

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

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

**ORDER AUTHORIZING THE DEBTORS TO ENTER INTO
THE REVISED FORTRESS COMMITMENT LETTER AND
INCUR RELATED FEES, EXPENSES AND INDEMNITIES**

Upon the *Debtors' Motion for Entry of an Order Authorizing the Debtors to Enter into a Financing Commitment Letter and Incur Related Fees, Expenses and Indemnities in Connection Therewith* [Docket No. 513], as supplemented by the *Supplement to Debtors' Motion for Entry of an Order Authorizing the Debtors to Enter into a Financing Commitment Letter and Incur Related Fees, Expenses and Indemnities in Connection Therewith* [Docket No. 610] and further supplementary documents presented to the Court at the hearing held on November 7, 2012 (as supplemented, the *Motion*)¹ filed in the above-captioned chapter 11 cases, this Court finds and concludes that: (a) the Court has jurisdiction over the subject matter of the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (c) the Debtors have demonstrated that their entry into the Revised Fortress Commitment Letter and payment of related fees, expenses, and indemnity constitute an exercise of sound business judgment under section 363(b)(1) of the Bankruptcy Code; (d)

¹ Each capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Motion or the revised version of the Fortress Commitment Letter annexed hereto as **Annex 1** (the "*Revised Fortress Commitment Letter*").

payment of the Commitment Fee, the Expenses, and indemnity provides a benefit to the Debtors' estates necessary to preserve the value of the Debtors' assets; (e) the legal and factual bases set forth in the Motion and on the record at the Initial Hearing on October 9, 2012 and the hearing held with respect to the Revised Fortress Commitment Letter on November 7, 2012 establish just cause for the relief granted herein; (f) the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; and (g) notice of the Motion was sufficient, and no other or further notice need be provided.

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

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted to the extent provided herein.
2. The Revised Fortress Commitment Letter and all provisions set forth therein are approved in their entirety.
3. The Debtors are authorized enter into the Revised Fortress Commitment Letter and perform all obligations thereunder on the terms and conditions set forth therein, without notice, hearing or further order of the Court as, when and to the extent they become due under the Revised Fortress Commitment Letter.
4. The Debtors are authorized to pay to Fortress the Commitment Fee on the terms and conditions set forth in the Revised Fortress Commitment Letter, without notice, hearing or further order of the Court as, when and to the extent it becomes due and payable under the terms of the Revised Fortress Commitment Letter.
5. The Debtors are authorized to indemnify and hold harmless each Indemnified Party on the terms and conditions set forth in the Revised Fortress Commitment

Letter (the “*Indemnification*”), without notice, hearing or further order of the Court as, when and to the extent such obligation becomes due and payable under the terms of the Revised Fortress Commitment Letter.

6. Upon entry of this Order and subject to the notice requirements in paragraphs 7 through 9 below, the Debtors are authorized to pay all Expenses incurred prior to the date hereof. In addition, the Debtors are authorized to pay to Fortress the Deposit and any Deposit Top-Up on the terms and conditions set forth in the Revised Fortress Commitment Letter, without notice, hearing or further order of the Court as, when and to the extent such obligation becomes due and payable under the terms of the Revised Fortress Commitment Letter. Upon the earlier of (a) the Closing Date, or (b) the termination of the Revised Fortress Commitment Letter, Fortress shall return any unused balance of the Deposit. Fortress shall maintain the Deposit in JPMorgan Chase or a similar financial institution in the United States acceptable to the Debtors, the Committee and Fortress.

7. The Debtors are authorized to pay the Expenses as provided in the Revised Fortress Commitment Letter. Prior to payment by the Debtors of any Expenses, including from funds held in the Deposit, the Committee and the Debtors shall have three days (the “*Notice Period*”) after Committee counsel’s receipt of any related invoice or invoices to review such invoice or invoices and serve the Debtors (or the Committee, as applicable) and Fortress with notice of any objection setting forth the amount of costs or expenses to which the Committee or the Debtors, as applicable, objects (the “*Disputed Costs or Fees*”).

8. As soon as practicable after the expiration of the Notice Period in respect of a particular invoice or invoices, the Debtors are authorized to reimburse Fortress (or if

applicable, Fortress may draw down on the Deposit) for reasonable and actual costs and expenses as set forth in such invoice or invoices, excluding any Disputed Costs or Fees.

9. If the Committee or the Debtors object to the payment of any costs or expenses within the Notice Period, such objection shall be resolved by (a) the Committee, the Debtors and Fortress or (b) the Court, in either case, prior to any payment of the Disputed Costs or Fees subject to such objection (from the Debtors or the Deposit, as applicable).

10. The Commitment Fee, Expenses, and Indemnification, to the extent payable under the Revised Fortress Commitment Letter and this Order, are actual, necessary costs and expenses of preserving the Debtors' estates and shall be treated as allowed administrative priority claims against the Debtors under sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code; *provided, however*, to the extent that WTHL, AEID II or RailInvest are obligated to pay the Commitment Fee pursuant to the Revised Fortress Commitment Letter, such obligations shall be subordinated to the existing guarantees by such entities in favor of SCB in accordance with the terms of the *Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing and Approving the Settlement with Standard Chartered Bank* [Docket No. 587].

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

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

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

Dated: November 9, 2012
New York, New York

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

ANNEX 1

REVISED FORTRESS COMMITMENT LETTER

Fortress Credit Corp.

