

GIBSON, DUNN & CRUTCHER LLP

Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
Matthew J. Williams (MW-4081)
Joshua Weisser (JW-0185)
200 Park Avenue
New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

Attorneys for the Debtors and
Debtors in Possession

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

In re

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

Debtors.

Chapter 11 Case

Case No. 12-11076 (SHL)

Jointly Administered

**MOTION FOR THE ENTRY OF AN ORDER AUTHORIZING THE DEBTORS
TO (A) ENTER INTO A FINANCING COMMITMENT LETTER AND
RELATED FEE LETTER TO OBTAIN (I) REPLACEMENT DIP
FINANCING AND (II) EXIT FINANCING, (B) INCUR AND PAY
ASSOCIATED FEES AND EXPENSES, AND (C) PROVIDE RELATED INDEMNITIES**

Arcapita Bank B.S.C.(c) (“*Arcapita*”), Arcapita Investment Holdings Limited (“*AIHL*”),
Arcapita LT Holdings Limited (“*ALTHL*”), WindTurbine Holdings Limited (“*WindTurbine*”),
AEID II Holdings Limited (“*AEID II*”) and RailInvest Holdings Limited (“*RailInvest*”), as
debtors and debtors in possession (collectively, the “*Debtors*” and each, a “*Debtor*”) in the
above-captioned chapter 11 cases (collectively, the “*Chapter 11 Cases*”)¹ hereby submit this
motion (“*Motion*”) and respectfully represent as follows:

¹ Debtor Falcon Gas Storage Co., Inc. (“*Falcon Gas*”) is not a party to the Commitment Letter or the Fee Letter (each as defined below) and will not incur any obligations in connection therewith.

PRELIMINARY STATEMENT²

On April 25, 2013, the Debtors filed their *Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors under Chapter 11 of the Bankruptcy Code* (Dkt. No. 1036) (as the same may be further amended or supplemented, the “**Amended Plan**”). The Amended Plan reflects compromises made by the Debtors and their stakeholders relating to the distribution of estate assets among creditor classes, post-reorganization corporate governance and the proposed long-term wind-down of the Debtors’ estates. The related disclosure statement (Dkt. No. 1038) (the “**Amended Disclosure Statement**”) was approved by that certain order entered by this Court on April 26, 2013 (Dkt. No. 1045), and the Debtors are on track for a June 11, 2013 confirmation hearing and consummation of the Amended Plan as soon thereafter as is practicable.

The Debtors’ current post-petition financing matures on June 14, 2013 (prior to the expected effective date of the Amended Plan (the “**Effective Date**”)), subject to an extension option. However, as additional financing is necessary to ensure that the Debtors have sufficient liquidity to (a) fund them through the Effective Date and (b) consummate and implement the Amended Plan, the Debtors have requested both replacement debtor-in-possession (“**DIP**”) and exit financing proposals from potential lenders.

After good faith, arm’s-length negotiations, the Debtors and Goldman Sachs International (“**Goldman Sachs**”) reached agreement on the financing commitment letter annexed hereto as **Exhibit B** (as the same may be amended, the “**Commitment Letter**”) and the related fee letter annexed hereto as **Exhibit C** (as the same may be amended, the “**Fee Letter**” and, together with

² For ease of reference, this Motion uses terms typical of a loan, such as “lender” and “borrower”. In actuality, both the Replacement DIP Facility and the Exit Facility (each as defined below) will be in the forms of Shari’ah compliant Murabahas, or commodities transactions, not loans.

the Commitment Letter, the “**Commitment Documents**”).³ Subject to the terms of the Commitment Documents, Goldman Sachs (a) will be appointed as sole lead arranger, sole bookrunner and sole syndication agent and (b) commits to provide Murabaha facilities of up to \$350 million, comprised of a \$150 million secured superpriority debtor-in-possession Murabaha facility (the “**Replacement DIP Facility**”) that will convert, upon the Effective Date and satisfaction of other conditions precedent, to a larger senior secured exit Murabaha facility with up to \$200 million⁴ of additional availability (the “**Exit Facility**”) and, together with the Replacement DIP Facility, the “**Goldman Sachs Facilities**”).

The Commitment Documents obligate the Debtors to pay certain reasonable fees (the “**Fees**”), and reasonable expenses (the “**Expenses**”) and to grant indemnities (the “**Indemnities**”) in connection with the Goldman Sachs Facilities. The Fees, Expenses and Indemnities are compensation due from the Debtors to Goldman Sachs for its commitment to provide the financing, its efforts to arrange and syndicate the Goldman Sachs Facilities and any reasonable and documented expenses it incurs in connection therewith. These terms, moreover, are the product of arm’s-length negotiation among the Debtors, the Committee and Goldman Sachs. Taking into consideration all of the terms and conditions of the Goldman Sachs Facilities, including the Fees, Expenses and Indemnities, the Debtors believe that the Goldman Sachs Facilities offer the best terms available for the financing required by the Debtors during the remainder of their Chapter 11 Cases and to consummate and implement the Amended Plan.

³ The Debtors have filed contemporaneously herewith a motion authorizing them to file the Fee Letter in a redacted form, and file the unredacted Fee Letter with the Court under seal.

⁴ The size of the Exit Facility is contingent on whether the Debtors elect to repay in cash the obligations under the pre-petition secured Murabaha facilities (the “**SCB Facilities**”) between the Debtors and Standard Chartered Bank (“**SCB**”) at the effective date of the Amended Plan. The Commitment Documents permit the Debtors until May 20, 2013 to make this election.

The Debtors' entry into the Commitment Documents and performance of the transactions contemplated therein will enable the Debtors to (a) satisfy their outstanding obligations under the existing secured superpriority debtor in possession Murabaha facility, (b) consummate the Amended Plan, and (c) fulfill their duty to maximize the value of their estates for the benefit of all stakeholders. As such, the Debtors and, upon information and belief, the Committee believes that the Debtors' entry into the Commitment Documents represents a sound exercise of the Debtors' business judgment.

JURISDICTION AND VENUE

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

2. The statutory bases for the relief requested herein are sections 363(b) and 503(b) of title 11 of the United States Code (the "*Bankruptcy Code*").

BACKGROUND

3. On March 19, 2012 (the "*Petition Date*"), the Debtors commenced cases under chapter 11 of the Bankruptcy Code. On April 30, 2012, Falcon Gas commenced a case under chapter 11 of the Bankruptcy Code. The Debtors and Falcon Gas are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On April 5, 2012, the United States Trustee for Region 2 appointed the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the "*Committee*") (Dkt. No. 60) pursuant to sections 1102(a) and (b) of the Bankruptcy Code.

5. On April 16, 2013, the Debtors filed the Amended Plan and the Amended Disclosure Statement. Ten days later, on April 26, 2013, the Court entered the order approving

the Amended Disclosure Statement. The Debtors subsequently began soliciting votes for the Amended Plan pursuant to the procedures set forth in that order.

**THE DEBTORS' NEED FOR
THE REPLACEMENT DIP FINANCING AND THE EXIT FINANCING**

6. As the Court will recall, the Debtors were entitled to borrow, and did borrow, \$150 million under the Original DIP Facility. In accordance with the terms of the Original DIP Facility, the Debtors, during the Chapter 11 Cases, repaid approximately \$40 million of these borrowings with proceeds from asset sales. The Original DIP Facility is scheduled to mature prior to the anticipated Effective Date of the Amended Plan. While it contains an extension option, it does not allow for additional borrowings beyond the current amount outstanding and such additional borrowings are necessary to fund the Debtors' operational requirements through the Effective Date of the Amended Plan. Hence, alternative DIP financing (or an extension of the current financing) is necessary to bridge the Debtors to exit from chapter 11. The Replacement DIP Facility will restore a full \$150 million of DIP financing availability; after repayment of the Original DIP Facility, the Replacement DIP Facility will ensure that the Debtors have access to approximately \$40 million of additional liquidity prior to the Effective Date.

THE COMMITMENT DOCUMENT TERMS

7. As discussed above, the Commitment Documents propose financing that will consist of an approximately \$150 million Replacement DIP Facility and either a \$250 million or \$350 million Exit Facility. The primary terms and conditions of the Commitment Documents are as follows:⁵

⁵ The summary of Commitment Document and Goldman Sachs Facility provisions is qualified in all respects by the terms of the Commitment Documents.

<u>TERM</u>	<u>SUMMARY OF PROVISION</u>	
	REPLACEMENT DIP FACILITY	EXIT FACILITY
Investment Agent	<ul style="list-style-type: none"> Goldman Sachs or an affiliate or designee thereof. 	<ul style="list-style-type: none"> Same
Participants	<ul style="list-style-type: none"> The Investment Agent, certain banks and other financing entities that from time to time become party to the respective applicable Investment Agency Agreement (the “<i>Participants</i>”). 	<ul style="list-style-type: none"> Same
Replacement DIP Facility	<ul style="list-style-type: none"> US Dollar term Murabaha facility in an aggregate amount up to US\$150,000,000. 	<ul style="list-style-type: none"> US Dollar term Murabaha facility in an aggregate amount up to US\$250,000,000 or US\$350,000,000.
Budget	<ul style="list-style-type: none"> Debtors must comply with DIP Budget subject to permitted variance and carryover. 	<ul style="list-style-type: none"> Not applicable.
Profit	<p>“<i>Profit</i>” means the amount calculated in accordance with the following formula:</p> <ul style="list-style-type: none"> Cost Price * (L + M) * (N / 360) Where: <ul style="list-style-type: none"> L is LIBOR, M is the Margin, and N is the number of days in the relevant Deferred Payment Period (as defined below). 	<ul style="list-style-type: none"> Same
Late Payment Compensation	<ul style="list-style-type: none"> 2.0% above the usual Profit Rate. 	<ul style="list-style-type: none"> Same.
Original Issue Discount	<ul style="list-style-type: none"> 1.0% on the Replacement DIP Facility. 	<ul style="list-style-type: none"> 1.0% on the Exit Facility.
Administration Fee	<ul style="list-style-type: none"> 1.0% payment due Participants on the net proceeds of any voluntary or mandatory prepayment (other than any mandatory prepayment made prior to the first anniversary of the Conversion Date (as defined in the Commitment Documents)). 	<ul style="list-style-type: none"> Same
LIBOR	<ul style="list-style-type: none"> Subject to 1.5% floor. 	<ul style="list-style-type: none"> Same.
Margin	<ul style="list-style-type: none"> 8.0% per annum payable in cash plus 1.75% per annum payable in kind. 	<ul style="list-style-type: none"> Same.
Termination	<ul style="list-style-type: none"> July 31, 2013; provided that, in the event that entry of a confirmation order 	<ul style="list-style-type: none"> Three year anniversary of closing on

Dates	is delayed beyond July 31, 2013 as a result of regulatory related matters, the maturity date may be extended to August 30, 2013, at the Debtors' option.	the Exit Facility.
Superpriority Claims	<ul style="list-style-type: none"> Superpriority claims against all Debtors; provided that, the guarantees issued by WTHL, AEID II and RailInvest shall be subordinated to the obligations of the Debtors in favor of Standard Chartered Bank ("SCB") solely to the extent provided in the SCB Settlement Order.⁶ 	<ul style="list-style-type: none"> Not applicable.
Priority and Liens	<ul style="list-style-type: none"> First priority liens on all unencumbered Debtor assets, including ALTHL's interests in unencumbered LT Caycos) and AIHL's non-syndicated interests in the syndication companies. First priority liens on substantially all assets of non-Debtor obligors (excluding specific assets identified in the Commitment Documents). Second priority liens on all assets subject to a lien under the SCB Facilities. No liens on avoidance actions. 	<ul style="list-style-type: none"> First priority liens on substantially all assets of the obligors (excluding specific assets identified in the Commitment Documents); provided that, to the extent the obligations under the SCB Facilities remain outstanding post-emergence, the guarantees and liens in collateral in favor of SCB which had priority over the guarantees and liens supporting the Replacement DIP Facility shall have the same priority in relation to the Exit Facility.
Mandatory and Voluntary Prepayments	<p>Prepayments due in connection with net proceeds received by (a) an Obligor or (b) that could be required to be paid to an Obligor in connection with (i) asset sales (subject to specific carve outs and reductions based on the obligors ability to satisfy specific financial covenants); and (ii) insurance proceeds.</p> <p>Prepayments in an amount equal to 100% of the net cash proceeds received from the incurrence of financing obligations Purchaser or its wholly-owned subsidiaries.</p> <p>No mandatory prepayment from the proceeds of (a) any equity raise, (b) cash distributions in respect of litigation relating to Falcon Gas Storage Company, Inc. or an escrow account relating thereto or (c) to the extent the obligations under the SCB Facilities remain outstanding, any sale or other disposition of assets upon which then</p>	<ul style="list-style-type: none"> Same.

⁶ Order pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing and Approving the Settlement with Standard Chartered Bank (Dkt. 587).

	existing obligations in favor of SCB have priority.	
Financial and Reporting Covenants	<ul style="list-style-type: none"> Minimum Liquidity of US\$15,000,000 (at all times), and Loan-to-Value/Collateral Coverage Ratio of not less than 2.00x. 	<ul style="list-style-type: none"> Same.
Conditions Precedent	<p>Conditions precedent include:</p> <ul style="list-style-type: none"> Entry of a DIP order and related order of the Cayman court; Definitive transaction documents; Receipt of a DIP budget and other financial information; Payment of fees and costs; Delivery of legal, opinions, corporate records and lien searches; and All third party consents and the absence of unstayed litigation affecting the Replacement DIP Facility and evidence of insurance. 	<p>Conditions precedent include:</p> <ul style="list-style-type: none"> Entry of a confirmation order; Consummation of the Amended Plan; Resolution of the Cayman Islands proceedings of AIHL; Payment of all payable fees, costs and expenses; Subordination of disposition expenses under the Cooperation Settlement Term Sheet (as defined in the Amended Plan) and claims of the obligors against the Murabaha WCF Entities (as defined in the Commitment Letter); The timing and amounts of any fees payable under the Management Services Agreement (as defined in the Amended Plan) shall be materially consistent with the timing and amounts of such fees disclosed to Investment Agent in the draft Cooperation Term Sheet prior to the date hereof or otherwise in form and substance reasonably acceptable to the Investment Agent; Effectiveness of intercreditor agreement with SCB (to the extent necessary); and The investment agent shall be satisfied that the purchaser has complied with the following closing conditions: (a) the delivery of legal opinions, corporate records and documents from public officials, officer's certificates; and evidence of authority; (b) accuracy of representations and warranties; (c) perfection of liens, pledges, and mortgages on the collateral and (d) delivery of a solvency certificate, satisfactory to the investment agent.

8. The proceeds of the Goldman Sachs Facilities will be used, among other things, to fund the Debtors' ordinary course corporate expenses, pay down the Debtors' outstanding obligations under the Original DIP Facility (and potentially, the SCB Facilities), and enable the Debtors to consummate and implement the Amended Plan and subsequent wind-down of the estates.

RELIEF REQUESTED

9. Subject to the entry of an order in respect of this Commitment Motion, under the Commitment Documents, the Debtors must: (a) provide the Indemnities to Goldman Sachs (to the extent set forth in Annex A of the Commitment Letter); (b) reimburse Goldman Sachs for Expenses in accordance with the Commitment Documents; and (c) pay certain Fees to Goldman Sachs, as further set forth in the Fee Letter.⁷ By this motion, the Debtors seek entry of an order, substantially in the form attached hereto as *Exhibit A*, (a) authorizing the Debtors pursuant to sections 363 and 503(b) of the Bankruptcy Code to (i) enter into and perform the Commitment Documents, (ii) incur and pay the associated Fees and Expenses in connection therewith, and (iii) provide related Indemnities and (b) granting such other relief as is just and proper.

BASIS FOR RELIEF

10. Section 363(b) of the Bankruptcy Code provides that a debtor "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtor must demonstrate a sound business justification for the

⁷ As set forth in Annex A of the Commitment Letter, Goldman Sachs has agreed that no indemnification is due to the extent that any loss, claim, damage or liability (a) has been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of Goldman Sachs in performing the services that are the subject of the Commitment Documents, (b) is in respect of disputes solely among Goldman Sachs (other than in its capacity as Investment Agent or as sole lead arranger, sole bookrunner or sole syndication agent in connection with the Goldman Sachs Facilities) and any potential Participant (as defined in the Commitment Documents), or (c) resulted from Goldman Sachs' material breach in bad faith of its payment obligations to provide the Goldman Sachs Facilities on the terms set forth in the Commitment Documents.

sale or use of assets outside the ordinary course of business. *See, e.g., Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 387 (2d Cir. 1997); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983). Further, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

11. As noted above, the Debtors respectfully submit that entering into the Commitment Documents represents a sound exercise of the Debtors’ business judgment and will further a valid business purpose. Additional liquidity is required to fund repayment of the Original DIP Facility and implementation of the Amended Plan.⁸ The Commitment Documents are the result of extensive good faith, arm’s-length negotiations with input from the Debtors and their advisors, Goldman Sachs, and, taking all relevant factors into consideration, the Committee, and represent the best financing available. In particular, provisions governing payment of the Fees,⁹ the Expenses and the Indemnities were negotiated at length and are reasonable in light of Goldman Sachs’s commitment to provide financing to the estates and expenditure of substantial out-of-pocket expenses and resources to propose a commitment in the context of these Chapter 11 Cases.

