UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	:	**Chapter 11**
ARCAPITA BANK B.S.C.(c), *et al.*,	:	**Case No. 12-11076 (SHL)**
Debtors.	:	**Jointly Administered**

FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(e) AND 552 AND BANKRUPTCY RULES 4001 AND 6004 (I) AUTHORIZING DEBTORS (A) TO ENTER INTO AND PERFORM UNDER MURABAHA AGREEMENT, AND (B) TO OBTAIN CREDIT ON A SECURED SUPERPRIORITY BASIS, AND (II) GRANTING RELATED RELIEF

Upon the Debtors' motion dated May 27, 2013 (Docket No. 1157) (as supplemented on June 6, 2013 (Docket Nos. 1216 and 1224), on June 9, 2013 (Docket No. 1234) and as further supplemented by oral statements of counsel made before this Court at the Interim Hearing (as defined below) and the Final Hearing (as defined below), the "**Motion**") of Arcapita Bank B.S.C.(c) ("**Arcapita**") and certain of its affiliated debtors, each as debtor and debtor-in-possession (expressly not including Falcon Gas Storage Company, Inc., collectively, the "**Debtors**"), in the above-captioned chapter 11 cases (not including the chapter 11 case of Falcon Gas Storage Company, Inc., the "**Cases**") pursuant to sections 105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(e), and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "**Bankruptcy Code**"), Rules 2002, 4001 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of New York (the "**Local Rules**"), requesting, among other things:

(1) authorization for Arcapita Investment Holdings Limited (the "**Purchaser**") to obtain a senior secured Murabaha facility (the "**Facility**"), comprised of a senior secured superpriority debtor-in-possession US Dollar term Murabaha facility (the "**DIP Facility**") in an aggregate principal amount up to $175,000,000 (the availability of which shall be subject to the terms and conditions set forth in the Finance Documents (as defined in the Facility Agreement (as defined below) and including any exhibits thereto)), to be provided by Goldman Sachs International or a permitted affiliate or designee thereof ("**GSI**"), acting as investment agent (in such capacity, the "**Investment Agent**") for institutions participating in the DIP Facility (together with GSI, the "**Participants**"), to be arranged by GSI acting as sole lead arranger, sole bookrunner, sole syndication agent, and investment agent (in such capacity, the "**Arranger**"), and for all of the other Debtors except for Falcon Gas Storage Company, Inc. ("**Falcon**") (collectively, the "**Debtor Guarantors**") to guaranty all of the Purchaser's obligations under such Facility;

(2) authorization for the Purchaser to enter into and perform under a senior secured Superpriority Debtor-in-Possession and Exit Facility Master Murabaha Agreement substantially in the form filed in the Notice of Filing of Final DIP Agreement (Docket No. 1259) (as the same has been or may be hereafter amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with terms thereof or hereof, the

"**Facility Agreement**"),[1] and the other Finance Documents and to perform such other and further acts as may be reasonably required or appropriate in connection with the Finance Documents;

(3) authorization for the Purchaser to enter into and perform under agreements with the Investment Agent for the purchase of the Commodities (as defined in the Facility Agreement) on the terms set forth in the Finance Documents, and for the Purchaser to sell and convey such Commodities to a third-party purchaser;

(4) authorization for the Purchaser to repay in full in cash the outstanding obligations under the Existing DIP Facility (as defined below) as provided in the Interim Order Pursuant to 11 U.S.C. §§ 105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(e) and 552 and Bankruptcy Rules 4001 and 6004 (I) Authorizing Debtors (A) to Enter into and Perform Under Murabaha Agreement, and (B) to Obtain Credit on a Secured Superpriority Basis, (II) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and (III) Granting Related Relief (Docket No. 1245) (the "**Interim Order**"), in this final order (the "**Final Order**") and in the Facility Agreement, subject to the terms and conditions of the Interim Order, this Final Order and the Finance Documents, and the extinguishing of any and all liens and obligations (except, in each case contingent indemnification obligations as provided in Paragraph 11(d) and (e) hereof) arising under the Existing DIP Facility (defined below);

[1] The Facility Agreement also provides for a senior secured US Dollar term Murabaha exit facility (the "**Exit Facility**") in an aggregate amount of up to $350,000,000, subject to the terms and conditions of the Facility Agreement.

(5) the grant of superpriority administrative expense claims to the Investment Agent pursuant to section 364(c)(1) of the Bankruptcy Code over any and all administrative expenses of any kind or nature, subject only to the Carve Out (as defined below), the Prior SCB Claims (as defined below) and as set forth in the Interim Order, this Final Order and the Finance Documents;

(6) the grant of valid, enforceable, continuing, non-avoidable and fully perfected first priority liens on and security interests in, pursuant to section 364(c)(2), all of the property, assets, and other interests in property and assets of Arcapita, the Purchaser, and Arcapita LT Holdings Limited ("**ALTHL**") not otherwise subject to a valid, enforceable, continuing, non-avoidable and fully perfected lien, whether such property is presently owned or after-acquired, and all other "property of the estate" (as such term is defined in the Bankruptcy Code) of the Purchaser, Arcapita and ALTHL, of any kind or nature whatsoever, real or personal, tangible, intangible or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date (as defined in the Facility Agreement), excluding actions for preferences, fraudulent conveyances, and other avoidance power claims under sections 544, 545, 547, 548, 550 and 553 (but not including any recoveries under section 549 of the Bankruptcy Code) of the Bankruptcy Code (the "**Avoidance Actions**") and the proceeds thereof, subject only to the Carve Out on the terms and conditions set forth in the Interim Order, this Final Order and the Finance Documents;

(7) the grant of valid, enforceable, continuing, non-avoidable and fully perfected junior liens on and security interests in, pursuant to section 364(c)(3),

all of the property, assets, and other interests in property and assets of the Debtors (except for Falcon) that are subject to valid, enforceable, continuing, perfected, and non-avoidable liens in existence on the Petition Date (or that are perfected after the Petition Date pursuant to 546(b)), whether such property is presently owned or after-acquired, and all other "property of the estate" (within the meaning of the Bankruptcy Code) of such Debtors, of any kind or nature whatsoever, real or personal, tangible, intangible or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date, excluding Avoidance Actions and the proceeds thereof, subject only to the Carve Out on the terms and conditions set forth in the Interim Order, this Final Order and the Finance Documents;

(8) the scheduling of a Final Hearing on the Motion to consider entry of this Final Order, which grants all of the relief requested in the Motion, and provided in the Interim Order, on a final basis; and

(9) the waiver of the Debtors' and their estates' rights to surcharge the Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code; and due and appropriate notice of the Motion, and the final relief requested therein having been served by the Debtors on the Investment Agent (for itself and the Participants); Standard Chartered Bank ("**SCB**"), as agent under the prepetition secured Murabaha facilities dated May 30, 2011, and December 22, 2011 (the "**SCB Facilities**"); 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.) (the "**U.S. Trustee**"); 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 official committee of unsecured creditors in the Cases (the "**Committee**"); the Joint Provisional Liquidators (as defined in the Facility Agreement), Sidley Austin LLP, Woolgate Exchange, 25 Basinghall Street London, EC2V 5HA (Attn: Patrick Corr and Benjamin Klinger); CF ARC LLC, the investment agent under the Existing DIP Facility (defined below); all parties listed on the Master Service List established in the Cases; and all other parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**"); notice of the hearing on such Motion, having been timely and properly served by the Debtors on the Notice Parties; and the Debtors' representations to the Court, the record in these Cases and the records made at the hearings before the Court on such Motion on June 10, 2013 (the "**Interim Hearing**") and on June 24, 2013 (the "**Final Hearing**"); and the Court having considered any objections to the relief sought herein; and after due deliberation and consideration and sufficient cause appearing therefor,