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

November 1, 2012

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

Re: Commitment Letter for Arcapita

Mr. Douton:

We understand that Arcapita Investment Holdings Limited (“you”, “AIHL” or the “Company”) and certain of its direct and indirect subsidiaries are debtors and debtors in possession in chapter 11 cases styled *In re Arcapita Bank B.S.C., et al.* (the “Chapter 11 Cases”) pending before the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). Arcapita has requested that Fortress Credit Corp. (“Fortress”) consider providing AIHL with a \$150,000,000 term DIP debtor in possession facility (the “Fortress Facility”) in order to (i) fund current and future investment opportunities, (ii) fund working capital requirements and (iii) pay fees and expenses related to the transaction, in each case in accordance with the terms set forth in the Term Sheet (defined below). In connection with the foregoing and subject only to the terms and conditions set forth in this commitment letter and in the Summary of Terms and Conditions attached hereto as Exhibit A (the “Term Sheet” and together with this letter and all attachments hereto (including Exhibits A and B), the “Commitment Letter”), (a) Fortress is pleased to offer to be the sole and exclusive administrative agent (in such capacity, the “Agent”) for the Fortress Facility, (b) Fortress is pleased to offer to be the sole and exclusive arranger for the Fortress Facility (in such capacity, the “Arranger”) and (c) Fortress is pleased to offer its commitment to lend up to \$150,000,000 of the Fortress Facility.

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

The commitments and the undertakings to provide the services described herein by Fortress are subject to the following conditions precedent (i) the negotiation, execution and delivery of definitive DIP documentation (the “DIP Documents”), consistent with the Term Sheet and in form and substance reasonably satisfactory to Fortress and its counsel, (ii) since the date hereof, there has not occurred any material adverse change with respect to the condition, financial or otherwise, business, operations, assets or liabilities of the Company and its subsidiaries taken as a whole (other than as may customarily result as a consequence of the continuation of the Chapter 11 Cases) (a “Material Adverse Change”), (iii) the representations and warranties set forth

herein (other than in the next succeeding paragraph) and in Exhibit B shall be true and correct in all material respects (unless such representation and warranty is qualified by materiality or Material Adverse Change, in which case it shall be true and correct in all respects) on the Closing Date (or such earlier date as may be expressly referenced in any such representations and warranties), (iv) the representations and warranties set forth in the next succeeding paragraph shall be true and correct on the date hereof and at all times from the date hereof until and including the Closing Date, (v) the Murabaha DIP Order (as defined in the Term Sheet) shall have been entered by the Bankruptcy Court on or prior to December 7, 2012 and shall be in full force and effect and unstayed and (vi) the satisfaction of the other conditions set forth in the Term Sheet and the DIP Documents.

You hereby represent and warrant that all information prepared by you, or by your advisors on your behalf, (the "Information") other than financial projections, forecasts, budgets and other forward-looking statements and other information of a general economic or industry nature, which has been or is hereafter made available to Fortress or any Participant (as defined in the Term Sheet) by you or on your behalf by any of your authorized representatives with respect to you and your subsidiaries in connection with the Fortress Facility or provided to us to assist us in our consideration of providing the Fortress Facility, as and when furnished, taken as a whole, is and will be correct in all material respects and does not and will not contain any untrue statement of a fact or omit to state a fact necessary to make the statements contained therein not misleading in light of the circumstances under which such statements are made. Notwithstanding the previous sentence, in the event you have furnished Information which contains an untrue statement of a fact or omits to state a fact necessary to make the statements contained therein not misleading in light of the circumstances under which such statements are made, you shall not be deemed in breach of this Commitment Letter, and Fortress' obligations hereunder shall remain in full force and effect, so long as the effect of such misstatement or omission would not reasonably be expected to decrease the aggregate value to the Company of its assets and portfolio companies based on the KPMG LLP low point current valuations (the "Low Point Valuations") and the Waterfall schedules presented to Fortress prior to the date hereof by more than \$70 million (calculated as of the date of such misstatement or omission and with such adjusted valuation for a given asset or portfolio company calculated pursuant to the methodology similar to the methodology utilized in the Low Point Valuations and the Waterfall schedules).¹ You agree that you shall provide to Fortress and its advisors all information and documents relating to the Company, its subsidiaries, the portfolio companies and the related holding companies and their respective businesses, operations, assets and liabilities as Fortress may reasonably request from time to time in a reasonably prompt manner.

¹



Neither the existence of this Commitment Letter, nor any of its contents, shall be disclosed by AIHL except as may be compelled to be disclosed in a judicial or administrative proceeding or as otherwise required by law or, on a confidential and “need to know” basis, solely to the directors, officers, employees, advisors and agents of Fortress and the Company. Notwithstanding the foregoing, AIHL shall be permitted, with prior notice to Fortress, to furnish a copy of this Commitment Letter to the official committee of unsecured creditors appointed in the Chapter 11 Cases (the “Committee”), the joint provisional liquidators appointed in the Cayman Island proceedings of AIHL (the “Joint Provisional Liquidators”), the Office of the United States Trustee, in all cases on a confidential basis. You may file this Commitment Letter with the Bankruptcy Court and with the court overseeing the Cayman Island proceedings of AIHL. In addition, except as set forth above, the Company agrees that it shall obtain the prior approval of Fortress before releasing any public announcement in which reference is made to Fortress or to the Commitment Letter contained herein.

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

In addition, AIHL agrees that it will reimburse Fortress for all reasonable and documented out-of-pocket fees and expenses (the “Expenses”) incurred by or on behalf of Fortress prior to the date of termination of this Commitment Letter in connection with the preparation, negotiation, execution and delivery of this Commitment Letter and any and all definitive documentation relating hereto or thereto, including, without limitation, the reasonable and documented fees and expenses of counsel to Fortress, whether the Fortress Facility closes or not. On or before November 15, 2012, Fortress shall commence confirmatory due diligence in a commercially reasonable manner with respect to providing the Conditional Amount unless on or prior to such date, the Company has requested that Fortress not commence such confirmatory due diligence. Immediately upon entry of the Approval Order, Fortress shall commence in a commercially reasonable manner to negotiate and to document definitive documentation with respect to the Fortress Facility, the understanding being that the Company shall be seeking Bankruptcy Court approval of the Fortress Facility as soon as reasonably practicable.

