

TOGUT, SEGAL & SEGAL LLP  
One Penn Plaza  
Suite 3335  
New York, New York 10119  
(212) 594-5000  
Neil Berger  
Steven S. Flores

Co-Counsel for CF ARC LLC in Its Capacity as  
Investment Agent and Security Agent for the  
Debtor-in-Possession Murabaha Facility

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

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<b>In re</b>	<b>Chapter 11 Case</b>
	:
<b>ARCAPITA BANK B.S.C.(c), et al.,</b>	<b>Case No. 12-11076 (SHL)</b>
	:
<b>Debtors.</b>	<b>Jointly Administered</b>
-----x	

**OBJECTION OF CF ARC LLC TO 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**

Fortress Credit Corp., an affiliate of the investment agent under the senior secured superpriority debtor-in-possession Murabaha facility (collectively, "Fortress"), hereby submits this objection (the "Objection") to the motion of Arcapita Bank B.S.C.(c) and its affiliated debtors and debtors-in-possession (the "Debtors") for entry of an order authorizing the Debtors to (a) enter into a financing commitment letter and related letter to obtain (i) replacement DIP financing and (ii) exit financing, (b) incur and pay associated fees and expenses, and (c) provide related indemnities (the "Motion"). With respect to the Motion, Fortress respectfully represents:

**PRELIMINARY STATEMENT**

1. Prior to the filing of the Motion, Fortress worked extensively with the Debtors on a proposal to provide an exit facility to fund the Debtors' emergence from

chapter 11. In fact, Fortress and the Debtors have held ongoing exit-facility discussions since last year, both during and after negotiations regarding the existing debtor-in-possession Murabaha facility (the "DIP Facility"). These efforts intensified as the Debtors drew closer to finalizing the terms of their plan of reorganization and the recently approved disclosure statement. During this period, Fortress dedicated substantial resources to developing the exit proposal. Working closely with the Debtors and their advisors, Fortress exchanged numerous drafts of a proposed exit commitment letter and term sheet with the Debtors, significantly improving the terms for the reorganized company with each turn. Fortress last sent proposals for an exit facility commitment letter and term sheet to the Debtors on April 26, 2013, subject to additional modifications provided to the Debtors on April 29, 2013.

2. As was the case with each prior proposal, the Debtors advised Fortress that its April 29 proposal would be taken under review and that the Debtors, in consultation with the Official Committee of Unsecured Creditors (the "Committee"), would contact Fortress to the extent any additional modifications were requested. But the week passed with very little communication regarding Fortress's proposal. On May 3, the Debtors informed Fortress that they had accepted the competing proposal made by Goldman Sachs International ("GSI"). Fortress's initial disappointment regarding the Debtors' selection of GSI as exit lender soon gave way to confusion after reviewing the Motion and GSI's own commitment letter and term sheet.

3. As set forth in greater detail below, Fortress's April 29 proposal is objectively more favorable to the Debtors in nearly every respect than the terms of the GSI proposal for which the Debtors now seek approval. It is unclear to Fortress why both the Debtors and the Committee have lent their support to the GSI proposal. Of particular concern to Fortress, given its substantial allocation of time and resources, is

that the selection process may have been influenced by potential conflicts of interest embedded in GSI's proposal. Specifically, the GSI proposal contemplates a syndicated facility, which may allow certain unsecured creditors, including members of the Committee and the ad hoc group of holders of the Debtors' prepetition Murabaha facility (the "Ad Hoc Group"), to improve their positions in the reorganized Debtors' capital structure relative to other unsecured creditors.

4. After communicating its confusion regarding the selection of GSI's proposal and its concerns regarding process, Fortress received assurances from both the Debtors and the Committee that at the hearing on the Motion they will seek approval of the best exit facility proposal, whether that proposal comes from Fortress or GSI. To this end, Fortress has attached a revised commitment letter and term sheet as Exhibit A hereto (the "Fortress Exit Proposal"). Additional improvements to the Fortress Exit Proposal from the April 29 proposal are described below. In the meantime, Fortress reserves any rights to investigate and take discovery regarding the selection process and welcomes the opportunity to work with the Debtors and the Committee to develop the Fortress Exit Proposal through the conclusion of the hearing on the Motion.

## DISCUSSION

### **A. Fortress's April 29 Exit Proposal Was Superior to the Selected GSI Proposal**

5. As noted above, Fortress's April 29 exit facility proposal was superior to the GSI proposal in nearly every respect. The Debtors, in articulating their business judgment for electing the GSI proposal, do not provide any detail supporting their assertion that GSI had submitted the "best terms available" at the time of the Motion. Nor has the Committee explained its reasons for supporting the GSI proposal over the Fortress proposal. Set forth below are the key terms of both GSI's May 3 proposal

(attached to the Motion) and Fortress's April 29 proposal (submitted to the Debtors for consideration prior to selection of the GSI proposal).

a) **Commitment Size.** Both the Fortress and GSI proposals provided for commitments in the amount of \$350 million, assuming repayment of the Debtors' prepetition facility with Standard Chartered Bank. As set forth below, however, the Fortress proposal provides greater flexibility to the reorganized Debtors to use the commitment and retain proceeds from sales of collateral (a central function of the reorganized company), including a provision permitting the reorganized Debtors to retain up to \$30 million in sale proceeds to protect existing portfolio company investments. Under the GSI proposal, restrictions on the use of proceeds from collateral would require the Debtors to rely instead on funds from GSI, thereby reducing availability under the exit facility. GSI's proposal contemplates a \$150 million refinancing of the DIP Facility. Fortress also is prepared to increase its commitment under the DIP Facility and extend the term to facilitate the Debtor's emergence from chapter 11. **Advantage: Fortress.**

b) **Term.** Both proposals contemplate three-year terms. **Advantage: Neutral.**

c) **Pricing.** The Fortress proposal provided for margin in the amount of LIBOR plus 4.0% (subject to a 1.0% LIBOR floor), plus payment-in-kind equal to 6.0%; the GSI proposal provided for LIBOR plus 8.0% (subject to a 1.5% floor), plus payment-in-kind equal to 1.75%. Not only did the Fortress proposal provide for an overall lower rate of margin (11.0% versus 11.25%), the cash component of the Fortress proposal is significantly lower, providing the reorganized Debtors with greater liquidity than under the GSI proposal. Fortress's lower LIBOR floor also provides a meaningful improvement on pricing, as the present LIBOR is below the floor rate in both the Fortress and GSI proposals. **Advantage: Fortress.**

d) **Upfront Fees.** The Fortress proposal provides for a commitment fee in the amount of \$8.75 million, equal to 2.5% of the commitment. The GSI proposal discloses a minimum 1.0% fee on both the proposed new debtor-in-possession and exit facilities (through original issue discount), plus additional fees provided in the fee letter but filed under seal. **Advantage: Unknown.**

e) **Administrative Fees.** The GSI proposal provides for a 1.0% administrative fee on sales resulting from sales of the Debtors' portfolio companies. Fortress's proposal does not incorporate such fees, which will limit the reorganized Debtors' liquidity. **Advantage: Fortress.**

f) **Alternative Transaction Fee.** The GSI proposal provides for a fee in the event that the Debtors' enter into an alternative transaction; the terms of this fee were filed under seal. Fortress's proposal does not include an alternative transaction fee. **Advantage: Fortress.**

g) **Voluntary Prepayment Fee.** The Fortress proposal includes a voluntary prepayment fee in the event that the exit facility is repaid with proceeds of

the exit facility within the first two years. The fee is equal to 2.0% of the prepaid amount in the first year and 1.0% of the prepaid amount in the second year. Fortress does not know whether GSI's sealed fee letter includes similar fees. **Advantage: Unknown.**

