

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE: : Chapter 11
ARCAPITA BANK B.S.C.(c), *et al.*, : Case No. 12-11076 (SHL)
Debtors. : Jointly Administered
: :
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**ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE
AND BANKRUPTCY RULE 9019, AUTHORIZING AND APPROVING THE
SETTLEMENT WITH STANDARD CHARTERED BANK**

Upon consideration of the motion (the “*Motion*”)¹ of Arcapita Bank B.S.C.(c) and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned Chapter 11 Cases (collectively, the “*Debtors*” and each, a “*Debtor*”),² for entry of an order authorizing and approving that certain Settlement in accordance with the Settlement Term Sheet attached hereto as Exhibit 1, by and between the Debtors, SCB, the Committee, and the JPLs, all as set forth in the Motion; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. sections 157 and 1334; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Settlement Term Sheet, as appropriate.

² As used herein, “Debtors” does not include Falcon Gas Storage Company, Inc. (“Falcon”), which is also a chapter 11 debtor in the Chapter 11 Cases.

hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted.
2. Pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, the Settlement is approved, and the terms, conditions, and provisions of the Settlement Term Sheet attached hereto as Exhibit 1 are incorporated in this Order by reference as if fully set forth herein. The Settlement shall be irrevocably binding and enforceable in accordance with its terms on all parties thereto and shall be irrevocably binding on their successors and assigns.
3. The Debtors acknowledge and agree as follows (the “**Debtors’ Stipulations**”):
 - (a) SCB extended two Murabaha facilities (the “**SCB Facilities**”) to Arcapita Bank pursuant to those certain Master Murabaha Agreements, dated as of (i) May 30, 2011, in the principal amount of US\$50,000,000 (as amended, restated, replaced, supplemented or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the “**SCB May 2011 Murabaha Agreement**”), which matured on March 28, 2012, and (ii) December 22, 2011, in the principal amount of US\$50,000,000 (as amended, restated, replaced, supplemented or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the “**SCB December 2011 Murabaha Agreement**”, and together with the SCB May Murabaha Agreement, the “**SCB Murabaha Agreements**”), which matured on March 28, 2012.

(b) The Debtors at all times intended that Arcapita Bank's obligations under the SCB May 2011 Murabaha Agreement be guaranteed, and Arcapita Bank's obligations under the SCB May 2011 Murabaha Agreement are guaranteed, by AIHL, Arcapita LT, and WindTurbine, (the "**SCB May 2011 Guarantors**") in accordance with that certain Guaranty dated May 30, 2011 (the "**May 2011 Guaranty**").

(c) The Debtors at all times intended that Arcapita Bank's obligations under the SCB December 2011 Murabaha Agreement be guaranteed, and Arcapita Bank's obligations under the SCB December 2011 Murabaha Agreement are guaranteed, by AIHL, Arcapita LT, AEID II, WindTurbine, and RailInvest (the "**SCB December 2011 Guarantors**," and, together with the SCB May 2011 Guarantors, the "**SCB Guarantors**") in accordance with that certain Guaranty dated December 22, 2011 (the "**December 2011 Guaranty**").

(d) Arcapita Bank's obligations in respect of the SCB May 2011 Murabaha Agreement are secured by four equitable mortgages or charges over the shares in Arcapita LT, AEID II, WindTurbine, and RailInvest (such shares, collectively, the "**May 2011 Collateral**") pursuant to that certain Charge Over Shares in WindTurbine Holdings Limited, dated May 30, 2011, that certain Charge Over Shares in Arcapita LT Holdings Limited, dated May 30, 2011, that certain Equitable Mortgage Over Shares in RailInvest Holdings Limited, dated December 22, 2011, and that certain Equitable Mortgage Over Shares in AEID II Holdings Limited, dated December 22, 2011 (collectively, the "**May 2011 Mortgages**," and together with the SCB May 2011 Murabaha Agreement and the May 2011 Guaranty and other related and ancillary documents, the "**May 2011 SCB Documents**").

(e) Arcapita Bank's obligations in respect of the SCB December 2011 Murabaha Agreement are secured by an equitable mortgage over the shares in Arcapita LT, AEID II, WindTurbine, and RailInvest (such shares, collectively, the "**December 2011 Collateral**"), which together with the May 2011 Collateral constitutes the "**Collateral**") pursuant to that certain Equitable Mortgage Over Shares in RailInvest Holdings Limited, dated December 22, 2011, that certain Equitable Mortgage Over Shares in AEID II Holdings Limited, dated December 22, 2011, that certain Equitable Mortgage Over Shares in WindTurbine Holdings Limited, dated December 22, 2011, and that certain Equitable Mortgage Over Shares in Arcapita LT Holdings Limited, dated December 22, 2011 (collectively, the "**December 2011 Mortgages**," and together with the SCB December 2011 Murabaha Agreement and the December 2011 Guaranty and other related and ancillary documents and the May 2011 SCB Documents, the "**SCB Documents**").