⁸ In their most recent cash management budget, the Debtors project to have approximately \$4 million of available cash at June 22, 2013 (Dkt. 1054).

⁹ The Fees include an Alternative Transaction Fee (as defined in the Fee Letter), which becomes payable, as more fully described in the Fee Letter, only in the unlikely event that, among other things, the Debtors or their subsidiaries consummate another transaction involving a debtor-in-possession or exit facility. For the reasons set forth below, the Debtors submit that this fee is a reasonable and necessary cost that serves to protect the value of the estates by locking in Goldman Sachs’s commitment to provide the Goldman Sachs Facilities and ensuring the Debtors’ ability to consummate the Amended Plan as quickly as possible, if and when the Amended Plan is confirmed by this Court.

12. The Commitment Documents are the product of a robust and competitive auction process. The Debtors and their professionals engaged in a rigorous marketing and solicitation process to identify potential financing providers who were equipped to provide (a) debtor in possession financing in the short term, and (b) exit financing post-emergence, in each case in a Shari'ah compliant manner. The Debtors began to solicit exit financing proposals in February 2013. The Debtors principally focused on financial institutions which had participated in the DIP auction in the fall of 2012. The Debtors reasonably believed that those parties had spent a significant amount of time, effort and expense to develop considerable institutional knowledge regarding the company and its assets and would not require substantial additional diligence in connection with this new opportunity.

13. The Debtors and the Committee received a formal financing proposal from two parties and quickly began negotiating the terms of each proposal. At each round of negotiations, the Debtors and the Committee consulted with each other at length and, by doing so, extracted additional considerable value for the estates. The Goldman Sachs Facilities offered the best terms available at the bidding deadline (and do so at the time of this filing).

14. This Court has approved similar motions filed by debtors to enter into commitment letters and incur obligations in connection with exit financing on the basis of such debtors' reasonable business judgment. *See, e.g., In re Hawker Beechcraft, Inc., et al.*, Case No. 12-11873 (SMB) (Bankr. S.D.N.Y. Jan. 30, 2013); *In re Eastman Kodak Co., et al.*, Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Dec. 14, 2012); *In re the Great Atlantic & Pacific Tea Company, Inc., et al.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 27, 2012); *In re Calpine Corp.*, Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. Dec. 17, 2007) (approving exit facility commitment documents).

15. In particular, the Alternative Transaction Fee should be approved under section 503(b) of the Bankruptcy Code as necessary to preserve the value of the Debtors' estates. the Alternative Transaction Fee is well within the acceptable range: the proposed Alternative Transaction Fee is under any circumstance materially less than 2 percent of the overall commitment, and courts in this district and elsewhere have previously approved alternative transaction or break-up fees of similar or larger percentage amounts in DIP or exit financing contexts. *See, e.g., In re Point Blank Solutions*, Case No. 10-11255 (Bankr. D. Del. Dec. 28, 2010) (Dkt. No. 968) (authorizing 3.75% break-up fee (Dkt. No. 874)); *In re Sea Launch Co.*, Case No. 09-12153 (Bankr. D. Del. May 12, 2010) (Dkt. No. 697) (authorizing financing commitment with 3.75% break-up fee (Dkt. No. 655)); *In re Integrated Res., Inc.*, 147 B.R. 650 (Bankr. S.D.N.Y. 1992) (approving break-up fee up to 3.2% of commitment party's out of pocket expenses and 1.6% of the total proposed purchase price); *In re T.V.S.I. Holdings, Inc. et al.*, Case Nos. 90 B 13581–13586, 90 B 13856–13864 (CB), slip op. (Bankr. S.D.N.Y.1991) (approving 2.54% break-up fee).

16. Absent authorization from the Court to enter and perform under the Commitment Documents, the Debtors' ability to successfully consummate the Amended Plan and emerge from the Chapter 11 Cases is uncertain. Thus, the Debtors respectfully submit that it is in the best interest of the Debtors' estates, their creditors and other parties in interest for the Court to authorize the Debtors' entry into the Commitment Documents.

NOTICE

17. No trustee or examiner has been appointed in the Chapter 11 Cases. The Debtors have provided notice of filing of the Commitment 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, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey,

Esq.); (ii) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York, 10005 (Attn: Dennis F. Dunne, Esq., Abhilash M. Raval, Esq., and Evan R. Fleck, Esq.), counsel for the Committee; (iii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022-4834 (Attn: Mitchell A. Seider, Esq. and Adam J. Goldberg, Esq.), counsel for Goldman Sachs; and (iv) all parties listed on the Master Service List established in these Chapter 11 Cases. A copy of the Commitment Motion is also available on the website of the Debtors' notice and claims agent, GCG, at www.gcginc.com/cases/arcapita.

NO PRIOR REQUEST

18. No prior application for the relief requested herein 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
May 3, 2013

Respectfully submitted,

/s/ Michael A. Rosenthal

Michael A. Rosenthal (MR-7006)

Craig H. Millet (admitted *pro hac vice*)

Matthew J. Williams (MW-4081)

Joshua Weisser (JW-0185)

GIBSON, DUNN & CRUTCHER LLP

200 Park Avenue

New York, New York 10166-0193

Telephone: (212) 351-4000

Facsimile: (212) 351-4035

Exhibit A

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

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

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

**ORDER AUTHORIZING THE DEBTORS TO (A) ENTER INTO A FINANCING
COMMITMENT LETTER AND RELATED FEE LETTER TO OBTAIN (I)
REPLACEMENT DIP FINANCING AND (II) EXIT FINANCING, (B) INCUR AND PAY
ASSOCIATED FEES AND EXPENSES, AND (C) PROVIDE RELATED INDEMNITIES**

Upon the *Motion for Entry of an Order Authorizing the Debtors to (a) Enter into a Financing Commitment Letter and Related Fee Letter to Obtain (i) Replacement DIP Financing and (ii) Exit Financing, (b) Incur and Pay Associated Fees and Expenses, and (c) Provide Related Indemnities*, filed in the above-captioned chapter 11 cases, this Court finds and concludes that: (a) the Court has jurisdiction over the subject matter of the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (c) the Debtors have demonstrated that the Debtors' entry into the Commitment Documents, payment of the related Fees and Expenses and granting the Indemnities constitute an exercise of sound business judgment under section 363(b)(1) of the Bankruptcy Code; (d) payment of Fees and Expenses and the granting of the Indemnities provide a benefit to the Debtors' estates necessary to preserve the value of the Debtors' assets; (e) the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; (f) the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; and (g) notice of the Motion was sufficient, and no other or further notice need be provided.

Based upon the above findings and conclusions, and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted to the extent provided herein.
2. The Commitment Documents and all provisions set forth therein are approved in their entirety.
3. The Debtors are authorized to enter into the Commitment Documents and perform all obligations thereunder on the terms and conditions set forth therein, without notice, hearing or further order of the Court as, when and to the extent they become due under the Commitment Documents.
4. The Debtors are authorized to pay to Goldman Sachs the Fees and Expenses on the terms and conditions set forth in the Commitment Documents, without notice, hearing or further order of the Court as, when and to the extent it becomes due and payable under the terms of the Commitment Documents.
5. The Debtors are authorized to indemnify and hold harmless each of the indemnified parties on the terms and conditions set forth in Annex A of the Commitment Letter (the “**Indemnification**”), without notice, hearing or further order of the Court as, when and to the extent such obligation becomes due and payable under the terms of the Commitment Documents.
6. Upon entry of this Order, and subject to the notice and review requirements in paragraphs 7–9 below and the terms of the Commitment Documents, the Debtors are authorized to pay all Expenses incurred before the Effective Date.
7. The Debtors are authorized to pay the Expenses as provided in the Commitment Documents. Prior to payment by the Debtors of (a) any Expenses incurred prior to

or on May 3, 2013, the Committee and (b) any Expenses incurred after May 3, 2013, the Debtors and the Committee, in each case, shall have three days (the “**Notice Period**”) after Committee counsel’s receipt of any related invoice or invoices (which may be redacted as appropriate to preserve privilege, protection or confidentiality) to review such invoice or invoices and serve the Debtors (or the Committee, as applicable) and Goldman Sachs with notice of any objection on the basis that such invoice or invoices does not constitute “reasonable out-of-pocket expenses” in accordance with the terms of the Fee Letter and setting forth the amount of the Expenses to which the Committee or the Debtors, as applicable, objects (the “**Disputed Expenses**”).

8. As soon as practicable after the expiration of the Notice Period in respect of a particular invoice or invoices, the Debtors are authorized to reimburse Goldman Sachs for the amount of the Expenses as set forth in such invoice or invoices, excluding any Disputed Expenses.

9. If the Committee or the Debtors (as applicable) object to the payment of any Expenses within the Notice Period, such objection shall be resolved by (a) the Committee, the Debtors (as applicable) and Goldman Sachs or (b) the Court, in either case, prior to any payment of the Disputed Expenses subject to such objection; *provided, however*, that any ruling or order of the Court with respect to any Disputed Expenses shall not modify any term or condition of the Commitment Documents.

10. The Fees, the Expenses and the Indemnities, to the extent payable under the Commitment Documents and this Order, are actual, necessary costs and expenses of preserving the Debtors’ estates and shall be treated as allowed administrative priority claims against the Debtors under sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code; *provided, however*, to the extent that WTHL, AEID II or RailInvest are obligated to pay the Fees, Expenses

or Indemnities pursuant to the Commitment Documents, such obligations shall be subordinated to the existing guarantees by such entities in favor of SCB in accordance with the terms of the *Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing and Approving the Settlement with Standard Chartered Bank* (Dkt. No. 587).

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

12. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

13. The terms and conditions of this Order shall be effective and enforceable upon its entry.

Dated: _____, 2013
New York, New York

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

GOLDMAN SACHS INTERNATIONAL
Peterborough Court
133 Fleet Street
London EC4A 2BB
United Kingdom

PERSONAL AND CONFIDENTIAL

May 2, 2013

Arcapita Bank B.S.C.(c)
c/o Bernard Douton
Rothschild
1251 Sixth Avenue, 51st Floor
New York, New York 10020

Commitment Letter

Ladies and Gentlemen:

Goldman Sachs International (“**Goldman Sachs**”) is pleased to confirm the arrangements under which it (i) is exclusively authorized by Arcapita Bank B.S.C.(c) (“**Arcapita Bank**”) to act as sole lead arranger, sole bookrunner, and sole syndication agent in connection with, (ii) is exclusively authorized by Arcapita Bank to act as investment agent in connection with, and (iii) commits to provide the financing for, certain transactions described herein, in each case on the terms and subject to the conditions set forth in this letter and the attached Annexes A, B and C hereto (collectively, this “**Commitment Letter**”). Capitalized terms that are not defined herein are used with the meanings ascribed to such terms in Annexes A, B and C, as applicable.

You have informed us that Arcapita Bank and certain of its direct and indirect subsidiaries commenced voluntary cases under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) on March 19, 2012 in the Southern District of New York, which are jointly-administered by the U.S. Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) under the caption: *In re Arcapita Bank B.S.C.(c), et al.*, Case No. 12-11076 (SHL) (the “**Chapter 11 Cases**”). You have also informed us that the debtors in the Chapter 11 Cases are Arcapita Bank, Arcapita Investment Holdings Limited (“**AIHL**”), Arcapita LT Holdings Limited, WindTurbine Holdings Limited, AEID II Holdings Limited, and RailInvest Holdings Limited (collectively, the “**Debtors**”). You have further informed us that AIHL filed a winding up petition in FSD Cause No. 45 of 2012 – AJ (the “**Cayman Proceeding**”) in the Grand Court of the Cayman Islands (the “**Cayman Court**”) and sought appointment of joint provisional liquidators pursuant to s.104(3) Companies Law (2011 Revision), which joint provisional liquidators were appointed by order of the Cayman Court on March 20, 2012.

You have also informed us that Arcapita Bank, certain of the other Debtors and certain of their direct and indirect subsidiaries wish to obtain an up to \$150 million secured superpriority debtor-in-possession Murabaha financing facility (the “**Murabaha DIP Facility**”), which may convert into a senior secured exit Murabaha financing facility, with (i) an incremental additional \$200 million available thereunder so long as the SCB Facilities (as defined below) are repaid with the proceeds thereof or (ii) only if Arcapita Bank elects to keep the SCB Facilities outstanding following the occurrence of the effective date under the Plan and consummation of the Plan and downsize such additional financing (such election to occur no later than May 20, 2013), an incremental additional \$100 million available thereunder, in each case,

subject to the additional conditions set forth herein (the **“Murabaha Exit Facility”** and together with the Murabaha DIP Facility, the **“Facilities”**); in each case, having the terms and conditions set forth on Annexes B and C hereto.

1. Commitments; Titles and Roles.

Goldman Sachs is pleased to confirm its agreement to act, and you hereby appoint Goldman Sachs to act, as sole lead arranger, sole bookrunner and sole syndication agent in connection with the Facilities. Goldman Sachs is pleased to confirm its agreement to act, and you hereby appoint Goldman Sachs to act as investment agent (the **“Investment Agent”**) for the Facilities, Goldman Sachs is pleased to commit to provide Arcapita Bank the full \$350 million of the Facilities so long as the SCB Facilities are repaid with the proceeds of the Murabaha Exit Facility (or \$250 million of the Facilities only if Arcapita Bank elects to downsize the Murabaha Exit Facility no later than May 20, 2013) on the terms and subject to the conditions contained in this Commitment Letter and the Fee Letter (referred to below). Our fees for our services related to the Facilities are set forth in a separate fee letter (the **“Fee Letter”**) entered into by Arcapita Bank and Goldman Sachs on the date hereof.

2. Conditions Precedent.

Goldman Sachs' commitments and agreements are subject to (i) there not having occurred, since the date hereof, any event that has resulted in or could reasonably be expected to result in a material adverse change in or effect on the general affairs, management, financial position or results of operations of Arcapita Bank and its consolidated subsidiaries, taken as a whole, (other than those events typically resulting from the filing or continuation of the Chapter 11 Cases and Cayman Proceeding or the announcement of the filing of the Chapter 11 Cases and Cayman Proceeding) (a **“Material Adverse Change”**), (ii) the satisfactory negotiation, execution and delivery of appropriate definitive documents relating to the Facilities on terms consistent with this Commitment Letter including, without limitation, Murabaha agreements, an investment agency agreement, guarantees, security agreements, pledge agreements, real property security agreements, opinions of counsel, fatwas of Sharia'a advisors and other related definitive documents as deemed necessary by Goldman Sachs (collectively, the **“Facilities Documents”**), (iii) the accuracy of the representations and warranties set forth in paragraph 4 of this Commitment Letter and (iv) the other conditions set forth or referred to in Annexes B and C hereto.

3. Syndication

Goldman Sachs intends, and reserves the right, to syndicate the Facilities to the Participants, and you acknowledge and agree that the commencement of syndication shall occur in the discretion of Goldman Sachs. Goldman Sachs will select the Participants after consultation with Arcapita Bank. Goldman Sachs will lead the syndication, including determining the timing of all offers to potential Participants, any title of agent or similar designations or roles awarded to any Participant and the acceptance of commitments, the amounts offered and the compensation provided to each Participant from the amounts to be paid to Goldman Sachs pursuant to the terms of this Commitment Letter and the Fee Letter. Goldman Sachs will determine the final commitment allocations and will notify Arcapita Bank of such determinations. To facilitate an orderly and successful syndication of the Facilities, you agree that, until 45 days following the date of initial funding under the Facilities, Arcapita Bank, the Debtors and their respective direct and indirect subsidiaries or their respective affiliates will not (i) raise, contract, issue, arrange, syndicate or incur (or announce an intention to raise, contract, issue, arrange, syndicate or incur) any other debt financing in the international or any relevant domestic money, debt, bank or capital markets (including but not limited to, any private or public Sukuk issue, private placement, note issuance, bilateral or syndicated Murabaha, or other financing, whether or not Sharia'a-compliant (other than (a) the Facilities and other financing contemplated hereby to remain outstanding after the Closing Date, (b) debt

instruments to be issued in accordance with the Plan upon the effective date of the Plan, and (c) financing issued by any portfolio company of Arcapita LT Holdings Limited, including any renewals or refinancings of any existing financing facility or security), without the prior written consent of Goldman Sachs; (ii) disclose any information to any person in relation to a Participation; (iii) make a price (whether firm or indicative) with a view to buying or selling a Participation; or (iv) enter into (or agree to enter into) any agreement, option or other arrangement, whether legally binding or not, giving rise to the assumption of any risk or participation in any exposure in relation to a Participation. Notwithstanding the foregoing, Arcapita Bank may receive (but not solicit) proposals for debtor in possession financing and exit financing, negotiate such proposals and provide due diligence information to third parties in connection with such proposals.