**h) *Cash Flow from Sales of Collateral.*** Based on information provided to Fortress by the Debtors, Fortress believes that the waterfall structure in Fortress's proposal will provide the reorganized Debtors with substantially greater ability to retain and use proceeds from sales of collateral under the exit facility. The Fortress proposal provides for ongoing cash releases (based on the asset coverage matrix) to the reorganized Debtors for all asset sales. The GSI proposal, on the other hand, is more restrictive because the reorganized Debtors would be required to use the vast majority of collateral sale proceeds to repay GSI or would be trapped in segregated, low-yield escrow accounts. In addition, the Fortress proposal includes a provision whereby 50% of the net proceeds from the Lusail assets would be distributed to the reorganized Debtors (regardless of the existing asset coverage). Given the Debtors' current estimate that a Lusail transaction will occur within the next twelve months, Fortress's proposal will provide substantially more liquidity to the reorganized Debtors from the Lusail sale proceeds (as well as sale proceeds from the vast majority of the Debtors' other remaining portfolio companies). And as set forth below, in the attached Fortress Exit Proposal, Fortress has increased the amount of sale proceeds to be retained by the reorganized Debtors to protect their investment in existing portfolio companies to \$30 million. For the reasons, Fortress's proposal provides the reorganized Debtors with superior flexibility to manage liquidity. **Advantage: Fortress.**

**i) *Reimbursable Fees and Expenses.*** While neither proposal contains a diligence condition, the Debtors' businesses and structure are highly complex. Consequently, even if it is not a condition, substantial diligence is required to understand the collateral and draft definitive agreements. As the incumbent lender under the DIP Facility, Fortress already has great familiarity with the Debtors and the documentation that will be required to finalize the exit facility. The incremental costs to finalize the Fortress proposal will, therefore, be significantly less than the GSI proposal. To ensure this result, Fortress offered to place a cap on reimbursable fees and expenses relating to drafting and negotiating the exit facility, which has been memorialized in a draft proposed side letter that has been provided to the Debtors and the Committee. Fortress believes that the amount of the cap on reimbursable fees and expenses instituted in the side letter is well below the amount of reimbursable fees and expenses that will be incurred by any non-incumbent provider of a Murabaha facility. In addition, unlike the GSI proposal, the Fortress proposal does not include a requirement to obtain any ongoing outside appraisals or valuation services. The absence of such requirement in Fortress's proposal considerably reduces costs as compared with the GSI proposal – to date, KPMG has charged Arcapita approximately \$5.5 million for valuation services, including over \$4 million during these chapter 11 cases. **Advantage: Fortress.**

**j) *Covenants.*** There are several key differences in the covenants under Fortress and GSI's respective proposals. For instance, the Fortress proposal requires minimum asset coverage of 1.3x, compared to a more restrictive 2.0x minimum asset coverage covenant under the GSI proposal. Also, the GSI proposal requires that

the reorganized Debtors maintain liquidity at a minimum level of \$15 million; as noted below, Fortress has clarified in the attached Fortress Exit Proposal that its minimum liquidity requirement is \$10 million. Thus, Fortress is again providing the reorganized Debtors with additional flexibility. **Advantage: Fortress.**

**k) Syndication.** The GSI proposal provides for syndication of the exit facility. The Fortress proposal does not. Syndication of the exit facility to certain unsecured creditors, at the exclusion of others, would create inherent conflicts of interests between creditors who are permitted to participate in the exit facility – which may include members of the Committee and the Ad Hoc Group – and those not afforded the opportunity to participate, who will retain only junior unsecured claim and equity interests in the reorganized Debtors. Potential conflicts of interest may be compounded as a result of the cross-default provision relating to cooperation agreements with the Debtors' third-party investors to the extent syndicated holders of the exit facility are also parties with voting control under a cooperation agreement. Moreover, syndication among select creditor constituencies may create future conflicts of interest to the extent such parties are entitled to demand fees or other payments under the exit facility, such as in the case of amendments or modifications. It is unclear whether the redacted portions of the GSI fee letter address this concern. The Fortress proposal does not create conflicts of interest. The absence of syndication in the Fortress proposal also has a practical side. Rather than seek approval from a multitude of different exit facility participants regarding documentation, amendments, or other issues that might arise in the future, the reorganized Debtors will interface with a single party, Fortress. This results in efficiency and lowers costs to the reorganized Debtors. **Advantage: Fortress.**

**l) DIP Facility.** The GSI proposal contemplates that the existing DIP Facility will be refinanced by a new \$150 million syndicated debtor-in-possession facility provided by GSI. This facility contemplates a minimum of 1.0% upfront fee and would mature on August 31, 2013. In addition, the Debtors' proposed repayment of the DIP under the GSI proposal will trigger additional payment obligations under the DIP Facility. Documentation and approval of this new debtor-in-possession facility will, of course, require the Debtors to incur additional costs. Fortress is prepared to extend the term of the existing DIP Facility to December 14, 2013, amend the existing DIP Facility to increase the commitment as required to bridge the Debtors' emergence from chapter 11. The fees and costs for Fortress's extension of the existing DIP Facility will be substantially less than GSI's proposal. **Advantage: Fortress.**

## **B. Improvements to the Fortress Exit Proposal**

6. In discussions with the Debtors and the Committee since filing of the Motion, Fortress was informed of three specific areas in which Fortress's April 29 proposal could be clarified or improved: (i) increasing the covenant concerning the outstanding cost price to value ratio; (ii) increasing the amount of proceeds that the reorganized Debtors are entitled to retain from sales of collateral to protect existing

portfolio company investments; and (iii) clarifying the parameters of the maximum expense covenant. Although Fortress submits that its April 29 proposal already contains more favorable terms than the GSI proposal, Fortress has addressed each of these concerns in the Fortress Exit Proposal attached as Exhibit A. In addition, Fortress has improved the Fortress Exit proposal by reducing the in the payment-in-kind pricing component by an additional 0.5%, such that aggregate pricing is now 10.5% (compared to 11.25% under the GSI proposal). Fortress stands ready to address any additional questions or concerns that the Debtors, the Committee, or this Court may have regarding the Fortress Exit Proposal.

### CONCLUSION

WHEREFORE, for the reasons set forth herein, Fortress respectfully requests that the Court deny the Motion as it pertains to the exit facility proposed by GSI and grant such other and further relief as this Court deems just and proper.

Dated: New York, New York  
May 13, 2013

TOGUT, SEGAL & SEGAL LLP  
Co-Counsel for CF ARC LLC in Its Capacity as  
Investment Agent and Security Agent for the  
Debtor-in-Possession Murabaha Facility  
By:

/s/ Neil Berger  
NEIL BERGER  
STEVEN S. FLORES  
One Penn Plaza, Suite 3335  
New York, New York 10119  
(212) 594-5000

**EXHIBIT "A"**

SASM&F Draft 5/13/13

## Fortress Credit Corp.

1345 AVENUE OF THE AMERICAS  
46TH FLOOR  
NEW YORK, NY 10105  
TEL 212 798-6130  
FAX 212 798-6099

May [ ], 2013

Bernard Douton  
Rothschild  
1251 Avenue of the Americas 51st floor  
New York, NY 10020

Re: Commitment Letter for Arcapita Exit Financing

Mr. Douton:

We understand that Arcapita Bank B.S.C.(c) (“you”, or “Arcapita”) and certain of its direct and indirect subsidiaries are seeking financing for the Reorganized Company<sup>1</sup> in connection with the confirmation of that certain First Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code, dated April 16, 2013 (as the same may be further amended or modified from time to time in a manner not adverse to the Agent or Participants (defined below) in any material respect, the “Plan of Reorganization”) for Arcapita, Arcapita Investment Holdings Limited (“AIHL”) and certain of their affiliates, as debtors and debtors-in-possession (together with Arcapita and AIHL, but expressly not including Falcon Gas Storage Company, Inc., the “Debtors”) in cases under Chapter 11 of the United States Bankruptcy Code jointly administered as case no. 12-11076 in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) styled In re Arcapita Bank B.S.C.(c), et al. (the “Chapter 11 Cases”). You have requested that Fortress Credit Corp. (“Fortress”) consider providing Purchaser (as defined in the Summary of Terms and Conditions attached hereto as Exhibit A (the “Term Sheet”) with a senior secured Master Murabaha term loan exit facility in an aggregate principal amount of \$350,000,000 (or, if the SCB Facilities are not repaid in full at closing, \$250,000,000) (the “Murabaha Exit Facility”) in order to (i) effect the Plan of Reorganization, including repaying the DIP Facility (as defined in the Term Sheet) and, at the option of the Reorganized Company, the Standard Chartered Bank murabaha facilities of certain of the Debtors (the “SCB Facilities”), (ii) fund working capital requirements and (iii) pay fees and expenses related to the transactions contemplated hereunder, in each case in accordance with the terms set forth in the Term Sheet. In connection with the foregoing and

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<sup>1</sup> The “Reorganized Company” means the reorganized Debtors, [New Arcapita Topco] and all other entities formed in connection with consummation of the transactions contemplated by the Plan of Reorganization (defined below).

subject only to the terms and conditions set forth in this commitment letter and the Term Sheet and all attachments hereto (collectively, the "Commitment Letter"), (a) Fortress is pleased to offer to be the sole and exclusive investment agent (in such capacity, the "Agent") for the Murabaha Exit Facility, (b) Fortress is pleased to offer to be the sole and exclusive arranger for the Murabaha Exit Facility (in such capacity, the "Arranger") and (c) Fortress is pleased to offer its commitment to provide the entire Murabaha Exit Facility (the "Committed Amount").

Fortress will act as the sole and exclusive Administrative Agent and sole and exclusive Arranger for the Murabaha Exit Facility. No other agents or arrangers shall be appointed and no other titles shall be awarded for the Murabaha Exit Facility without Fortress's consent.

The commitments and the undertakings to provide the services described herein by Fortress are subject to the following conditions precedent (i) the negotiation, execution and delivery of definitive finance documentation (the "Finance Documents"), consistent with the Term Sheet and in form and substance reasonably satisfactory to Fortress and its counsel, (ii) since the date hereof, there has not occurred any material adverse change with respect to the financial condition, business, results of operations, assets or liabilities of Arcapita and its subsidiaries taken as a whole (other than as may customarily result as a consequence of the continuation of the Chapter 11 Cases) (a "Material Adverse Change"), (iii) the representations and warranties set forth herein and in the Finance Documents shall be true and correct in all material respects (unless such representation and warranty is qualified by materiality or Material Adverse Change, in which case it shall be true and correct in all respects) on the Closing Date (or such earlier date as may be expressly referenced in any such representations and warranties), and (iv) the satisfaction of the other conditions set forth in the Term Sheet and the Finance Documents.

You hereby represent and warrant that all information prepared by you, or by your advisors on your behalf, (the "Information") other than financial projections, forecasts, budgets and other forward-looking statements and other information of a general economic or industry nature, which has been or is hereafter made available to Fortress or any Participant (as defined in the Term Sheet) by you or on your behalf by any of your authorized representatives with respect to you and your subsidiaries in connection with the Murabaha Exit Facility or provided to us to assist us in our consideration of providing the Murabaha Exit Facility, as and when furnished, taken as a whole, is and will be 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 in light of the circumstances under which such statements are made. You agree that you shall provide to Fortress and its advisors all information and documents relating to Arcapita, its subsidiaries, the portfolio companies and the related holding companies and their respective businesses, operations, assets and liabilities as Fortress may reasonably request from time to time in a reasonably prompt manner.

Neither the existence of this Commitment Letter, nor any of its contents, shall be disclosed by Arcapita or its affiliates except as may be compelled to be disclosed in a judicial or administrative proceeding or as otherwise required by law or, on a confidential and "need to know" basis, solely to the directors, officers, employees, advisors and agents of Fortress and Arcapita and its affiliates. Notwithstanding the foregoing, Arcapita shall be permitted to furnish a copy of this Commitment Letter to the official committee of unsecured creditors appointed in the Chapter 11 Cases (the "Committee") and its professional advisors, the joint provisional liquidation

tors appointed in the Cayman Island proceedings of the Debtors that are domiciled in the Cayman Islands (the “Joint Provisional Liquidators”) and their professional advisors, and the Office of the United States Trustee and its professional advisors, in all cases on a confidential basis. In addition, you may file this Commitment Letter with the Bankruptcy Court and with the court overseeing the Cayman Island proceedings of the Debtors domiciled in the Cayman Islands under seal, including in order to obtain court approval for any of Arcapita and its affiliates and subsidiaries to execute, deliver and perform its obligations hereunder. In addition, except as set forth above, Arcapita agrees that it shall obtain the prior approval of Fortress before releasing any public announcement in which reference is made to Fortress or to the Commitment Letter or the terms contained herein .

By executing this Commitment Letter, subject to the approval of the Bankruptcy Court, you agree to indemnify and hold harmless Fortress and each of its affiliates and their respective officers, directors, employees, agents and advisors (each an “Indemnified Party”) from and against (and will reimburse each Indemnified Party as the same are incurred for) any actions described in Annex A hereto. Annex A is hereby incorporated by reference into this Commitment Letter.

In addition, Arcapita, subject to the approval of the Bankruptcy Court, agrees that it will reimburse Fortress for all reasonable and documented out-of-pocket fees and expenses (the “Expenses”) incurred by or on behalf of Fortress prior to the date of termination of this Commitment Letter in connection with the preparation, negotiation, execution and delivery of this Commitment Letter and any and all definitive documentation relating hereto or thereto (including, without limitation, the Finance Documents), including, without limitation, the reasonable and documented fees and expenses of counsel to Fortress, whether the Murabaha Exit Facility closes or not. Upon execution and delivery of this Commitment Letter, Fortress shall commence in a commercially reasonable manner to negotiate and to document definitive documentation with respect to the Murabaha Exit Facility.

Arcapita also agrees to pay, subject to the review provisions contained in the next succeeding sentence, all Expenses incurred by Fortress on or prior to the date of the entry of the Approval Order within three business days of the later of Arcapita’s, the Committee counsel’s and the Joint Provisional Liquidators’ receipt of the invoices therefor. In all instances, prior to payment of any Expenses, the Committee, the Joint Provisional Liquidators and the Debtors shall have three days after Committee counsel’s and the Joint Provisional Liquidators’ receipt of any related invoice to review such invoice and serve the Debtors (or the Committee and/or the Joint Provisional Liquidators, as applicable) and Fortress with notice of any objection setting forth the amount of costs or expenses to which the Committee, the Joint Provisional Liquidators or the Debtors, as applicable, objects, consistent with the reimbursement procedures set forth in the Approval Order.

Subject to the receipt of the Approval Order, as consideration for its commitment hereunder Arcapita agrees to pay Fortress a commitment fee of \$8,750,000 (the “Commitment Fee”) on the earliest of (x) the Closing Date and (y) the date that the commitments of Fortress are terminated or expire pursuant to the terms hereof. The Commitment Fee shall be fully earned upon the parties executing this Commitment Letter, shall be nonrefundable for any reason whatsoever and shall be in addition to any other fees, costs and expenses payable pursuant to this Commitment

Commitment Letter or the Finance Documents. Your obligation to pay the Commitment Fee will not be subject to counterclaim or setoff for, or be otherwise affected by, any claim or dispute you or your affiliates may have, including, without limitation, any claim or dispute that you or any of your affiliates may have under the DIP Facility.