(f) (i) the obligations under the SCB Documents (the "**SCB Obligations**") are valid, binding, and enforceable obligations of Arcapita Bank and/or the applicable SCB Guarantors in accordance with the terms set forth in the SCB Documents and SCB is not required to take any further action under the SCB Documents to preserve and enforce its claims against Arcapita Bank and/or the applicable SCB Guarantors under the SCB Documents; (ii) the May 2011 Mortgages and December 2011 Mortgages and other liens and security interests granted to SCB with respect to the Collateral, as security for the obligations under the SCB Documents, are valid, perfected, and enforceable liens, mortgages, charges, deeds of trust, deeds to secure debt, and/or security interests in

accordance with the terms set forth in the SCB Documents; and (iii) the Debtors do not have any claims or causes of action against SCB under chapter 5 of the Bankruptcy Code.

4. SCB is, and shall be, entitled to receive an administrative claim against AIHL, Arcapita LT, and the Pledged Subsidiary Debtors as evidenced by the New SCB Financing Documents in an amount equal to all post-petition and post-maturity profit that is accrued and unpaid (at the rates specified in the SCB Facilities) (the “**Adequate Protection Claim**”) which for the purpose of the Settlement shall be equal to \$500,097.08 per month; *provided, however*, that until the Challenge Right Termination Date (as defined in the Settlement Term Sheet) the Committee shall be entitled in accordance with the terms and conditions of the Settlement to challenge (the “**Committee Challenge Right**”) SCB’s entitlement to the Adequate Protection Claim, and payment of amounts on account of post-petition or post-maturity profit under the SCB Facilities including one half of the amount of the Initial Payment (as defined in the Settlement Term Sheet and as it relates to post-petition or post-maturity profit) and the Monthly Profit Payments (as defined in the Settlement Term Sheet); *provided further, however*, that, notwithstanding any successful prosecution of the Committee Challenge Right, SCB shall be entitled to retain one half of the Initial Payment (as defined in the Settlement Term Sheet and as it relates to post-petition or post-maturity profit that has accrued through the earlier of (i) the date of the Initial Payment and (ii) November 30, 2012) as adequate protection (the “**Protected Amount**”). In the event that the Committee exercises the Committee Challenge Right and obtains a favorable final order from this Court granting its challenge, all amounts (other than the Protected Amount) received or to be received by SCB through the effective date of a chapter 11 plan for the Debtors on account of post-petition or post-maturity profit under the SCB Facilities and/or the New SCB Financing Documents (as defined in the Settlement Term Sheet), may be

re-characterized as payments of principal under the SCB Facilities and reduce SCB's claims against the Debtors on account thereof, to the extent provided in such final order. Any amounts paid pursuant to the New SCB Financing Documents (including the Initial Payment and each Monthly Profit Payment) shall be credited, on a dollar for dollar basis, against any SCB Expenses or post-petition or post-maturity profit that arises or is deemed to arise under the SCB Facilities.

5. Upon entry of this Order and subject to a Challenge (defined below), (i) the SCB Obligations constitute valid secured claims against the Debtors and, together with any payments on account thereof, are not subject to subordination, avoidance, or objection by the Debtors or any party as to validity, enforceability, priority, or avoidability of the security for such claims and payments made on account thereof, and (ii) the claims, liens and security interests of SCB are deemed to be valid, perfected, enforceable, and not subject to avoidance, subordination, or objection by the Debtors or any party as to validity, enforceability, priority or perfection. Notwithstanding the foregoing, such determination of the validity, perfection, enforceability, priority, and unavailability of such claims, liens and security interests, and any payments made on account thereof, is without prejudice to the rights of the JPLs to file a complaint, summons or other originating process challenging any such claims, liens or security interests of SCB or any of the Debtors' Stipulations (a "**Challenge**"); *provided, however*, that any such Challenge not commenced (an "**Adversary Proceeding**") and served within thirty (30) days after entry of this Order (the "**Challenge Period**") shall be forever barred. Despite the initiation of any such Adversary Proceeding asserting a Challenge, SCB's claims, liens and security interests under the SCB Documents, and any payments made on account thereof, shall be presumed to be valid and entitled to the benefit of this Order pending the entry of a final non-appealable judgment and

order in favor of the party in interest with respect to such Challenge. If no such Adversary Proceeding is properly and timely filed and served by such date, SCB's claims, liens and security interests under the SCB Documents, and payments made on account thereof, shall not be subject to any other or further Challenge and shall be determined to have been, as of the Petition Date, valid, binding, perfected, enforceable, unavoidable, and having the priority asserted, and the Debtors, their estates and creditors, the JPLs, and any trustee appointed upon the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or in any other proceedings superseding the Chapter 11 Cases (including any Cayman Islands liquidation proceedings) or such chapter 7 cases (any such chapter 7 cases or superseding proceedings, "*Successor Cases*"), shall be bound by Debtors' Stipulations set forth in this Order. The Challenge Period may be extended by agreement between SCB and the JPLs without further order of the Court. The Committee has expressly waived any Challenge with respect to the SCB Obligations; *provided, however*, that the Committee shall be entitled to the Committee Challenge Right in accordance with the terms and conditions of the Settlement. To the extent the Committee is permitted to assert the Committee Challenge Right under the Settlement and the Committee asserts the Committee Challenge Right, the Debtors have agreed pursuant to the Settlement that they shall oppose any such challenge and support SCB's right to retain the full Initial Payment, the Monthly Profit Payments, and the Adequate Protection Claim as adequate protection.