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Motion*. The Motion is hereby granted in accordance with the terms of this Final Order. An objection to the Motion was late filed by Captain Hani Alsohaibi (Docket No. 1227) (as supplemented, modified or amended, the "**First Objection**") after the deadline for objections to the Motion that was set in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any applicable orders of this Court. The First Objection complained that the Motion failed to include a copy of the credit agreement as required by Bankruptcy Rule 4001(c)(1), which was not filed until June 6, 2013, such that Captain Hani Alsohaibi purportedly lacked sufficient time to understand the terms of the agreement, notwithstanding the 25 page term sheet included with the Motion. Consistent with Debtors' undisputed need for the financing and the undisputed fact that the financing is on more advantageous terms for the estates than the

Existing DIP Facility that it replaced (see Docket No. 727), the Court, on June 10, 2013, granted the Motion but only on an interim basis, so that all stakeholders had sufficient time to review the underlying credit agreement before the Final Hearing. The Court overruled the First Objection to the Motion being granted on an interim basis, noting that Captain Hani Alsohaibi failed to timely object to the Motion, notwithstanding that he previously had filed pleadings in this case and notwithstanding that the Debtors' request for replacement financing had been a subject of numerous prior pleadings and hearings that are reflected on the docket, thus giving more than adequate notice to Captain Hani Alsohaibi. A further objection to the Motion was filed by Captain Hani Alsohaibi (Docket No. 1261) (as supplemented, modified or amended, the "**Second Objection**"), and a joinder to the Second Objection was filed by Khalid Baeshen, Osama Baeshen, Sahar Baeshen and Sumayya Baeshen (collectively, the "**Baeshen Family**") (Docket No. 1263) (as supplemented, modified or amended, the "**Joinder**"). ~~The First Objection, Second Objection, Joinder and any other objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived, or settled are hereby denied and overruled, and any reservations of rights shall not affect or modify the terms of this Final Order.~~ ***The First Objection, Second Objection, and the Joinder are hereby overruled as to the entry of the Final Order for the reasons stated at the Final Hearing, including but not limited to the Court's rejection of the objectors' arguments regarding notice. For the reasons stated at the Final Hearing, the Court also explicitly rejects the argument that the Court can only approve this financing if it finds it to be Shari'ah compliant and the argument that the Debtors have somehow improperly failed to file a proceeding under Chapter 15 of the United States Bankruptcy Code.***

2. *Jurisdiction*. This Court has core jurisdiction over the Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. *Notice*. The Final Hearing is being held in accordance with Bankruptcy Rule 4001. Notice of the Motion, the final relief requested therein and the Final Hearing has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery to certain parties, including the Notice Parties, Captain Hani Alsohaibi and the Baeshan Family. The final relief granted herein is necessary to avoid irreparable harm to the Debtors and their estates. Under the circumstances, the request for the final relief granted herein and the notice given by the Debtors of the Motion, the Interim Hearing and the Final Hearing constitutes appropriate, due and sufficient notice thereof and complies with Bankruptcy Rule 4001(c) and (d) and the Local Rules, and no further notice of the relief sought at the Final Hearing and the relief granted herein is necessary or required.

4. *Effectiveness.* This Final Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable immediately upon entry of this Final Order. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, and 9024, or any other Bankruptcy Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Final Order as a result of the application of any of the foregoing Bankruptcy Rules or Federal Rules of Civil Procedure.

5. *Findings Regarding the Existing DIP Facility.*

(a) On December 18, 2012, the Court entered the Final Order Pursuant to 11 U.S.C. §§ 105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), and 364(e)

and Bankruptcy Rules 4001 and 6004 (I) Authorizing Debtors (A) to Enter into and Perform under Murabaha Agreement, and (B) to Obtain Credit on a Secured Superpriority Basis, and (II) Granting Related Relief (Docket No. 727) (the "**Existing Final DIP Order**"). Pursuant to the Existing Final DIP Order, the Purchaser was authorized to obtain a senior secured superpriority debtor-in-possession multiple-draw term Murabaha facility, in an aggregate principal amount up to $150,000,000 under that certain Superpriority Debtor-in-Possession Master Murabaha Agreement, dated as of December 14, 2012 (as such may have been amended, restated, supplemented or otherwise modified in accordance with its terms, the "**Existing DIP Agreement**," and together with the other Finance Documents (as defined in the Existing DIP Agreement), in each case as such may have been amended, restated, supplemented or otherwise modified in accordance with their terms, collectively with the Existing DIP Agreement, the "**Existing DIP Finance Documents**," and the facility contemplated therein, the "**Existing DIP Facility**"), between Arcapita Investment Holdings Limited, as Purchaser, and CF ARC LLC, as investment agent and security agent for the Participants (as defined in the Existing DIP Agreement) (in such capacity, the "**Existing DIP Agent**," and together with the Participants (as defined in the Existing DIP Agreement), the "**Existing Finance Parties**"). All Obligations (as defined in the Existing DIP Agreement) incurred by or for the benefit or account of, and all guarantees issued by, the respective Debtors pursuant to the Existing DIP Finance Documents, the Existing Final DIP Order (or prior to the entry thereof, the Interim Order Pursuant to 11 U.S.C. §§105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), and 364(e) and Bankruptcy Rules 4001 and 6004 (I) Authorizing Debtors (A) to Enter into and Perform under Murabaha Agreement, and (B) to Obtain Credit on a Secured Superpriority

Basis, (II) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and (III) Granting Related Relief (Docket No. 698) approving the Existing DIP Facility, the "**Existing Interim DIP Order**")) and all other obligations and liabilities of the Debtors arising under the Existing DIP Finance Documents, the Existing Interim DIP Order and the Existing Final DIP Order, shall hereinafter be collectively referred to as the "**Existing DIP Obligations**").

6. *Findings Regarding the Commodities Transactions.*

(a) The purchases and sales of the Commodities through Purchase Contracts (as defined in the Facility Agreement) (i) give rise to extensions of credit by the Secured Parties (as defined below) in the form of DIP Obligations (as defined below) comprised of the Deferred Sale Price (as defined in the Facility Agreement), (ii) are essential to the Facility Agreement and the DIP Facility, and (iii) thus provide a basis for the Debtors to access liquidity required to operate their businesses and preserve and enhance their enterprise value for the benefit of their stakeholders, and are necessary for the Debtors' overall restructuring.

(b) The purchases and sales of the Commodities shall be deemed to have been undertaken by the Secured Parties and their affiliates in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and in express reliance upon the protections offered by section 363(m) of the Bankruptcy Code, and the Secured Parties shall be entitled to the full protection of section 363(m) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise, unless the authorization of such sale or purchase is stayed pending appeal.

7. *Findings Regarding the DIP Facility* .

(a) Good cause has been shown for approval of the DIP Facility and entry of this Final Order.

(b) In light of the imminent June 14, 2013 maturity date on the Purchaser's Existing DIP Obligations under the Existing DIP Facility and the Debtors' work to exit chapter 11 as soon as possible in accordance with their proposed Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code (Docket No. 1038) (as amended, modified or supplemented in accordance with the DIP Facility, the "**Proposed Plan**"), the Debtors have a need to obtain the credit available under the DIP Facility in order to, among other things, repay the Existing DIP Facility; to permit the orderly continuation of the operation of their businesses; to facilitate the emergence from chapter 11; to maintain business relationships with vendors, suppliers, and customers; to make payroll; to make capital expenditures; to satisfy other general corporate, working capital and operational needs; to fund administrative costs of the Cases; and to pay such other amounts in accordance with the Finance Documents. The Debtors' access to sufficient working capital and liquidity by obtaining new credit under the Facility is vital to the preservation and maintenance of the going concern values of the Debtors during the Cases and necessary to avoid harm to the Debtors' estates. The Debtors' ability to convert the DIP Facility into the Exit Facility upon satisfaction of certain conditions set forth in the Facility Agreement and Finance Documents is critical to their ability to consummate a successful reorganization that will preserve and maintain the Debtors' going concern values in accordance with the Proposed Plan.