Within one business day following entry of the Approval Order (as defined below), AIHL shall be obligated to pay to Fortress in immediately available funds a \$250,000 expense deposit (the “Deposit”) to fund Expenses incurred by or on behalf of Fortress. Fortress may request an additional expense deposit(s) if the amount of Expenses incurred by Fortress in connection with the Fortress Facility exceeds the amount of the Deposit (the “Deposit Top-Up”) and AIHL agrees to pay to Fortress the amount of the requested Deposit Top-Up within three business days of Fortress’ request therefor. Subject to the review provisions contained in the last sentence of this paragraph, the Deposit will be applied to Expenses as and when they are incurred. If this Commitment Letter is terminated prior to the closing of the Fortress Facility, Fortress shall return any unused balance of the Deposit. Upon closing of the Fortress Facility, at the request of AIHL, any unused balance of the Deposit will be applied to the transaction fees and/or returned to AIHL. In addition to the Deposit, AIHL also agrees to pay, subject to the review provisions contained in the next succeeding sentence, all Expenses incurred by Fortress on or prior to the date of the en-

try of the Approval Order within three business days of the later of AIHL's and the Committee counsel's receipt of the invoices therefor. In all instances, prior to payment of any Expenses, the Committee, the Joint Provisional Liquidators and the Debtors (as defined below) shall have three days after Committee counsel's receipt of any related invoice to review such invoice and serve the Debtors (or the Committee and/or the Joint Provisional Liquidators, as applicable) and Fortress with notice of any objection setting forth the amount of costs or expenses to which the Committee or the Debtors, as applicable, objects, consistent with the reimbursement procedures set forth in the Approval Order.

As consideration for its commitment hereunder AIHL agrees to pay Fortress a commitment fee of \$2,500,000 (the "Commitment Fee") on the earliest of (x) the Closing Date, (y) the date that the commitments of Fortress are terminated pursuant to the terms hereof and (z) the date of the closing of any Alternative Transaction (defined below). The Commitment Fee shall be fully earned upon the parties executing this Commitment Letter, shall be nonrefundable for any reason whatsoever and shall be in addition to any other fees, costs and expenses payable pursuant to this Commitment Letter or the DIP Documents, except that the Commitment Fee shall be credited against the Upfront Fee as provided in the Term Sheet. The Commitment Fee shall have administrative expense priority status in the Chapter 11 Cases pursuant to section 503(b)(1) of the Bankruptcy Code. Your obligation to pay the Commitment Fee will not be subject to counterclaim or setoff for, or be otherwise affected by, any claim or dispute you may have.

In the event that during the period commencing on the date hereof and ending on the six month anniversary of the date hereof, you or any other person controlled by or affiliated with you, consummates a similar transaction as the Fortress Facility or any other transaction involving a DIP debtor in possession facility of the Company or its subsidiaries and affiliates (any such transaction, an "Alternative Transaction"), notwithstanding a willingness of Fortress to provide the Fortress Facility at the time of such Alternative Transaction, then, unless Fortress has terminated the Commitment Letter prior to its stated termination date or breached its obligation to provide the Fortress Facility on the terms set forth herein as set forth below, you agree to provide Fortress, prior to the consummation of such Alternative Transaction, a reasonable opportunity to provide such alternative facility on substantially the same terms and conditions as those proposed and to appoint Fortress as the lead arranger for such alternative facility to the extent that Fortress has agreed to provide such alternative facility on such proposed terms; provided, that if such reasonable opportunity to provide such alternative facility is not provided to Fortress (other than in circumstances where Fortress has terminated the Commitment Letter prior to its stated termination date or breached its obligation to provide the Fortress Facility on terms set forth herein), you shall pay to Fortress an amount equal to 0.75% of the Initial Amount (as defined in the Term Sheet) as if the Closing Date and the full funding of the Fortress Facility had occurred, which payment shall be made on the date of the closing of such Alternative Transaction, from the proceeds of the initial funding of such Alternative Transaction.

In connection with all aspects of each transaction contemplated by the Fortress Facility, you acknowledge and agree, and acknowledge your affiliates' understanding, that: (i)(a) the arranging and other services described herein regarding the Fortress Facility are arm's-length commercial transactions between you, on the one hand, and Fortress, on the other hand, (b) you have consulted your own legal, accounting, regulatory and tax advisors to the extent you have

deemed appropriate, and (c) you are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Fortress Facility; (ii) in connection with the Fortress Facility, (a) Fortress has been, is, and will be acting solely as a principal and, except as otherwise expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for you, any of your affiliates or any other person or entity and (b) Fortress has no obligation to you or your affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein; and (iii) Fortress and its affiliates may be engaged in a broad range of transactions that involve interests that differ from yours and those of your affiliates, and Fortress does not have any obligation to disclose any of such interests to you or your affiliates. To the fullest extent permitted by law, you hereby waive and release any claims that you may have against Fortress with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated by the Fortress Facility.

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

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

The Commitment Letter (i) supersedes all prior discussions, agreements, commitments, arrangements, negotiations or understandings, whether oral or written, of the parties with respect thereto; (ii) shall be governed by the law of the State of New York; (iii) shall be binding upon the parties and their respective successors and assigns; (iv) may not be relied upon or enforced by any other person or entity; and (v) may be signed in multiple counterparts and may be delivered by facsimile, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. If this Commitment Letter becomes the subject of a dispute, each of the parties hereto hereby waives trial by jury. This Commitment Letter may be amended, modified or waived only in a writing signed by each of the parties hereto. This letter may be executed in two or more counterparts, each of which, when so executed and delivered, shall be deemed to be an original, but all of which counterparts, taken together, shall constitute one and the same instrument. Transmission by facsimile or other electronic transmission of an executed

counterpart of this letter shall be deemed to constitute due and sufficient delivery of such counterpart.