6. Subject to the express reservation of the rights of the JPLs and the Committee set forth in paragraphs 4 and 5 above, the Debtors' Stipulations set forth in this Order shall survive the entry of any order: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (c)

dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or Successor Cases. The terms and provisions of this Order shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and SCB's claims, liens, and security interests shall maintain their priority, validity, enforceability, and perfection as provided by this Order and the Settlement until the SCB Obligations have been discharged.

7. The automatic stay under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of the Settlement and this Order.

8. The Court has considered the terms, conditions, and compromises contained in the Settlement and has determined that they are reasonable and appropriate, are designed to maximize value for the Debtors' estates, and are in the best interests of the Debtors, their estates, their creditors, and all parties in interest in the Chapter 11 Cases.

9. The Debtors have provided due, adequate, and sufficient notice of the Motion and the relief sought therein to all parties entitled to notice in compliance with the Bankruptcy Rules.

10. Except as expressly provided in the Settlement or this Order, nothing in the Settlement or this Order shall limit, condition, or impair any of SCB's rights, actions or remedies with respect to the SCB Facilities and the Debtors' bankruptcy cases.

11. The Court has considered the provisions of the Settlement regarding cash payments to be made to SCB by the Debtors, finds that all parties in interest have had notice of such provisions, have either failed to object or their objections have been overruled, and determines and orders that such provisions and such payments are hereby approved in their entirety and that any payments made to SCB under the Settlement should be, and hereby are

determined to be, indefeasible and not subject to clawback or redistribution, subject to the express reservation of the rights of the JPLs and the Committee set forth in paragraphs 4 and 5 above.

12. The Court finds and determines that all parties to the Settlement are expressly relying on the binding effect of the Settlement and this Order, that the parties would not have entered into the Settlement without obtaining the irrevocable and binding relief granted in the Settlement and in this Order, and that any modification to the Settlement or this Order would lead to irreparable harm. Money damages would be an insufficient remedy for any breach of the Settlement by any party and each non-breaching party shall be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach, including, without limitation, an order of this Court or other court of competent jurisdiction requiring any party to comply promptly with any of its obligations under the Settlement and this Order.

13. The provisions of this Order shall be binding upon and inure to the benefit of SCB, the Debtors, the JPLs, the Committee, and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Chapter 11 Cases or any Successor Cases as a legal representative of the Debtors or the Debtors' estates.

14. If any or all of the provisions of this Order are hereafter modified, vacated, reversed, or stayed by an order of the Court or another court, such stay, modification, reversal, or vacation shall not affect the validity, perfection, priority, allowability, or enforceability of any claims, priority, payments, or protection authorized for the benefit of SCB hereunder that is granted or attaches prior to the effective date of such stay, modification, reversal, or vacation, and shall be governed in all respects by the original provisions of this Order.

15. Notwithstanding Bankruptcy Rules 6004(a) and 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

16. The Debtors are authorized, empowered, and directed to take any and all steps and to perform such other and further actions as are necessary to carry out, effectuate or otherwise enforce the terms, conditions and provisions of the Settlement Term Sheet, including execution of definitive documentation evidencing the same. The Debtors and SCB are authorized to enter into the New SCB Financing Documents (as defined in the Settlement Term Sheet) without further Court approval.

17. The Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: New York, New York
October 19, 2012

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

Exhibit 1

**SETTLEMENT TERM SHEET
(Arcapita / Standard Chartered Bank)**

October 7, 2012

*This term sheet (the “**Agreement**”) is subject to the approval of the United States Bankruptcy Court and the Grand Court of the Cayman Islands.*

THIS AGREEMENT IS NOT AN OFFER OR A SOLICITATION WITH RESPECT TO ANY SECURITIES OF ARCAPITA BANK B.S.C.(c) OR ANY OF ITS AFFILIATED CHAPTER 11 DEBTORS OR A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN.