(c) The Debtors have been and continue to be unable to obtain financing on more favorable terms from sources other than the Investment Agent and the Participants under the Finance Documents and this Final Order. The Debtors are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured financing on better terms without granting to GSI, as Security Agent under the Facility (in such capacity, the "**Security Agent**") for the benefit of the Finance Parties (as defined in the Facility Agreement, the "**Secured Parties**"), the rights, remedies, privileges, benefits and protections provided herein, in the Interim Order and in the Finance Documents allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code, including, without limitation, DIP Liens (as defined below) and the Superpriority Claims (as defined below) (collectively, the "**DIP Protections**").

(d) The Investment Agent and the Participants have indicated a willingness to provide postpetition secured financing via the DIP Facility to the Purchaser in accordance with the Facility Agreement, Finance Documents and this Final Order. The Finance Documents, including without limitation the executed Facility Agreement (Docket No. 1259), substantially conform to the terms and conditions of the Commitment Documents approved by the Court on May 17, 2013 (Docket No. 1113), except that the maximum available amount of the DIP Facility is increased from up to $150 million to up to $175 million.

(e) The terms and conditions of the DIP Facility pursuant to the Finance Documents and this Final Order, and the fees, costs, expenses and other charges paid or to be paid thereunder, are fair, reasonable, and the best available under the circumstances,

reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and constitute "reasonably equivalent value" and "fair consideration" within the meaning of such terms under section 548 of the Bankruptcy Code and under applicable non-bankruptcy law.

(f) The DIP Facility and Finance Documents were negotiated in good faith and at arm's length among the Debtors and the Investment Agent, among others, with the assistance and counsel of their respective advisors, and all of the Debtor's obligations arising under, in respect of or in connection with the Facility Agreement or any of the other Finance Documents (including, without limitation, all indemnification obligations) (collectively, the "**DIP Obligations**"), as well as the rights granted in this Final Order, shall be deemed to have been extended by the Investment Agent, the Participants and their affiliates for valid business purposes and uses and in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, the Secured Parties, along with the DIP Protections, shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed, amended or modified, on appeal or otherwise. The Secured Parties shall be entitled to the full protection of section 363(m) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise, unless the authorization of such sale or purchase is stayed pending appeal.

(g) The Debtors have requested entry of this Final Order pursuant to Bankruptcy Rule 4001(c)(2). The relief requested in the Motion and the authorization granted herein to enter into the Finance Documents and to purchase and sell Commodities

up to an aggregate purchase price of $175,000,000 in connection with the DIP Facility is necessary to avoid irreparable harm to the Debtors, their estates and their ability to successfully reorganize. Consummation of the DIP Facility, along with repayment of the Existing DIP Facilities, in accordance with this Final Order and the Finance Documents is therefore in the best interest of the Debtors' estates, consistent with their fiduciary duties, as its consummation will, among other things, allow the Debtors to facilitate their chapter 11 goals and maximize the value of their estates.

8. *Authorization of the Commodities Transactions*.

(a) Pursuant to section 363(b)(1) of the Bankruptcy Code, the Purchaser is hereby authorized to (i) enter into and perform its obligations under the Purchase Contracts (as defined in the Facility Agreement), including the obligation to purchase Commodities from the Investment Agent at the Cost Price plus Profit Amount (as such terms are defined in the Facility Agreement) and such other amounts due and payable under the Finance Documents, and (ii) sell such Commodities as set forth in the Facility Agreement. The transactions described in this subparagraph (a) shall be referred to collectively as the "**Commodities Transactions**."

(b) To the extent provided in the Facility Agreement, the Purchaser shall indemnify the Investment Agent for any actions, claims, proceedings, liabilities, costs, and expenses associated with, or arising in connection with, the Commodities Transactions or the other transactions contemplated under the Purchase Contracts, other than any actions, claims, proceedings, liabilities, costs, and expenses arising from the ownership of the Commodities by any of the Indemnified Parties (as defined in the Facility Agreement).

9. *Authorization to Incur DIP Obligations.*

(a) To enable Debtors to continue to operate their business, and subject to the terms and conditions of this Final Order and the Finance Documents, the Purchaser is hereby authorized to (i) incur obligations under, or as otherwise provided in, the DIP Facility in an aggregate outstanding principal amount not to exceed $175,000,000; and (ii) repay all of the Existing DIP Obligations under the Existing DIP Facility in accordance with the provisions hereof.

10. *Authorization of the Finance Documents*.

(a) The Debtors are hereby authorized to execute, issue, deliver, and enter into the Finance Documents and the Finance Documents are hereby approved. The Purchaser is hereby authorized to enter into the Facility Agreement, and the Debtor Guarantors are hereby authorized to unconditionally guaranty (on a joint and several basis and except that the guarantees of AEID II Holdings Limited ("**AEID II**"), RailInvest Holdings Limited ("**RailInvest**"), and WindTurbine Holdings Limited ("**WTHL**") shall be expressly subordinated to the Prior SCB Claims) the Purchaser's obligations under the Finance Documents up to an aggregate principal or face amount of $175,000,000 (plus profits, fees, costs and other expenses and amounts provided for in the Finance Documents), in accordance with the terms of this Final Order and the Finance Documents, the proceeds of which shall be used for all purposes permitted under the Finance Documents, including, without limitation, to allow repayment of all obligations outstanding under the Existing DIP Facility; to provide working capital for the Purchaser and the Debtor Guarantors; to fund general corporate purposes; and to pay profits, fees and expenses, in each case in accordance with this Final Order, the Finance Documents, the

SCB Order and the DIP Budget (as defined in the Facility Agreement) (subject to the permitted variances and carryover under the Facility Agreement).

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and, without further application to the Court, to pay all fees, expenses, and profits under the Finance Documents (including, without limitation, payment of Additional Profit (as defined in the Facility Agreement)), that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Facility, including, without limitation:

(i) the execution, delivery and performance of the Finance Documents;

(ii) the execution, delivery and performance of one or more amendments, waivers, consents, supplements or other modifications to and under the Finance Documents including, among other things, to at any time, add additional institutions as Participants or reallocate the commitments under the Finance Documents among Participants, in each case in such form as Arcapita, the Purchaser, the Investment Agent, and the Participants (to the extent required under the Facility Agreement) may reasonably agree, it being understood that no further notice and hearing or approval of the Court shall be required for amendments, waivers, consents, supplements or other modifications to and under the Finance Documents with respect to the DIP Facility or the DIP Obligations that do not (A) shorten the maturity of the extensions of credit thereunder, (B) increase the

commitments or the rate of profit or fees payable thereunder, (C) materially impair SCB's rights under the SCB Order, or (D) otherwise materially burden the Debtors' estates; provided that, notwithstanding the foregoing, the Debtors shall provide three (3) days' notice to and consult with counsel to the Committee, SCB, and the Joint Provisional Liquidators prior to entering into any amendment or other modification to the Finance Documents or the DIP Obligations;

(iii) the non-refundable payment to the Investment Agent, the Security Agent, the Arranger and the Participants, as the case may be, of the fees and profits referred to in the Finance Documents and the reasonable fees, costs and expenses of professionals retained by the Investment Agent and the Security Agent (the "**Participant Professionals**"), as and to the extent provided for in the Finance Documents, without the necessity of filing retention applications, fee applications, or fee statements; and

(iv) the performance of all other acts required under or in connection with the Finance Documents.

(c) Upon execution and delivery of the Finance Documents, the Finance Documents shall constitute valid and binding obligations of the Debtors (except for Falcon), enforceable against each such Debtor party thereto in accordance with their terms and this Final Order. No obligation, payment, transfer or grant of security under the Finance Documents or this Final Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, setoff, recoupment or counterclaim.

(d) The Debtors shall promptly (but within three Business Days) provide to Committee counsel a copy of any duly completed Transaction Request (as defined in the Facility Agreement) made to the Investment Agent pursuant to section 5.1 of the Facility Agreement. The Debtors shall further promptly (but within three Business Days) provide to Committee counsel a copy of the acceptance of an Offer Letter (as defined in the Facility Agreement) made pursuant to section 5.4 of the Facility Agreement.