Arcapita Bank agrees to cooperate with Goldman Sachs, agrees to cause the Debtors to cooperate with Goldman Sachs, and agrees to make its Sharia'a advisors available to Goldman Sachs and Goldman Sachs' Sharia'a advisors, in connection with the syndication of Facilities by making available to prospective Participants, subject to entry into confidentiality agreements and, in the case of the KPMG and CBRE reports, hold harmless letters, in each case, on substantially the same terms as those agreed by Goldman Sachs, access to the online data room established and maintained by Arcapita Bank containing information with respect to Arcapita Bank and its subsidiaries and the proposed Facilities, including customary information regarding the business, operations, financial projections and prospects of Arcapita Bank and its subsidiaries in order to complete the syndication of the Facilities (the "**Company Data Room**"), access to the valuation reports and waterfall analyses prepared by, and based on reports by, KPMG and CBRE and access to the DIP Budget. For the avoidance of doubt the completion of syndication shall not be a condition to the Closing Date, the Initial Transaction Date or the Conversion Date. Your obligations under this paragraph shall survive until 45 days following the date of initial funding under the Facilities. Arcapita Bank will be solely responsible for the contents of the DIP Budget and all other information, documentation or materials delivered to Goldman Sachs in connection with the Facilities (collectively, the "**Information**") and acknowledges that Goldman Sachs will be using and relying upon the Information without independent verification thereof. The Information will, in line with market practice and with the assistance of the Investment Agent, be provided to potential new Participants. Arcapita Bank agrees that Information regarding the Facilities and Information provided by Arcapita Bank or its professionals or representatives to Goldman Sachs in connection with the Facilities (limited to draft and execution versions of the Facilities Documents, the DIP Budget, any publicly filed financial statements any motions or other filings in the Chapter 11 Cases and Cayman Proceeding, and any other Information approved by Arcapita Bank in its reasonable discretion) may be disseminated to potential Participants and other persons through one or more internet sites (including an IntraLinks, SyndTrak or other electronic workspace (the "**Platform**")) created for purposes of syndicating the Facilities or otherwise, in accordance with Goldman Sachs' standard syndication practices (including click-through agreements reasonably satisfactory to you), and you acknowledge that neither Goldman Sachs nor any of its affiliates will be responsible or liable to you or any other person or entity for damages arising from the use by others of any Information or other materials obtained on the Platform.

Arcapita Bank acknowledges that certain of the Participants may be "public side" Participants (i.e., Participants that do not wish to receive material non-public information with respect to Arcapita Bank, the Debtors or their respective affiliates or any of their respective securities) (each, a "**Public Participant**"). It is understood that in connection with your assistance described above, you will provide, and cause all other applicable persons to provide, authorization letters to Goldman Sachs authorizing the distribution of the Information to prospective Participants and containing a representation to Goldman Sachs, in the case of information to be distributed to Public Participants, that such Information does not include material non-public information about Arcapita Bank, the Debtors or their respective affiliates or their respective securities. In addition, Arcapita Bank will clearly designate as such all Information provided to Goldman Sachs by or on behalf of Arcapita Bank or the Debtors which is suitable to make available to Public

Participants. Arcapita Bank acknowledges and agrees that the following documents may be distributed to all Participants (including Public Participants): (a) drafts and final versions of the Facilities Documents; (b) administrative materials prepared by Goldman Sachs for prospective Participants (such as a participant meeting invitation, allocations and funding and closing memoranda); (c) term sheets and notification of changes in the terms of the Facilities; and (d) the Final DIP Order, the Cayman Order, the Budget and any motions or other documents to be filed in the Chapter 11 Cases or Cayman Proceeding. You hereby inform Goldman Sachs that certain documentation made available to Goldman Sachs on the Company Data Room includes material non-public information.

4. Information.

Arcapita Bank represents and covenants that (i) all Information (other than financial projections, forecasts, budgets and other forward-looking statements and other information of a general economic or industry nature) provided directly or indirectly by Arcapita Bank or the Debtors to Goldman Sachs or the Participants in connection with the transactions contemplated hereunder is and will be, when taken as a whole, complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading and (ii) the financial projections, forecasts, budgets and other forward-looking statements, including, without limitation, the DIP Budget, that have been or will be made available to Goldman Sachs or the Participants by or on behalf of Arcapita Bank or the Debtors have been and will be prepared in good faith based upon assumptions that are believed by the preparer thereof to be reasonable at the time such financial projections are furnished to Goldman Sachs or the Participants, it being understood and agreed that financial projections are not a guarantee of financial performance and actual results may differ from financial projections and such differences may be material. You agree that if at any time prior to the later of (i) the Closing Date and (ii) the termination of the syndication of the Facilities as determined by Goldman Sachs (which shall not be later than 45 days after the Closing Date), any of the representations in the preceding sentence would be incorrect in any material respect if the Information and financial projections were being furnished, and such representations were being made, at such time, then you will promptly supplement, or cause to be supplemented, the Information and financial projections so that such representations will be correct in all material respects under those circumstances. In arranging and syndicating the Facilities, we will be entitled to use and rely on the Information and the financial projections, including, without limitation, the DIP Budget, without responsibility for independent verification thereof. We will have no obligation to conduct any independent evaluation or appraisal of the assets or liabilities of you, the Borrower, the Debtors or any other party or to advise or opine on any related solvency issues.

You agree that you shall provide to Goldman Sachs and its advisors all information and documents relating to the Company, its subsidiaries, the portfolio companies and the related holding companies and their respective businesses, operations, assets and liabilities as Goldman Sachs may reasonably request from time to time in a reasonably prompt manner and that such materials shall be made available to Participants in the Company Data Room.

5. Indemnification and Related Matters.

In connection with arrangements such as this, it is our firm's policy to receive indemnification. Arcapita Bank agrees to the provisions with respect to our indemnity and other matters set forth in Annex A, which is incorporated by reference into this Commitment Letter.

6. Assignments.

This Commitment Letter may not be assigned by you without the prior written consent of Goldman Sachs (and any purported assignment without such consent will be null and void), is intended to be solely for the benefit of Goldman Sachs and the other parties hereto and, except as set forth in Annex A hereto, is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto. Goldman Sachs may assign its commitments and agreements hereunder, in whole or in part, to any of its affiliates and, as provided above (except with respect to its role as Investment Agent), to any Participant prior to the Closing Date. In addition, until the termination of the syndication of the Facilities, as determined by Goldman Sachs, Goldman Sachs may, in consultation with Arcapita Bank, assign its commitments and agreements hereunder (other than with respect to its role as Investment Agent), in whole or in part, to additional arrangers or other Participants. Any assignment by Goldman Sachs to any potential Participant made prior to the Closing Date will only relieve Goldman Sachs of its obligations set forth herein to fund that portion of the commitments so assigned if such assignment was approved by you (pursuant to the Fee Letter or otherwise, in each case, such approval not to be unreasonably withheld or delayed); provided that, any such assignment will not relieve Goldman Sachs of its commitment to provide the full amount of the Facilities (as set forth in paragraph 2 above). Neither this Commitment Letter nor the Fee Letter may be amended or any term or provision hereof or thereof waived or otherwise modified except by an instrument in writing signed by each of the parties hereto or thereto, as applicable, and any term or provision hereof or thereof may be amended or waived only by a written agreement executed and delivered by all parties hereto or thereto. Notwithstanding the foregoing, any assignment by Goldman Sachs of its role as Investment Agent (other than to any affiliate of Goldman Sachs) is subject to the consent of Arcapita Bank, not to be unreasonably withheld.

7. Confidentiality.

Please note that this Commitment Letter, the Fee Letter and any written communications provided by, or oral discussions with, Goldman Sachs in connection with this arrangement are exclusively for the information of Arcapita Bank and may not be disclosed by you to any third party or circulated or referred to publicly without our prior written consent; provided that we hereby consent to your disclosure of (a) this Commitment Letter, the Fee Letter and such communications and discussions to (i) Arcapita Bank's subsidiaries and (ii) their respective officers, directors, agents and advisors (including, without limitation, all legal counsel, accountants, auditors, financial advisors and other experts or advisors) in connection with the consideration or negotiation of the Facilities, in each case, who have been informed by you of the confidential nature of this Commitment Letter, the Fee Letter and such communications and discussions and who have agreed or are contractually obligated to treat such information confidentially, (b) this Commitment Letter and the Fee Letter to the office of the U.S. Trustee, the Joint Provisional Liquidators appointed in the Cayman Proceeding (the "**JPL**") and to their respective representatives and professional advisors on a confidential basis and to the statutorily appointed committee of unsecured creditors and their professional advisors (the "**Committee**"), (c) the Fee Letter, under seal in a filing with the Bankruptcy Court, upon granting of a motion to file the Fee Letter under seal, (d) the Fee Letter, on a confidential basis and subject to any prior or subsequent motion or order to file the Fee Letter under seal, to such other persons or entities determined by Goldman Sachs in its sole discretion, in each case on a confidential basis, and (e) after execution and delivery by Arcapita Bank and Goldman Sachs of this Commitment Letter and the Fee Letter, this Commitment Letter, and a redacted version of the Fee Letter reasonably acceptable to the Goldman Sachs (which at a minimum shall redact the fee provisions that may be set forth therein) to the extent required in motions, in form and substance reasonably satisfactory to Goldman Sachs, to be filed with the Bankruptcy Court solely in connection with obtaining the entry of an order approving Arcapita Bank's execution, delivery and performance of this Commitment Letter, the Fee Letter and/or the definitive Facilities Documents, (g) the aggregate amount of the fees payable under the Fee Letter, (h) the Commitment Letter, the Fee Letter and such communications and discussions in connection with the enforcement of your rights hereunder, and (i) this Commitment Letter, the Fee Letter and such communications and discussions as required by applicable law or compulsory legal process,

including pursuant to a subpoena or order issued by a court of competent jurisdiction or by a judicial, administrative or legislative body or committee (in which case you agree to inform us promptly thereof to the extent you are lawfully permitted to do so).

Except as provided in the preceding paragraph, the Company further agrees to take such reasonable actions as shall be required to prevent pricing, fees or similar terms of the Fee Letter (collectively, the **“Specified Information”**) and the contents of the Fee Letter from becoming publicly available, including without limitation by the filing of a motion or an *ex parte* request pursuant to Sections 105(a) and 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018, as applicable, in each case seeking an order of the applicable Bankruptcy Court authorizing the Company to file the Specified Information and the Fee Letter under seal; provided, for the avoidance of doubt, that authorization to file the Specified Information and the Fee Letter under seal shall not be required prior to disclosure except as expressly provided above.

8. Absence of Fiduciary Relationship; Affiliates; Etc.

As you know, Goldman Sachs (together with its affiliates, **“GS”**) is a full service financial institution engaged, either directly or through its affiliates, in a broad array of activities, including commercial and investment banking, financial advisory, market making and trading, investment management (both public and private investing), investment research, principal investment, financial planning, benefits counseling, risk management, hedging, financing, brokerage and other financial and non-financial activities and services globally. In the ordinary course of their various business activities, GS and funds or other entities in which GS invests or with which they co-invest, may at any time purchase, sell, hold or vote long or short positions and investments in securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers. In addition, GS may at any time communicate independent recommendations and/or publish or express independent research views in respect of such assets, securities or instruments. Any of the aforementioned activities may involve or relate to assets, securities and/or instruments of Arcapita Bank and/or other entities and persons which may (i) be involved in transactions arising from or relating to the arrangement contemplated by this Commitment Letter or (ii) have other relationships with Arcapita Bank or its affiliates. In addition, GS may provide investment banking, commercial banking, underwriting and financial advisory services to such other entities and persons. The arrangement contemplated by this Commitment Letter may have a direct or indirect impact on the investments, securities or instruments referred to in this paragraph, and employees working on the financing contemplated hereby may have been involved in originating certain of such investments and those employees may receive credit internally therefor. Although GS in the course of such other activities and relationships may acquire information about the transaction contemplated by this Commitment Letter or other entities and persons which may be the subject of the financing contemplated by this Commitment Letter, GS shall have no obligation to disclose such information, or the fact that GS is in possession of such information, to Arcapita Bank or to use such information on Arcapita Bank’s behalf.

Goldman Sachs or its affiliates are, or may at any time be, (i) a creditor of the Debtors or their direct or indirect subsidiaries or affiliates (in such capacity, the **“Existing Creditor”**) and/or (ii) receive an allocation of and become a participant in the Murabaha DIP Facility and the Murabaha Exit Facility (in such capacity, the **“Goldman Participant”**). Arcapita Bank further acknowledges and agrees for itself, its subsidiaries and its affiliates that the Existing Creditor and Goldman Participant (a) will be acting for its own account as principal in connection with the existing claims as well as any decisions it makes as a Goldman Participant, (b) will be under no obligation or duty as a result of Goldman Sachs’ role in connection with the transactions contemplated by this Commitment Letter or otherwise to take any action or refrain from taking any action (including with respect to voting for or against any requested amendments), or exercising any rights or remedies, that the Existing Creditor may be entitled to take or exercise in respect of the existing claims, and (c) may manage its exposure to the existing claims and/or

the Murabaha DIP Facility and the Murabaha Exit Facility without regard to Goldman Sachs' role hereunder.

Consistent with GS's policies to hold in confidence the affairs of its customers, GS will not furnish confidential information obtained from you by virtue of the transactions contemplated by this Commitment Letter to any of its other customers. Furthermore, you acknowledge that neither GS nor any of its affiliates has an obligation to use in connection with the transactions contemplated by this Commitment Letter, or to furnish to you, confidential information obtained or that may be obtained by them from any other person.

GS may have economic interests that conflict with those of the Debtors, their direct and indirect subsidiaries, their respective equity holders, their respective creditors and/or their affiliates. You agree that GS will act under this Commitment Letter as an independent contractor and that nothing in this Commitment Letter or the Fee Letter or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between GS and the Debtors, their direct and indirect subsidiaries, their respective equity holders, their respective creditors and/or their affiliates. You acknowledge and agree that the transactions contemplated by this Commitment Letter and the Fee Letter (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between GS, on the one hand, and Arcapita Bank, on the other, and in connection therewith and with the process leading thereto, (i) GS has not assumed an advisory or fiduciary responsibility in favor of Arcapita Bank, its equity holders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether GS has advised, is currently advising or will advise the Debtors, their direct and indirect subsidiaries, their respective equity holders, their respective creditors and/or their affiliates on other matters) or any other obligation to the Debtors, their direct and indirect subsidiaries, their respective equity holders, their respective creditors and/or their affiliates except the obligations expressly set forth in this Commitment Letter and the Fee Letter and (ii) GS is acting solely as a principal and not as the agent or fiduciary of the Debtors, their direct and indirect subsidiaries, their respective equity holders, their respective creditors, their affiliates or any other person. Arcapita Bank acknowledges and agrees that Arcapita Bank has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Arcapita Bank agrees that it will not claim that GS has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to Arcapita Bank, in connection with such transactions or the process leading thereto. In addition, Goldman Sachs may employ the services of its affiliates in providing services and/or performing its or their obligations hereunder and may exchange with such affiliates information concerning Arcapita Bank, the Debtors, their affiliates and other companies that may be the subject of this arrangement, and such affiliates will be entitled to the benefits afforded to Goldman Sachs hereunder.

In addition, please note that GS does not provide accounting, tax or legal advice or advice in relation to Sharia'a issues. Notwithstanding anything herein to the contrary, Arcapita Bank (and each employee, representative or other agent of Arcapita Bank) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Facilities and all materials of any kind (including opinions or other tax analyses) that are provided to Arcapita Bank relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure will remain subject to the confidentiality provisions hereof (and the foregoing sentence will not apply) to the extent reasonably necessary to enable the parties hereto, their respective affiliates, and their respective affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax treatment" means U.S. federal or state income tax treatment, and "tax structure" is limited to any facts relevant to the U.S. federal income tax treatment of the transactions contemplated by this Commitment Letter but does not include information relating to the identity of the parties hereto or any of their respective affiliates.