**Bankruptcy Court
Order:**

The agreements contained herein are expressly subject to the entry of (I) an order (the “**Order**”) by the United States Bankruptcy Court for the Southern District of New York (“**Bankruptcy Court**”) presiding over the chapter 11 cases (“**Chapter 11 Cases**”) of affiliated debtors Arcapita Bank B.S.C.(c) (“**Arcapita Bank**”), Arcapita Investment Holdings Limited (“**AIHL**”), Arcapita LT Holdings Limited (“**Arcapita LT**”), AEID II Holdings Limited (“**AEID II**”), RailInvest Holdings Limited (“**RailInvest**”), and WindTurbine Holdings Limited (“**WindTurbine**,” and together with AEID II and RailInvest, the “**Subsidiary Debtors**”, together with Arcapita Bank, Arcapita LT, and AIHL, the “**Debtors**”), that is acceptable in all respects to Standard Chartered Bank (“**SCB**”) and the Official Committee of Unsecured Creditors (the “**Committee**”), and approving the agreements contained herein in their entirety; and (II) an order (the “**Cayman Order**”) by the Grand Court of the Cayman Islands in FSD Cause No. 45 of 2012 (the “**Cayman Proceeding**”), that is acceptable in all respects to SCB and the Committee, including approving the Joint Provisional Liquidators’ (“**JPLs**”) entry into this Agreement as JPLs of AIHL for all purposes in the Cayman Proceeding. The forms of the Order and the Cayman Order shall be submitted with the applicable motion seeking approval of this Agreement. As used herein, “Debtors” does not include Falcon Gas Storage Company Inc. “**Falcon**”, which is also a chapter 11 debtor in the Chapter 11 Cases.

The Debtors shall file on an expedited basis a motion seeking entry of the Order in the Bankruptcy Court by no later than October 9, 2012. The Order shall be entered by the Bankruptcy Court no later than October 19, 2012. The Cayman Order shall be entered no later than October 31, 2012.

**Cayman Trust
Property:**

SCB, the Debtors, the JPLs, and the Committee each reserve their respective rights with respect to the transfer and use of property by the Debtors which SCB has asserted is subject to certain express trusts established under SCB’s equitable mortgages over shares in Arcapita LT and the Subsidiary Debtors to AIHL. This property consists of

property directly or indirectly owned or controlled by Arcapita LT and the Subsidiary Debtors (the “**SCB Asserted Trust Property**”). For the avoidance of doubt, except as expressly set forth herein, SCB does not consent to the transfer or use of any SCB Asserted Trust Property related to the Subsidiary Debtors.

SCB Claims and Security:

Prior to the commencement of the Chapter 11 Cases, SCB extended approximately \$100 million in secured Shari’ah-compliant murabaha financing to the Debtors under two \$50 million secured murabaha facilities (together, the “**SCB Facilities**”). The Debtors shall each admit, stipulate, acknowledge, and agree as to the validity, perfection and enforceability of SCB’s claims and security (the “**SCB Claims**”) under the finance and security documents (the “**SCB Financing Documents**”) between the Debtors and SCB including SCB’s entitlement to the Adequate Protection Claim (defined below) and the Debtors shall agree, and the Order and the Cayman Order (to the extent approved by the Cayman Court) shall provide, that the SCB Claims are not subject to avoidance, subordination, or other objection. This stipulation, contained in the Order and the Cayman Order (to the extent approved by the Cayman Court), shall be binding for all purposes in the Debtors’ Chapter 11 Cases, the Cayman Proceeding (to the extent approved by the Cayman Court), and any subsequent bankruptcy or liquidation proceedings of the Debtors (“**Subsequent Proceedings**”); provided that the JPLs shall have 30 days from the date of the Order to file a complaint challenging the SCB Claims. The Committee expressly waives any challenge with respect to the SCB Claims under the SCB Facilities and SCB Financing Documents.

SCB Superpriority Claims:

If the Debtors transfer to AIHL or otherwise dispose of the SCB Asserted Trust Property, SCB shall be granted superpriority administrative expense claims (the “**SCB Superpriority Claims**”) against AIHL in an amount equal to the sum of all funds that have been or will be transferred post-petition to AIHL or otherwise disposed of on account of the SCB Asserted Trust Property.

The SCB Superpriority Claims against AIHL shall not exceed the full amount of SCB’s accrued and unpaid claims (including without limitation unpaid principal, pre-petition and post-petition profit (which for the purpose of this Agreement shall be equal to \$500,097.08 per month), fees and expenses).

The SCB Superpriority Claims shall have priority ahead of all other present and future administrative claims (including, except as provided below, the claims of Estate Professionals (defined below)) but shall be subordinate to (a) any claims arising under debtor in possession financing obtained by the Debtors from unaffiliated third parties that has terms and conditions that are the same or better as those set forth

in the term sheet attached to the Commitment Letter of Silver Point Finance LLC, dated September 25, 2012 (the “**Silver Point DIP Facility**”) and which is approved by an order of the Bankruptcy Court which provides for modifications and adequate protection consistent with this Agreement and which includes the DIP Requirements (defined below) (the “**DIP Financing**”); provided, however, the SCB Superpriority Claims shall not be subordinate to the claims under the DIP Financing to the extent that the SCB Superpriority Claims relate to funds transferred by, or other disposition of, the Subsidiary Debtors, (b) the Cayman court-approved fees and expenses of the JPLs (including their legal advisors), in an amount not to exceed \$9,000,000; provided, however, such amount shall be reduced dollar for dollar for amounts funded for the fees and expenses of the JPL which have been, and will be, funded by the Debtors, (c) any professional fee carve-out under the DIP Financing (and for the avoidance of doubt such carve-out shall not apply to the Subsidiary Debtors), and (d) a professional fee carve-out of \$1 million in favor of professionals for the Debtors and the Committee (the “**Estate Professionals**”); provided that the professional fee carve-out may not be used by the Estate Professionals unless and until the professional fee carve-out under the DIP Financing has been fully used and exhausted; provided, further, SCB reserves any right it may have to assert any objections to the merits (but not the carve-out priority) and reasonableness of any fee and expense request of the JPLs and/or the Estate Professionals.