11. *Payoff of Existing DIP Obligations.* Subject to the occurrence of the Investment Agent delivering notice to the Participants that it has received all of the documents and other evidence listed in Schedule 1 Part 1 (Initial Conditions Precedent documents) of the Facility Agreement in form and substance satisfactory to it in accordance with Clause 4.1 of the Facility Agreement (the date of such occurrence, the "**Effective Date**"), the Purchaser shall use the proceeds of the DIP Facility, or shall direct that the proceeds of the DIP Facility be used, to repay in full in cash the Existing DIP Obligations in the manner required by the Existing Facility Agreement and Finance Documents (as defined in the Existing Facility Agreement), respectively, and in accordance with the following provisions:

(a) On the business day of the receipt by the Existing DIP Agent of written notice of entry of the Interim Order, the Existing DIP Agent shall have delivered to the Debtors and the Investment Agent a duly executed payoff letter (the "**DIP Facility Payoff Letter**") (i) setting forth its calculation of all amounts then due and payable in respect of the Existing DIP Obligations, including without limitation the unpaid or outstanding obligations and under the Purchase Contracts (as defined in the Existing DIP Agreement) and any other fees, costs and/or expenses, including a good faith, reasonable estimate for accrued and unpaid fees, costs and/or expenses (provided that any payment of

estimated fees, costs and/or expenses in excess of the actual amount shall be returned to the Debtors by July 15, 2013) due and payable pursuant to the terms of the Existing DIP Finance Documents (the "**Asserted Existing DIP Facility Payoff Amount**"), (ii) agreeing to deliver to the Investment Agent all Collateral in their possession (and agreeing to take reasonable steps to have any Participant (as defined in the Existing DIP Agreement) deliver to the Investment Agent all Collateral in such Participant's (as defined in the Existing DIP Agreement) possession), together with all necessary endorsements, immediately upon payment of the Asserted Existing DIP Facility Payoff Amount, and (iii) providing customary further assurance provisions with respect to termination or release of liens and with respect to the taking of further actions, including, without limitation, providing reasonable cooperation and assistance (at the Debtors' expense) with respect to effectuating the assignment (to the extent assignable) of existing deposit account control agreements and securities control agreements as requested by the Investment Agent.

(b) In the event the Debtors dispute the accuracy or validity of the Asserted Existing DIP Facility Payoff Amount, then the Debtors shall deliver, or shall direct to be delivered, to the Existing DIP Agent, prior to the Effective Date and within one business day after the Debtors' receipt of the DIP Facility Payoff Letter, a written notice (the "**Existing DIP Facility Payoff Amount Dispute Notice**") specifying the portion of the Asserted Existing DIP Facility Payoff Amount that the Debtors dispute (such disputed portion, the "**Disputed Asserted Existing DIP Facility Payoff Amount**" and the undisputed portion, the "**Undisputed Asserted Existing DIP Facility Payoff Amount**"). Promptly upon the Debtors' and the Investment Agent's receipt of the Existing DIP Facility Payoff Letter and, if applicable, the Existing DIP Facility Payoff Amount Dispute

Notice, and subject to the occurrence of the Effective Date, the Debtors shall use the proceeds of the DIP Facility, or shall direct that the proceeds of the DIP Facility be used, under the Facility Agreement to irrevocably repay the Existing DIP Agent, for its benefit and the benefit of the Existing Finance Parties, the entire Asserted Existing DIP Facility Payoff Amount (including the Disputed Asserted Existing DIP Facility Payoff Amount) in full satisfaction of the Existing DIP Obligations; provided, that the Existing DIP Agent shall retain (and not distribute to the Existing Finance Parties) the Disputed Asserted Existing DIP Facility Payoff Amount pending final resolution of the dispute specified in the Existing DIP Facility Payoff Amount Dispute Notice either by mutual agreement of the parties or by order of the Court; provided, further, that such Disputed Asserted Existing DIP Facility Payoff Amount shall remain subject to this Final Order and the DIP Protections of the Secured Parties pending final resolution of the dispute specified in the Existing DIP Facility Payoff Amount Dispute Notice either by mutual agreement of the parties or by order of the Court.

(c) Immediately upon payment of the Asserted Existing DIP Facility Payoff Amount (the date on which such payment occurs, the "**Existing DIP Facility Payment Date**"), (i) all Superpriority Claims (as defined in the Existing Final DIP Order), all DIP Liens (as defined in the Existing Final DIP Order) including, without limitation, any other liens securing any or all of the Existing DIP Obligations shall be automatically terminated, discharged and released in their entirety without any further action of this Court or any other Person, (ii) the Existing Finance Parties shall deliver to the Investment Agent all Collateral in their possession, together with all necessary endorsements, in each case at the sole cost and expense of the Debtors; provided, that the DIP Liens on such

Collateral shall remain valid, enforceable and effective with the priority specified in this Final Order and the other Finance Documents at all times, notwithstanding that such Collateral may not have been delivered to the Investment Agent, (iii) each deposit account control agreement and each securities account control agreement entered into in connection with the Existing DIP Finance Documents shall be, at the sole discretion of the Investment Agent, either (x) assigned, to the extent such agreement can be assigned, to the Investment Agent on terms and conditions satisfactory to the Investment Agent or (y) automatically terminated without any further action of this Court or any other Person, and (iv) the Existing DIP Agent shall take all reasonable actions requested by any of the Investment Agent or the Debtors to effect or evidence the foregoing (including, without limitation, the execution and delivery of UCC-3 termination statements, mortgage releases and other instruments and documents evidencing the release of any and all liens securing any or all of the Existing DIP Obligations), in each case at the sole cost and expense of the Debtors.

(d) Immediately upon the occurrence of the Existing DIP Facility Payment Date, the Existing Final DIP Order shall have no further force and effect; *provided, however*, notwithstanding the foregoing, the following shall remain in full force and effect and be binding upon the Debtors and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors), the Committee and any other party in interest in these Cases: (i) the indemnity provisions and limitations on use of financing proceeds and collateral provided for in Paragraphs 9 and 18 of the Existing Final DIP Order and (ii) the provisions of the Existing DIP Agreement approved by the Existing Final DIP Order (x) relating to indemnification and (y) that by their terms expressly survive the termination of the Existing DIP Agreement;

provided, for the avoidance of doubt, that obligations arising in respect of the foregoing (i) and (ii) shall be subject and junior in all respects to the Superpriority Claims, DIP Liens, Carve Out, SCB First Priority Superpriority Claims (as defined below) and other DIP Protections of the Secured Parties.

(e) Subsequent to the Existing DIP Facility Payment Date, (i) the Debtors shall promptly pay and/or reimburse, or shall direct the prompt payment and/or reimbursement of, the applicable Existing DIP Secured Parties for any and all fees, costs and expenses and losses and damages actually incurred (including, without limitation, any fees, costs, losses, damages and expenses contemplated by Clause 16.1(a) of the Existing DIP Agreement) thereafter to the extent the Existing DIP Agreement expressly and currently entitles them to such payment, indemnity or reimbursement after termination of the Existing DIP Agreement (subject to all parties' reservation of rights on whether such fees, costs, losses, damages or expenses are entitled to payment, indemnity or reimbursement by the Debtors); and (ii) such amounts shall continue to constitute superpriority administrative expense claims under section 364(c)(1) of the Bankruptcy Code (which shall be subject and junior in all respects to the Superpriority Claims, DIP Liens, Carve Out, SCB First Priority Superpriority Claims (as defined below) and other DIP Protections of the Secured Parties) but senior to all other administrative expense claims.

(f) Nothing in this paragraph 11 shall require the Secured Parties to extend any credit or provide any other financial accommodations that they are not otherwise required to extend or provide under the terms of the Facility Agreement and this Final Order.