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

This Commitment Letter and all commitments and undertakings of Fortress hereunder will expire upon the earliest to occur of (i) 5:00 p.m. Eastern time on November 1, 2012 unless you execute this Commitment Letter and return it to Fortress, (ii) 5:00 pm eastern time on November 9, 2012 unless an order of the Bankruptcy Court, in the form set forth as Exhibit C hereto (with such changes thereto as may be in form and substance satisfactory to Fortress in its sole discretion), approving the execution by the Debtors of this Commitment Letter has been entered (the "Approval Order") and (iii) 5:00 pm eastern time on the date that is one business day following the entry of the Approval Order unless you have paid to Fortress the Deposit and all fees required to be paid at the time of acceptance of this Commitment Letter pursuant to this Commitment Letter and the Term Sheet. Thereafter, other than as provided in the twelfth paragraph hereof, this Commitment Letter and all commitments and undertakings of Fortress hereunder will expire upon the earliest to occur of (i) the execution and delivery of the definitive documentation for the Fortress Facility, (ii) the failure of the parties acting in good faith to execute and deliver the definitive documentation for the Fortress Facility on or prior to December 11, 2012, (iii) the failure of the Company to comply with any of the provisions set forth herein, and (iv) the entry of an order dismissing any Chapter 11 Case, converting any of the Chapter 11 Cases to a chapter 7 case (in each instance, other than Falcon Gas Storage), appointing a chapter 11 trustee in any of the Chapter 11 Cases or an examiner with enlarged powers under section 1106 of the Bankruptcy Code or approving any Alternative Transaction.

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Please confirm your acceptance of, and agreement with, the foregoing by, on or before 5:00 p.m. Eastern time on November 1, 2012, delivering to Fortress a copy of this Commitment Letter, signed by the Company, accepting the terms and conditions of the Commitment Letter.

Very truly yours,

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

By: 
Name: **MARC K. FURSTEIN**
Title: **CHIEF OPERATING OFFICER**

Agreed and accepted on this
___ day of November 2012:

ARCAPITA INVESTMENT HOLDINGS LIMITED

By: _____
Name:
Title:

Please confirm your acceptance of, and agreement with, the foregoing by, on or before 5:00 p.m. Eastern time on November 1, 2012, delivering to Fortress a copy of this Commitment Letter, signed by the Company, accepting the terms and conditions of the Commitment Letter.

Very truly yours,

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

By: _____

Name:

Title:

Agreed and accepted on this
1st day of November 2012:

ARCAPITA INVESTMENT HOLDINGS LIMITED

By: MAR Chowdhury
Name: MOHAMMED CHOWDHURY
Title: DIRECTOR

CONFIDENTIAL

EXHIBIT A

***Arcapita DIP
Term Sheet***

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

Purchaser: Arcapita Investment Holdings Limited, as a debtor and debtor in possession in its chapter 11 case ("**AIHL**").

Guarantor: Arcapita Bank B.S.C.(c) ("**Arcapita**"), each of Arcapita's subsidiaries (other than Falcon Gas Storage Company, Inc.)² that is a debtor and debtor-in-possession (the "**Subsidiary Debtors**" and, together with AIHL, the "**Debtors**") in the chapter 11 cases pending in the U.S. Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**"), Case No. 12-11076 (the "**Chapter 11 Cases**"), Arcapita Investment Management Limited ("**AIML**"), Arcapita Inc., Arcapita Structured Finance Ltd, Arcapita Investment Funding Limited, Arcapita Industrial Management I Ltd, Arcapita Limited (England), Arcapita Pte. Limited (Singapore), Arcapita (US) Limited, Arcapita (Europe) Limited, Arcapita (Singapore) Limited, all of the LT Caycos and all wholly owned WCFs³ (other than as to be agreed by AIHL and Agent) (collectively with the Subsidiary Debtors, the "**Guarantors**" and, collectively with the Debtors, the "**Obligors**").

Agent: Fortress Credit Corp. (the "**Agent**")

Participants: Funds managed by, or affiliates of, Fortress Credit Corp. ("**Fortress**") and/or banks, financial institutions or other entities selected by Fortress (collectively, "**Participants**").

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

³ LT Caycos, WCFs, Intermediate Holdcos, Transaction Holdcos, syndication companies and PVs shall have meanings consistent with those given in the due diligence materials provided to Fortress in connection with the Murabaha DIP Facility

Facility:

A senior secured debtor in possession US Dollar term Murabaha facility made available by the Agent in an aggregate amount up to \$150,000,000 ("Murabaha DIP Facility") comprised of an initial \$125,000,000 multi-draw term facility (the "Initial Amount") and a \$25,000,000 delayed draw term facility (the "Conditional Amount"), which Conditional Amount shall become available at the written request of AIHL (x) no sooner than December 31, 2012 and (y) after the Agent's completion of additional confirmatory due diligence the results of which are reasonably satisfactory to the Agent (provided that no Conditional Amount will be provided after a Rejection Date (as defined below)). Drawings under the Murabaha DIP Facility shall be in minimum amounts of \$25,000,000 and increments above that amount to be agreed. Amounts repaid under the Murabaha DIP Facility may not be reborrowed.⁴

As used herein, "Rejection Date" mean the date, if any, occurring prior to December 31, 2012 that AIHL notifies the Agent in writing that AIHL is no longer interested in the Participants providing the Conditional Amount (at which time the Participants shall be relieved of any obligation to continue their due diligence with respect to, or to seek to provide, the Conditional Amount).