Except as expressly set forth herein, the proceeds from any disposition, sale, transfer of, or equity offering related to, any of the investments owned directly or indirectly by the Subsidiary Debtors (the “**Proceeds**”) shall be held by the applicable Subsidiary Debtor unless SCB otherwise agrees in writing or the Bankruptcy Court permits such Proceeds to be transferred to AIHL or to be otherwise used by the Debtors. If the Court permits such use or transfer of Proceeds, SCB shall receive a SCB Superpriority Claim equal to the sum of all funds transferred or used by the Debtors.

Subject to the foregoing, the Debtors may use, sell, transfer, or otherwise dispose of the SCB Asserted Trust Property in their discretion and may use the proceeds of any such use, sale, transfer or disposition to pay any obligations arising under the DIP Financing or otherwise in accordance with the Cash Management Order.

Shari’ah Compliance: The Debtors and SCB shall enter into a new murabaha financing agreement (“**New SCB Financing Documents**”), acceptable to SCB, the Debtors and the Committee, for the payment of the SCB Expenses and the Adequate Protection Claim (each as defined below), unless otherwise agreed by SCB, the Debtors and the Committee. The New

SCB Financing Documents shall be structured in a manner acceptable under Islamic law to cause all payments made to SCB under this Agreement to be Shari'ah compliant. The New SCB Financing Documents, including the Listco Pledge (defined below), shall be finalized not later than 5 business days after the later of the entry of the Order or the Cayman Order.

Fees and Expenses:

AIHL, Arcapita LT, and the Subsidiary Debtors agree to reimburse SCB for all reasonable and documented out-of-pocket fees and expenses (the “**SCB Expenses**”) related to the Debtors, the Chapter 11 Cases, the SCB Facilities, the Cayman Proceeding, and any Subsequent Proceedings, in accordance with the SCB Financing Documents.

AIHL, Arcapita LT, and the Subsidiary Debtors agree that, as adequate protection for SCB's interests in the SCB Asserted Trust Property, (1) the SCB Expenses constitute an administrative claim in each of their estates, (2) they will pay such SCB Expenses on a monthly basis, and (3) SCB shall not be required to file with the Bankruptcy Court any interim or final fee applications with respect thereto; provided, however, that the Debtors shall keep the Committee and the JPLs informed regarding SCB requests for, and AIHL's, Arcapita LT's, and the Subsidiary Debtors' payment of, SCB Expenses.

The Debtors, the Committee, and the JPLs shall retain the right to object to any SCB Expenses to the extent they are unreasonable or otherwise exceed the amount to which SCB is entitled under the SCB Financing Documents.

Payment of Profit:

AIHL, Arcapita LT, and the Subsidiary Debtors agree that, as adequate protection for SCB's interests in the SCB Asserted Trust Property, SCB shall receive an administrative claim against AIHL, Arcapita LT, and the Subsidiary Debtors in an amount equal to all profit that is accrued and unpaid (at the rates specified in the SCB Financing Documents) (the “**Adequate Protection Claim**”), which administrative claim shall be paid as provided below. The Debtors, the Committee, JPLs, and SCB acknowledge and agree that for the purposes of the Adequate Protection Claim post-petition profit shall be equal to \$500,097.08 per month.

On the later of (a) October 15, 2012 and (b) the date on which the Debtors' receive interim approval (and if there is no interim approval, final approval) of debtor in possession financing, AIHL shall pay SCB the total amount of all outstanding and accrued, unpaid, prepetition and post-petition profit through the date of such payment and all outstanding SCB Expenses (both pre- and post-petition) through the

date of such payment (the “**Initial Payment**”). From and after the Initial Payment, AIHL shall, on the first day of each month make current monthly cash payments of profit to SCB, in the monthly amount of \$500,097.08 (the “**Monthly Profit Payment**”). The first Monthly Profit Payment shall include any accrued and unpaid profit from the date of the Initial Payment to the date of the first Monthly Profit Payment. SCB Expenses shall be invoiced to the Debtors with a copy to the Committee and paid monthly promptly upon receipt by the Debtors of invoices. Any amounts paid pursuant to the New SCB Financing Documents (including the Initial Payment and each Monthly Profit Payment) shall be credited, on a dollar for dollar basis, against any SCB Expenses or post-petition profit that arises or is deemed to arise under the SCB Facilities.