12. *Conditions Precedent.* The Secured Parties shall have no obligation to enter into a Purchase Contract, purchase Commodities or provide any other extension of credit or financial accommodation in respect of the DIP Facility or otherwise unless and until all conditions precedent thereto under the Finance Documents and this Final Order have been satisfied in full or waived by the requisite Investment Agent and Participants in accordance with the Finance Documents and this Final Order.

13. *Indemnity*. The indemnity provisions of the Finance Documents are hereby approved to the extent provided therein.

14. *Superpriority Claims.*

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations, including without limitation any obligations arising from the Commodities Transactions, shall constitute allowed administrative expenses against each of the Debtors (excluding Falcon) with priority over any and all administrative expenses, and all other claims against such Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under section 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, including, without limitation, any superpriority claims granted as adequate protection in favor of secured parties in the Cases, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from and have recourse to all pre- and post-petition property of the Debtors (excluding Falcon) and all proceeds thereof (the "**Superpriority Claims**"), subject only to the payment of the

Carve Out to the extent specifically provided for herein. The Superpriority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against each other Debtor (excluding Falcon) on a joint and several basis, and shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including, without limitation, all Avoidance Actions (and proceeds thereof). Other than as provided in the Facility Agreement and this Final Order with respect to the payment of the Carve Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 327, 328, 330, and 331 of the Bankruptcy Code, administrative expenses incurred in any chapter 7 case in respect of Debtors, or otherwise, that have been or may be incurred in these Cases, or any successor Cases, and no priority claims are, or will be, senior to, prior to or on a parity with the DIP Liens and the Superpriority Claims or the DIP Obligations, or with any other obligations of the Debtors to the Secured Parties arising hereunder.

(b) Notwithstanding anything to the contrary contained in the Facility Agreement, Finance Documents, this Final Order, or the Motion, so long as the obligations under the SCB Facilities remain outstanding, (i) the DIP Obligations and the Superpriority Claims shall be junior to the SCB Superpriority Claims (as defined in the Settlement Term Sheet attached as Exhibit 1 to the SCB Order[2]) to the extent that the SCB Superpriority Claims relate to funds transferred by, or other disposition of, AEID II, RailInvest, or WTHL (such SCB Superpriority Claims, the "**SCB First Priority Superpriority Claims**");

[2] The "**SCB Order**" means the 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), entered October 19, 2012.

(ii) the DIP Obligations and the Superpriority Claims against AEID II, RailInvest, and WTHL shall be subordinated to the existing guarantees in favor of SCB against AEID II, RailInvest; and WTHL; and (iii) SCB shall have a prior superpriority claim in all proceeds of the EuroLog IPO (as defined in the SCB Order) to the extent provided under the SCB Order (the claims in favor of SCB as described in (i) through (iii), and the Listco Pledge (as defined in the SCB Order) in connection with the EuroLog IPO, in each case to the extent allowed, referred to collectively as, the "**Prior SCB Claims**").

(c) For purposes hereof, the "**Carve Out**" shall mean (i) any unpaid fees required to be paid to the Clerk of the United States Bankruptcy Court for the Southern District of New York and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code and interest thereon, (ii) the reasonable fees and expenses approved by the Bankruptcy Court incurred by a trustee under sections 726(b) or 1104 of the Bankruptcy Code in an aggregate amount not to exceed $25,000, (iii) the reasonable and documented expenses of members of the Committee (excluding fees and expenses of professional persons employed by the Committee and/or such Committee member individually) in an amount not to exceed $200,000; (iv) 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 by the Debtors or the Committee (the "**Professional Persons**") and the reasonable fees and expenses (including legal fees) of the Joint Provisional Liquidators, in each case, that were accrued or incurred, as applicable through the date upon which the Purchaser and the Committee receives from the Investment Agent a written notice of the occurrence of an Event of Default (as defined in the Facility Agreement) and the

Investment Agent's intention to invoke the Carve Out (the "**Carve Out Notice**"); and (v) to the extent allowed at any time, all fees and expenses of Professional Persons and the Joint Provisional Liquidators incurred after the date upon which the Purchaser receives the Carve Out Notice, in the aggregate amount not to exceed $15,000,000 (the "**Carve Out Cap**"), provided that (a) the Carve Out Cap shall not be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred by or paid to any Professional Person or the Joint Provisional Liquidators prior to the Purchaser's receipt of the Carve Out Notice or by any fees, expenses, indemnities, or other amounts paid to the Investment Agent, Participants, or their respective attorneys or agents under the DIP Facility or otherwise and (b) to the extent that the Carve Out Cap is reduced by an amount as a result of payment of fees and expenses during the continuation of an Event of Default and after delivery of the 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.

(d) Notwithstanding anything herein, without the prior written consent of the Investment Agent or the Security Agent, as applicable, the Carve Out shall not include, apply to, or be available for any fees or expenses incurred by any party (1) in connection with any challenge to the validity, perfection, priority, extent or enforceability of the DIP Obligations or other transactions under the DIP Facility, or the DIP Liens on any Collateral or security interests securing the DIP Obligations; (2) in connection with any investigation or assertion of any other claims, adversary proceedings, causes of action, or other litigation, including any action or obligation with respect to the Superpriority Claims or DIP Liens, against any Participant, the Investment Agent or any other holder of

any DIP Obligations in such capacity; (3) to object to, contest, delay, prevent or interfere in any way with the exercise of rights or remedies by the Security Agent under the Finance Documents (except that the Debtors may dispute whether an Event of Default has occurred under paragraph 18(b) hereof and the Debtors shall be entitled to any notice provisions provided in this Final Order); or (4) during the continuation of an Event of Default and after delivery of the Carve Out Notice, in connection with any separate or additional act or series of acts which would constitute an Event of Default, provided that deviations from the DIP Budget for purposes of making payments to Professional Persons that would constitute an Event of Default but that are otherwise permitted under the Carve Out shall not be subject to this clause (4). Nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation of any Professional Person. The Carve Out must be used in full and exhausted prior to the Debtors' use of the $1,000,000 carve out for professional fees provided for in the SCB Order.

15. *Adequate Protection.* Nothing contained in this Final Order modifies, alters, amends or supersedes the grant of adequate protection to SCB and the priority of SCB's claims against the Debtors pursuant to the SCB Order.

16. *DIP Liens*. As security for the DIP Obligations, effective and perfected upon the date of the Interim Order, as supplemented by this Final Order, and without the necessity of the execution, recordation or filings of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Security Agent of, or over, any Collateral, the following security interests and liens are hereby granted to the Security Agent for the benefit of the Investment Agent and the Finance Parties (all

tangible and intangible property, whether real or personal, identified in clauses (a) and (b) below being collectively referred to as the "**Collateral**"); all such liens and security interests granted to the Security Agent for the benefit of the Finance Parties pursuant to the Interim Order and this Final Order, the "**DIP Liens**", subject and subordinate only to the payment of the Carve Out and the Prior SCB Claims and, in the case of the collateral identified in clause (b) below, any claim secured by a valid, binding, continuing, enforceable, fully-perfected senior lien therein; *provided, however*, that the Collateral shall not include (i) the Avoidance Actions or the proceeds thereof or (ii) the assets of AEID II, RailInvest, or WTHL (except to the extent such assets constitute collateral under the SCB Facilities, in which case the Security Agent's liens shall be junior to liens granted to SCB); *provided further, however*, that the Collateral shall not include any property to the extent that the Investment Agent reasonably determines, and notifies the Purchaser in writing, that the costs of obtaining liens or security interests with respect to such property are excessive in relation to the value of the security interest afforded thereby.