By execution of this Commitment Letter, Fortress, in its capacity as Investment Agent (as defined in the DIP Facility) under the DIP Facility acknowledges that, upon the entry of the Approval Order (a) the Extension Availability Date (as defined in the DIP Facility) shall have occurred, and (b) AIHL has delivered written notice of its request that the Investment Agent extend the Maturity Date (as defined in the DIP Facility) in compliance with clause 2.3(a) of the DIP Facility.<sup>2</sup> Arcapita and the Investment Agent each acknowledges and agrees that, upon the entry of the Approval Order, (a) the Maturity Date Extension (as defined in the DIP Facility) shall be effective and (b) the Installment C Amount (as defined in the DIP Facility) shall be reduced from 1.5% to 0.75% of the Facility Limit on the Extension Effective Date (each and defined in the DIP Agreement). Also, by execution of this Commitment Letter, Fortress, in its capacity as Investment Agent under the DIP Facility, agrees to take all steps reasonably required to amend the DIP Facility in compliance with the terms thereof and the Final Order (as defined in the DIP Facility) to increase the current Facility Limit (as defined in the DIP Facility) to \$150 million upon the entry of by the Bankruptcy Court of the Approval Order. AIHL will not be charged any arrangement or commitment fee in connection with any such increase.

In connection with all aspects of each transaction contemplated by the Murabaha Exit Facility, you acknowledge and agree, and acknowledge your affiliates' understanding, that: (i)(a) the arranging and other services described herein regarding the Murabaha Exit Facility are arm's-length commercial transactions between you, on the one hand, and Fortress, on the other hand, (b) you have consulted your own legal, accounting, regulatory and tax advisors to the extent you have deemed appropriate, and (c) you are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby; (ii) in connection with the Murabaha Exit Facility, (a) Fortress has been, is, and will be acting solely as a principal and, except as otherwise expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for you, any of your affiliates or any other person or entity and (b) Fortress has no obligation to you or your affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and under the DIP Facility; and (iii) Fortress and its affiliates may be engaged in a broad range of transactions that involve interests that differ from yours and those of your affiliates, and Fortress does not have any obligation to disclose any of such interests to you or your affiliates. To the fullest extent permitted by law, you hereby waive and release any claims that you may have against Fortress with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated by this Commitment Letter.

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<sup>2</sup> To be confirmed by parties

The provisions of this paragraph and the immediately preceding seven paragraphs shall remain in full force and effect regardless of whether any definitive documentation for the Murabaha Exit Facility shall be executed and delivered, and notwithstanding the termination of this Commitment Letter or any commitment or undertaking of Fortress hereunder; provided, that your obligations under this Commitment Letter shall automatically terminate and be superseded by the definitive documentation relating to the Murabaha Exit Facility upon the Closing Date and the payment of all amounts owing at such time hereunder, and you shall automatically be released from all liability in connection therewith at such time.

This Commitment Letter, together with the Term Sheet and the letter agreement dated the date hereof between Arcapita and Fortress, embodies the entire agreement and understanding among Fortress, you and your affiliates with respect to the Murabaha Exit Facility and supersedes all prior agreements and understandings relating to the specific matters hereof. No party has been authorized by Fortress to make any oral or written statements that expressly conflict with this Commitment Letter. This Commitment Letter is not assignable by us or by you without our or your prior written consent and is intended to be solely for the benefit of the parties hereto and the Indemnified Parties and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto and Indemnified Parties.

The Commitment Letter (i) supersedes all prior discussions, agreements, commitments, arrangements, negotiations or understandings, whether oral or written, of the parties with respect to the subject matter hereof; (ii) shall be binding upon the parties and their respective successors and assigns; and (iii) may not be relied upon or enforced by any other person or entity. This Commitment Letter may be amended, modified or waived only in a writing signed by each of the parties hereto. This Commitment Letter may be executed in multiple counterparts, each of which, when so executed and delivered, shall be deemed to be an original, but all of which counterparts, taken together, shall constitute one and the same instrument. Transmission by facsimile or other electronic transmission of an executed counterpart of this letter shall be deemed to constitute due and sufficient delivery of such counterpart.

Each of the parties hereto hereby irrevocably and unconditionally (a) submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York County, or the Bankruptcy Court, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Commitment Letter (including the Term Sheet) or the transactions contemplated hereby (whether based on contract, tort or otherwise), or for recognition or enforcement of any judgment, and agrees that all claims in respect of any such action or proceeding shall only be heard and determined in such New York State court or, to the fullest extent permitted by law, in such Federal court or the Bankruptcy Court, (b) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Commitment Letter (including the Term Sheet) or the transactions contemplated hereby in any New York State or in any such Federal court or the Bankruptcy Court, (c) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court and (d) agrees that a final judgment in any such suit, 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. Each of the parties hereto agrees that service of process, summons, notice or document by registered mail

addressed to you or us at the addresses set forth in the DIP Facility for AIHL (in the case of Arcapita) and CF ARC LLC (in the case of Fortress) shall be effective service of process for any suit, action or proceeding brought in any such court.

Fortress hereby notifies you that pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "Act"), it is required to obtain, verify and record information that identifies you and the other Obligor (as defined in the Term Sheet), which information includes the names and addresses of you and the other Obligor and other information that will allow the Fortress to identify you and the other Obligor in accordance with the Act.

Promptly upon your acceptance of this Commitment Letter, you hereby agree to use your commercially reasonable efforts to obtain an order of the Bankruptcy Court, in form and substance satisfactory to Fortress, authorizing the Purchaser's acceptance of, and its and the debtors performance under, this Commitment Letter, which order shall specifically provide, among other things, that the Agent and Lenders are entitled to receive all amounts due and owing to each of them hereunder and thereunder, including all fees and reimbursement of all Expenses, and that they are entitled to the indemnification as provided herein, in each case as and when such amounts are payable hereunder and thereunder, and all claims for such amounts shall be entitled to priority as administrative expense claims against the Debtors under Sections 503(b)(1) and 507(a)(2) under chapter 11 of the Bankruptcy Code, whether or not any Purchase Contract (as defined in the Term Sheet) is entered into or funded (the "Approval Order").

This Commitment Letter and all commitments and undertakings of Fortress hereunder will expire upon the earliest to occur of (i) 5:00 p.m. Eastern time on May [ ], 2013 unless you execute this Commitment Letter and return it to Fortress, (ii) 5:00 p.m. Eastern time on May [ ], 2013 unless the Bankruptcy Court shall have entered the Approval Order, and (iii) 5:00 pm eastern time on August 15, 2013 unless Bankruptcy Court shall have entered the Confirmation Order (as defined in the Term Sheet). Thereafter, other than as provided in the twelfth paragraph hereof, this Commitment Letter and all commitments and undertakings of Fortress hereunder will expire upon the earliest to occur of (i) the execution and delivery of the definitive documentation for the Murabaha Exit Facility, (ii) the failure of the parties acting in good faith to execute and deliver the definitive documentation for the Murabaha Exit Facility on or prior to September 13, 2013, and (iii) the failure of Arcapita to comply with any of the provisions set forth herein.

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SASM&F Draft 5/13/13

Please confirm your acceptance of, and agreement with, the foregoing by, on or before 5:00 p.m. Eastern time on May [\_\_\_\_], 2013, delivering to Fortress a copy of this Commitment Letter signed by Arcapita, accepting the terms and conditions of the Commitment Letter.

Very truly yours,

FORTRESS CREDIT CORP., on behalf of certain  
of its managed funds and/or affiliates

By: \_\_\_\_\_  
Name:  
Title:

Agreed and accepted on this  
\_\_\_\_ day of May 2013:

ARCAPITA BANK B.S.C.(c)

By: \_\_\_\_\_  
Name:  
Title:

**CONFIDENTIAL**

**EXHIBIT A**

***Arcapita Murabaha Exit Facility  
Term Sheet***

This Term Sheet is delivered with the commitment letter of even date herewith (the "Commitment Letter") from Fortress Credit Corp. to Arcapita Bank B.S.C.(c) in connection with the Murabaha Exit Term Facility described below. Capitalized terms used herein and not otherwise defined herein shall have the meanings attributed to such terms in the Commitment Letter, including the exhibits and annexes hereto.