Notwithstanding (i) anything herein or in the New SCB Financing Documents and (ii) the Debtors’ having made any payment on account of the Adequate Protection Claim, including the Initial Payment or any Monthly Profit Payments, until the Challenge Right Termination Date (as defined below), the Committee will be entitled to challenge (the “**Committee Challenge Right**”) SCB’s entitlement to the Adequate Protection Claim, and payment of amounts on account of post-petition or post-maturity profit under the SCB Facilities including one half of the amount of the Initial Payment (as it relates to post-petition or post-maturity profit) and the Monthly Profit Payments; provided, however, that, notwithstanding any successful prosecution of the Committee Challenge Right, SCB shall be entitled to retain one half of the Initial Payment (as it relates to post-petition or post-maturity profit that has accrued through the earlier of (i) the date of the Initial Payment and (ii) November 30, 2012) as adequate protection (the “**Protected Amount**”). In the event, the Committee exercises the Committee Challenge Right and obtains a favorable determination from the Bankruptcy Court, all amounts (other than the Protected Amount) received or to be received by SCB through the effective date of a chapter 11 plan for the Debtors on account of post-petition or post-maturity profit under the SCB Facilities and/or the New SCB Financing Documents, will be re-characterized as payments of principal under the SCB Facilities and reduce SCB’s claims against the Debtors on account thereof.

If the closing of the EuroLog IPO occurs, the Committee expressly waives the Committee Challenge Right and SCB shall be entitled to retain the full Initial Payment, the Monthly Profit Payments, and the Adequate Protection Claim as adequate protection.

If the closing of the EuroLog IPO does not occur, the “**Challenge Right Termination Date**” means, unless otherwise agreed in writing between the Committee and SCB, the date of confirmation of a

chapter 11 plan for the Debtors. To the extent the Committee asserts the Committee Challenge Right, the Committee agrees that such challenge will occur in connection with confirmation of a chapter 11 plan for the Debtors.

If the closing of the EuroLog IPO does not occur and the Committee asserts the Committee Challenge Right, the Debtors shall oppose any such challenge and support SCB's right to retain the full Initial Payment, the Monthly Profit Payments, and the Adequate Protection Claim as adequate protection.

DIP Financing:

SCB will not object to the DIP Financing sought by the Debtors provided, that the DIP Financing shall not prime the security interests of SCB and shall be expressly subordinated to SCB with respect to the Subsidiary Debtors (including with respect to the SCB Superpriority Claims related to funds transferred by, or other disposition of, the Subsidiary Debtors) (the "**DIP Requirements**"). The Debtors, Committee, and JPLs shall not obtain or seek approval of any debtor in possession financing that is not DIP Financing as defined in this Agreement without SCB's consent.

As soon as practicable after actual receipt by Arcapita Bank or AIHL of any proceeds of the EuroLog IPO, the Debtors agree to take any steps necessary to ensure that the maximum commitment under any DIP Financing will be reduced (or, if the entire amount of any DIP Financing facility has been drawn, the amount outstanding will be repaid) by an amount equal to any proceeds of the EuroLog IPO actually received by those entities, the receipt of which will have not resulted in an administrative expense claim in favor of any unaffiliated third party. Thus, for example, to the extent the AEID II Cash Proceeds are received by AIHL and SCB receives an administrative claim related thereto, the Debtors will not be required to repay, or reduce the commitment amount of, the DIP Financing.

The Debtors undertake that any DIP Financing facility shall be sized as if no EuroLog IPO proceeds will be available to the Debtors. To the extent the Debtors receive proceeds of the EuroLog IPO that have not resulted in the creation of an administrative expense claim in favor of any unaffiliated third party, those funds shall first be allocated to repay amounts actually drawn under any DIP Financing facility and thereafter such funds will be applied to reduce the amount of any unused DIP Financing commitment. The Debtors agree to use any remaining proceeds of the EuroLog IPO actually received by the Debtors (even if the receipt of such funds by a Debtor resulted in the creation of an administrative expense claim in favor of any unaffiliated third party) before making further draws on any unused

DIP Financing commitment.

The Debtors will negotiate in good faith with the provider of any DIP Financing to implement the terms of the preceding two paragraphs on a Shari'a compliant basis and in as efficient and least costly manner as possible; provided, however, that the failure to accomplish this goal, or the inability to reduce the profit component owed under the DIP Financing murabaha agreement as a result of Shari'a issues, shall not constitute a basis for any argument that the Debtors cannot enter into the DIP Financing.

Eurolog IPO:

SCB will consent to the Eurolog IPO and the Debtors' allocation of value of various assets (including the allocation of value to be provided to AEID II) that will be contributed to the IPO vehicle ("**Listco**") in accordance with the IPO Documentation approved by the Debtors, SCB, the Committee, and JPLs. SCB shall receive a first priority pledge of the shares in Listco allocated to AEID II to be held by an Arcapita affiliate that is wholly owned by AEID II (the "**Listco Pledge**"). SCB consents to the transfer of cash proceeds made available to AEID II in accordance with the Eurolog IPO (the "**AEID II Cash Proceeds**") to AIHL in accordance with the Cash Management Order; provided that SCB shall receive a SCB Superpriority Claim in an amount equal to the AEID II Cash Proceeds.

