application"), Kenneth P. Silverman, Esq., chapter 7 trustee (the "Trustee") for the substantively consolidated estate of Agape World, Inc., *et al.*, will move before the Honorable Dorothy T. Eisenberg, United States Bankruptcy Judge, in her Courtroom 760, at the United States Bankruptcy Court, Eastern District of New York at Central Islip, located at 290 Federal Plaza, Central Islip, New York 11722, on **February 28, 2012 at 10:00 a.m.**, or as soon thereafter as counsel can be heard, for an Order authorizing the Trustee to retain Gray Robinson P.A., *nunc pro tunc*, to March 2, 2011 for the purpose of pursuing certain adversary proceedings in the State of New Jersey, and for such other and further relief this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that opposition to the Motion, if any, must be (I) made in writing; (II) electronically filed with the Court; (III) mailed to Chambers of the Honorable

Robert E. Grossman, United States Bankruptcy Judge, 290 Federal Plaza, Central Islip, New York 11722; (IV) mailed to SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, Attn: David J. Mahoney; and (V) mailed to the Office of the United States Trustee, 290 Federal Plaza, Central Islip, New York 11722, so as to be actually received no later than **February 24, 2012 at 5:00 p.m.**

PLEASE TAKE FURTHER NOTICE, that the hearing may be adjourned without further notice other than by announcement of such adjournment in open Court.

Dated: Jericho, New York
February 13, 2012

SILVERMANACAMPORA LLP
Attorneys for Kenneth P. Silverman, Esq.
Chapter 7 Trustee

By: s/ David J. Mahoney
Jay S. Hellman
David J. Mahoney
Members of the Firm
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300

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**TRUSTEE'S APPLICATION FOR ENTRY OF
AN ORDER *NUNC PRO TUNC* EFFECTIVE AS OF MARCH 2, 2011,
AUTHORIZING THE RETENTION OF GRAY ROBINSON P.A., AS ATTORNEYS FOR
THE ESTATE, TO PROSECUTE ADVERSARY PROCEEDINGS IN THE STATE OF FLORIDA**

Kenneth P. Silverman, Esq., the chapter 7 trustee of the bankruptcy estate of Agape World, Inc., *et al.*, by his counsel, SilvermanAcampora LLP, hereby seeks the entry of an Order in accordance with 11 U.S.C. §§327, 328, and 330 and Fed. R. Bankr. P. 2014 permitting the Trustee to retain Gray Robinson, P.A. ("Gray Robinson"), as attorneys for the estate, to prosecute certain adversary proceedings in the State of Florida on behalf of the bankruptcy estate, and it being in the best interests of the estate and its creditors, respectfully represents and sets forth as follows:

Background

1. At all relevant times, Agape World, Inc. was a domestic corporation with principal places of business located at 150 Motor Parkway, Suite 106, Hauppauge, New York; 64-13B Grand Avenue, Maspeth, New York; and 82-11 37th Avenue, Suite 602, Jackson Heights, New

York.

2. On February 5, 2009 (the "Filing Date"), an involuntary chapter 7 petition was filed by four petitioning creditors (the "Petitioning Creditors") pursuant to 11 U.S.C. §303(b), against Agape World, Inc., in the United States Bankruptcy Court for the Eastern District of New York.

3. On February 9, 2009, the Petitioning Creditors filed a motion to appoint an interim chapter 7 trustee under 11 U.S.C. §303(g).

4. On February 12, 2009, this Court granted the Petitioning Creditors' motion and entered an order directing the United States Trustee's Office to immediately appoint an interim chapter 7 trustee in the Agape World, Inc. case.

5. On February 12, 2009, Kenneth P. Silverman, Esq., was appointed the interim trustee in the Agape World Inc. case, and has since duly qualified as is now the permanent Trustee in the Agape World, Inc. substantively consolidated case.

6. On March 4, 2009, the Court issued an Order for relief in the Agape World, Inc. chapter 7 case.

7. On April 14, 2009, the Court issued an Order substantively consolidating Agape World, Inc., Agape Merchant Advance LLC, Agape Community LLC, Agape Construction Management, LLC, Agape World Bridges LLC, and 114 Parkway Drive South LLC.