Maturity Date:

Six months after the Closing Date ("Maturity Date"); however maturity may be extended for a period of up to an additional six months with the Agent's approval ("Extended Maturity Date"); provided that (i) AIHL has delivered the valuation report referred to in the second bullet under "Reporting", below and (ii) as of the Maturity Date (x) no Event of Default or unmatured default is then continuing and (y) all representations and warranties contained in the DIP Documents shall be true and correct in all material respects (unless such representation and warranty is qualified by materiality or Material Adverse Change, in which case it shall be true and correct in all respects) as of such date (or such earlier date as may be expressly referenced in any such representation and warranty); or in each case, such earlier date that one or more of the following shall occur: (i) the Bankruptcy Court orders the conversion of the bankruptcy case of any Debtor to a chapter 7 liquidation or the dismissal of the bankruptcy case of any Debtor, (ii) the acceleration of the Murabaha DIP Facility in accordance with its terms thereof or (iii) the sale of all or substantially all of the Obligors' assets is consummat-

⁴ For the avoidance of doubt, Agent shall not use the results of the confirmatory due diligence to reduce the commitment with respect to the Initial Amount.

ed.

LIBOR and Margin:

Outstanding obligations under the Murabaha DIP Facility will accrue profit at a rate equal to 1-month LIBOR ("LIBOR") plus 10.00% ("Margin") per annum on the unpaid principal amount of the Murabaha DIP Facility.

LIBOR will be subject to a minimum floor of 2.0%.

Profit will (i) be calculated based upon a year of 360 days for actual days elapsed and (ii) be payable monthly in arrears.

Extension Fee:

In the event that the facility is extended, a 1.5% fee on the outstanding amount of the Murabaha DIP Facility will be payable on the original stated Maturity Date.

Conversion to Exit:

- At the option of AIHL and the satisfaction of the terms and conditions set forth below, the outstanding Murabaha DIP Facility may be paid off and satisfied from the proceeds of a new Murabaha term exit facility to be provided at the option of the Company by the Participants on the terms set forth herein (collectively, the "Murabaha Exit Facility").
- Maturity Date of Murabaha Exit Facility: The date which is the three-year anniversary of the effective date of the Debtors' chapter 11 plan.
- Margin: Outstanding obligations under the Murabaha Exit Facility will accrue profit at a rate equal to LIBOR plus up to 12.00% per annum on the unpaid principal amount of the Murabaha Exit Facility, subject to a LIBOR minimum floor of 2.0%.
- Mandatory Prepayments: The Murabaha Exit Facility will require prepayments with the proceeds of the incurrence of debt or equity financing (other than under the Murabaha DIP Facility), issuance of securities, sales of assets, tax refunds, casualty events, distributions from portfolio companies and holding companies (not including management fees) and, at the option of Agent or the Participants, proceeds of initial public offerings of any Obligor or their Subsidiaries; provided that, notwithstanding the foregoing, the Murabaha Exit Facility will not require prepayments with the proceeds of any sale, issuance or distribution of assets upon which then existing obligations in favor of SCB has priority over the Murabaha DIP Facility provided that the proceeds of such sale, issuance or distribution of assets are applied to the payment of the SCB loans, if then outstanding. The commitments of the Participants under the Murabaha Exit Facility will be permanently reduced in an amount equal to any mandatory

prepayments required hereunder,

- Other: Fees, call protection and covenants under the Murabaha Exit Facility TBD, but will include:
 - a requirement of 3:1 asset coverage at exit
 - a cash flow/cash burn covenant TBD

Investment Agency Agreement: Agreement to be entered into by AIHL, Agent, the Participants and others by which the Participants, among other things, appoint the Agent as their agent to enter into the Murabaha Transactions contemplated by the Murabaha DIP Facility.

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

Commodities: In relation to a Purchase Contract, the Shari'ah-compliant commodities as specified in the transaction request thereunder which may comprise London Metal Exchange metals and such other Sharia compliant commodities as may be agreed from time to time by AIHL and the Agent and, in any event, will only include allocated commodities physically located outside the United Kingdom.

Purchase Contract: Each agreement for the sale by the Agent of Commodities and the purchase of those Commodities by AIHL pursuant to the Murabaha DIP Facility.

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

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

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

Profit: $Cost\ Price \times (LIBOR + Margin) \times (N/360)$
Where N is the number of days to elapse from, and including, the date of the Purchase Contract in respect of the relevant Commodities, but excluding the Maturity Date.

Uses of Proceeds:

The proceeds of the Murabaha DIP Facility may be used to (i) pay profits, fees, and other expenses due and payable under the Murabaha DIP Facility, (ii) pay other amounts in accordance with a DIP budget reasonably satisfactory to Agent (the "Budget") (subject to the Permitted Variation (defined below)), which Budget shall expressly include payments required under the SCB Order (defined below) and (iii) pay amounts due under the Carve Out (as defined herein); provided that, no portion of the Murabaha DIP Facility or the Collateral may be used to commence or prosecute any action, proceeding, objection with respect to or related to any claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, or obligations that are subjects of the proceeds of the Purchase Contracts.

Carve Out:⁵

"Carve Out" shall mean:

- (a) any unpaid fees due to the United States Trustee pursuant to 28 U.S.C. § 1930 or otherwise and any fees due to the clerk of the Bankruptcy Court,
- (b) the reasonable fees and expenses approved by the Bankruptcy Court incurred by a trustee under section 726(b) or 1104 of the Bankruptcy Code in an aggregate amount not to exceed US\$25,000,
- (c) the reasonable and documented expenses of members of the official committee of unsecured creditors (the "Committee") appointed in the Chapter 11 Cases (excluding fees and expenses of professional persons employed by Committee and/or such Committee member individually) in an amount not to exceed US\$200,000,
- (d) to the extent allowed at any time, all unpaid fees and expenses allowed by the Bankruptcy Court of professionals or professional firms retained pursuant to sections 327, 328, 330, 363, or 1103 of the Bankruptcy Code (the "Professional Persons"); and the reasonable fees and expenses of the Joint Provisional Liquidators (to the extent allowed), in each case, that were accrued or incurred, as applicable through the date upon which AIHL receives from the Agent a written notice of the occurrence of an Event of Default and the intention to invoke the Carve Out (a "Carve Out Notice"), and

⁵ For the avoidance of doubt, the Carve Out must be used in full and exhausted prior to the Debtors' use of the \$1 million professional fee carve out provided for in the SCB Order.