For the avoidance of doubt, other than the Listco Pledge, SCB will not be entitled to assert any interest in, or to restrict the Debtors from using or transferring any cash proceeds of the Eurolog IPO, and the Debtors shall be free to use or transfer such proceeds in accordance with the Cash Management Order.

Budget Consultation and Financial Reporting:

The Debtors agree that SCB shall have consultation rights with respect to the Debtors' budget filed in the Chapter 11 Cases (the "**Budget**"). The Debtors shall (i) provide SCB on a monthly basis, with an accounting of all SCB Asserted Trust Property and the disposition thereof in accordance with this Agreement; (ii) make available to SCB all financial information provided to the Committee concerning the Budget, the SCB Asserted Trust Property, the Debtors' investments, or the Debtors' financial condition, and any additional information reasonably requested by SCB relating to the foregoing; and (iii) provide SCB with the reporting information required under the SCB Facilities ((i), (ii) and (iii) collectively, together with the consultation rights set forth above, the "**Reporting Obligations**"). The parties agree that the Reporting Obligations are a material term of this Agreement.

Nothing herein modifies the Committee's rights with respect to

Budget Consultation and Financial Reporting.

Plan Treatment: The Debtors, Committee, the JPLs, and SCB reserve all of their respective rights with respect to the treatment of SCB's claims (other than the SCB Superpriority Claims, other administrative claims granted to SCB in accordance with this Agreement, and the Listco Pledge) under any chapter 11 plan for the Debtors regardless of whether such plan is proposed or filed by the Debtors or the Committee. To the extent the SCB Claims are not paid in full in cash on the effective date of a chapter 11 plan, any chapter 11 plan for the Debtors regardless of whether such plan is proposed or filed by the Debtors or the Committee shall provide that SCB shall be entitled to retain the Listco Pledge to secure repayment of the SCB Claims.

Honiton Facility: SCB and the Debtors agree that they will engage in good faith negotiations in an effort to reach an amendment to the Honiton Facility in connection with the plan process. The Debtors acknowledge that the terms and conditions (including maturity and whether events of default have occurred and are continuing) of existing indebtedness related to Honiton is material to SCB's determination as to whether it will grant an amendment to the Honiton Facility.

Specific Performance: The undersigned parties agree that money damages would be an insufficient remedy for any breach of this Agreement by any party and each non-breaching party shall be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach, including, without limitation, an order of the Bankruptcy Court or other court of competent jurisdiction requiring any party to comply promptly with any of its obligations under this Agreement.

Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction). The Bankruptcy Court shall have exclusive jurisdiction to determine any disputes under this Agreement.

Termination Events: Each of the following is a "SCB Termination Event":

- (i) the material breach by the Debtors of any material term, provision or condition of this Agreement which has not been cured within three (3) business days of receipt of notice of such breach, including without limitation the failure of the Debtors to make any payment when due under this Agreement, including without limitation the Initial Payment, any Monthly

Profit Payment, and any payment of SCB Expenses;

- (ii) an order confirming a chapter 11 plan for either AIHL, Arcapita LT, or the Subsidiary Debtors is not entered on or before September 30, 2013;
- (iii) entry of an order granting relief from stay to any third party allowing them to proceed against any SCB Asserted Trust Property with a value in excess of \$1 million;
- (iv) the transfer or use by the Debtors of any SCB Asserted Trust Property that is not consented to by SCB or authorized by the Bankruptcy Court in accordance with the terms of this Agreement; provided, however, for the avoidance of doubt, the transfer or use of AEID II Cash Proceeds by the Debtors in accordance with the Cash Management Order and this Agreement will not constitute an SCB Termination Event;
- (v) the entry of an order dismissing any of the Debtors' Chapter 11 Cases or converting any of such cases to a chapter 7 case;
- (vi) the entry of an order appointing a chapter 11 trustee or an examiner with enlarged powers under section 1106 of the Bankruptcy Code in any of the Debtors' Chapter 11 Cases;
- (vii) except in connection with DIP Financing as expressly provided in this Agreement, the entry of an order granting any other creditor a lien or superpriority status equal or superior to SCB with respect to the SCB Superpriority Claims or the SCB Asserted Trust Property;
- (viii) Except upon the occurrence of a Debtor Termination Event (defined below), the entry of an order staying, reversing, vacating, or modifying this Agreement or the Order or the Cayman Order without SCB's prior written consent; and
- (ix) the violation of any material term, provision or condition in the Order or the Cayman Order which has not been cured.