9. Miscellaneous.

Goldman Sachs' commitments and agreements hereunder shall become effective only upon entry of the Commitment Order and acceptance of the terms of this letter by Arcapita Bank, and shall otherwise expire and terminate on the first to occur of (i) a material breach by Arcapita Bank under this Commitment Letter or the Fee Letter, except for any breach of Section 3 (Syndication) of this Commitment Letter, (ii) May 3, 2013 at 5:00 p.m. New York time, unless prior to such time the Debtors shall have filed a motion (the **"Commitment Motion"**), together with a joinder thereto from the Committee, with the Bankruptcy Court in form and substance reasonably satisfactory to Goldman Sachs for authorization for the Debtors to enter into, and perform under, the Commitment Letter and Fee Letter, (iii) May 15, 2013 at 5:00 p.m. New York time, unless prior to such time an order (the **"Commitment Order"**) shall have been entered by the Bankruptcy Court in form and substance reasonably satisfactory to Goldman Sachs, among other things, granting the Commitment Motion and authorizing the Debtors to enter into, and perform under, the Commitment Letter and Fee Letter, and (iv) June 13, 2013, unless prior to such time (1) a Final DIP Order shall have been entered by the Bankruptcy Court and a Cayman Order shall have been entered by the Cayman Court (collectively with the Final DIP Order and the Commitment Order, the **"Approval Orders"**), in each instance, in form and substance reasonably satisfactory to Goldman Sachs and, among other things, authorizing the Company to enter into, and perform under, the Facilities Documents, and (2) the closing of the Murabaha DIP Facility, on the terms and subject to the conditions contained herein and in the Facilities Documents, has been consummated. In the event of any termination pursuant to this paragraph, this Commitment Letter, and Goldman Sachs' agreement to perform the services described herein, shall automatically terminate without further action or notice and without further obligation to Arcapita Bank unless Goldman Sachs shall, in its discretion, agree to an extension in writing. If any Approval Order shall at any time cease to be in full force and effect or shall be reversed, stayed or modified in any manner without the prior written consent of Goldman Sachs, Goldman Sachs may, in its own discretion, terminate its agreements under this Commitment Letter and the Fee Letter.

The provisions set forth under Sections 3, 4, 5 (including Annex A), 7 and 8 hereof and this Section 9 hereof and the provisions of the Fee Letter will remain in full force and effect regardless of whether definitive Facilities Documents are executed and delivered. The provisions set forth in the Fee Letter and under Sections 5 (including Annex A) and 7 and 8 hereof and this Section 9 will remain in full force and effect notwithstanding the expiration or termination of this Commitment Letter or Goldman Sachs' commitments and agreements hereunder.

Arcapita Bank for itself and its affiliates agrees that any suit or proceeding arising in respect of this Commitment Letter or Goldman Sachs' commitments or agreements hereunder or the Fee Letter will be tried in the Bankruptcy Court, or in the event the Bankruptcy Court does not have or does not exercise jurisdiction, then in any Federal court of the United States of America sitting in the Borough of Manhattan or, if that court does not have subject matter jurisdiction, in any state court located in the City and County of New York, and Arcapita Bank hereby submits to the exclusive jurisdiction of, and to venue in, such court. Any right to trial by jury with respect to any action or proceeding arising in connection with or as a result of either Goldman Sachs' commitments or agreements or any matter referred to in this Commitment Letter or the Fee Letter is hereby waived by the parties hereto. Arcapita Bank for itself and its affiliates agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Service of any process, summons, notice or document by registered mail or overnight courier addressed to any of the parties hereto at the addresses above shall be effective service of process against such party for any suit, action or proceeding brought in any such court. This Commitment Letter and the Fee Letter will be

governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws.

Arcapita Bank hereby acknowledges that, the Debtors and the Obligors have appointed Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166-0193 (Attn: Michael A Rosenthal, Esq. & Matthew J. Williams, Esq.) as its agent for service of process for purpose of the submission to jurisdiction set forth above.

Goldman Sachs hereby notifies Arcapita Bank that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the **"Patriot Act"**) Goldman Sachs and each Participant may be required to obtain, verify and record information that identifies the Borrower and each of the Guarantors, which information includes the name and address of the Borrower and each of the Guarantors and other information that will allow Goldman Sachs and each Participant to identify the Borrower and each of the Guarantors in accordance with the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act and is effective for Goldman Sachs and each Participant.

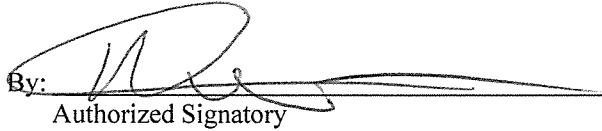
This Commitment Letter may be executed in any number of counterparts, each of which when executed will be an original, and all of which, when taken together, will constitute one agreement. Delivery of an executed counterpart of a signature page of this Commitment Letter by facsimile transmission or electronic transmission (in pdf format) will be effective as delivery of a manually executed counterpart hereof. This Commitment Letter and the Fee Letter are the only agreements that have been entered into among the parties hereto with respect to the Facilities and set forth the entire understanding of the parties with respect thereto and supersede any prior written or oral agreements among the parties hereto with respect to the Facilities.

[Remainder of page intentionally left blank]

Please confirm that the foregoing is in accordance with your understanding by signing and returning to Goldman Sachs the enclosed copy of this Commitment Letter, together, if not previously executed and delivered, with the Fee Letter on or before the close of business on May 3, 2013, whereupon this Commitment Letter and the Fee Letter will become binding agreements between us. If this Commitment Letter and the Fee Letter have not been signed and returned as described in the preceding sentence by such date, this offer will terminate on such date. We look forward to working with you on this transaction.

Very truly yours,

GOLDMAN SACHS INTERNATIONAL

By: 
Authorized Signatory

Alisdair Fraser
Managing Director

ACCEPTED AND AGREED AS OF MAY __, 2013:

ARCAPITA BANK B.S.C.(c)

By: _____
Name:
Title:

Please confirm that the foregoing is in accordance with your understanding by signing and returning to Goldman Sachs the enclosed copy of this Commitment Letter, together, if not previously executed and delivered, with the Fee Letter on or before the close of business on May 3, 2013, whereupon this Commitment Letter and the Fee Letter will become binding agreements between us. If this Commitment Letter and the Fee Letter have not been signed and returned as described in the preceding sentence by such date, this offer will terminate on such date. We look forward to working with you on this transaction.


Very truly yours,

GOLDMAN SACHS INTERNATIONAL

By: _____
Authorized Signatory

ACCEPTED AND AGREED AS OF MAY __, 2013:

ARCAPITA BANK B.S.C.(c)

By: 
Name: MOHAMMED CHOWDHURY
Title: EXECUTIVE DIRECTOR

In the event that Goldman Sachs becomes involved in any capacity in any action, proceeding or investigation brought by or against any person, including shareholders, partners, members or other equity holders of Arcapita Bank, the Debtors or their affiliates in connection with or as a result of either this arrangement or any matter referred to in this Commitment Letter or the Fee Letter (together, the “Letters”), Arcapita Bank agrees to periodically reimburse Goldman Sachs for its reasonable documented legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith as provided in the Fee Letter. Arcapita Bank also agrees to indemnify and hold Goldman Sachs harmless against any and all losses, claims, damages or liabilities to any such person in connection with or as a result of either this arrangement or any matter referred to in the Letters (whether or not such investigation, litigation, claim or proceeding is brought by you, your equity holders or creditors or an indemnified person and whether or not any such indemnified person is otherwise a party thereto), except to the extent that such loss, claim, damage or liability (i) has been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of Goldman Sachs in performing the services that are the subject of the Letters, (ii) are in respect of disputes solely among Goldman Sachs (other than in its capacity as Investment Agent or as sole lead arranger, sole bookrunner or sole syndication agent in connection with the Facilities) and any potential Participant (as defined in the Letters), or (iii) resulted from Goldman Sachs’ material breach in bad faith of its payment obligations to provide the Facilities (as defined in the Letters) on the terms set forth in the Letters. If for any reason the foregoing indemnification is unavailable to Goldman Sachs or insufficient to hold it harmless, then Arcapita Bank will contribute to the amount paid or payable by Goldman Sachs as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative economic interests of (i) Arcapita Bank, the Debtors and their respective affiliates, shareholders, partners, members or other equity holders on the one hand and (ii) Goldman Sachs on the other hand in the matters contemplated by the Letters as well as the relative fault of (i) Arcapita Bank, the Debtors and their respective affiliates, shareholders, partners, members or other equity holders on the one hand and (ii) Goldman Sachs with respect to such loss, claim, damage or liability and any other relevant equitable considerations. The reimbursement, indemnity and contribution obligations of Arcapita Bank under this paragraph will be in addition to any liability which Arcapita Bank may otherwise have, will extend upon the same terms and conditions to any affiliate of Goldman Sachs and the partners, members, directors, agents, employees and controlling persons (if any), as the case may be, of Goldman Sachs and any such affiliate, and will be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of Arcapita Bank, Goldman Sachs, any such affiliate and any such person. Arcapita Bank also agrees that neither any indemnified party nor any of such affiliates, partners, members, directors, agents, employees or controlling persons will have any liability to Arcapita Bank, the Debtors, their affiliates or any person asserting claims on behalf of or in right of Arcapita Bank, the Debtors, their affiliates or any other person in connection with or as a result of either this arrangement or any matter referred to in the Letters, except in the case of Arcapita Bank to the extent that any losses, claims, damages, liabilities or expenses incurred by Arcapita Bank or its affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such indemnified party in performing the services that are the subject of the Letters; provided, however, that in no event will such indemnified party or such other parties have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such indemnified party’s or such other parties’ activities related to the Letters.

*In respect of any judgment or order given or made for any amount due under this Commitment Letter, the Fee Letter or the transactions contemplated hereby that is expressed and paid in a currency (the “**judgment currency**”) other than United States dollars, Arcapita Bank will indemnify Goldman Sachs against any loss incurred by Goldman Sachs as a result of any variation as between (i) the rate of exchange at which the United States dollar amount is converted into the judgment currency for the purpose of such judgment or order and (ii) the rate of exchange at which Goldman Sachs is able to*

purchase United States dollars with the amount of the judgment currency actually received by Goldman Sachs. The foregoing indemnity shall constitute a separate and independent obligation of Arcapita Bank and shall survive any termination of this Commitment Letter, the Fee Letter or the transactions contemplated hereby, and shall continue in full force and effect notwithstanding any such judgment or order as aforesaid. The term "rate of exchange" shall include any premiums and costs of exchange payable in connection with the purchase of or conversion into United States dollars.

The provisions of this Annex A will survive any termination or completion of the arrangement provided by the Letters.

MURABAHA FACILITIES TERM SHEET

This Murabaha Facilities Term Sheet (this “Term Sheet”) does not purport to summarize all the terms, conditions, representations, warranties and other provisions with respect to the transactions referred to herein. Neither Goldman Sachs International nor any of its affiliates (collectively, “Goldman Sachs”) makes any representation as to the Sharia’a compliance of the transactions contemplated by this Term Sheet. You will need to make your own independent assessment as to whether the transactions contemplated herein are compliant with Sharia’a and meet your individual standards of compliance.

Unless otherwise noted, the terms described below apply to both the Murabaha DIP Facility and the Murabaha Exit Facility.

Purchaser	<ul style="list-style-type: none"> ▪ Arcapita Investment Holdings Limited (“<u>AIHL</u>”), as an obligor and purchaser under the Murabaha DIP Facility and debtor-in-possession in the Chapter 11 Cases (defined below). ▪ Upon conversion to the Murabaha Exit Facility, the entity to be formed as “New Arcapita Holdco 2” (“<u>New Arcapita Holdco 2</u>”) under the Plan (defined below), as an obligor and purchaser under the Murabaha Exit Facility, in accordance with and upon the effectiveness of the Plan.
Guarantors¹	<ul style="list-style-type: none"> ▪ Arcapita Bank B.S.C.(c) (“<u>Arcapita</u>”), each of AIHL’s subsidiaries (other than Falcon Gas Storage Company, Inc.)² that is a debtor and debtor-in-possession (the “<u>Subsidiary Debtors</u>” and, collectively with Arcapita and AIHL, the “<u>Debtors</u>”) in the chapter 11 cases pending before the U.S. Bankruptcy Court for the Southern District of New York (the “<u>Bankruptcy Court</u>”), Case No. 12-11076 (the “<u>Chapter 11 Cases</u>”), Arcapita Investment Management Limited (“<u>AIML</u>”), Arcapita Inc., Arcapita Structured Finance Ltd, Arcapita Investment Funding Limited, Arcapita Industrial Management I Ltd, Arcapita Limited (UK) and Arcapita Pte. Limited (Singapore) (collectively with the Subsidiary Debtors, the “<u>Guarantors</u>” and, collectively with the Debtors, the “<u>Obligors</u>”);³ <u>provided</u>, that the guarantees shall be

¹ Note to draft: Guarantors subject to diligence on post-reorganization ownership structure. To the extent the Reorganized Debtors (as defined in the Plan) retain any value, they will be Guarantors of the Murabaha Exit Facility.

² These subsidiaries are: (i) Arcapita LT Holdings Limited (“ALTHL”); (ii) WindTurbine Holdings Limited (“WTHL”); (iii) AEID II Holdings Limited (“AEID II”); and (iv) RailInvest Holdings Limited (“RailInvest”). Notwithstanding anything set forth herein, the guarantees of WTHL, AEID II, and RailInvest shall be expressly subordinate to the guarantees of those entities in favor of Standard Chartered Bank.

³ Other Debtor and non-Debtor affiliates may be required to become Guarantors, including without limitation Murabaha WCF Entities, if such entity is the owner of any asset otherwise required to be pledged hereunder.

MURABAHA FACILITIES TERM SHEET

	<p>structured in manner that does not conflict with the Bankruptcy Court's Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing and Approving the Settlement with Standard Chartered Bank (Docket No. 587, the "<u>SCB Settlement Order</u>").</p> <ul style="list-style-type: none"> ▪ Upon conversion to the Murabaha Exit Facility, (i) WTHL, AEID II, and RailInvest, in each case as reorganized or any other entity or entities that purchase or assume substantially all of their respective assets, in each case, in accordance with and upon the effectiveness of the Plan, (ii) each of New Arcapita Holdco 2's and New Arcapita Holdco 3's (as defined in the Plan) respective subsidiaries (other than Transaction Entities (as defined below)), including, without limitation, AIML and each of the LT Caycos and the Murabaha WCF Entities (as defined below). ▪ Notwithstanding any other provision of this Term Sheet, guarantees of and superpriority claims against WTHL, AEID II, and RailInvest shall be subordinated to the existing guarantees under the SCB Facilities to the extent then outstanding.
Investment Agent	<ul style="list-style-type: none"> ▪ Goldman Sachs International ("<u>GSI</u>") or an affiliate or designee thereof, as investment agent on behalf of the Participants (in such capacity, the "<u>Investment Agent</u>"); provided that, subject to customary provisions with respect to resignation, any assignment by GSI of its role as Investment Agent (other than to any affiliate of GSI) is subject to the reasonable consent of Arcapita Bank.
Collateral Agent	<ul style="list-style-type: none"> ▪ A financial institution to be mutually agreed.
Participants	<ul style="list-style-type: none"> ▪ The Investment Agent, certain banks and other financing entities that from time to time become party to the respective applicable Investment Agency Agreement subject to the terms of the Commitment Letter (the "<u>Participants</u>").
Participations	<ul style="list-style-type: none"> ▪ The funds to be made available by the Participants to the Investment Agent for the purposes of the Murabaha DIP Facility or the Murabaha Exit Facility, as applicable.
Murabaha Facilities	<ul style="list-style-type: none"> ▪ A senior secured debtor-in-possession US Dollar term Murabaha facility (the "<u>Murabaha DIP Facility</u>") made available by the Investment Agent in an aggregate amount up to US\$150,000,000 to repay the Existing DIP Facility and for working capital and general corporate purposes, and for the other purposes listed under "Use of Proceeds" below; <u>provided</u>, for the avoidance of doubt, the Purchaser may elect to reduce the undrawn committed amounts at any time, subject to prior notice and minimum reduction amounts to be agreed.