(e) to the extent allowed at any time, all fees and expenses of Professional Persons incurred after the date upon which AIHL receives from the Agent actual written receipt of an Event of Default, in the aggregate amount not to exceed US\$15,000,000; provided that:

(1) the dollar limitations in clause (e) above on fees and expenses shall not be reduced by the amount of any compensation or reimbursement of expenses incurred by or paid to any Professional Person or the Joint Provisional Liquidator prior to the written notification of AIHL by the Agent of the occurrence of an Event of Default in respect of which the Carve Out is invoked or by any fees, expenses, indemnities, or other amounts paid to the Agent, Participant, or their respective attorneys or agents under the DIP Murabaha Facility or otherwise, and

(2) to the extent the dollar limitation in clause (e) on fees and expenses is reduced by an amount as a result of payment of such fees and expenses during the continuation of an Event of Default and after delivery of a Carve Out Notice, and such Event of Default is subsequently cured or waived and the Carve Out Notice is rescinded in writing, such dollar limitation shall be increased by an amount equal to the amount by which it has been so reduced.

Mandatory and Voluntary Prepayments; Commitment Reductions:

- The Murabaha DIP Facility will be subject to customary mandatory prepayments to be included in the definitive DIP Documents (including prepayments with the proceeds of the incurrence of debt or equity financing (other than under the Murabaha DIP Facility), issuance of securities, sales of assets, tax refunds, casualty events by the Obligors, distributions from portfolio companies and holding companies (not including management fees) and, at the option of Agent or the Participants, proceeds of initial public offerings of any Obligor or their Subsidiaries); provided that, notwithstanding the foregoing, no mandatory prepayment shall be necessary from proceeds of (i) the EuroLog IPO, (ii) any equity raise or issuance of securities performed in either connection with a Chapter 11 plan of reorganization or no later than 30 days after the effective date of such Chapter 11 plan (it being acknowledged that this subsection (ii) shall equally apply to the Murabaha Exit Facility), (iii) distributions in respect of litigation relating to Falcon Gas Storage Company, Inc. or an escrow account relating thereto or (iv) any sale, issuance or distribution of assets upon which then existing obligations in favor of SCB have priority over the Murabaha DIP Facility, provided that the proceeds of such sale, issuance or distribu-

tion of assets described in this subsection (iv) are (x) applied to the payment of the SCB facility (no later than the effective date of the Debtors' chapter 11 plan, if then outstanding) and (y) pending such application are held in escrow or other arrangements satisfactory to the Agent which ensure that such proceeds are only utilized for the payment of the SCB facility).⁶ The commitments of the Participants under the Murabaha DIP Facility will be permanently reduced in an amount equal to any mandatory prepayments required hereunder.

- The commitments under the Murabaha DIP Facility will be reduced on the 120th day following the Closing Date by the difference (if a positive number) between (i) \$25,000,000 and (ii) the aggregate amount of commitment reductions under the Murabaha DIP Facility made during such 120 day period pursuant to the provisions of the previous paragraph (and, to the extent that the outstanding amount of the Murabaha DIP Facility after giving effect to such commitment reduction would exceed the amount of such reduced commitments, AIHL shall pay the amount of such excess to the Agent on the date of such reduction for distribution to the Participants).
- The Murabaha DIP Facility may be subject to certain voluntary prepayments and other voluntary commitment reductions to be determined (without premium or penalty).

Upfront fee:

3.0% of actually committed amount payable (a) with respect to the Initial Amount, on the date that the initial advance thereunder becomes available and (b) with respect to the Conditional Amount, on the date occurring on or after December 31, 2012 (provided that no Rejection Date shall have occurred prior thereto) that the initial advance thereunder becomes available and Fortress confirms that it has completed all additional confirmatory due diligence (the "Upfront Fee"); provided however, that the Upfront Fee payable pursuant to clause (a) shall be reduced by the Commitment Fee paid prior to the date thereof.

Unused fee:

5.0% per annum on undrawn amounts, payable monthly in arrears; provided that, no unused line fee will be paid on the Conditional Amount until it has become available.

Exit Fee:

To the extent the following is Shari'ah compliant, the amount by which (to the extent the same is a positive number and determined on

⁶ The Conditional Amount and the Initial Amount, in that order, shall be reduced by any EuroLog IPO proceeds distributed to the Debtor Obligors and not subject to the SCB administrative claim under the SCB Order to the extent required under the Settlement Term Sheet attached as Exhibit B to the SCB Order.

the date that the Deferred Sale Price of all Contracts have been paid in full) (a) \$10 million exceeds (b) all Profit paid in cash to the Participants at or prior to such time plus all Commitment Fees, Upfront Fees and Unused Fees paid in cash to Participants with respect to the Murabaha DIP Facility at or prior to such time, payable on the date that the Deferred Sale Price of all Contracts under the Murabaha DIP Facility have been paid in full. In the event that the foregoing methodology of calculating the Exit Fee is not Shari'ah compliant, the parties shall, prior to the Closing Date and as a condition to the DIP Facility, agree upon a methodology that will provide the Agent on the date that the Deferred Sale Price of all Contracts have been paid in full with compensation equal to or greater than the amount that would be due under the methodology set forth in preceding sentence. No Exit Fee shall be required if the Murabaha DIP Facility is repaid in full in cash in connection with the consummation of a plan of reorganization in the Chapter 11 Cases or is paid in cash with the proceeds of, or converted into, an Exit Facility.

Initial Closing Date:

On or before December 11, 2012 on which all conditions to the initial funding of the Murabaha DIP Facility have been satisfied (the "Closing Date").