Upon the occurrence of a SCB Termination Event and upon ten U.S. court days' written notice to the Debtors, the Committee and the JPLs, SCB may file with the Bankruptcy Court a notice of presentment stating that a SCB Termination Event has occurred, together with a proposed order granting relief from stay to SCB to pursue its remedies under the SCB Financing Documents (the "**SCB Termination Order**"), which may be entered by the Bankruptcy Court upon shortened notice as provided in the Case Management Order and the Local Bankruptcy Rules. Unless a Debtor Termination Event has

occurred, no party may oppose or contest the entry of the SCB Termination Order except on the ground that a SCB Termination Event has not occurred.

Except upon the occurrence of a Debtor Termination Event, the agreements and obligations of the parties contained herein shall remain in full force and effect notwithstanding the occurrence of a SCB Termination Event or the entry of the SCB Termination Order.

The following is the “**Debtor Termination Event**”:

- (i) the material breach by SCB of any material term, provision or condition of this Agreement, which has not been cured; and
- (ii) Any assignment or transfer (in whole or in part) by SCB to any third party of the SCB Superpriority Claims or of SCB’s claims (whether by participation or otherwise), or the voting rights with respect thereto, arising under the SCB Facilities, the SCB Financing Documents, or the New SCB Financing Documents which does not require the transferee to be bound to the terms of this Agreement.

Upon the occurrence of the Debtor Termination Event and upon ten U.S. court days’ written notice to SCB, the Committee and the JPLs, the Debtors may file with the Bankruptcy Court a notice stating that a Debtor Termination Event has occurred and is continuing together with a proposed order releasing the parties from any obligation to perform under the Agreement, vacating the Orders of the US Bankruptcy Court approving this Agreement and disallowing any SCB Superpriority Claims granted under this Agreement (the “**Debtor Termination Order**”), which may be entered by the Bankruptcy Court upon shortened notice as provided in the Case Management Order. Unless an SCB Termination Event has occurred, no party may oppose or contest the entry of the Debtor Termination Order except on the ground that the Debtor Termination Event has not occurred.

[Remainder of Page Left Intentionally Blank; Signatures Follow]

By signing below, each party acknowledges its agreement to the foregoing.

ARCAPITA BANK B.S.C.(C)

By: MB Chowdhury
Name: Mohammed Chowdhury
Title: Executive Director

ARCAPITA INVESTMENT HOLDINGS LIMITED

By: _____
Name:
Title:

ARCAPITA LT HOLDINGS LIMITED

By: _____
Name:
Title:

AEID II HOLDINGS LIMITED

By: _____
Name:
Title:

RAILINVEST HOLDINGS LIMITED

By: _____
Name:
Title:

WINDTURBINE HOLDINGS LIMITED

By: _____
Name:
Title:

By signing below, each party acknowledges its agreement to the foregoing.

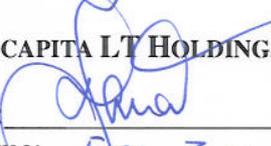
ARCAPITA BANK B.S.C.(C)

By: _____
Name:
Title:

ARCAPITA INVESTMENT HOLDINGS LIMITED

By: 
Name: ESSA ZAINAL
Title: DIRECTOR

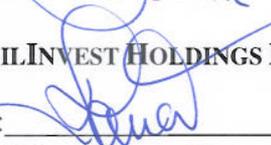
ARCAPITA LT HOLDINGS LIMITED

By: 
Name: ESSA ZAINAL
Title: DIRECTOR

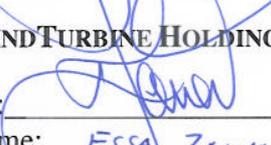
AEID II HOLDINGS LIMITED

By: 
Name: ESSA ZAINAL
Title: DIRECTOR

RAILINVEST HOLDINGS LIMITED

By: 
Name: ESSA ZAINAL
Title: DIRECTOR

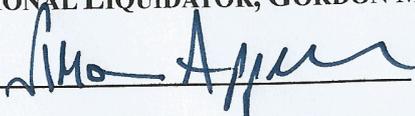
WINDTURBINE HOLDINGS LIMITED

By: 
Name: ESSA ZAINAL
Title: DIRECTOR

STANDARD CHARTERED BANK

By: 
Name: ASHOK V. S.
Title: HEAD - GSAM

**SIMON APPELL, JOINT PROVISIONAL LIQUIDATOR OF
ARCAPITA INVESTMENT HOLDINGS LIMITED ON HIS
OWN BEHALF AND ON BEHALF OF HIS JOINT
PROVISIONAL LIQUIDATOR, GORDON MAC RAE**

BY: 

NAME: SIMON APPELL
TITLE: **JOINT PROVISIONAL LIQUIDATOR OF
ARCAPITA INVESTMENT HOLDINGS LIMITED**

OFFICIAL COMMITTEE OF UNSECURED CREDITORS

BY: Evan R. Fleck (GU)

NAME: Evan R. Fleck

TITLE: Partner; Milbank, Tweed, Hadley & McCloy LLP

As duly authorized agent and on behalf of
the Official Committee of Unsecured Creditors.