MURABAHA FACILITIES TERM SHEET

	<ul style="list-style-type: none"> ▪ Upon satisfaction of the conditions to conversion set forth herein and listed in Annex C hereto, a senior secured US Dollar term Murabaha facility (the “<u>Murabaha Exit Facility</u>”) in an aggregate amount up to US\$350,000,000 so long as the SCB Facilities are repaid with the proceeds of the Murabaha Exit Facility (or US\$250,000,000 only if Arcapita Bank elects to downsize the Murabaha Exit Facility no later than May 20, 2013), inclusive of the amount of the Murabaha DIP Facility outstanding on the Conversion Date (as defined below).
Budget	<ul style="list-style-type: none"> ▪ With respect to the Murabaha DIP Facility only, the Obligors shall provide, in each case, in form and substance reasonably satisfactory to the Investment Agent: <ul style="list-style-type: none"> (i) prior to the Closing Date, a rolling monthly three-month cash budget (as modified or supplemented from time to time with the prior written consent of the Investment Agent in its discretion, including any such modifications or supplements covering additional time periods, the “<u>DIP Budget</u>”) initially for the three-month period beginning on the Closing Date, setting forth, on a line-item basis, (x) projected cash receipts (including asset sales), (y) projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses, capital expenditures, deal fundings, management fees, fees and expenses of the Investment Agent and the Participants (including counsel therefor) and any other fees and expenses relating to the Facilities) and (z) total liquidity. (ii) on the fifth business day of each month, a DIP Budget variance report/reconciliation (the “<u>DIP Budget Variance Report</u>”) (A) showing by line item actual cash receipts, disbursements and total available liquidity for the immediately preceding month, noting therein all variances, on a line-item basis, from values set forth for such period in the DIP Budget, and shall include explanations for all material variances, and (B) certified by the chief financial officer of AIHL. (iii) any covenant requiring compliance with the DIP Budget shall (a) not require compliance with any line item or line items projecting receipts or restructuring disbursements, (b) test compliance with non-restructuring disbursements on an aggregate basis and permit a variance of 10% from the aggregate test period for non-restructuring disbursements (the “<u>Permitted Variance</u>”), and (c) permit amounts not utilized during any testing period to be used during any subsequent period (the “<u>Permitted Carryover</u>”). ▪ With respect to the Murabaha Exit Facility only, the Obligors shall provide, in each case, in form and substance reasonably satisfactory to the Investment Agent: <ul style="list-style-type: none"> (i) prior to the Conversion Date, a rolling quarterly four-quarter cash

MURABAHA FACILITIES TERM SHEET

	<p>budget (as modified or supplemented from time to time with the prior written consent of the Investment Agent in its discretion, including any such modifications or supplements covering additional time periods, the “<u>Exit Budget</u>” and, together with the DIP Budget, the “<u>Budgets</u>”) initially for the four-quarter period beginning on the Conversion Date, setting forth, on a line-item basis, (x) projected cash receipts (including asset sales), (y) projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses, capital expenditures, deal fundings, management fees, fees and expenses of the Investment Agent and the Participants (including counsel therefor) and any other fees and expenses relating to the Facilities) and (z) total liquidity.</p> <p>(ii) no later than the 30th day following the end of each quarter, an Exit Budget variance report/reconciliation (the “Exit Budget Variance Report”) (A) showing by line item actual cash receipts, disbursements and total available liquidity for the immediately preceding quarter, noting therein all variances, on a line-item basis, from values set forth for such period in the Exit Budget, and shall include explanations for all material variances, and (B) certified by the chief financial officer of New Arcapita Holdco 2.</p>
Investment Agency Agreement	<ul style="list-style-type: none"> ▪ An English law-governed agreement to be entered into by the Purchaser, the Guarantors, the Investment Agent, the Participants and others pursuant to which the Participants, among other things, appoint the Investment Agent as their agent to enter into the Murabaha Contracts contemplated by the Murabaha DIP Facility and the Murabaha Exit Facility, as applicable; provided, for the avoidance of doubt, that there shall be one Investment Agency Agreement for the Facilities.
Murabaha Contracts	<ul style="list-style-type: none"> ▪ Each contract for the purchase of Commodities (as defined below) by the Purchaser on a deferred payment basis, made by the issue of an offer notice (an “<u>Offer Notice</u>”) in relation to specified Commodities by the Investment Agent to the Purchaser and the issue of a corresponding acceptance notice by the Purchaser to the Investment Agent.
Murabaha WCF Entities	<ul style="list-style-type: none"> ▪ Certain of those entities organized under the laws of the Cayman Islands that are wholly owned directly or indirectly by AIHL and, after the effective date of the Plan, that are owned directly or indirectly by New Arcapita Holdco 2, and used for making Murabaha investments in the Debtors’ portfolio companies or other affiliates for the purposes of working capital (collectively, the “<u>Murabaha WCF Entities</u>”).

MURABAHA FACILITIES TERM SHEET

Commodities	<ul style="list-style-type: none"> ▪ In relation to a Murabaha Contract, the Sharia'a-compliant commodities as specified in an Offer Notice which may comprise metals traded on the London Metal Exchange and such other Sharia'a compliant commodities as may be agreed from time to time by the Purchaser and the Investment Agent and, in any event, will only include allocated commodities physically located outside the United Kingdom and exclude gold and silver.
Deferred Payment Price	<ul style="list-style-type: none"> ▪ In relation to a Murabaha Contract, an amount equal to the aggregate sum of: <ul style="list-style-type: none"> - The Cost Price (as defined below), - Profit (as defined below), and - All other unpaid accrued amounts (including mandatory costs, increased costs, VAT (if any), commodity taxes and any other direct or indirect costs and expenses).
Cost Price of Murabaha DIP Facility	<ul style="list-style-type: none"> ▪ "<u>Cost Price</u>" means the amount (in US Dollars) payable or paid by the Investment Agent to the Seller for the purchase of Commodities by the Investment Agent (on a spot basis determined on the value date upon which the payment is made, or is to be made) to be on-sold by the Investment Agent to the Purchaser under a Murabaha Contract. ▪ The initial Murabaha Contract (the "<u>Initial Murabaha Contract</u>") may have a Cost Price of up to US\$150,000,000 and shall have Cost Price of at least such amount as is necessary to repay in full all obligations outstanding under the Superpriority Debtor-In-Possession Master Murabaha Agreement, dated as of December 14, 2012, among AIHL and CF Arc LLC, as investment agent (as amended, modified or supplemented from time to time, the "<u>Existing DIP Facility</u>"). ▪ Further Murabaha Contracts during the Availability Period will be used to refinance, in whole, the previous Murabaha Contract upon each Deferred Payment Date. ▪ The Cost Price of any Murabaha Contract shall be no greater than the Cost Price of the maturing Murabaha Contract. ▪ For the avoidance of doubt, the aggregate amount of the Cost Prices of any outstanding Murabaha Contracts may never exceed US\$150,000,000.
Cost Price of Murabaha Exit Facility	<ul style="list-style-type: none"> ▪ The Cost Price of the initial Murabaha Contract under the Murabaha Exit Facility shall be no less than the Cost Price of the final Murabaha Contract under the Murabaha DIP Facility. ▪ Further Murabaha Contracts during the Availability Period will be used to refinance, in whole, the previous Murabaha Contract upon

MURABAHA FACILITIES TERM SHEET

	<p>each Deferred Payment Date.</p> <ul style="list-style-type: none"> ▪ The Cost Price of any Murabaha Contract shall be no greater than the Cost Price of the maturing Murabaha Contract. ▪ For the avoidance of doubt, the aggregate amount of the Cost Prices of any outstanding Murabaha Contracts may never exceed US\$350,000,000 so long as the SCB Facilities are repaid upon emergence (or US\$250,000,000 only if Arcapita Bank elects to downsize the Murabaha Exit Facility no later than May 20, 2013).
Profit	<p>“Profit” means the amount specified under an Offer Notice in respect of a Murabaha Contract, calculated in accordance with the following formula:</p> <ul style="list-style-type: none"> ▪ $\text{Cost Price} * (L + M) * (N / 360)$ ▪ Where: <ul style="list-style-type: none"> - L is LIBOR, - M is the Margin, and - N is the number of days in the relevant Deferred Payment Period (as defined below).
Late Payment Compensation	<ul style="list-style-type: none"> ▪ Late Payment Compensation of 2.0% above the usual Profit Rate to be defined in a manner consistent with the Existing DIP Facility.
Original Issue Discount	<ul style="list-style-type: none"> ▪ Original Issue Discount of 1.0% for the Murabaha DIP Facility and the Murabaha Exit Facility to be documented in a Sharia’a-compliant manner.
Administration Fee	<ul style="list-style-type: none"> ▪ An Administration Fee for the Facilities to be payable in the event that the Purchaser makes any voluntary or mandatory prepayment (other than any mandatory prepayment made prior to the first anniversary of the Conversion Date) or does not request the maximum Cost Price possible for a particular Murabaha Contract (in each case prior to the third anniversary of the Conversion Date). Such fee to be calculated as 1.0% of the relevant amount. This fee shall be separately documented in a Sharia’a-compliant manner, as an administration fee. This fee will be payable to the Investment Agent for the ratable account of each Participant (or such Participant’s designees).
Seller	<ul style="list-style-type: none"> ▪ Broker to be determined.
LIBOR	<ul style="list-style-type: none"> ▪ LIBOR (which shall have the meaning customary and appropriate for transactions of this type) for the relevant Deferred Payment Period with LIBOR floor of 1.5%.

MURABAHA FACILITIES TERM SHEET

Margin	<ul style="list-style-type: none"> 8.0% per annum payable in cash plus 1.75% per annum payable in kind.⁴
Availability Period	<ul style="list-style-type: none"> For the Murabaha DIP Facility, from the Closing Date to one month prior to the DIP Termination Date. For the Murabaha Exit Facility, from the date of conversion to the Murabaha Exit Facility to three months prior to the Exit Termination Date (as defined below).
Termination Dates	<ul style="list-style-type: none"> The Murabaha DIP Facility will mature on July 31, 2013 (the “<u>DIP Termination Date</u>”); provided that, in the event that the entry of the Confirmation Order will be delayed beyond July 31, 2013 as a result of regulatory related matters, the DIP Termination Date may be extended at the Purchaser’s option to August 30, 2013. The Murabaha Exit Facility will mature on the date which is the three-year anniversary of the Conversion Date (the “<u>Exit Termination Date</u>”).
Deferred Payment Period	<ul style="list-style-type: none"> The period starting on the date of a Murabaha Contract and ending on the relevant Deferred Payment Date.
Prepetition Secured Financing Obligations	<ul style="list-style-type: none"> Arcapita has informed Goldman Sachs that it is the counterparty under two Murabaha facilities made available by Standard Chartered Bank (“<u>SCB</u>”): <ul style="list-style-type: none"> A US\$50 million facility, dated May 30, 2011, of which approximately US\$46.6 million is outstanding and which matured on March 28, 2012 (the “<u>SCB May 2011 Facility</u>”); and A US\$50 million facility dated December 22, 2011, of which approximately US\$50.1 million is outstanding and which matured on March 28, 2012 (the “<u>SCB December 2011 Facility</u>” and, together with the SCB May 2011 Facility, the “<u>SCB Facilities</u>”). Arcapita has informed Goldman Sachs that the SCB May 2011 Facility is guaranteed by each of AIHL, AIHL Sub, and WTHL, and that these guarantees are secured by: (i) a first priority pledge of AIHL’s shares in AIHL Sub; (ii) a first priority pledge of AIHL Sub’s shares in WTHL; and (iii) a second priority pledge of AIHL Sub’s shares in AEID II and RailInvest. Arcapita has informed Goldman Sachs that SCB December 2011

⁴ Note to draft: Terms and Sharia’a compliance for PIK profit to be discussed. For the avoidance of doubt, the amount of the PIK profit shall be required to be paid in cash in the event that PIK profit is not able to be documented in compliance with Sharia’a as determined by Arcapita’s or New Arcapita Holdco 2’s, as applicable, Sharia’a Board.

MURABAHA FACILITIES TERM SHEET

	<p>Facility is guaranteed by each of AIHL, AIHL Sub, WTHL, AEID II, and RailInvest, and that these guarantees are secured by: (i) a second priority pledge of AIHL's shares in AIHL Sub; (ii) a first priority pledge of AIHL Sub's shares in AEID II and RailInvest; and (iii) a second priority pledge in AIHL Sub's shares in WTHL.</p> <ul style="list-style-type: none"> ▪ The Murabaha DIP Facility will include a representation that (i) the SCB Facilities and (ii) the Existing DIP Facility (with respect to any obligations that survive termination of the facility) represent the sole secured obligations of the Obligors, subject to scheduled exceptions to be mutually agreed upon.
Priority and Liens⁵	<ul style="list-style-type: none"> ▪ The Murabaha DIP Facility will be a secured facility which will: <ul style="list-style-type: none"> (i) Pursuant to section 364(c)(1) of the Bankruptcy Code, be entitled to superpriority administrative claim status having priority over any and all other claims, provided that the guarantees issued by WTHL, AEID II, and RailInvest shall be subordinated to the obligations of the Debtors in favor of SCB solely to the extent provided in the SCB Settlement Order; (ii) Pursuant to section 364(c)(2) of the Bankruptcy Code, be secured by a perfected first-priority lien (except to the extent described below) on substantially all now owned or after acquired assets (including without limitation, (i) all personal, real and mixed property of the Debtors (except as otherwise agreed to by the Investment Agent), (ii) 100% of the capital stock of each of the Obligors and other first tier subsidiaries of the Debtors and all intercompany debt payable to the Debtors) of Arcapita, AIHL and ALTHL, in each case, that are not otherwise subject to a lien securing the obligations under the SCB Facilities (including (x) AIHL's interests in the Murabaha WCF Entities (but only those that are reasonably determined to be material by the Investment Agent), (y) ALTHL's interests in the unencumbered LT Caycos (<u>i.e.</u>, all LT Caycos other than WTHL, AEID II, and RailInvest, but only those that are reasonably determined to be material by the Investment Agent) and (z) AIHL's non-syndicated interests in the syndication companies (but only those that are reasonably determined to be material by the Investment Agent) and (iii) the Encumbered Property (defined below) solely to the extent that the valid liens on such Encumbered Property are extinguished or released; in each case, where the benefit of

⁵ Security package, any modification to the SCB Settlement Order and any adequate protection other than that contained in the SCB Settlement Order to be satisfactory to the Investment Agent.

MURABAHA FACILITIES TERM SHEET

such additional collateral likely exceeds the cost of providing such security as determined by the Investment Agent; provided that any claim secured by a lien granted on any asset of WTHL, AEID II or RailInvest shall be subordinate in right of payment to the SCB Facilities;

- (iii) Pursuant to section 364(c)(3) of the Bankruptcy Code, be secured by a perfected junior lien on substantially all now owned or after acquired assets of the Debtor Obligors (including without limitation, (i) all personal, real and mixed property of the Debtor Obligors (except as otherwise agreed to by the Investment Agent) and (ii) 100% of the capital stock of each of the Debtor Obligors and their first tier subsidiaries and all intercompany debt payable to the Debtor Obligors) that are subject to (x) any valid, perfected and non-avoidable lien securing the obligations under the SCB Facilities in existence on the Petition or (y) any valid lien securing the obligations under the SCB Facilities in existence on the Petition Date that is perfected subsequent to the Petition Date by section 546(b) of the Bankruptcy Code (collectively, the “Encumbered Property”); in each case, where the benefit of such additional collateral likely exceeds the cost of providing such security as determined by the Investment Agent (together with the assets described in clause (ii) above, the “DIP Collateral”);
 - (iv) Notwithstanding the foregoing, DIP Collateral will not include actions for preferences, fraudulent conveyances, and other avoidance power claims under sections 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code (“Avoidance Actions”) and/or proceeds thereof; and
 - (v) For the avoidance of doubt, be secured by perfected first-priority liens on substantially all now owned or after acquired assets of the non-Debtor Obligors (including without limitation, (i) all personal, real and mixed property of such non-Debtor Obligors (except as otherwise agreed to by the Investment Agent) and (ii) 100% of the capital stock of each of the Obligors and their first tier subsidiaries and all intercompany debt payable to such Obligors); provided, however, with respect to AIML, the Murabaha DIP Facility shall be secured by only AIML’s performance and management fee receivables.
- The Murabaha Exit Facility will be a secured facility which will be secured by a perfected first-priority lien (except to the extent described below) on substantially all now owned or after acquired