(a) *First Lien Unencumbered Property*. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all property of Arcapita, the Purchaser, and ALTHL, whether existing on the Petition Date or thereafter arising, coming into existence or acquired, whether tangible or intangible, whether real or personal, that (1) is not subject to valid, binding, continuing, enforceable, and fully perfected and non-avoidable liens or security interests as of the Petition Date or (2) becomes unencumbered and is no longer subject to any lien or security interest, including, without limitation, the Purchaser's interests in the WCFs (as defined in the Facility Agreement) and the Purchaser's voting rights with respect thereto, ALTHL's interests in LT CayCos (as defined in the Facility

Agreement) that are unencumbered or become unencumbered, the Purchaser's non-syndicated interests in the Syndication Companies (as defined in the Facility Agreement), cash, general intangibles, accounts, equipment, goods, inventory, fixtures, documents, instruments, chattel paper, letters of credit and letters of credit rights, investment property, commercial tort claims, money, deposit accounts, supporting obligations (each of foregoing terms as defined in the Uniform Commercial Code as in effect from time to time in the State of New York (the "**UCC**")), all books and records relating to the foregoing, and all other personal and real property, whether tangible or intangible, and all proceeds (as defined in the UCC) and products of each of the foregoing (the "**First Lien Collateral**").

(b) *Liens Junior to Certain Other Liens*. Pursuant to sections 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest in and junior lien upon all property of the Debtors (except for Falcon) that are subject to (i) any valid, binding, continuing, enforceable, fully-perfected and non-avoidable lien in existence on the Petition Date or (ii) any valid, binding and enforceable lien in existence on the Petition Date that is perfected subsequent to the Petition Date pursuant to section 546(b) of the Bankruptcy Code or otherwise comes into existence or is acquired after the Petition Date, whether tangible or intangible, whether real or personal, together with all proceeds and products thereof, including, in each case and for so long as the obligations under the SCB Facilities remain unpaid, the liens on the collateral securing the obligations under the SCB Facilities.

(c) For so long as any of the DIP Obligations remain outstanding, the Collateral shall be free and clear of all senior liens, claims and encumbrances, other than

the DIP Liens granted to the Security Agent for the benefit of the Finance Parties and except for those liens, claims, and encumbrances expressly permitted under the Finance Documents or this Final Order. Any liens and claims granted as adequate protection to any secured party (other than those granted to SCB in connection with the SCB Facilities and the SCB Order) are junior and subordinate to the DIP Liens in the Collateral granted to the Security Agent, for the benefit of the Finance Parties pursuant to this Final Order.

17. *Proceeds of Collateral.* All proceeds of (a) the First Lien Collateral or (b) other Collateral solely to the extent that the obligations under the SCB Facilities or other senior debt are no longer outstanding, of any kind which are now or shall hereafter come into the possession or control of the Debtors (other than Falcon) to which any such Debtor is now or shall become entitled under the Finance Documents, shall be promptly deposited into deposit accounts maintained by the Purchaser or Arcapita upon which the Security Agent shall have first priority DIP Liens pursuant to this Final Order, and such collections and proceeds shall remain subject to the DIP Liens and shall be treated in accordance with this Final Order and the Finance Documents. Subject to the provisions of this Final Order, upon the occurrence and continuation of an Event of Default under the Finance Documents, all financial institutions in which any deposit accounts, lockboxes, blocked accounts, or other accounts of any of the Debtors (except Falcon) holding the proceeds of any of the First Lien Collateral are located are hereby authorized and directed to comply with any request of the Security Agent to turn over to the Security Agent all funds therein without setoff, recoupment, or deduction of any kind.

18. *Protection of Financing Parties' Rights.* The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary, without the need for any further order of the Court:

(a) To permit the Investment Agent and/or Security Agent to exercise, upon the occurrence and continuation of any Event of Default under the Finance Documents or the Termination Date (as defined in the Facility Agreement), all rights and remedies under the Finance Documents, and, to the extent provided for in the Finance Documents, to take any or all of the following actions without further order of or application to this Court: (i) cease to make any extensions of credit or advances to the Debtors and declare the Participants' commitments under the DIP Facility terminated; (ii) declare all DIP Obligations to be immediately due and payable without presentment, demand, protest or notice; (iii) set off and apply immediately any and all amounts in accounts maintained by Arcapita, the Purchaser, and ALTHL (or any other Debtor (except Falcon) to the extent such accounts are subject to DIP Liens and solely to the extent that the obligations under the SCB Facilities or other senior debt are no longer outstanding) with the Investment Agent, Security Agent or any Participant against the DIP Obligations to the extent permitted under the Finance Documents or applicable law; (iv) exercise all rights and remedies against the Collateral to the extent provided for in any Finance Document; and (v) take any other actions or exercise any other rights or remedies permitted under this Final Order, the Finance Documents, or applicable law to realize upon the Collateral and/or effect the repayment and satisfaction of the DIP Obligations, subject to (A) SCB's rights under paragraph 18(b) of this Final Order and (B) Clause 16.24(e) of the Facility Agreement, including that the Investment Agent and/or the Security Agent

provide seven (7) days written notice (by facsimile, telecopy, electronic mail or otherwise) to the Debtors, counsel to the Debtors, the U.S. Trustee, the Joint Provisional Liquidators, counsel to the Committee, and counsel to SCB, prior to exercising any enforcement rights or remedies under (iii) through (v) above (but not any of the rights described in clauses (i) and (ii) above).

(b) In any hearing regarding any exercise of rights or remedies by the Investment Agent and/or the Security Agent, the only issue that may be raised by the Debtors or any party in interest shall be whether, in fact, an Event of Default under the Finance Documents has occurred and is continuing, and neither the Debtors nor any party in interest shall be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of any Secured Party set forth in this Final Order or the Finance Documents. Notwithstanding the foregoing, so long as the obligations under the SCB Facilities remain outstanding, SCB shall be permitted to assert that any exercise of rights or remedies by the Investment Agent and/or the Security Agent against (i) collateral securing the obligations under the SCB Facilities and/or (ii) AEID II, RailInvest, or WTHL is not permitted under this Final Order or the SCB Order. In no event shall the Investment Agent, the Security Agent or the Participants be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to any of the Collateral.

(c) Until the payment in full of the DIP Obligations, any party other than the Security Agent that has or obtains a lien or security interest in the Collateral shall not exercise any rights or remedies with respect to the First Lien Collateral to the extent allowed by applicable law.

(d) Unless the Investment Agent and the requisite other Secured Parties under the Finance Documents shall have provided their prior written consent, or all DIP Obligations have been indefeasibly paid in full in cash in accordance with the provisions of the applicable Finance Documents and all commitments thereunder have been terminated ("**Paid in Full**" or "**Payment in Full**"), there shall not be entered in any Case or in any successor proceedings, any order which authorizes the obtaining of credit or the incurring of any other obligation that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the Collateral and/or that is entitled to administrative priority status, in each case which is superior to or pari passu with the DIP Liens, Superpriority Claims and other DIP Protections granted pursuant to this Final Order to the Secured Parties.

19. *Proceeds of Subsequent Financing.* Without limiting the provisions and protections of Paragraph 27 below, if at any time prior to the Payment in Full of all DIP Obligations (including subsequent to the confirmation of the Proposed Plan or any other chapter 11 plan or plans with respect to any of the Debtors), the Debtors' estates, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed, shall obtain credit or incur obligations pursuant to sections 364(b), 364(c), 364(d) or any other provision of the Bankruptcy Code in violation of the Financing Documents, then all of the cash proceeds derived from such credit or obligation related to the First Lien Collateral shall be immediately turned over to the Investment Agent for application to, and until Payment in Full of, the DIP Obligations pursuant to the applicable Finance Documents. Without limiting the foregoing, no cash proceeds related to the First Lien Collateral derived from such credit or obligation may be applied to any administrative claims prior to and until Payment in Full of the DIP Obligations.