Avoidable Transfers To Florida Defendants

8. Upon information and belief, since at least 1999 Agape was purportedly operating as a bridge lender, whereby investors were advised that Agape provided short-term bridge loans to commercial borrowers in order to generate high rates of return.

9. Prior to the Filing Date, various "brokers" and "sub-brokers" of Agape, recruited third-parties to invest money with the Debtor.

10. Upon information and belief, the Debtor, and the various "brokers" and/or "sub-brokers" offered contracts to various third-parties to induce those third-party "investors" to

“invest” in the purported bridge loans.

11. Pursuant to the terms of the various contracts entered into between the Debtor and the purported investors, those investors were permitted to receive payments from their purported investments in the form of “interest payments” or, alternatively, the purported investors were permitted to “roll-over” their investments to a future bridge loan offered.

12. Upon information and belief, the representations to investors were, in large measure, false.

13. Rather than utilizing all of the third-party funds to invest in bridge loans, the majority of the investor funds were, among other things, utilized to pay prior investors their promised rate of interest or to provide a return of their investment.

A. The Fraudulent Conveyance Claims

14. Certain individuals residing in the state of Florida received a net benefit (disbursements from the Debtors in excess of their deposits) of between \$5,850 and \$11,725 (the “Florida Clawback Defendants”).

15. The Trustee is entitled to recover the net benefits received from the Florida Clawback Defendants pursuant to 11 U.S.C. §§544(b), 548, 550 and New York Debtor & Creditor Law §§273 *et seq.*

16. Pursuant to 28 U.S.C. §1409, avoidance actions against the Florida Clawback Defendants are properly venued only in the District of Florida.

17. Accordingly, because the his counsel does not maintain an office in Florida, the Trustee must retain local counsel to file and prosecute the adversary proceedings against the Florida Clawback Defendants, or risk losing the opportunity to collect on those otherwise meritorious claims for the benefit of Agape’s creditors.

B. The Preference Claims

18. Certain individuals residing in the state of Florida received preferential transfers of between \$5,850 and \$11,725 in the 90 days immediately preceding the Filing Date (the

“Florida Preference Defendants” and collectively with the Florida Clawback Defendants, the “Florida Defendants”).

19. The Trustee is entitled to recover the preferential transfers received from the Florida Preference Defendants pursuant to 11 U.S.C. §§547 and 550.

20. Pursuant to 28 U.S.C. §1409, avoidance actions against the Florida Preference Defendants are properly venued only in the Southern and Middle Districts of Florida.

21. Accordingly, because the his counsel does not maintain an office in Florida, the Trustee must retain local counsel to file and prosecute the adversary proceedings against the Florida Preference Defendants, or risk losing the opportunity to collect on those otherwise meritorious claims for the benefit of Agape's creditors.

Retention Of Gray Robinson, P.A.

22. It is in the best interests of the estate to appoint an attorney as local counsel in the State of Florida to exercise all of the Trustee's legal rights and remedies to avoid and recover fraudulent transfers and/or preferential transfers made prior to the petition date.

23. To the best of the Trustee's knowledge, and upon information and belief, Gray Robinson has no connection with the Debtors, creditors, or parties in interest or their respective attorneys, as more particularly set forth in the affidavit of Frank Terzo, Esq., a partner of Gray Robinson, annexed hereto and made a part hereof as “**Exhibit 1.**” Therefore, Gray Robinson is “disinterested” within the meaning of 11 U.S.C. §§101(4) and §327(a).

The Timing of the Trustee's Motion

24. It is initially conceded that Bankruptcy Court's do not normally approve the retention of professionals more than thirty (30) days back. However, as Chief Judge Arthur J. Gonzalez recently held, “this Circuit recognizes that retroactive approval for employment under 11 U.S.C § 327 may be granted if the court finds that (1) the court would have granted the application if made in a timely manner, and (2) the delay in retention was due to either ‘excusable neglect’ or ‘unavoidable hardship.’” *In re Stylianou*, 2010 WL 3719303, 3 (Bankr.

S.D.N.Y.) (Bkrcty.S.D.N.Y.,2010) (citing *In re Hutter*, 215 B.R. 308, 315 (Bankr. D.Conn 19970 and *In re 245 Assocs.*, 188 B.R. 743, 750–51 (Bankr. S.D.N.Y.1995)).