MURABAHA FACILITIES TERM SHEET

	<p>assets (including without limitation, (i) all personal, real and mixed property of the Obligors (except as otherwise agreed to by the Investment Agent), including, without limitation, any and all rights to damages upon any Put Failure (as defined in the Plan) and (ii) 100% of the capital stock of each of the Obligors and each other first tier subsidiaries of the Obligors and all intercompany debt payable to the Obligors) of the Obligors (including (w) New Arcapita Holdco 2's interests in the Murabaha WCF Entities (but only those that are reasonably determined to be material by the Investment Agent), (x) New Arcapita Holdco 2's interests in the LT Caycos (but only those that are reasonably determined to be material by the Investment Agent), (y) the LT Caycos' interest in transaction holdcos (but only those that are reasonably determined to be material by the Investment Agent) and (z) New Arcapita Holdco 2's non-syndicated interests in the syndication companies (but only those that are reasonably determined to be material by the Investment Agent); in each case, where the benefit of such additional collateral likely exceeds the cost of providing such security as determined by the Investment Agent; <u>provided, however</u>, with respect to AIML, the Murabaha Exit Facility may, subject to due diligence, be secured by only AIML's performance and management fee receivables. To the extent the obligations under the SCB Facilities remain outstanding in accordance with the Plan, the guarantees and liens in collateral in favor of SCB which had priority over the guarantees and liens supporting the Murabaha DIP Facility, shall have the same priority with respect to the Murabaha Exit Facility.</p> <ul style="list-style-type: none"> ▪ All security arrangements under the Murabaha DIP Facility and Murabaha Exit Facility will be in form and substance reasonably satisfactory to the Investment Agent and will be perfected as of the Closing Date. ▪ To the extent the obligations under the SCB Facilities remain outstanding in accordance with the Plan, notwithstanding any other provision of this Term Sheet, guarantees of and superpriority claims against WTHL, AEID II, and RailInvest shall be subordinated to the existing guarantees under the SCB Facilities. ▪ No portion of the Carve-Out, any Collateral proceeds or proceeds of the Murabaha DIP Facility may be used for the payment of the fees and expenses of any person incurred in challenging, or in relation to the challenge of any of the Investment Agent's or Participant's liens or claims, or the initiation or prosecution of any claim or action against any of the Investment Agent or Participants.
Murabaha DIP Closing Date	<ul style="list-style-type: none"> ▪ The date on which the Final DIP Order (as defined in Annex C) is entered by the Bankruptcy Court and definitive Transaction

MURABAHA FACILITIES TERM SHEET

	Documents are fully executed (such date, the " <u>Closing Date</u> "); <i>provided</i> that entry into the Transaction Documents shall be subject to the accuracy of representations and warranties under the Transaction Documents in all material respects.
Initial Transaction Date	<ul style="list-style-type: none"> ▪ The date on or after the Closing Date on which all conditions precedent to the initial Murabaha Contract have occurred and the Initial Murabaha Contract is completed under the Murabaha DIP Facility. ▪ For the Murabaha Exit Facility, the date on or after the Closing Date on which all conditions precedent to the Murabaha Exit Facility have occurred and the initial Murabaha Contract is completed under the Murabaha Exit Facility (such date, the "<u>Conversion Date</u>").
Deferred Payment Dates	<ul style="list-style-type: none"> ▪ The Deferred Payment Date in respect of all Murabaha Contracts under the Murabaha DIP Facility shall be one month after the relevant Transaction Date; <u>provided</u> that no Deferred Payment Date shall extend beyond the DIP Termination Date. ▪ For the Murabaha Exit Facility, the Deferred Payment Date in respect of all Murabaha Contracts shall be three months after the relevant Transaction Date; <u>provided</u> that no Deferred Payment Date shall extend beyond the Exit Termination Date.
Use of Proceeds	<ul style="list-style-type: none"> ▪ The proceeds of that portion of the Murabaha DIP Facility funded on the Initial Transaction Date will be used: <ul style="list-style-type: none"> (i) in compliance with the disbursement terms of the DIP Budget (subject to the Permitted Variance and Permitted Carryover), to (v) pay transaction costs, profits, fees and expenses which are incurred in connection with the Facilities, including payment of professionals' fees and expenses, (w) to repay all obligations outstanding under the Existing DIP Facility, (x) for working capital and other general corporate purposes (other than the repayment of pre-petition financing obligations except as permitted in the Final DIP Order or the definitive Transaction Documents), (y) for adequate protection payments made to SCB in accordance with the SCB Settlement Order and (z) to pay other amounts, including, without limitation, in connection with investment deal fundings; and (ii) to be segregated for the benefit of a trustee appointed under Section 726(b) or 1104 of the Bankruptcy Code, members of the Committee (as defined herein) and Professional Persons (as defined herein) to pay the amounts

MURABAHA FACILITIES TERM SHEET

	<p>that constitute the Carve Out (as defined herein).</p> <ul style="list-style-type: none"> ▪ No portion of the Murabaha DIP Facility or the DIP Collateral may be used to commence or prosecute any action, proceeding, or objection with respect to or related to any claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, financing obligations, or obligations that are subjects of the Release (as defined herein). ▪ The proceeds of the Murabaha Exit Facility shall be used (i) to repay in full the obligations under the Murabaha DIP Facility, (ii) to repay in full the obligations with respect to the SCB Facilities in accordance with the Plan and (iii) for other corporate purposes, in the Purchaser's sole discretion.
Carve Out⁶	<ul style="list-style-type: none"> ▪ <u>"Carve Out"</u> shall mean: <ul style="list-style-type: none"> a. any unpaid fees due to the United States Trustee pursuant to 28 U.S.C. § 1930 or otherwise and any fees due to the clerk of the Bankruptcy Court, b. the reasonable fees and expenses approved by the Bankruptcy Court incurred by a trustee under section 726(b) or 1104 of the Bankruptcy Code in an aggregate amount not to exceed US\$25,000, c. the reasonable expenses of members of the official committee of unsecured creditors (the <u>"Committee"</u>) appointed in the chapter 11 cases (excluding fees and expenses of professional persons employed by Committee and / or such Committee member individually) in an amount not to exceed US\$200,000, d. to the extent allowed at any time, all unpaid fees and expenses allowed by the Bankruptcy Court of professionals or professional firms retained pursuant to sections 327, 328, 330, 363, or 1103 of the Bankruptcy Code (the <u>"Professional Persons"</u>); and the reasonable fees and expenses of the Joint Provisional Liquidators, in each case, that were incurred or accrued through the date upon which AIHL receives from the Investment Agent a written notice of the occurrence of an Event of Default and the intention to invoke the Carve Out (a <u>"Carve Out Notice"</u>), and e. to the extent allowed at any time, all fees and expenses of Professional Persons and the Joint Provisional Liquidators

⁶ For the avoidance of doubt, the Carve Out must be used in full and exhausted prior to the Debtors' use of the US\$1 million professional fee carve out provided for in the SCB Settlement Order.

MURABAHA FACILITIES TERM SHEET

	<p>incurred after the date upon which AIHL receives from the Investment Agent actual written receipt of an Event of Default and the intention to invoke the Carve Out, in the aggregate amount not to exceed US\$15,000,000; provided that:</p> <ul style="list-style-type: none"> (i) the dollar limitations in clause (e) above on fees and expenses shall not be reduced by the amount of any compensation or reimbursement of expenses incurred by or paid to any Professional Person or the Joint Provisional Liquidator prior to the written notification of AIHL by the Investment Agent of the occurrence of an Event of Default in respect of which the Carve Out is invoked or by any fees, expenses, indemnities, or other amounts paid to the Investment Agent, Participant, or their respective attorneys or agents under the Murabaha DIP Facility or otherwise, and (ii) to the extent the dollar limitation in clause (e) on fees and expenses is reduced by an amount as a result of payment of such fees and expenses during the continuation of an Event of Default and after delivery of a Carve Out Notice, and such Event of Default is subsequently cured or waived and the Carve Out Notice is rescinded in writing, such dollar limitation shall be increased by an amount equal to the amount by which it has been so reduced.
<p>Mandatory and Voluntary Prepayments</p>	<ul style="list-style-type: none"> ▪ The Facilities may be prepaid in whole or in part subject to any Administration Fee that may become payable. ▪ The following mandatory prepayments will be required promptly (unless otherwise set forth herein) following receipt of the relevant proceeds (subject to certain basket amounts to be mutually agreed in the definitive Transaction Documents): <ol style="list-style-type: none"> 1. <u>Asset Sales</u>: Prepayments in an amount equal to 100% (or, with respect to the sale of Oman Logistics, AIBPD II and Saadiyat Island, 50%) of the cash proceeds (net of reasonable and ordinary transaction costs and expenses, including all fees and expenses payable to or for the account of AIM as a result of such sale in accordance with the terms of the Cooperation Settlement Term Sheet (as defined in the Plan)) of the sale or other disposition of any property or assets of the Obligors or any of their first tier subsidiaries (and such first tier subsidiaries' direct and indirect subsidiaries ("<u>Portfolio Companies</u>")) to the extent constituting the sale of all or substantially all of the assets of such Portfolio Companies); provided that such net cash proceeds received by any

MURABAHA FACILITIES TERM SHEET

subsidary of any Obligor will be applied to prepay the Facilities only to the extent that such net cash proceeds (i) have been paid to an Obligor or (ii) could be required to be paid to an Obligor based on the exercise of all of the Obligors' direct or indirect control of such subsidiary, payable no later than the first business day following the date of receipt; provided that, during the 18-month period following the Conversion Date (the "Retention Period"), (i) with respect to such cash proceeds (excluding proceeds from the sale of Oman Logistics, AIBPD II and Saadiyat Island) in an aggregate amount not to exceed \$50 million, up to 50% may be retained in a segregated deposit account subject to a control agreement in favor of the Investment Agent (the "Proceeds Account") so long as the Loan-to-Value/Collateral Coverage Ratio as of the last day of the most recent fiscal quarter pro forma for any dispositions is greater than 2.25x, and (ii) with respect to such cash proceeds (excluding proceeds from the sale of Oman Logistics, AIBPD II and Saadiyat Island) in an aggregate amount not to exceed an additional \$100 million, up to 25% may be retained in the Proceeds Account so long as the Loan-to-Value/Collateral Coverage Ratio as of the last day of the most recent fiscal quarter pro forma for any dispositions is greater than 2.25x. At any time during the Retention Period that the Obligors' cash on hand is less than \$25 million, the Obligors may withdraw (i) up to \$25 million so long as the Loan-to-Value/Collateral Coverage Ratio as of the last day of the most recent fiscal quarter is greater than 2.50x and (ii) the remaining amount so long as the Loan-to-Value/Collateral Coverage Ratio as of the last day of the most recent fiscal quarter is greater than 3.0x. Any amounts remaining in the Proceeds Account (i) following the Retention Period or (ii) following an Event of Default shall be applied as a prepayment.

2. Insurance Proceeds and Extraordinary Events: Prepayments in an amount equal to 100% of the cash proceeds (net of reasonable and ordinary transaction costs and expenses) of insurance paid on account of any loss of any property or assets of the Obligors or any of their first tier subsidiaries (and Portfolio Companies to the extent relating to a loss of all or substantially all of the assets of such Portfolio Companies); provided that such net cash proceeds received by any subsidiary of any Obligor will be applied to prepay the Facilities only to the extent that such net cash proceeds (i) have been paid to an Obligor or (ii) could be required to be paid to an Obligor based on the exercise of all of the Obligors' direct or indirect control of such subsidiary, or of any

MURABAHA FACILITIES TERM SHEET

“extraordinary event” (the definition of which is to be agreed, but which shall exclude, for the avoidance of doubt, any equity issued in connection with a confirmed chapter 11 plan for the Debtors), with exceptions following the entry of the Final DIP Order as may be agreed, payable no later than the first business day following the date of receipt.

3. Incurrence of Financing Obligations: Prepayments in an amount equal to 100% of the cash proceeds (net of reasonably and ordinary costs and expenses) received from the incurrence of financing obligations Purchaser or its wholly-owned subsidiaries (other than financing obligations otherwise permitted under the Transaction Documents), payable no later than the first business day following the date of receipt.
4. Chapter 11 Events: The Murabaha DIP Facility must be prepaid in full in cash and cancelled in full on:
- (a) the effective date of a chapter 11 plan for the Debtors,
 - (b) the date the Bankruptcy Court orders the conversion of the Chapter 11 Case of any Debtor to a chapter 7 liquidation or the dismissal of the Chapter 11 Case of any Debtor, or
 - (c) the date upon which the sale of all or substantially all of the Obligors’ assets is consummated.

For the avoidance of doubt, there shall be no Mandatory Prepayment from the proceeds of (a) any equity raise or issuance of equity securities performed in connection with a chapter 11 plan of reorganization, (b) cash distributions in respect of litigation relating to Falcon Gas Storage Company, Inc. or an escrow account relating thereto or (c) to the extent the obligations under the SCB Facilities remain outstanding, any sale or other disposition of assets upon which then existing obligations in favor of SCB have priority over the Murabaha DIP Facility or Murabaha Exit Facility; provided that the proceeds of such sale or other disposition from such assets are (i) applied to the permanent repayment of the SCB Facilities (no later than the effective date of the Plan, if then outstanding, or if after the effective date of the Plan, the first business day following the date of receipt) and (ii) pending such application are held in escrow or other arrangements satisfactory to the Investment Agent which ensure that such proceeds are utilized for the payment of the SCB Facilities.

Upon any Mandatory Prepayment or Voluntary Prepayment, the Investment Agent in its sole discretion may determine that a rebate of

MURABAHA FACILITIES TERM SHEET

	part of the Profit can be made to the Purchaser.
Representations	<ul style="list-style-type: none"> ▪ The definitive Transaction Documents for the Murabaha DIP Facility will include the following representations and warranties by AIHL and the other Obligors: due organization; requisite power and authority; qualification; equity interests and ownership; due authorization, execution, delivery and enforceability of the Transaction Documents; creation, perfection and priority of security interests; no conflicts; governmental consents; historical and projected financial condition; no Material Adverse Change; absence of material unstayed litigation; payment of post-petition taxes; title to properties; environmental matters; no defaults under post-petition material agreements; Investment Company Act and margin stock matters; compliance with laws; full and accurate disclosure (subject on the Closing Date to the second paragraph of Section 4 of the Commitment Letter), including with respect to voting and proxy rights; Patriot Act and other related matters; anti-bribery conduct; money laundering laws; no immunity; Sharia'a compliance; no objection as to Sharia'a compliance; and no default under third party financing and other material agreements of Portfolio Companies arising from the enforcement of remedies on the Murabaha DIP Facility. ▪ The definitive Transaction Documents for the Murabaha Exit Facility will include the following representations and warranties by New Arcapita Holdco 2 and the other Obligors: due organization; requisite power and authority; qualification; equity interests and ownership; due authorization, execution, delivery and enforceability of the Transaction Documents; creation, perfection and priority of security interests; no conflicts; governmental consents; historical and projected financial condition; absence of material unstayed litigation; payment of taxes; title to properties; environmental matters; no defaults under material agreements; Investment Company Act and margin stock matters; compliance with laws; full disclosure; Patriot Act and other related matters; anti-bribery conduct; money laundering laws; Sharia'a compliance; no objection as to Sharia'a compliance; and no default under third party financing and other material agreements of Portfolio Companies arising from the enforcement of remedies on the Murabaha Exit Facility.
Affirmative Covenants	<ul style="list-style-type: none"> ▪ The definitive Transaction Documents for the Murabaha DIP Facility will contain the following affirmative covenants by each of AIHL and the other Obligors (with respect to AIHL, the Obligors and their subsidiaries, but excluding each Transaction Holdco and any entity in which any Transaction Holdco has a direct or indirect equity interest (collectively, the "<u>Transaction Entities</u>")):

MURABAHA FACILITIES TERM SHEET

- delivery of the following documents and reports to the Investment Agent for distribution to the Participants, in each case in form and substance reasonably acceptable to the Investment Agent:
 - financial statements and other reports (including the identification of information as suitable for distribution to public Participants or non-public / private Participants) as well as all press releases and other statements made available to the public;
 - DIP Budgets and DIP Budget Variance Reports on the fifth business day of each month;
 - upon the request of the Investment Agent, quarterly conference calls with the chief financial officer (or such other representative reasonably satisfactory to the Investment Agent) of Arcapita to discuss the DIP Budget (and all updates and DIP Budget Variance Reports related thereto) and the status of asset dispositions;
 - as soon as practicable in advance of filing with the Bankruptcy Court, the proposed form of the Final DIP Order (which must be in form and substance reasonably satisfactory to the Investment Agent), all other proposed orders and pleadings related to the Murabaha DIP Facility (which must be in form and substance reasonably satisfactory to the Investment Agent),⁷ amendments to the chapter 11 plan for the Debtors filed on April 25, 2013 (Docket No. 1036; as amended, modified and supplemented in form and substance reasonably satisfactory to the Investment Agent (including all term sheets), the “Plan”) and the disclosure statement related to such plan filed on April 25, 2013 (Docket No. 1038); as amended, modified and supplemented in form and substance reasonably satisfactory to the Investment Agent (including all term sheets);
 - notices of litigation, defaults and other reasonably requested information (including all documents filed with the Bankruptcy Court) with respect to the

⁷ The Investment Agent hereby acknowledges that, for purposes of this provisions, the protections provided to SCB or in respect of collateral securing the SCB Facilities in the order approving the Existing DIP Facility are in form and substance reasonably satisfactory to the Investment Agent.