20. *Disposition of DIP Collateral.* The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the First Lien Collateral without the prior written consent of the Investment Agent and the requisite Secured Parties under the Finance Documents (and no such consent shall be implied from any other action, inaction or acquiescence by any Secured Party or any order of this Court), except as otherwise permitted in the Finance Documents and this Final Order. Except to the extent otherwise expressly provided in the Finance Documents, all proceeds from the sale, transfer, lease, encumbrance or other disposition of any First Lien Collateral shall be promptly remitted to the Investment Agent for application to, and until Payment in Full of, the DIP Obligations pursuant to and in accordance with the applicable Finance Documents. For the avoidance of doubt, subject to the obligations in respect of the Carve Out set forth in Paragraph 14(c) hereof, all proceeds from the sale, transfer, lease, encumbrance or other disposition of any First Lien Collateral following the occurrence of any Event of Default shall be applied first to Payment in Full of the DIP Obligations, and only after Payment in Full of the DIP Obligations may any such proceeds be applied to any other administrative claims.

21. *Limitation on Charging Expenses Against Collateral*. As a further condition of the DIP Facility and any obligation of the Investment Agent or Participants to enter into Commodities Transactions pursuant to the Finance Documents (and their consent to the payment of the Carve Out to the extent provided herein), except to the extent of the Carve Out, no costs or expenses of administration of the Cases or any successor proceedings, including a chapter 7 liquidation in bankruptcy and the cost of preservation or disposition of the Collateral, shall be charged against or recovered from or against any or all of Secured Parties or the Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the

prior written consent of the Investment Agent, and no such consent shall be implied from any other action, inaction, or acquiescence by the Investment Agent, the Security Agent or the Participants. The Debtors (for themselves and their estates) hereby irrevocably waive and relinquish any rights they may have under section 506(c) of the Bankruptcy Code with respect to the Collateral.

22. *Perfection of DIP Liens.*

(a) The Investment Agent and the Security Agent, on behalf of the Finance Parties, are each hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over, or take any other action in order to validate and perfect the liens and security interests granted hereunder and under the Interim Order. Whether or not the Investment Agent or the Security Agent, on behalf of the Finance Parties shall, in its sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over, or otherwise confirm perfection of the liens and security interests granted hereunder and under the Interim Order, such liens and security interests shall be deemed valid, perfected, continuing, enforceable, non-avoidable and not subject to challenge, dispute or subordination, at the time and on the date of entry of the Interim Order. Without limitation of the foregoing, the Security Agent on behalf of the Finance Parties shall have a valid, perfected, continuing, enforceable, non-avoidable, perfected lien upon and security interest of the same relative priority or priorities set forth in paragraphs 16(a) and 16(b) in all deposit accounts in which any cash constituting the Collateral is deposited and all securities accounts in which any financial assets constituting

the Collateral is credited, in each case without any need for entering into any control agreement.

(b) A certified copy of this Final Order and/or the Interim Order may, in the discretion of the Investment Agent or the Security Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Final Order and/or the Interim Order for filing and recording. For the avoidance of doubt, the automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the Investment Agent, the Security Agent, and the Finance Parties to take all actions, as applicable, referenced in this paragraph 22.

23. *Limitation on Use of Financing Proceeds and Collateral*. Notwithstanding anything herein or in any other order by this Court to the contrary, no portion of the proceeds under the Facility or of Collateral, or any portion of the Carve Out, may be used by any of the Debtors, the Committee or any trustee or other estate representative appointed in any Case or successor proceeding, or any other person (or to pay any professional fees and disbursements in connection therewith): (i) to request authorization to obtain postpetition credit or other financial accommodations, in each case, by the Obligors or other members of the Group (as defined in the Facility Agreement) pursuant to Bankruptcy Code section 364(c) or (d), or otherwise, other than from the Secured Parties unless expressly permitted in the Finance Documents; (ii) to investigate, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in such capacity,

any or all of the Investment Agent, Participants, other Secured Parties or other holder of DIP Obligations under the Finance Documents and their respective officers, directors, employees, agents, attorneys, affiliates, assigns or successors, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation of or in connection therewith), including, without limitation (A) any Avoidance Actions or other actions arising under chapter 5 of the Bankruptcy Code, (B) any so-called "lender liability" claims and causes of action, (C) any action with respect to the amount, validity, enforceability, perfection, priority, or characterization of the DIP Liens (or the value of any of the Collateral), Superpriority Claims or any other DIP Protections, (D) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the DIP Liens, the Superpriority Claims or any other DIP Protections; (E) except to contest the occurrence or continuation of any Event of Default (as defined in the Facility Agreement) as permitted in Paragraph 18(b) of this Final Order, any action seeking, or having the effect of, preventing, hindering or otherwise delaying any or all of the Secured Parties' assertion, enforcement or realization on the Collateral in accordance with the Finance Documents or this Final Order, and (F) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to any or all of the Secured Parties hereunder or under the Finance Documents; (iii) to make any payment on account of any claims or indebtedness arising or incurred prior to the Petition Date except as permitted under the Finance Documents and SCB Order, and then only in accordance with the DIP Budget (subject to applicable variances and carry-forwards under the Facility Agreement); (iv) for any act which has the effect of materially or adversely modifying or compromising the rights and remedies of the Investment Agent, the Security Agent, or any Participant as set forth herein and in the other Finance Documents, or which results in the occurrence of an Event of

Default (except as permitted under the Carve Out); (v) directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended; (vi) be paid to (A) any Embargoed Person (as defined in the Facility Agreement), (B) any agency of the government of any Sanctioned Country (as defined in the Facility Agreement), (C) any organization controlled by a Sanctioned Country or (D) any person residing in a Sanctioned Country, to the extent subject to a sanctions program administered by U.S. Department of the Treasury's Office of Foreign Assets Control; or (vii) in any manner that violates Regulations T, U, or X of the Board of Governors of the Federal Reserve System of the United States or any other regulation thereof or to violate the Securities Exchange Act of 1934. Except as provided in the Finance Documents or in this Final Order, no portion of the proceeds of any Collateral, including cash collateral, shall be used for any purpose other than as provided for in the DIP Budget (subject to the variances set forth in Clause 13 of the Facility Agreement and except as permitted under the Carve Out).

24. *Order Governs*. In the event of any inconsistency between the provisions, terms and conditions of this Final Order and the Finance Documents, the provisions of this Final Order shall govern and control.

25. *Binding Effect; Successors and Assigns*. Except as expressly provided herein, the Finance Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in the Cases, including, without limitation, the Investment Agent, the Security Agent, the Participants, the Committee, the Existing DIP Agent and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee

hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary or responsible person appointed as a legal representative under any plan of reorganization or of any of the Debtors or with respect to the property of the Debtors (including as they may be reorganized under any plan of reorganization), any entity formed under any plan of reorganization of the Debtors or the estate of any of the Debtors), whether in any of the Cases, in any subsequent proceeding, or upon dismissal of any such Case or subsequent proceeding, and shall inure to the benefit of the Financing Parties and the Debtors and their respective successors and assigns; *provided*, *however*, that the Secured Parties shall have no obligation to extend any financing to any chapter 7 trustee or other responsible person appointed for the estates of the Debtors in any Case or subsequent proceeding. In determining to enter into any Commodities transaction, make any extension of credit (whether under the Facility Agreement, any other Finance Documents or otherwise) or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the Finance Documents, the Secured Parties shall not (i) be deemed to be in control of the operations of the Debtors, (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates or (iii) be deemed to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors, so long as the Secured Parties' actions do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by a Debtor, or cause the status of responsible person or managing agent to exist under applicable law (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute), or otherwise cause liability to arise to the federal or any state government.

26. *After Acquired Property*. Except as otherwise provided in this Final Order or the SCB Order, pursuant to section 552(a) of the Bankruptcy Code, all property acquired by the Debtors on or after the Petition Date is not, and shall not be, subject to any lien of any Person resulting from any security agreement entered into by the Debtors prior to the Petition Date, except to the extent that (a) such property constitutes proceeds of property of the Debtors that is subject to a valid, enforceable, continuing, fully perfected, and non-avoidable lien as of the Petition Date which is not subject to subordination under the Bankruptcy Code or other provisions or principles of applicable law or (b) such property is finally determined by a court of competent jurisdiction to be trust property of or otherwise owned by SCB; provided that all parties' rights are reserved with respect to whether any property is trust property of or otherwise owned by SCB.