25. The Supreme Court has long protected the “overriding consideration that equitable principles govern the exercise of bankruptcy jurisdiction.” *Marin v. Bank of England*, 385 U.S. 99, 103 (1966). In fact, it is well within the Bankruptcy Court’s discretion to grant the requested retention *nunc pro tunc*, for cause shown after notice and a hearing. See *In re Hutter*, 40 Fed.Appx. 640 (2nd Cir. 2002). For the reasons set forth herein, it is respectfully submitted that in this instance, such cause exists.

26. First, the Bankruptcy Court must decide whether it would have granted the retention application, had it been timely made. *In re Stylianou*, 2010 WL 379303, 4. To this point it is respectfully pointed out that (a) Gray Robinson is “disinterested,” and (b) the services being performed by Gray Robinson were necessary under the circumstances.

27. “The second prong of the test inquires into whether the delay in seeking court approval resulted from excusable neglect. Applicable case law permits courts “latitude to grant relief where the failure to file a timely application has been explained, and the explanation has been found reasonable.” *In re Stylianou*, 2010 WL 3719303, 5 quoting (*In re Hutter*, 215 B.R. at 315)

28. “The determination [of whether to grant *nunc pro tunc* employment] is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.” *Matter of Inter Urban Broadcasting of St. Louis, Inc.*, 174 B.R. 441, 448 (E.D.La.,1994) (quoting *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 113 S.Ct. 1489, 1498, (1993) Two of the most important factors in considering an application for *nunc pro tunc* employment are “whether the applicant or some other person bore responsibility for applying for approval; [and] whether the applicant was under time pressure to begin service without approval.” *In re Keren Ltd. Partnership*, 225 B.R. 303, 307 (S.D.N.Y.,1998) quoting *F/S Airlease II, Inc. v. Simon*, 844 F.2d 99, 105-06 (3rd Cir. 1988)

29. Here, the Trustee respectfully requests that the Court grant this application because it was not the neglect of the applicant that caused the delay. Rather, it was the oversight of Trustee's general counsel that resulted in the delayed filing of the instant application. As the Court will recall, when Gray Robinson began to work for the estate in early March, the Trustee and his counsel were in the midst of completing the filing of almost 1,500 adversary proceedings on the eve of the statute of limitations. In order to preserve the claims against the Florida Defendants, the Trustee sought out Gray Robinson to file the necessary adversary proceedings in the Florida Bankruptcy Court. Gray Robinson accepted and performed the requested task tirelessly and without flaw. However, because Gray Robinson does not have New York offices, Gray Robinson relied on Trustee's general counsel to file the retention application. See *In re Arkansas Co., Inc.*, 798 F.2d 645, 650 (3rd Cir. 1986) ("Retroactive approval should be limited to cases where the hardship is not of counsel's own making.") The failure to file the necessary retention is that of the Trustee's general counsel, not Gray Robinson.

30. Moreover, the proposed retention of Gray Robinson will not prejudice innocent third parties. See *In re Arkansas Co., Inc.*, 798 F.2d at 650. In fact, the Trustee would have been unable to pursue the estate's claims against the Florida Clawback Defendants and Florida Preference Defendants without Gray Robinson's diligent efforts.

31. Under the circumstances, given the fact that Gray Robinson is otherwise worthy of retention to perform necessary services and because it would be inequitable to penalize Gray Robinson for the failure of Trustee's counsel to file the retention application. Accordingly, it is respectfully requested that the Court follow the guidance of *In re Stylianou* and *In re Hutter*, and approve the *nunc pro tunc* retention of Gray Robinson.

32. Based on the foregoing, the Trustee respectfully requests that the Court authorize and approve the retention of Gray Robinson as attorneys for the estate to pursue claims on behalf of the estate in the State of Florida.

33. No prior application for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Trustee respectfully requests that this Court enter the Order, annexed hereto as **Exhibit 2**, approving all of the relief requested herein, together with such other, further and different relief this Court may deem just and proper.