MURABAHA FACILITIES TERM SHEET

Obligors and their subsidiaries (excluding Transaction Entities);

- notice of any event, occurrence or circumstance in which a material portion of the Collateral is damaged, destroyed or otherwise impaired or adversely affected;
- chapter 11 plan;
- the Debtors shall oppose the approval of any plan, disclosure statement or amendment to any plan or disclosure statement, in each case, that either fails to provide for payment in full in cash of the Murabaha DIP Facility (and termination of all Participations) upon the effective date of such plan, or provides for treatment other than payment in full of the Murabaha DIP Facility without the consent of the Investment Agent and Participants in their discretion; and
- other affirmative covenants, usual and customary for Sharia'a-compliant debtor-in-possession financings as the Investment Agent shall require.
- The definitive Transaction Documents for the Murabaha Exit Facility will contain the following affirmative covenants by each of New Arcapita Holdco 2 and the other Obligors (with respect to New Arcapita Holdco 2, the Obligors and their subsidiaries (excluding Transaction Entities)):
 - delivery of the following documents and reports to the Investment Agent for distribution to the Participants, in each case in form and substance reasonably acceptable to the Investment Agent:
 - financial statements, financial projections for the following three years and other reports (including the identification of information as suitable for distribution to public Participants or non-public / private Participants) as well as all press releases and other statements made available to the public;
 - Exit Budgets and Exit Budget Variance Reports no later than the 30th day following the end of each quarter;
 - upon the request of the Investment Agent, quarterly conference calls with the chief financial officer of New Arcapita Holdco 2 (or such other representative

MURABAHA FACILITIES TERM SHEET

	<p>reasonably satisfactory to the Investment Agent) to discuss the Exit Budget (and all updates and Exit Budget Variance Reports related thereto) and the status of asset dispositions;</p> <ul style="list-style-type: none"> ○ notices of litigation, defaults and other reasonably requested information with respect to the Obligors and their subsidiaries (excluding Transaction Entities); ○ notice of any event, occurrence or circumstance in which a material portion of the Collateral is damaged, destroyed or otherwise impaired or adversely affected; <p>- other affirmative covenants, usual and customary for Sharia'a-compliant financings as the Investment Agent shall require.</p>
<p>Negative Covenants</p>	<ul style="list-style-type: none"> ▪ The definitive Transaction Documents for the Murabaha DIP Facility will contain the following negative covenants by each of AIHL and the other Obligors (with respect to AIHL, the Obligors and their subsidiaries (excluding Transaction Entities)): limitations with respect to other financing obligations; liens; negative pledges; capital expenditures; restricted junior payments (e.g. no dividends, redemptions or voluntary payments on certain financing obligations); restrictions on subsidiary distributions; investments (but permitting investments in current Portfolio Companies to the extent contractually required or otherwise permitted by the Transaction Documents in an amount to be agreed), mergers and acquisitions; sales of assets (including subsidiary interests); sales and lease-backs; transactions with affiliates; conduct of business; permitted activities of the Obligors and their subsidiaries; amendments and waivers of organizational documents, junior financing obligations and other material contracts; use of proceeds in violation of the Foreign Corrupt Practices Act; and changes to fiscal year, including, in each case, exceptions and baskets to be mutually agreed upon (including exceptions permitting the wind down of PointPark Properties s.r.o. so long as no default or Event of Default is continuing). ▪ The definitive Transaction Documents for the Murabaha Exit Facility will contain the following negative covenants by each of New Arcapita Holdco 2 and the other Obligors (with respect to New Arcapita Holdco 2, the Obligors and their subsidiaries (excluding Transaction Entities)): limitations with respect to other financing obligations; liens; negative pledges; capital expenditures; restricted junior payments (e.g. no dividends, redemptions or voluntary payments on certain financing obligations); restrictions on subsidiary

MURABAHA FACILITIES TERM SHEET

	distributions; investments, mergers and acquisitions; sales of assets (including subsidiary interests); sales and lease-backs; transactions with affiliates; conduct of business; permitted activities of the Obligor and their subsidiaries; amendments and waivers of organizational documents, junior financing obligations and other material contracts; use of proceeds in violation of the Foreign Corrupt Practices Act; and changes to fiscal year, including, in each case, exceptions and baskets to be mutually agreed upon (including exceptions permitting the wind down of PointPark Properties s.r.o. so long as no default or Event of Default is continuing).
Financial Covenants	<ul style="list-style-type: none"> ▪ Minimum Liquidity of US\$15,000,000 (at all times) (including any undrawn portion of the Murabaha DIP Facility or Murabaha Exit Facility, as applicable), and ▪ Loan-to-Value/Collateral Coverage Ratio of not less than 2.00x to be tested quarterly on terms and based on valuations to be agreed; provided that such covenant for the first quarter ending after the Closing Date shall be tested based on the values set forth on Annex D attached hereto.
Conditions Precedent to the Murabaha Contracts	<ul style="list-style-type: none"> ▪ Conditions to the transactions pursuant to the Initial Murabaha Contract: <ul style="list-style-type: none"> ○ The obligations of the Investment Agent (on behalf of the Participants) to make, or cause one of their respective affiliates to enter into, the Initial Murabaha Contract under the Murabaha DIP Facility on the Initial Transaction Date will be subject to the applicable conditions precedent listed on Annex C attached hereto, and such other conditions as set forth herein (in each case, as determined by the Investment Agent in its sole discretion); ▪ Conditions to the transactions pursuant to each Murabaha Contract: <ul style="list-style-type: none"> ○ The conditions to all Murabaha Contracts will include requirements relating to prior written notice of an intention to purchase Commodities, maximum cash balances, the accuracy of representations and warranties and, prior to and after giving effect to the effectiveness of the Murabaha DIP Facility or Murabaha Exit Facility, as applicable, and any Murabaha Contract, the absence of any default or Event of Default, unless waived by the Investment Agent (acting at the discretion of Participants holding more than 50% of the Participations and commitments with respect thereto). Such conditions shall also include the following: <ul style="list-style-type: none"> (a) with respect to any Murabaha Contract under the Murabaha DIP Facility, the Final DIP Order, as the

MURABAHA FACILITIES TERM SHEET

	<p>case may be, shall be in full force and effect, and shall not have been reversed, modified, amended, stayed, vacated or subject to a stay pending appeal; and</p> <p>(b) with respect to any Murabaha Contract:</p> <p>(i) the Debtors shall have paid the balance of all fees then due and payable as referenced herein; and</p> <p>(ii) no Broker Disruption Event has occurred or is continuing (for these purposes, a “<u>Broker Disruption Event</u>” means that the Investment Agent is unable, after using commercially reasonable efforts, to enter into or maintain a purchase and sale agreement with the Seller (or an acceptable replacement), including where Commodities cannot be sourced for the purposes of a Murabaha Contract).</p> <p>▪ Conditions to Conversion to Murabaha Exit Facility</p> <p>The outstanding Murabaha DIP Facility shall be paid off and satisfied from the proceeds of a new Murabaha exit facility to be provided by the Investment Agent and the Participants (collectively, the “<u>Murabaha Exit Facility</u>”). The obligations of the Investment Agent (on behalf of the Participants) to make, or cause one of their respective affiliates to provide the Murabaha Exit Facility will be subject to (i) compliance with a Collateral Coverage test based on KPMG valuations and (ii) the applicable conditions precedent listed on Annex C attached hereto.</p>
<p>Events of Default</p>	<p>▪ The Murabaha DIP Facility shall contain events of default customary or appropriate in the context of the proposed Murabaha DIP Facility, including:</p> <ul style="list-style-type: none"> - The entry of an order dismissing the case or converting any Debtor’s⁸ chapter 11 case to a chapter 7 case; - The entry of an order appointing a chapter 11 trustee in any Debtor’s case or an examiner with enlarged powers under section 1106 of the Bankruptcy Code; - The entry of an order granting any other claim (other than (i) the claims of SCB related to the SCB Facilities and (ii) claims surviving termination of the Existing DIP Facility) superpriority

⁸ For the avoidance of doubt, Falcon Gas Company, Inc. shall not be included as a “Debtor” or “Obligor” for purposes of determining the Events of Default

MURABAHA FACILITIES TERM SHEET

	<p>status or a lien equal or superior to that granted to the prospective Investment Agent for the ratable benefit of the Participants;</p> <ul style="list-style-type: none">- The entry of an order staying, reversing, vacating, or modifying the Murabaha DIP Facility or the Final DIP Order without the Investment Agent's prior written consent;- The failure of AIHL to pay the Deferred Payment Price or any other amounts when due;- Any material adverse event in the pending insolvency proceedings of AIHL before the Grand Court of the Cayman Islands (the "<u>Cayman Proceeding</u>"). For purposes of this clause, a "material adverse event" means any event, change, effect, development, circumstance or condition that has caused or could reasonably be expected to cause a material adverse change, material adverse effect on and/or material adverse developments with respect to (i) the business, assets, liabilities, operations, management, condition (financial or otherwise), or results of operations of the Obligors and their subsidiaries taken as a whole; (ii) the ability of any Obligor to fully and timely perform its obligations under the Transaction Documents; (iii) the legality, validity, binding effect or enforceability against any Obligor of any Transaction Document to which it is a party; or (iv) the rights, remedies and benefits available to, or conferred upon, any Investment Agent or any Participant under any Transaction Document;- The failure of any Obligor to comply with financial or other covenants;- Any representation or warranty by any Obligor shall be incorrect in any material respect when made;- The entry of an order granting relief from the automatic stay so as to allow a third party to proceed against any asset of any of the Obligors with a value in excess of US\$100,000,000;- The violation of any material term, provision or condition in the Final DIP Order;- The default under another agreement or instrument of financing obligations, including any default under the SCB Settlement Order, provided that it shall not constitute an Event of Default if the aggregate amount owed resulting from such default is less than \$10,000,000;- The failure to satisfy or stay execution of judgments in excess of specified amounts;- Any Obligor shall seek to repudiate any obligation under the
--	---

MURABAHA FACILITIES TERM SHEET

	<p>Murabaha DIP Facility, or any such obligation shall cease to be legal, valid or enforceable in any material respect;</p> <ul style="list-style-type: none">- The impairment of a security interest in collateral (other than immaterial portions of collateral);- The invalidity of guarantees or any obligation or security;- The occurrence of a “change of control” (to be defined in a mutually agreed upon manner);- The entry of an order or filing authorizing, approving, granting or seeking (A) additional post-petition financing not otherwise permitted, (B) any liens on the Collateral not otherwise permitted, (C) modification of the Commitment Letter, or (D) any action adverse to the Investment Agent or any Participant or their rights and remedies or their interest in the Collateral;- The commencement of any action, adversary proceeding or motion against any of the Investment Agent or any Participant by or on behalf of any Debtor or any of its affiliates, officers or employees;- The Final DIP Order shall cease to be in full force and effect or shall have been reversed, modified, amended, stayed, vacated or subject to a stay pending appeal, in the case of any modification or amendment, without the prior written consent of the Investment Agent;- The allowance of any claim under Section 506(c) of the Bankruptcy Code or otherwise against any or all of the Investment Agent, the Participants and the Collateral; and- The filing by the Debtors or any other person or party of any chapter 11 plan or related disclosure statement or any direct or indirect amendment to such plan or disclosure statement, or the entry of an order confirming any plan of reorganization or approving any disclosure statement or approving any amendment (in each case, whether or not proposed by the Debtors), in each case that (i) fails to provide for payment in full in cash of the Murabaha DIP Facility (and termination of all Participations) upon the effective date of such plan, (ii) fails to provide for the conversion of the Murabaha DIP Facility into the Murabaha Exit Facility or (iii) treats the claims of the Investment Agent and Participants in any other manner to which they do not consent in their discretion. <ul style="list-style-type: none">▪ The Murabaha Exit Facility shall contain events of default customary or appropriate in the context of the proposed Murabaha Exit Facility, including (subject to materiality and cure periods to be agreed):<ul style="list-style-type: none">- The failure of New Arcapita Holdco 2 to pay the Deferred
--	--

MURABAHA FACILITIES TERM SHEET

	<p>Payment Price or any other amounts when due;</p> <ul style="list-style-type: none"> - The failure of any Obligor to comply with financial or other covenants; - Any representation or warranty by any Obligor shall be incorrect in any material respect when made; - The default under any other agreement or instrument of financing obligations, including any default under the SCB Facilities (to the extent then outstanding) or the Sukuk Facility; - The failure to satisfy or stay execution of judgments in excess of specified amounts; - Insolvency; - Insolvency proceedings; - Creditors' process; - Material litigation; - Any Obligor shall seek to repudiate any obligation under the Murabaha Exit Facility, or any such obligation shall cease to be legal, valid or enforceable in any material respect. - The impairment of a security interest in collateral; - The invalidity of guarantees or any obligation or security; - The occurrence of a "change of control" (to be defined in a mutually agreed upon manner); - Any Put Failure (as defined in the Cooperation Term Sheet) by Reorganized Arcapita (as defined in the Cooperation Term Sheet) for any Transaction Holdco in which Reorganized Arcapita is the Majority Investor (as defined in the Cooperation Term Sheet); and - The commencement of an administration or similar regulatory proceeding, or appointment of an asset manager, receiver, custodian, trustee or similar official, with respect to any Obligor, Arcapita Bank B.S.C.(c), New Arcapita Topco or any material direct or indirect wholly-owned subsidiaries or Arcapita Bank B.S.C.(c) and/or New Arcapita Topco, in each case that is either (i) commenced voluntarily or (ii) commenced involuntarily and is not withdrawn, vacated or dismissed for 30 calendar days.
Remedies	<ul style="list-style-type: none"> ▪ The Murabaha DIP Agreement and Final DIP Order shall contain remedies customary or appropriate to be determined in the context of the proposed Murabaha DIP Facility, including, without limitation, foreclosing on the DIP Collateral. ▪ The Murabaha Exit Agreement shall contain remedies customary or

MURABAHA FACILITIES TERM SHEET

	appropriate to be determined in the context of the proposed Murabaha Exit Facility, including, without limitation, foreclosing on the Collateral.
Release and Indemnification	<ul style="list-style-type: none"> ▪ The Obligors will provide customary releases and exculpations for any claims, demands, liabilities, responsibilities, disputes, remedies causes of action, financing obligations, or obligations related to or arising out of the Murabaha DIP Facility and/or the Murabaha Exit Facility (the “<u>Release</u>”). ▪ The Murabaha DIP Facility and Murabaha Exit Facility will provide customary and appropriate provisions relating to indemnity and related matters in a form reasonably satisfactory to the Investment Agent and the Participants which provisions shall expressly survive the effective date of any chapter 11 plan for the Debtors and any discharge of the Debtors.
Transfers by Participants	<ul style="list-style-type: none"> ▪ Participants shall be able to transfer freely their Participations in a Sharia’a-compliant manner to other entities without the Obligors’ consent. Participants may assign all or, in an amount of not less than an amount to be agreed, of their Participations to Affiliated Funds thereof (or of other Participants) and, with the consent of the Investment Agent (not to be unreasonably withheld), to one or more banks, financial entities or other entities that are eligible assignees (other than natural persons).
Governing Law and Jurisdiction	<ul style="list-style-type: none"> ▪ The Murabaha DIP Agreement will provide that the parties will submit to (i) the non-exclusive jurisdiction and venue of the Bankruptcy Court, and (ii) solely to the extent the Bankruptcy Court does not exert jurisdiction or venue, the exclusive jurisdiction and venue of the courts of England. ▪ The Murabaha Exit Agreement will provide that the parties will submit to the exclusive jurisdiction and venue of the courts of England. ▪ English law will govern the Transaction Documents, except with respect to certain security documents where applicable local law is necessary for enforceability or perfection.
Transaction Documents	<ul style="list-style-type: none"> ▪ Transaction Documents to be based on Loan Market Association (LMA) standard form documents, adopted for the purposes of a Sharia’a-compliant Murabaha facility.

ARCAPITA INVESTMENT HOLDINGS LIMITED

SUMMARY OF CONDITIONS PRECEDENT TO THE MURABAHA FACILITIES

This Summary of Conditions Precedent outlines certain of the conditions precedent to the Murabaha DIP Facility referred to in the Commitment Letter, of which this Annex C is a part. Certain capitalized terms used herein are defined in the Commitment Letter.