27. *No Non-Consensual Modification or Extension of Interim Order.* Unless all DIP Obligations shall have been Paid in Full, the Debtors shall not seek, and it shall constitute an Event of Default under the Facility Agreement (resulting, among other things, in the termination of the Debtors' right to incur obligations under the DIP Facility), if there is entered (i) an order amending, supplementing, extending or otherwise modifying this Final Order or (ii) an order converting or dismissing any of the Cases, in each case, without the prior written consent of the Investment Agent, and no such consent shall be inferred by any other action, inaction or acquiescence.

28. *Dismissal.* If any order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code), to the fullest extent permitted by law, that (i) this Final Order and the DIP Protections shall continue in full force and effect and shall

maintain their priorities as provided in this Final Order until all DIP Obligations have been Paid in Full (and that all DIP Protections shall, notwithstanding such dismissal, remain binding on all parties in interest), and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing this Final Order and such DIP Protections and DIP Obligations.

29. *Modification of Final Order.* Based on the findings set forth in this Final Order and in accordance with sections 363(m) and 364(e) of the Bankruptcy Code, which are applicable to the purchases and sales of the Commodities and the DIP Facility contemplated by this Final Order and the Finance Documents, in the event any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed by a subsequent order of this Court or any other court, the Secured Parties shall be entitled to the protections provided in sections 363(m) and 364(e) of the Bankruptcy Code, and no such reversal, modification, vacatur or stay shall affect (i) the validity of the purchases and sales of the Commodities, (ii) the validity, priority or enforceability of any DIP Protections or DIP Obligations granted or incurred prior to the actual receipt of written notice by the Investment Agent of the effective date of such reversal, modification, vacatur or stay or (iii) the validity or enforceability of any DIP Lien, DIP Superpriority Claim or any other DIP Protection or priority authorized or created hereby or pursuant to the Finance Documents and this Final Order with respect to any DIP Obligations. Notwithstanding any such reversal, modification, vacatur or stay, any purchases and sales of the Commodities, use of Collateral or any DIP Obligations and DIP Protections incurred or granted by the Debtors prior to the actual receipt of written notice by the Investment Agent of the effective date of such reversal, modification, vacatur or stay shall be governed in all respects by the original provisions of this Final Order, and the Secured Parties shall be entitled to all of the DIP Protections and all other rights, remedies, liens, priorities, privileges, protections and

benefits granted in sections 363(m) and 364(e) of the Bankruptcy Code, this Final Order and pursuant to the Finance Documents with respect to all purchases and sales of the Commodities, use of Collateral and all other DIP Obligations.

30. *Survival of the Final Order.* The provisions of this Final Order and the Finance Documents, any actions taken pursuant hereto or thereto or pursuant to the Interim Order, and all of the DIP Protections and all other rights, remedies, DIP Liens, Superpriority Claims, priorities, privileges, protections and benefits granted to any or all of the Secured Parties shall survive, and shall not be modified, impaired or discharged by, the entry of any order confirming any plan of reorganization in any Case, converting any Case to a case under chapter 7, dismissing any of the Cases, withdrawing of the reference of any of the Cases or any successor proceedings or providing for abstention from handling or retaining of jurisdiction of any of the Cases in this Court, or terminating the joint administration of these Cases or by any other act or omission. The terms and provisions of this Final Order, including all of the DIP Protections and all other rights, remedies, DIP Liens, Superpriority Claims, priorities, privileges, protections and benefits granted to any or all of the Secured Parties, shall continue in full force and effect notwithstanding the entry of any such order, and such DIP Protections shall continue in these proceedings and in any successor proceedings, and shall maintain their respective priorities as provided by this Final Order. The DIP Obligations that have not been indefeasibly paid in full in cash, or received such other treatment in accordance with the Finance Documents or provided with the prior written consent of the Secured Parties, shall not be discharged by the entry of an order confirming the Proposed Plan or any other such chapter 11 plan, the Debtors having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code.

31. *Expenses.* As provided in, and subject to the limitations and exceptions

set forth in, the Finance Documents, the applicable Debtors will pay all reasonable out-of-pocket fees, costs, expenses and other charges incurred by the Investment Agent (including, without limitation, the reasonable out-of-pocket fees and disbursements of all counsel for the Investment Agent and any internal or third-party appraisers, consultants and auditors advising the Investment Agent) in connection with the preparation, execution, delivery, syndication and administration of the Finance Documents, this Interim Order and any other agreements, instruments, pleadings or other documents prepared or reviewed in connection with any of the foregoing, whether or not any or all of the transactions contemplated hereby or by the Finance Documents are consummated. Payment of such reasonable out-of-pocket fees, costs, expenses and other charges are approved and allowed pursuant to this Interim Order and shall not be subject to any further review by or further procedure of this Court except as expressly permitted by this paragraph. Participant Professionals shall not be required to comply with the U.S. Trustee fee guidelines or submit invoices to the Court, U.S. Trustee, the or any other party-in-interest absent further court order. Copies of invoices submitted to the Debtors by such Participant Professionals shall be forwarded by the Debtors to the U.S. Trustee, counsel for the Committee, and such other parties as the Court may direct. The invoices shall be sufficiently detailed to enable a determination as to the reasonableness of such fees and expenses (without limiting the right of the various professionals to redact privileged, confidential or sensitive information). If the Debtors, U.S. Trustee or counsel for the Committee object to the reasonableness of the fees and expenses of any of the Participant Professionals and cannot resolve such objection within ten (10) days of receipt of such invoices, the Debtors, U.S. Trustee or the Committee, as the case may be, shall file and serve on such Participant Professionals an objection with the Court (the "**Fee Objection**") limited to the issue of whether such fees and

expenses constitute reasonable out-of-pocket fees and expenses; provided that no ruling of the Court with respect to any Fee Objection shall modify, supplement or otherwise affect the terms and conditions of the Finance Documents. The Debtors shall timely pay in accordance with the terms and conditions of this Final Order the undisputed fees, costs and expenses reflected on any invoice to which a Fee Objection has been timely filed and shall pay any such remaining fees, costs and expenses owed following a final resolution of the Fee Objection by agreement or adjudication by the Court.

32. *Release.* The Participants (in their capacities as such), the Investment Agent, the Security Agent, Goldman Sachs International, the other Secured Parties (in their capacities as such) and their respective officers, directors, employees, advisors and attorneys shall be deemed to be forever released and discharged by the Debtors and the Debtors' estates from any and all claims, causes of action, litigation claims, avoidance claims and any other debts, obligations, rights, suits, damages, expenses, actions, remedies, judgments and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing at any time, whether in law, at equity, whether for tort, contract, or otherwise, arising from or related in any way to the Debtors or their respective properties, assets and estates, the Facility and the Cases.

33. *No Waiver.* Neither the failure of the Secured Parties to seek relief or otherwise exercise their respective rights and remedies under this Final Order, the Finance Documents or otherwise (or any delay in seeking or exercising same), shall constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Except as expressly provided herein, nothing contained in this Final Order shall impair or modify any rights, claims or defenses available in law or equity to any Secured Party. Except as prohibited or limited by this Final Order, the entry

of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the Secured Parties under the Bankruptcy Code or other applicable law, to (i) request conversion of the Cases to cases under chapter 7, dismissal of the Cases, or the appointment of a trustee in the Cases, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, any chapter 11 plan or plans with respect to any of the Debtors, or (iii) exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) of the Secured Parties.

34. *No Third Party Rights.* Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

35. *Amendments.* No waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by or on behalf of all the Debtors and the Investment Agent and, except as provided in the immediately preceding sentence, approved by this Court or permitted by this Final Order.

36. *Headings.* Paragraph headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Final Order.

37. *Jurisdiction.* The Bankruptcy Court has and will retain jurisdiction to enforce this Final Order according to its terms.

Dated: June 26, 2013
New York, New York

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