Collateral:

- a) Pursuant to section 364(c)(1) of the Bankruptcy Code, be entitled to superpriority administrative claim status having priority over any and all other administrative expenses specified in sections 503(b) or 507(b) of the Bankruptcy Code, provided that so long as the SCB obligations are outstanding, the guarantees of and superpriority claims against WTHL, AEID II, and RailInvest shall be subordinated to the existing guarantees in favor of SCB, and SCB shall have a prior superpriority administrative claim in all proceeds of the EuroLog IPO to the extent provided under the SCB Order;
- b) Pursuant to section 364(c)(2) of the Bankruptcy Code, be secured by a perfected first-priority lien on all now owned or after acquired assets of Arcapita, AIHL and ALTHL, in each case, that are not otherwise subject to a lien (including (a) AIHL's interests in the Murabaha WCF Entities and AIHL's voting right with respect thereto, (b) ALTHL's interests in the unencumbered LT Caycos (*i.e.*, all LT Caycos other than WTHL, AEID II, and RailInvest (but only for so long as the SCB indebtedness guaranteed by such entity remains unpaid) and (c) AIHL's non-syndicated interests in the syndication companies, provided, that the forgoing interests shall not constitute Collateral to the extent that the Agent shall reasonably determine that the costs of obtaining such a security interest in such interests are excessive in relation to the value of the security interest to be afforded thereby); and
- c) Pursuant to section 364(c)(3) of the Bankruptcy Code, be secured by a perfected junior lien on all now owned or after

acquired assets of the Debtor Obligors that are subject to (x) any valid, perfected and non-avoidable lien in existence on the Petition Date or (y) any valid lien in existence on the Petition Date that is perfected subsequent to the Petition Date pursuant to section 546(b) of the Bankruptcy Code (including, in each case and for so long as the obligations under the prepetition facilities with SCB remain unpaid, the liens on the collateral securing the obligations under the prepetition facilities with SCB) (together with the assets described in clause (ii) above, the "DIP Collateral").

- d) Notwithstanding the foregoing, DIP Collateral will not include actions for preferences, fraudulent conveyances, and other avoidance power claims under sections 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code ("Avoidance Actions") or the proceeds thereof.
- e) For the avoidance of doubt, be secured by perfected first-priority liens on all now owned or after acquired assets of the non-Debtor Obligors (unless the Agent shall reasonably determine that the costs of obtaining a security interest in any such assets are excessive in relation to the value of the security interest to be afforded thereby), including all voting rights, if any, of AIML in the syndication companies, and the Transaction Holdcos, the PVs and any interim holding companies (it being understood that the Agent will agree not to take any action with respect to such voting rights for a period of 30 days after receipt by AIHL of a written notice from Agent that an Event of Default has occurred (the "Voting Standstill Period") and AIML agrees that it will not exercise any such voting rights with respect to certain non-ordinary course events to be agreed upon during the Voting Standstill Period (in all cases, it being understood that AIML may, during such 30 day period, exercise all voting rights with respect to ordinary course transactions)); provided, however, with respect to AIFL, the Murabaha DIP Facility may not be secured by AIFL's interests in PointPark Properties s.r.o.

Adequate Protection:

Adequate protection for SCB shall be in form and substance materially consistent with *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] (including the settlement term sheet annexed thereto (the "SCB Order").

Release:

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

rabaha DIP Facility (the “Release”).

Representations and Warrantees:

Customary representations and warrantees for transactions of this type.

Conditions Precedent:

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

- a) negotiation, execution and documentation of reasonably satisfactory DIP Documents consistent with this term sheet, including but not limited to security agreements, control agreements, pledge agreements, financing statements and legal opinions in form reasonably satisfactory to Agent;
- b) no Material Adverse Change;
- c) payment of all accrued and unpaid fees and expenses (including, without limitation, the fees, costs and expenses of the commodities brokers, to the extent the foregoing are reasonable and documented) and other compensation contemplated by the Commitment Letter and herein, payable to Fortress and the Participants;
- d) the Executive Committee of the Obligor’s Shari’ah Advisory Board shall approve the execution of the Murabaha DIP Facility and the finance documents and issue a “Fatwa” that the Murabaha DIP Facility and the finance documents are in compliance with Shari’ah principles;
- e) entry into intercreditor arrangements with or among Agent, Arcapita and/or third parties shall be in form and substance reasonably satisfactory to Agent (it being understood that no intercreditor agreement with SCB will be required);
- f) receipt of all government and third party approvals necessary in connection with the Murabaha DIP Facility on terms reasonably satisfactory to the Agent;
- g) absence of defaults;
- h) to the extent required under the Settlement Term Sheet attached as Exhibit B to the SCB Order, the Debtors shall have utilized any proceed received from the EuroLog IPO before entering into additional Purchase Contracts; and
- i) confirmation that there exists no action, investigation, litigation or proceeding, pending or threatened, in any court or before any arbitrator or government authority that could reasonably be expected to have a Material Adverse Change on AIHL.

Murabaha DIP Order:

The order of the Bankruptcy Court approving the financing shall be in form and substance satisfactory to the Agent and the Participants in their sole discretion and shall include provisions customary or appropriate in the context of the proposed Murabaha DIP Facility.⁷

Affirmative Covenants:

Customary for transactions of this type, with appropriate materiality thresholds and grace periods.

In addition, if an Event of Default is continuing (taking into account any applicable cure or grace periods), so long as such Event of Default is continuing, the Obligors shall cooperate with the Agent in the disposal of the Collateral in a manner reasonably calculated to obtain the maximum value for such Collateral.

Negative Covenants:

Customary for transactions of this type, with appropriate materiality thresholds and grace periods.