**Purchaser:** [New Arcapita Holdco 2] ("Purchaser")

**Guarantors:** ► [TBD], (including Arcapita Investment Holdings Limited ("AIHL"), each entity that was a guarantor under the Master Murabaha DIP Facility dated December 14, 2012 between AIHL and CF ARC LLC (the "DIP Facility"), the Reorganized Debtors (as defined in the Plan or Reorganization), each entity (other than Purchaser) to be created in Arcapita's pending restructuring and the other LT Caycos and wholly-owned Syndication Companies and WCFs<sup>3</sup> (collectively, the "Guarantors" and, together with Purchaser, the "Obligors").<sup>4</sup>

All obligations of Purchaser under the Murabaha Exit Facility (as defined below) will be unconditionally guaranteed by the Guarantors.

**Agent:** Fortress Credit Corp. ("Fortress") or one of its affiliates (reasonably satisfactory to Purchaser) will act as Investment Agent and Security Agent (collectively, in such capacities, the "Agent") under the Murabaha Exit Facility.

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<sup>3</sup> LT Caycos, WCFs, Intermediate Holdcos, Transaction Holdcos, Syndication Companies, PNVs and PVs shall have meanings consistent with those given in the due diligence materials provided to Fortress in connection with the DIP Facility.

<sup>4</sup> Identities of Guarantors subject to continued review of reorganization and recapitalization. For the avoidance of doubt, Falcon Gas Storage Company, Inc. shall not guarantee the Purchaser's performance under the Murabaha Exit Facility. In the event that the SCB Facilities are not repaid in full on the Closing Date, the guarantees of (a) WindTurbine Holdings Limited ("WTHL"), (b) AEID II Holdings Limited ("AEID II") and RailInvest Holdings Limited ("RailInvest") under the Murabaha Exit Facility shall be expressly subordinate to any post-reorganization guarantees by such entities in favor of Standard Chartered Bank.

**Participants:**

The initial Participant will be funds managed by, or affiliates of, Fortress (collectively, with their respective successors and assigns, "Participants").

**Murabaha Exit Facility:**

A senior secured Master US Dollar term Murabaha exit facility made available by the Agent in an aggregate amount up to \$350,000,000 (or, if the SCB Facilities are not repaid in full at closing, \$250,000,000) ("Murabaha Exit Facility"). Fortress' commitments with respect to amounts under the Murabaha Exit Facility not utilized on the Closing Date shall expire on the Closing Date. Amounts repaid under the Murabaha DIP Facility (other than with the proceeds of subsequent commodities purchases) will no longer be available to the Purchasers.

**Closing Date:**

The date on which the Plan of Reorganization becomes effective and the definitive Finance Documents for the Murabaha Exit Facility are executed and delivered by the parties thereto.

**Maturity Date:**

The date which is the three-year anniversary of the Closing Date ("Maturity Date").

**LIBOR and Margin:**

Outstanding obligations under the Murabaha Exit Facility will accrue profit at a rate equal to 1-month LIBOR ("LIBOR") plus 9.5% ("Margin") per annum on the unpaid principal amount of the Murabaha Exit Facility.

LIBOR will be subject to a minimum floor of 1.0%.

Profit will be calculated based upon a year of 360 days for actual days elapsed. An amount of Profit equal to LIBOR plus 4% shall be payable in cash monthly in arrears. Payment of the remaining 5.5% of the Profit each month may be deferred until payments on the last Purchase Contract is due (whether at maturity, after default, or as a result of prepayment). The Participants will be entitled to Profit on this deferred amount at the rate provided herein, to the extent a formulation compliant with Shari'ah law for this payment can be formulated. .

**Investment Agency Agreement:**

Agreement to be entered into by Purchaser, Guarantors, Agent and the Participants under which the Participants, among other things, appoint the Agent as their agent to enter into the Murabaha Transactions contemplated by the Murabaha Exit Facility.

**Murabaha Transactions:**

Each transaction involves the sale by the Agent (on behalf of the Participants) of Commodities specified by Purchaser pursuant to Purchase Contracts referred to below. Under each Purchase Contract and the Murabaha Exit Facility, Purchaser is obliged to pay the Deferred Sale Price to Agent for the Commodities.

**Commodities:**

In relation to a Purchase Contract, the Shari'ah-compliant commodities as specified in the transaction request thereunder which may

comprise London Metal Exchange metals and such other Shari'ah compliant commodities as may be agreed from time to time by Purchaser and the Agent and, in any event, will only include allocated commodities physically located outside the United Kingdom and the United States.

**Purchase Contract:**

Each agreement for the sale by the Agent of Commodities and the purchase of those Commodities by Purchaser pursuant to the Murabaha Exit Facility (each, a "Purchase Contract").

**Deferred Sale Price:**

In relation to a Purchase Contract, an amount equal to the aggregate sum of :

- a) The Cost Price
- b) All unpaid accrued Profit,
- c) All other unpaid accrued amounts (including mandatory costs, increased costs and VAT (if any)) due and payable under the Murabaha Exit Facility on the Maturity Date.

**Cost Price:**

The amount (in US Dollars) payable or paid by the Agent to the Seller for the purchase of Commodities by the Agent (on a spot basis on the value date upon which the payment is made, or is to be made) to be on-sold by the Agent to Purchaser under the Purchase Contract.

**Profit:**

$Cost\ Price \times (LIBOR + Margin) \times (N/360)$

Where N is the number of days to elapse from, and including, the date of the Purchase Contract in respect of the relevant Commodities, but excluding the Maturity Date.

Profit calculations are subject to adjustment in the definitive documentation to give effect to the payment of fees, deferred profit and other amounts contemplated under the Commitment Letter and this Term Sheet.

**Uses of Proceeds:**

The proceeds of the Murabaha Exit Facility may be used (i) to pay profits, fees, expenses and other amounts due and payable under the Murabaha Exit Facility, (ii) to make payments contemplated under the Plan of Reorganization (including the repayment of the DIP Facility), (iii) to repay amounts owed under the SCB Facilities and (iv) for general working capital purposes.

**Mandatory and Voluntary Prepayments; Commitment Reductions:**

§ The Murabaha Exit Facility will be subject to mandatory prepayments in an amount equal to the Applicable Portion of the net cash proceeds received by any Obligor or any member of the Group (as defined in the DIP Facility) in connection with a Prepayment Event. As used herein, the "Applicable Portion" of any net cash proceeds from any Prepayment Event means:

- (i) if the Asset Coverage Ratio at the time of such Pre-

payment Event is less than 2.00 to 1.0 (“Level I”), 100% of such net cash proceeds:

(ii) if the Asset Coverage Ratio at the time of such Prepayment Event is equal to or greater than 2.00 to 1.0 but less than 2.75 to 1.0 (“Level II”), the sum of (x) 100% of such net cash proceeds up to the Attributable Value of the assets subject to such Prepayment Event and (y) 50% of the amount of net cash proceeds in excess of Attributable Value of the assets subject to such Prepayment Event:

(iii) if the Asset Coverage Ratio at the time of such Prepayment Event is equal to or greater than 2.75 to 1.0 but less than 3.50 to 1.0 (“Level III”), the sum of (x) 50% of such net cash proceeds up to the Attributable Value of the assets subject to such Prepayment Event and (y) 25% of the amount of net cash proceeds in excess of Attributable Value of the assets subject to such Prepayment Event: and

(iv) if the Asset Coverage Ratio at the time of such Prepayment Event is equal to or greater than 3.50 to 1.0 (“Level IV”), 25% of such net cash proceeds up to the Attributable Value of the assets subject to such Prepayment Event (it being understood that no mandatory prepayment will be required from net cash proceeds in excess of Attributable Value of the assets subject to such Prepayment Event).