A. CONDITIONS PRECEDENT TO THE CLOSING DATE

1. Final DIP Order/Bankruptcy Matters.

- (a) The Bankruptcy Court shall have entered, upon motion in form and substance reasonably satisfactory to the Investment Agent, on such prior notice as may be satisfactory to the Investment Agent, a final order in form and substance reasonably satisfactory to the Investment Agent on or before June 10, 2013, authorizing and approving the use of the Murabaha DIP Facility, all provisions thereof and the priorities and liens granted under Sections 364(c) of the Bankruptcy Code, as applicable (the "Final DIP Order"), which Final DIP Order shall, among other things: (i) modify the automatic stay to permit the creation and perfection of the Investment Agent's and Participants' liens on the Collateral; (ii) provide for the automatic vacation of such stay to permit the enforcement of the Investment Agent's and/or Participants' remedies under the Murabaha DIP Facility, including without limitation the enforcement, upon five (5) business days' prior written notice, of such remedies against the Collateral; (iii) prohibit the assertion of claims arising under Section 506(c) of the Bankruptcy Code against any or all of the Investment Agent and the Participants or the commencement of other actions adverse to the Investment Agent or any Participant or their respective rights and remedies under the Murabaha DIP Facility or the Final DIP Order; (iv) prohibit the incurrence of debt or granting of liens with priority equal to or greater than the Investment Agent's and Participants' liens under the Murabaha DIP Facility, other than in connection with the SCB Settlement Order; (v) (A) prohibit any granting or imposition of liens other than liens set forth in the Final DIP Order or otherwise reasonably acceptable to the Investment Agent and (B) terminate all liens upon the Collateral (except for permitted liens to be mutually agreed upon, including the liens confirmed in the SCB Settlement) upon payment of the amounts to be funded under the Murabaha DIP Facility; (vi) authorize and approve the Murabaha DIP Facility and the transactions contemplated hereby, including without limitation the granting of the superpriority claims, the first-priority security interests and liens (other than liens securing the SCB Facilities) upon the Collateral; (vii) authorize the payment by AIHL of all of the fees provided for herein and in any separate fee letter (including authorizing the entering into of any such fee letter) as administrative expense claims under Section 503(b)(1) of the Bankruptcy Code, including with respect to any indemnification obligations, whether or not any Transaction Documents are executed or any Facility is funded (which fees and indemnification obligations shall be secured by all of the priorities and liens granted pursuant to Section 364(c) of the Bankruptcy Code with respect to any and all other financing obligations under the Murabaha DIP Facility); (viii) find that the Participants are extending financing to the Debtors in good faith within the meaning of Section 364(e) of the Bankruptcy Code; and (ix) set forth the mechanics affecting the Murabaha DIP Facility as reasonably determined by AIHL and the Investment

Agent. The order should also authorize the entering into of the definitive documentation.

- (b) Entry of an order (the “Cayman Order”) in the Cayman Proceeding in form and substance reasonably satisfactory to the Investment Agent, in its sole discretion, on such prior notice as may be satisfactory to the Investment Agent, with respect to the Murabaha DIP Facility and such matters are to be determined by the Investment Agent, in its reasonable discretion.⁹
 - (c) The Debtors shall be in compliance in all respects with the Final DIP Order and Cayman Order.
 - (d) The definitive Transaction Documents shall have been entered into, and the Investment Agent, for the benefit of the Participants, shall have been granted perfected liens and pledges on the Collateral securing the Murabaha DIP Facility.
 - (e) No trustee or examiner shall have been appointed with respect to any of the Debtors or the Debtors’ properties.
2. Financial Statements, Budgets and Reports. The Investment Agent shall have received the following financial information:
- (a) the DIP Budget, which shall be in form and substance reasonably satisfactory to the Investment Agent;
 - (b) to the extent available, audited financial statements of the Company for the years 2009, 2010, 2011 and 2012; and
 - (c) such other information (financial or otherwise) as it may reasonably request.
3. Performance of Obligations. All costs, fees, expenses (including, without limitation, reasonable legal fees) and other compensation contemplated by the Commitment Letter and any separate fee letter payable to the Investment Agent or the Participants shall have been paid in full in cash to the extent due and the Debtors shall have complied with all of their other obligations under the Commitment Letter and any separate fee letter.
4. Sharia’a. A fatwa from Arcapita’s Sharia’a Board approving the Transaction Documents shall have been issued in form and substance reasonably acceptable to the Investment Agent.
5. Credit Support. Any modification to the SCB Settlement Order and any adequate protection other than that contained in the SCB Settlement Order to any secured party shall be satisfactory to the Investment Agent.
6. Other Customary Conditions.
- (a) The Investment Agent shall be satisfied that the Debtors have complied with the following conditions: (i) the delivery of legal opinions, corporate records and

⁹ Note to draft: To be determined based on Cayman law advice.

documents from public officials, lien searches and officer's certificates; (ii) evidence of authority; (iii) obtaining material third party and governmental consents necessary in connection with the Murabaha DIP Facility, the related transactions and the financing thereof; (iv) absence of unstayed litigation affecting the Murabaha DIP Facility, the related transactions or the financing thereof; (v) evidence of insurance; and (vi) perfection of liens, pledges, and mortgages on the Collateral securing the Murabaha DIP Facility.

- (b) The Investment Agent shall have received at least 10 days prior to the Closing Date (or such shorter period as the Investment Agent shall agree) all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the Patriot Act.

B. CONDITIONS TO MURABAHA EXIT FACILITY AVAILABILITY

The several obligations of the Participants to provide the Murabaha Exit Facility on the effective date of the Plan will be subject to the satisfaction of conditions for each Murabaha Contract set forth in the Term Sheet and the following:

- (a) Entry of a Confirmation Order not later than two weeks prior to the DIP Termination Date.
- (b) The occurrence of the effective date under the Plan and consummation of the Plan on or before the DIP Termination Date.
- (c) Resolution of the Cayman Proceeding.
- (d) The Investment Agent shall be satisfied in its reasonable judgment that (a) concurrently with the consummation of the Plan, all pre-existing indebtedness of the Debtors and their respective subsidiaries shall have been satisfied or otherwise treated in the manner specified in the Plan (to the extent applicable), and all liens and security interests related thereto, to the extent required by the Plan, shall have been terminated or released, in each case, on terms satisfactory to the Investment Agent, (b) the respective indebtedness of the Debtors and their respective subsidiaries and any liens securing same that are outstanding immediately after the consummation of the Plan shall not exceed the amount contemplated by the Plan (to the extent applicable), (c) no default under the Murabaha Exit Facility documentation shall have occurred and be continuing and (d) there shall not occur as a result of, and after giving effect to, the Murabaha Exit Facility and the other Plan effective date transactions, a default (or any event which with the giving of notice or lapse of time or both will be a default) under any of the reorganized Debtors or their respective subsidiaries' debt instruments and other material agreements.
- (e) The Investment Agent shall be satisfied that the Purchaser has complied with the following closing conditions: (a) the delivery of legal opinions, corporate records and documents from public officials, officer's certificates; and evidence of authority; (b) accuracy of representations and warranties under the Murabaha Exit Facility, (c) perfection of liens, pledges, and mortgages on the collateral securing the Murabaha Exit Facility and (d) delivery of a solvency certificate from the chief

financial officer of Obligors in form and substance, and with supporting documentation, satisfactory to the Investment Agent.

- (f) (i) No amendment, modification, supplement or waiver shall have been made to any or all of the Plan, the related Disclosure Statement and other solicitation materials, the Confirmation Order and all documents to be executed and/or delivered in connection with the implementation of the Plan, in each case, which adversely affects the Investment Agent or the Facilities without the prior written consent of the Investment Agent, (ii) the Bankruptcy Court shall have entered an order, in form and substance reasonably satisfactory to the Investment Agent (the “Confirmation Order”), confirming the Plan and approving the Plan-related solicitation procedures, and such order shall have become final and non-appealable, (iii) the Plan shall have become effective in accordance with its terms, and all conditions precedent to the effectiveness of the Plan shall have been satisfied or waived (to the extent such waiver would be adverse to the interest of the Investment Agent or the Participants with the prior consent of the Investment Agent), and (iv) the transactions contemplated by the Plan to occur on the effective date of the Plan shall have been consummated substantially contemporaneously with the provision of the Murabaha Exit Facility.
- (g) A fatwa from New Arcapita Holdco 2’s Sharia’a Board approving the Murabaha Exit Facility and all related transaction documents (in form and substance reasonably satisfactory to the Investment Agent) shall have been issued, and a pronouncement by a Sharia’a Advisor to the Investment Agent approving the Murabaha Exit Facility and all related transaction documents shall have been issued.
- (h) All costs, fees, expenses (including, without limitation, reasonable legal fees) and other compensation contemplated by the Commitment Letter and any separate fee letter payable to the Investment Agent or the Participants shall have been paid in full in cash to the extent due and the Debtors shall have complied with all of their other obligations under the Commitment Letter and any separate fee letter.
- (i) Unless the SCB Facilities are repaid in cash from the proceeds of the Murabaha Exit Facility, effectiveness of an intercreditor agreement among the Investment Agent, the Obligors and Standard Chartered Bank, in each case in form and substance reasonably acceptable to the Investment Agent.
- (j) Effectiveness of agreements or other arrangements in form and substance reasonably acceptable to the Investment Agent authorizing the Investment Agent to exercise all rights of the Obligors with respect to the Cooperation Settlement Term Sheet and LT Caycos, including, without limitation, with respect to the disposition of Portfolio Companies, upon the occurrence and during the continuation of an Event of Default.¹⁰
- (k) Subordination of all claims of AHIL, the Obligors or their affiliates against the Murabaha WCF Entities to the obligations under the Murabaha Exit Facility on terms in form and substance reasonably acceptable to the Investment Agent; provided that, for the avoidance of doubt, no claims against the Murabaha WCF

¹⁰ Note to draft: Structure and drafting of “step in” rights subject to review of final documentation to be proposed by the Debtors.

Entities held by or participated to third parties that are not affiliates of Obligors shall be required to be subordinated.

- (l) Subordination of all claims for Disposition Expenses (as defined in the Plan) of the Obligors and their affiliates to the obligations under the Murabaha Exit Facility on terms in form and substance reasonably acceptable to the Investment Agent, which shall permit payment of claims for Disposition Expenses prior to the occurrence of an Event of Default.
- (m) The timing and amounts of any fees payable under the Management Services Agreement (as defined in the Plan) shall be materially consistent with the timing and amounts of such fees disclosed to Investment Agent in the draft Cooperation Settlement Term Sheet prior to the date hereof or otherwise in form and substance reasonably acceptable to the Investment Agent.
- (n) The Investment Agent shall have received evidence that New Arcapita Topco and all of the Obligors shall not be regulated directly by the Central Bank of Bahrain, the Bahrain Ministry of Industry & Commerce or any other Bahraini governmental authority except to the extent that such regulation could not reasonably be expected to materially and adversely impact (i) the ability of the Obligors to perform under the Facilities Documents in respect of the Murabaha DIP Facility or (ii) the rights or remedies of the Investment Agent or the Participants under such documents.

SUMMARY OF CURRENT MIDPOINT VALUE OF DEBTORS' INTERESTS

Aggregate current midpoint value of Debtors' interests

[REDACTED]

[REDACTED]

[REDACTED]

Exhibit C

**GOLDMAN SACHS INTERNATIONAL
PETERBOROUGH COURT
133 Fleet Street
London EC4A 2BB
United Kingdom**

PERSONAL AND CONFIDENTIAL

May 2, 2013

**Arcapita Bank B.S.C.(c)
c/o Bernard Douton
Rothschild
1251 Sixth Avenue, 51st Floor
New York, New York 10020**

Fee Letter

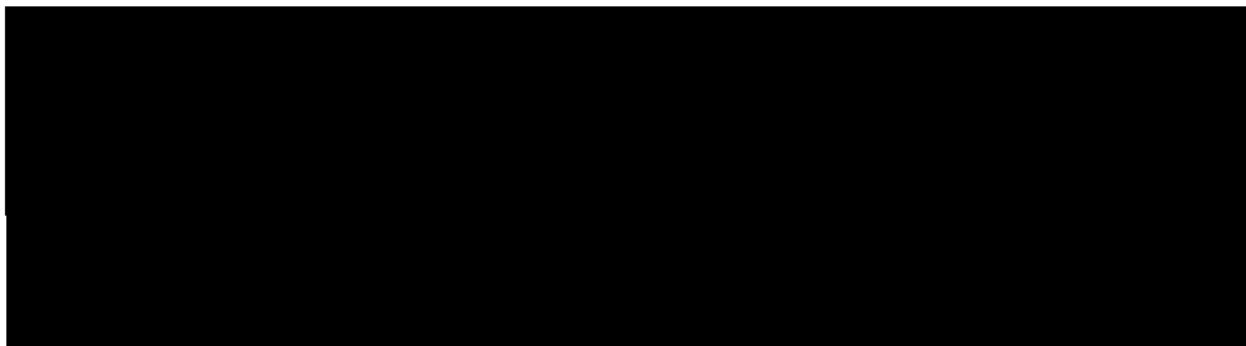
Ladies and Gentlemen:

This Fee Letter sets forth certain fees payable by Arcapita Bank B.S.C.(c) (“**Arcapita Bank**”) in connection with the Facilities contemplated to be provided pursuant to the commitment letter dated the date hereof (the “**Commitment Letter**”) among Goldman Sachs International (“**Goldman Sachs**”) and Arcapita Bank. Terms defined in the Commitment Letter are used herein as defined therein. By accepting the Commitment Letter but subject to receipt of the Commitment Order, you agree to pay the fees set forth in this Fee Letter in accordance with the other terms and conditions set forth herein.

Murabaha DIP Facility and Murabaha Exit Facility

Arcapita Bank agrees to pay to Goldman Sachs:

- 
- 



Arcapita Bank B.S.C.(c)

May 2, 2013

Page 2

[REDACTED]

[REDACTED]

Other

Whether or not any of the Final DIP Order or the Cayman Order is entered, or the Facilities are funded, Arcapita Bank also agrees to reimburse Goldman Sachs periodically upon demand for its reasonable out-of-pocket expenses, including expenses associated with syndication of the Facilities and the fees and disbursements of our attorneys and advisors, plus any sales, use or similar taxes (including additions to such taxes, if any) arising in connection with any matter referred to in the Commitment Letter or this Fee Letter. In addition, Arcapita Bank agrees to reimburse each Participant for any loss or expense that such Participant sustains or incurs as a consequence of making funds available, or making arrangements to fund, its contributions to a Cost Price in relation to a Murabaha Contract proposed on any date identified by Arcapita Bank to the Investment Agent as the expected Closing Date but not entered into on such expected date. Notwithstanding anything to the contrary herein, Goldman Sachs shall be permitted to allocate the fees payable to it hereunder for its own account to any Participants, prospective Participants or other participants or to any of its affiliates as it deems appropriate.

[REDACTED]

All fees shall be payable in U.S. dollars in immediately available funds, free and clear of and without deduction for any and all present or future applicable taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto (with appropriate gross-up for withholding taxes).

You agree that, once paid, the fees or an part thereof payable hereunder shall not be refundable under any circumstances. All fees payable hereunder will be paid in immediately available funds and shall not be subject to reduction by way of setoff or counterclaim.

Arcapita Bank B.S.C.(c)

May 2, 2013

Page 3

Arcapita Bank acknowledges that this Fee Letter is neither an expressed nor an implied commitment by Goldman Sachs to act in any capacity with respect to the Facilities or to enter into any Murabaha Contracts in connection therewith, which commitment, if any, is only set forth in the Commitment Letter.

Please note that this Fee Letter is exclusively for the information of the Board of Directors and senior management of Arcapita Bank and may not be disclosed to any third party or circulated or referred to publicly other than as provided in Section 7 (Confidentiality) of the Commitment Letter without our prior written consent. For the avoidance of doubt, and without limitation, this Fee Letter is subject to the terms of section 7 (Confidentiality) of the Commitment Letter.

This Fee Letter may be executed in any number of counterparts, each of which when executed will be an original, and all of which, when taken together, will constitute one agreement. Delivery of an executed counterpart of a signature page of this Fee Letter by facsimile transmission will be effective as delivery of a manually executed counterpart hereof.

In addition, please note that Goldman Sachs and its affiliates do not provide accounting, tax or legal advice.

This Fee Letter will be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of law.

[Remainder of page intentionally left blank]

Arcapita Bank B.S.C.(c)
May 2, 2013
Page 4

Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed copy of this Fee Letter, which will become a binding agreement upon our receipt.

Very truly yours,

GOLDMAN SACHS INTERNATIONAL

By:  _____
Authorized Signatory

Alisdair Fraser
Managing Director

ACCEPTED AND AGREED AS OF
May __, 2013:

ARCAPITA BANK B.S.C.(c)

By: _____
Name:
Title:

Arcapita Bank B.S.C.(c)
May 2, 2013
Page 4

Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed copy of this Fee Letter, which will become a binding agreement upon our receipt.

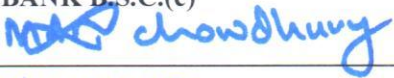
Very truly yours,

GOLDMAN SACHS INTERNATIONAL

By: _____
Authorized Signatory

ACCEPTED AND AGREED AS OF
May __, 2013:

ARCAPITA BANK B.S.C.(c)

By: 
Name: MOHAMMED CHOWDHURY
Title: EXECUTIVE DIRECTOR

NY\5754776