Dated: Jericho, New York
February 10, 2012

SILVERMANACAMPORA LLP
Attorneys for Kenneth P. Silverman, Esq.,
The Chapter 7 Trustee for the Estate
of Agape World Inc., *et al.*

By: s/David J. Mahoney
David J. Mahoney
A Member of the Firm
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT NEW YORK

In re:

Chapter 7 Cases

AGAPE WORLD, INC.
AGAPE MERCHANT ADVANCE, LLC,
AGAPE COMMUNITY LLC, AGAPE
CONSTRUCTION MANAGEMENT, LLC,
AGAPE WORLD BRIDGES, LLC, AND
114PARKWAY DRIVE SOUTH, LLC
Debtors. _____/

Case No.: 09-70660 (DTE)
Substantively Consolidated

AFFIDAVIT OF PROPOSED SPECIAL COUNSEL FOR THE CHAPTER 7 TRUSTEE

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

Frank P. Terzo, being duly sworn says:

1. I am an attorney admitted to practice in the State of Florida, the United States District Court for the Southern District of Florida and qualified to practice in the U.S. Bankruptcy Court for the Southern District of Florida and the U.S. Bankruptcy Court for the Middle District of Florida.

2. I am a shareholder at the law firm of GrayRobinson, P.A. with offices located at 1221 Brickell Avenue, Suite 1650, Miami, Florida 33131.

3. Neither I nor the firm represent any interest adverse to the debtors, or the estates and we are disinterested persons as required by 11 U.S.C. § 327(a).

4. Neither I nor the firm have connections with the Debtor, its creditors, their respective attorneys and accountants, the U.S. Trustee, or any person employed in the office of the U.S. Trustee as required by FRBP 2014, other than the following: (i) GrayRobinson, P.A. has represented parties adverse (or potentially adverse) to the following creditors or interested

parties in unrelated matters: None; (ii) GrayRobinson, P.A. has represented the following creditors or interested parties as clients or as parties related to clients in related matters: None

5. Except for the representation of the Trustee, neither I nor the firm has or will represent any other entity in connection with this case and neither I nor the firm will accept any fee from any other party or parties in this case, except the debtor-in-possession.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: March 11, 2010.

/s/ Frank P. Terzo
Frank P. Terzo
Florida Bar No.: 906263

EXHIBIT 2

SILVERMANACAMPORA LLP
Counsel to Kenneth P. Silverman, Esq.,
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Chapter 7
Case No.: 09-70660 (DTE)
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**ORDER FOR RETENTION OF GRAY ROBINSON P.A.,
AS LOCAL COUNSEL TO THE TRUSTEE AND THE ESTATE IN
THE STATE OF FLORIDA NUNC PRO TUNC TO MARCH 2, 2011**

Upon the application (the "Application") of Kenneth P. Silverman, Esq., the Chapter 7 Trustee of Agape World, Inc., *et al* (the "Debtor") by his attorneys SilvermanAcampora, LLP, seeking the entry of an order authorizing the employment of Gray Robinson P.A. ("Gray Robinson") as local counsel to the Trustee and the estate of the Debtor in the State of Florida *nunc pro tunc* to March 2, 2011; and it appearing that Gray Robinson represents no interests adverse to the Debtor or to the estate in the matters upon which it is to be engaged, and that its employment is necessary and would be in the best interests of the estate; and that the within matter is one justifying the retention of local counsel; and it appearing that the delay in seeking authority to employ Gray Robinson was not that of Gray Robinson, and upon the hearing conducted by the court on the Application and no further notice being required, it is hereby

ORDERED, that Gray Robinson is retained and employed as attorneys to the Trustee under 11 U.S.C. §§327, 328 and 330, and Rule 2014 of the Federal Rules of Bankruptcy Procedure, *nunc pro tunc* to March 2, 2011; and, it is further

ORDERED, that no compensation or reimbursement of expenses shall be paid to Gray Robinson for services rendered to the Trustee, except upon proper application under 11 U.S.C. §§327, 328, and 330 and Rule 2014 of the Federal Rules of Bankruptcy Procedure and by further order of this Court; and it is further

ORDERED, that the Trustee is authorized and directed to take any and all such reasonable steps as may be necessary to implement the terms and condition of this Order.