The Applicable Portion of the net cash proceeds of any Prepayment Event will be adjusted to the extent that the Asset Coverage Ratio would be increased to a higher level on the above grid as the result of the application of such net cash proceeds to a reduction in the aggregate Cost Price of all purchased then outstanding (e.g. if the Asset Coverage Ratio at the time of the Prepayment Event is less than 2.00 to 1.0, the Applicable Portion of such net cash proceeds to be applied as mandatory prepayments shall be determined at Level I until such time, if any, as (after giving effect to such prepayment) the Asset Coverage Ratio reaches 2.00 to 1.0, after which, the Applicable Portion of the remaining net cash proceeds will be shall be determined at Level II, etc.).

Notwithstanding the foregoing, if at the time of any Prepayment Event the combined Attributable Values of the top five portfolio investments exceeds 65% of the combined Attributable Values of all of the portfolio investments, in determining the Applicable Portion applicable to such Prepayment Event, the percentages set forth in each of clauses (ii)(y), (iii)(x) and (y) and (iv) of the definition of Attributed Value shall be increased to 75%.

As used herein:

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(i) “Prepayment Event” has the meaning provided on Annex C;

(ii) “Asset Coverage Ratio” means, at any time of determination the ratio of (x) the total Attributable Values of all remaining portfolio investments of the Arcapita group to (y) the aggregate Cost Price of all Commodities Purchases made by Agent that that have not been repaid by the Reorganized Company; and

(iii) “Attributable Value” means, with respect to any portfolio company and its assets:

(x)(i) in the case of portfolio investments listed on Part I of Schedule B hereto, the difference between (A) the product of (1) EBITDA for the prior four quarter period for which financial reports have been delivered (taken as a single accounting period) multiplied by (2) the Multiple set forth opposite such portfolio investment on Part I of Schedule B hereto less (B) all debt (or debt-like obligations) of such portfolio investments,

(y) in the case of portfolio investments listed on Part II of Schedule B hereto, the (A) the ratio of (1) NOI for the prior four quarters divided by (2) the Cap Rate set forth opposite such investment on Part II, of Schedule B hereto less (B) all debt (or debt-like obligations) of such portfolio investments; and

(z) in the case of portfolio investments listed on Part III of Schedule B hereto, the Attributable Values set forth opposite such portfolio investment on such schedule;

in each case multiplied by the Obligors’ Percentage of such Portfolio Investment. As used herein, “Obligors’ Percentage” of any portfolio investment means the percentage of the equity distributions of such portfolio investment (expressed as a decimal) to which the Obligors (or their wholly-owned subsidiaries) would be entitled in the event of the liquidation of such portfolio investment.

Notwithstanding the foregoing, (i) the Reorganized Company and its subsidiaries may retain up to 50% of the net cash proceeds from any Prepayment Event of the Lusail entities and (ii) up to \$30 million of mandatory prepayments otherwise required to be paid to the Agent can be retained by Purchaser for investments required to be made in portfolio companies to protect the Reorganized Company’s existing in-

vestments in such portfolio companies (but not for the Reorganized Company's working capital purposes).

The commitments of the Participants under the Murabaha Exit Facility will be permanently reduced in an amount equal to any mandatory prepayments required hereunder.

§ Except as provided in the following sentence, all or a portion of the Murabaha Exit Facility may be voluntarily prepaid without premium or penalty. Voluntary prepayments of the Murabaha Exit Facility with the proceeds of any financing (debt, equity, murabaha or similar) on or prior to the second anniversary of the Closing Date will be permitted only upon the contemporaneous payment of a prepayment premium (i) equal to 2% of the amount of the Murabaha Exit Facility being prepaid if such prepayment is made during the period from the Closing Date to (and including) the first anniversary of the Closing Date and (ii) equal to 1% of the amount of the Murabaha Exit Facility being prepaid if such prepayment is made after the first anniversary of the Closing Date but on or before the second anniversary of the Closing Date.

§ Notwithstanding the foregoing, until the SCB Facility is repaid in full, no mandatory prepayment shall be necessary from proceeds of any sale, issuance or distribution of the SCB Collateral (as defined below).

**Collateral:**

- a) Except with respect to the SCB Collateral (if the SCB Facilities are not repaid in full on the Closing Date and only until such time as the SCB Facilities are repaid in full), a perfected first-priority lien on all now owned or after acquired assets of Purchaser and each Guarantor (including (a) all equity interests in the WCF Entities owned by any Obligor and voting right with respect thereto, (b) all equity interests in the LT Caycos owned by any Obligor and (c) all non-syndicated interests in the Syndication Companies, provided, that the foregoing interests shall not constitute Collateral to the extent that the Agent shall reasonably determine that the costs of obtaining such a security interest in such interests are excessive in relation to the value of the security interest to be afforded thereby) and a perfected first-priority lien on all now owned or after acquired equity interests in the Syndication Companies owned by any PV or PNV and voting right with respect thereto<sup>5</sup>; and

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<sup>5</sup> Discuss PVs and PNV

- b) For the avoidance of doubt, be secured by perfected first-priority liens on all voting rights, if any, of the Obligors in the syndication companies, and the Transaction Holdcos and any interim holding companies.
- c) If the SCB Facilities are not repaid in full on the Closing Date and only until such time as the SCB Facilities are repaid in full, a perfected second-priority lien on (a) all owned or after acquired assets of WTHL, AEID II and RailInvest, (b) Arcapita LT Holdings Limited's interests in WTHL, AEID II or RailInvest and (c) AIHL's interests in Arcapita LT Holdings Limited (collectively, the "SCB Collateral").

**Release:**

The Obligors will provide customary releases for any claims, demands, liabilities, responsibilities, disputes, remedies causes of action, indebtedness, or obligations related to or arising out of the Murabaha Exit Facility.

**Representations and Warranties:**

Substantially the same as under the DIP Facility (except for the budget representations in the DIP Facility and to the extent that such representations and warranties are only appropriate in debtor-in-possession facilities) and other representations and warranties customary for exit facilities and transactions of this type, with appropriate modifications.

**Conditions Precedent:**

Customary for transactions of this type, including but not limited to the following:

- a) dismissal of pending insolvency proceedings of AIHL in the Cayman Islands, as commenced by the filing of a Winding Up Petition in FSD Cause No. 45 of 2012-ACJ in the Grand Court of the Cayman Islands (the "Cayman Court") and such insolvency proceedings, the "Cayman Proceedings")<sup>6</sup>;
- b) negotiation, execution and documentation of reasonably satisfactory Finance Documents consistent with this term sheet, including but not limited to security agreements, control agreements, pledge agreements, financing statements and legal opinions in form reasonably satisfactory to Agent;
- c) reasonably satisfactory evidence that the Agent will have a valid and perfected lien in the Collateral with the priority contemplated herein;

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<sup>6</sup> Subject to Cayman counsel review

- d) no Material Adverse Change;
- e) payment of all accrued and unpaid fees and Expenses and other compensation contemplated by the Commitment Letter, and this Term Sheet and the Fee Letter, payable to Fortress and the Participants;
- f) the proposed organizational restructuring of the Obligors (including the organizations structure, governing documents, administration and management agreements, asset and liability transfers and assumptions and all documentation effecting the same) shall be reasonably acceptable to the Agent, and all other documents, agreements and instruments necessary to consummate the Plan of Reorganization on the Effective Date (as defined in the Plan of Reorganization) shall (x) be consistent in all material respects with the term sheets attached as Exhibits to the Plan of Reorganization (with respect to the matters addressed therein) and (y) with respect to all other matters, shall be reasonably acceptable to the to the Agent;
- g) the Plan of Reorganization shall have been confirmed by a final order entered by the Bankruptcy Court (the “Confirmation Order”) in form and substance reasonably acceptable to the Agent in all material respects. The Confirmation Order shall have been entered upon proper notice to all parties to be bound by the Plan of Reorganization and shall be in full force and effect, shall not be stayed and the time to appeal the Confirmation Order or to seek review, rehearing or certiorari with respect to the Confirmation Order shall have expired. The Effective Date shall have occurred or shall occur concurrently with the closing of the Murabaha Exit Facility, without waiver or modification of the conditions thereto in any manner that could be reasonably expected to adversely affect the interests of the Agent or the Participants, unless consented to by the Agent. All documents, agreements and instruments necessary to consummate the Plan of Reorganization on the Effective Date shall, unless consented to by the Agent (which consent shall not be unreasonably withheld), shall, be consistent with the Plan of Reorganization;
- h) The entry of the Approval Order by the Bankruptcy Court; and such Approval Order shall be in full force and effect, and such Approval Order shall not been vacated, stayed, reversed, modified, or amended in any respect (except to the extent the Agent shall have consented in writing thereto);
- i) the Executive Committee of the Obligor’s Shari’ah Advisory Board shall approve the execution of the Murabaha Exit Facility and the Finance Documents and issue a “Fatwa” that the Murabaha Exit Facility and the Finance Documents are in

compliance with Shari'ah principles;

- j) to the extent required by the Agent, entry into intercreditor arrangements with or among Agent and any third party creditors of any Obligor (including affiliates but other than holders of trade, employee and other ordinary course creditors), each of which shall be in form and substance reasonably satisfactory to Agent;
- k) receipt of all government, equity holder and third party approvals necessary in connection with the Murabaha Exit Facility and the other transactions contemplated hereunder on terms reasonably satisfactory to the Agent;
- l) absence of defaults;
- m) effectiveness of agreements or other arrangements in form and substance reasonably acceptable to the Agent authorizing the 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;
- n) the 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 Finance Documents in respect of the Murabaha DIP Facility or (ii) the rights or remedies of the Agent or the Participants under such documents;
- o) receipt by the Agent of financial statements from each portfolio company, each in a form reasonably satisfactory to the Agent for a time period ending no earlier than the end of fiscal year ended 2012; and
- p) confirmation that there exists no action, investigation, litigation or proceeding, pending or threatened, in any court or before any arbitrator or government authority that could reasonably be expected to have a Material Adverse Change on the Obligors.

**Affirmative Covenants:**

Substantially the same as under the DIP Facility (except for the budget covenant and except to the extent that such affirmative covenants are only appropriate in debtor-in-possession facilities) and other customary affirmative covenants for transactions of this type, with appropriate modifications, including the delivery of expense budgets

and budget variance reports (each in form and substance reasonably satisfactory to the Agent) no later than the 30<sup>th</sup> day following the end of such quarter.

**Negative Covenants:**

Substantially the same as under the DIP Facility (except to the extent that such negative covenants are only appropriate in debtor-in-possession facilities) and other negative covenants customary for transactions of this type, with appropriate modifications.

**Financial Covenants:**

- Maintenance of an Outstanding Cost Price to Value ratio of no greater than 0.85 to 1.0
- Minimum liquidity of \$10 million (at all times) (including any undrawn portion of the Murabaha Exit Facility)
- Expenses not to exceed 15% of budget (determined quarterly) with any cap not utilized carried forward for 4 quarters

**Events of Default:**

Substantially the same as under the DIP Facility (except to the extent that such Events of Default are only appropriate in debtor-in-possession facilities) and other Events of Default customary for transactions of this type, with appropriate modifications. In addition, any Put Failure (as defined in the Cooperation Term Sheet) by Reorganized Arcapita for any Transaction Holdco in which Reorganized Arcapita is the Majority Investor (as defined in the Cooperation Term Sheet) shall constitute an Event of Default.

**Reporting:**

- Delivery of annual, semi-annual and quarterly financial statements.
- Quarterly delivery of EBITDA and Cap Rate calculations (together with supporting information satisfactory to Agent) necessary to provide for the calculation of Attributable Values.
- The Obligors shall allow the Agent and the Participants reasonable access to the Obligors' representatives and books and records during regular business hours to monitor financial performance and the Collateral.

**Governing Law:**

New York.

**Waiver of Jury Trial; Jurisdiction:**

Each of the parties shall (i) waive its right to a trial by jury and (ii) submit to the exclusive jurisdiction of the courts of the State of New York.

**Assignments and Participations:** The Agent and Participants will be permitted to make assignments in acceptable minimum amounts to other financial institutions subject to Purchaser's prior approval, such approval not to be unreasonably withheld, delayed or conditioned; provided, however, that Purchaser's approval shall not be required during and following the occurrence of an Event of Default or in connection with assignments to then current Participants or their respective affiliates. Agent and Participants also will be permitted to sell customary "silent" participations.

**Indemnification:** Customary for transactions of this type.

**USA Patriot Act:** To ensure compliance with the USA PATRIOT Act of 2001, Agent and Participants obtain, verify and record information that identifies each non-affiliated person and entity with whom it enters into a business relationship. Purchaser agrees to provide, and is authorizing Agent and Participants to verify and report, all relevant parties' names, addresses, corporate tax identification numbers, dates of birth and other pertinent information.

**Other:** This Term Sheet is intended as an outline of certain of the material terms of the Murabaha Exit Facility and does not purport to summarize all of the conditions, covenants, representations, warranties and other provisions which would be contained in definitive legal documentation for the Murabaha Exit Facility contemplated hereby.

### **DISCLAIMERS**

Please note that neither Fortress nor any of its affiliates, provide accounting, tax or legal advice. Notwithstanding anything in this Term Sheet to the contrary, Agent (and its partners, officers, directors, employees, affiliates, agents, advisors and attorneys) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of this potential transaction and all materials of any kind (including tax opinions or other tax analyses) that are provided to Agent relating to such tax treatment and tax structure. For this purpose, "**tax treatment**" means U.S. federal income tax treatment, and "tax structure" is limited to any facts relevant to the U.S. federal income tax treatment of the potential transaction.

As you know, Fortress and/or its affiliates may, from time to time, effect transactions, for its own account or the account of customers, and hold positions in loans or options on loans of Arcapita and other companies that may be the subject of this Term Sheet. In addition, Fortress is a full service securities firm and as such may from time to time effect transactions, for its own account or the account of customers, and hold positions in securities or options on securities of Arcapita and other companies that may be the subject of this Term Sheet. In addition, Agent may employ the services of its affiliates in providing certain services hereunder and may exchange with such affiliates information concerning Arcapita and other

companies that may be the subject of this Term Sheet, and such affiliates shall be entitled to the benefits afforded to Agent hereunder.

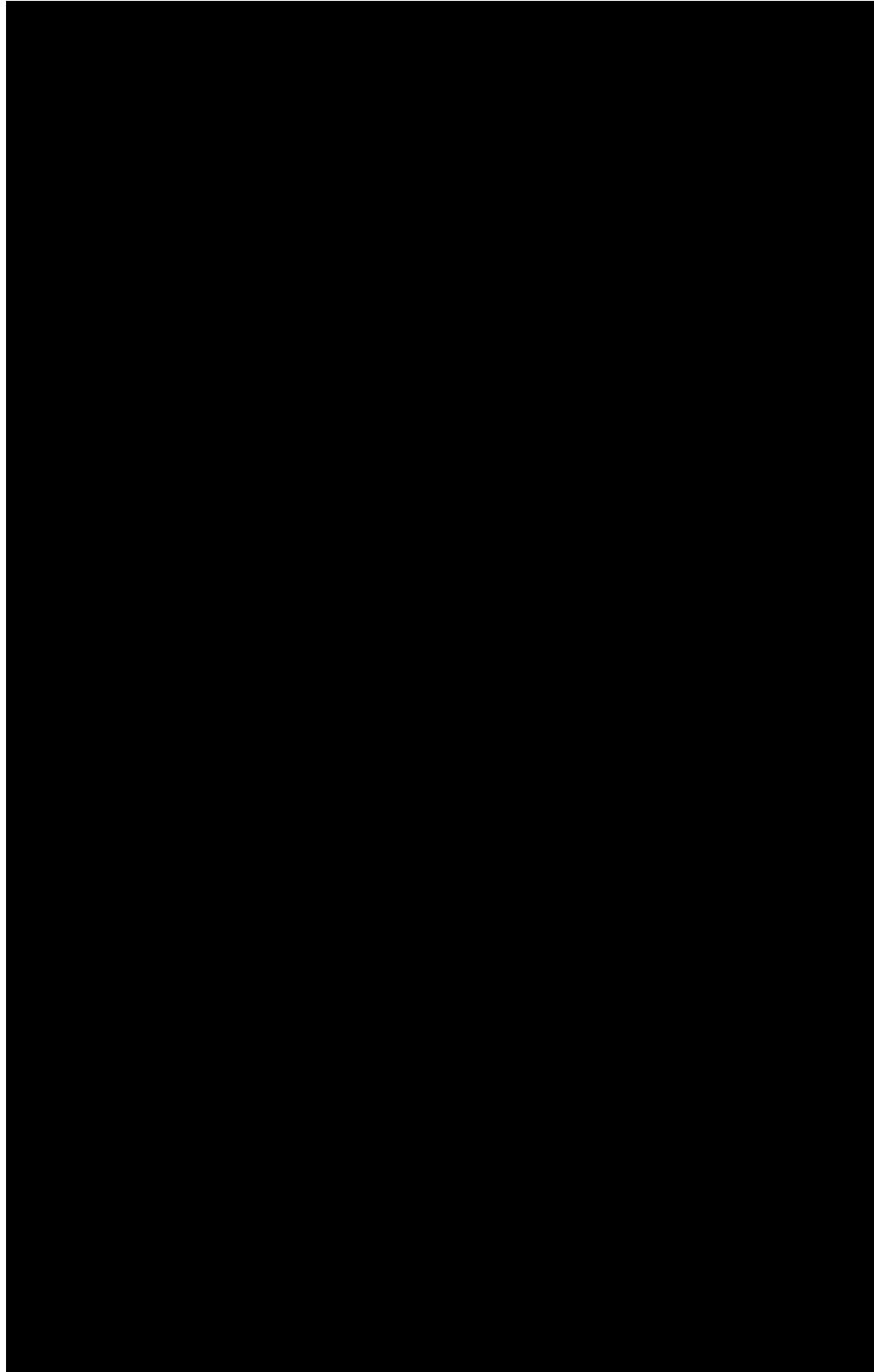
Annex A

*In the event that Fortress or any of its affiliates or any of their respective officers, directors, employees, agents and advisors (each, an "Indemnified Party") becomes involved in any capacity in any action, proceeding or investigation brought by or against any person, including stockholders, partners, or other equity holders of Arcapita, in connection with or as a result of either this arrangement or any matter referred to in the Commitment Letter, Arcapita agrees to periodically reimburse such Indemnified Party for its documented reasonable legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith, except to the extent that such 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. Arcapita also agrees to indemnify and hold each Indemnified Party, harmless against any and all losses, claims, damages or liabilities to any such person in connection with or as a result of any matter referred to in the Term Sheet, and without regard to the exclusive or contributory negligence of any Indemnified Party (if any), as the case may be, of such Indemnified Party, except to the extent that such (i) 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, (ii) are in respect of disputes solely among Indemnified Parties hereunder (not arising by any act or omission by Arcapita or any of its affiliates, officers, directors, employees, agents and advisors) or (iii) resulted from such Indemnified Party's breach of its obligation to provide the Murabaha Exit Facility on the terms set forth in the Commitment Letter (as found by a final, non-appealable judgment of a court of competent jurisdiction). If for any reason the foregoing indemnification is unavailable to such Indemnified Party or is insufficient to hold it harmless, then Arcapita shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative economic interests of Arcapita and its stockholders, partners, or other equity holders on the one hand and such Indemnified Party on the other hand in the matters contemplated by the Commitment Letter as well as the relative fault of Arcapita and such Indemnified Party with respect to such loss, claim, damage or liability and any other relevant equitable considerations. The reimbursement, indemnity and contribution obligations of Arcapita under this paragraph shall be in addition to any liability which Arcapita may otherwise have, shall extend upon the same terms and conditions to any affiliate of any Indemnified Party and the partners, directors, agents, employees and controlling persons (if any), as the case may be, of such Indemnified Party and any such affiliate, and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of such parties. Arcapita also agrees that neither any Indemnified Party nor any of such affiliates, partners, directors, agents, employees or controlling persons of such Indemnified Party shall have any liability based on its or their exclusive or contributory negligence or otherwise to Arcapita or any person asserting claims on behalf of or in right of any such person or any other person in connection with or as a result of either this arrangement or any matter referred to in the Commitment Letter; except in the case of Arcapita to the extent that any losses, claims, damages, liabilities or expenses incurred by Arcapita or their respective affiliates, stockholders, 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; provided, however, that in no event shall such Indemnified Party or such other parties have any liability for any indirect, consequential or punitive damages in connection with or as a result of such Indemnified Party's or such other parties' activities related to the Commitment Letter. **Any right to trial by jury with respect to any action or proceeding arising in connection with or as a result of either this arrangement or any matter referred to in the Commitment Letter is hereby waived by the parties hereto. The provisions of this Annex A shall survive any termination or completion of the arrangement provided by the Term Sheet and the Commitment Letter, and***

*this Term Sheet shall be governed by and construed in accordance with the laws of the State of New York.*

*Annex B*

[SEE ATTACHED]





*Annex C*

Prepayment Event

“Prepayment Event” means:

(a) any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any sale and leaseback transaction) of any property (including the equity interests by the holder thereof) by any Obligor or any of their respective subsidiaries (collectively, the “Group”), or any other member of the Group to any person other than (i) any Obligor and (ii) in the case of any member of the Group that is not an Obligor, to any other member of the Group that is not an Obligor;

(b) any dividend, distributions, “AIML management fee”<sup>7</sup> payable on the sale, transfer, disposition of, or other control transaction involving, any portfolio investment or other amounts paid by any Syndication Company, Investment Company, any non-wholly owned Subsidiary or any other Person to any Obligor or any other member of the Group;

(c) any issuance or sale by any Obligor or any other member of the Group of its equity interests to any person other than issuance and sales of equity interests (i) in connection with the Plan of Reorganization on the Effective Date, (ii) to any Obligor and (iii) in the case of any member of the Group that is not an Obligor, to any other member of the Group that is not an Obligor;

(d) any incurrence, issuance or sale by any Obligor or any other member of the Group of any Financial Indebtedness;

(e) unless the Agent otherwise agrees in its sole discretion, any initial public offering of the equity interests of any Obligor or any member of the Group; and

(f) any event that gives rise to the receipt by any Obligor or any other member of the Group of any insurance proceeds or condemnation awards in respect of any assets or properties.

For the avoidance of doubt, cash distributions in respect of litigation relating to Falcon Gas Storage Company, Inc. or an escrow account relating thereto shall not constitute a Prepayment Event.

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<sup>7</sup> AIML management fee shall not be double-counted if reflected in asset sale proceeds