Events of Default:

The Murabaha DIP Facility shall contain events of default customary or appropriate in the context of the proposed Murabaha DIP Facility (including appropriate cure and grace periods to be agreed), including but not limited to:

- The entry of an order dismissing the case or converting any Debtor's case to a chapter 7 case (other than Falcon Gas Storage);
- The entry of an order appointing a chapter 11 trustee in any Debtor's case or an examiner with enlarged powers under section 1106 of the Bankruptcy Code;
- The entry of an order (other than the adequate protection order described in "Adequate Protection," above) granting any other claim superpriority status or a lien equal or superior to that granted to the prospective lender for the ratable

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It is anticipated that this DIP Order will initially take the form of an interim (the "Interim DIP Order"), which must be entered by the Bankruptcy Court on or prior to December 7, 2012, and the DIP Documents will provide Agent and the Participants with customary protections afforded to lenders that provide DIP financings on an interim order basis. If an Interim DIP Order is entered, a final DIP order, substantially in the form of the interim DIP order (the "Final DIP Order") must be entered by the Bankruptcy Court on or prior to December 31, 2012. As used herein, "Murabaha DIP Order" shall mean the Interim DIP Order until such time as the Final DIP Order is entered, at which time "Murabaha DIP Order" shall mean such Final DIP Order. The entry of the Interim DIP Order and Final DIP Order by the dates required hereunder are conditions to the obligations of the Participants and Agent hereunder.

benefit of the Participants;

- The entry of an order staying, reversing, vacating, or modifying the Murabaha DIP Facility (or any order authorizing the Murabaha DIP Facility or any provision thereof) without the prospective lender's prior written consent;
- The failure of AIHL to pay the Deferred Sale Price or fees when due;
- The failure of any Obligor to comply with financial or certain other covenants;
- Any representation or warranty by any Obligor shall be incorrect in any material respect when made;
- The entry of an order granting relief from the automatic stay so as to allow a third party to proceed against any material asset of any of the Obligors with a value in excess of US\$100,000,000;
- The violation of any material term, provision or condition in the Murabaha DIP Order;
- The making of any payment or disbursement that is not set forth in the Budget, subject to the Permitted Variation without the prior written consent of the Agent; and
- Any adverse deviation of more than the Permitted Variation from the amount set forth for the total expenditures (or expenditures relating to the "Deal Fundings" and non-"Deal Fundings" line items thereof as provided above) under the Budget for any four-week budget period.

Budget

- Financial covenants to include compliance with the expenditure categories detailed under the Budget with actual results to be tested against such Budget on a rolling four-week aggregate basis, subject to a permitted variance of 10% from the aggregate expenditures under the Budget for each applicable four-week test period (the "Permitted Variation"); provided that (i) line items other than the "Deal-Fundings" line item (as set forth in the most recent Budget provided) shall be subject to a separate permitted variance of 10% from the aggregate expenditures for such line items under the Budget for each applicable four-week test period and (ii) the "Deal Fundings" line item shall be subject

to a separate permitted variance of 10% from the expenditures for such line item under the Budget for each applicable four-week test period.

Reporting:

- Delivery of annual, semi-annual, quarterly and monthly financial statements.
- Delivery of a report on value of a subset (to be determined) of the investment assets by agreed third party valuation expert prior to the Extended Maturity Date (if the Murabaha DIP Facility is extended as provided herein) and every six months thereafter.
- The Obligors shall allow the Agent and the Participants reasonable access to the Obligors' representatives and books and records during regular business hours to monitor financial performance, Budget compliance, and the DIP Collateral.

Governing Law:

New York.

Waiver of Jury Trial; Jurisdiction:

Each of the parties shall (i) waive its right to a trial by jury and (ii) submit to Bankruptcy Court jurisdiction.

Assignments and Participations:

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

Indemnification:

Customary for transactions of this type.

USA Patriot Act:

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

No Exclusivity:

Arcapita and the Company's respective boards of directors (or its equivalent, a "Board") may seek and receive proposals for debtor-in-possession financing or similar transactions during the Chapter 11 Cases from a third party and negotiate such proposals with a third party and provide due diligence information regarding the Obligor and their affiliates to such third party.

Other:

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

DISCLAIMERS

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

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

EXHIBIT B

Representations and Warranties

Upon execution of the Murabaha DIP Facility, each Obligor shall make the following representations and warranties which shall be true and correct in all material respects (unless such representation and warranty is qualified by materiality or Material Adverse Change, in which case it shall be true and correct in all respects) with reference to the facts and circumstances then existing (it being understood that the veracity of each such representation and warranty is a condition precedent to the obligations of the Agent and the Participants under this Commitment Letter and which, if not true and correct in all material respects, can be waived only by Fortress in writing):

(a) Each Obligor (w) is duly organized and validly existing and is in good standing under the laws of the jurisdiction of its organization and each other jurisdiction where is it required to be qualified and in good standing and, subject to Bankruptcy Court approval, has the organizational power and authority to own its property and assets and to transact the business in which it is engaged, (x) subject to Bankruptcy Court approval, has the organizational power and authority to execute, deliver and carry out the terms and provisions of the DIP Documents, to which it is a party, (y) subject to Bankruptcy Court approval, has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the DIP Documents to which it is a party and (z) has duly executed and delivered each DIP Document to which it is a party, and, subject to Bankruptcy Court approval, and (with respect to non-Debtor Obligors) to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered, each such DIP Document constitutes the legal, valid and binding obligation of such Obligor enforceable in accordance with its terms.

(b) Other than the Murabaha DIP Order, any consent or approval that is required to be obtained by the Debtors under applicable Cayman Islands insolvency law and those approvals identified on a schedule to the DIP Documents, no contractual, governmental or other consent or approval is required (i) for the execution, delivery or performance by any Obligor of the DIP Documents to which it is a party or any of the transactions contemplated under the Murabaha DIP Facility (including the granting and enforcement of the security interests contemplated herein) or the enforcement of the Agent's or any Participant's rights thereunder, or (ii) to make the DIP Documents admissible in evidence in its jurisdiction of organization, other than those which have been obtained or effected and are in full force and effect.

(c) Upon entry of the Murabaha DIP Order and of any approval required under the Cayman Islands insolvency proceeding relating to the Debtors, the execution, delivery and performance by any Obligor of the DIP Documents to which it is a party shall not (i) violate, breach or cause a default under any agreement to which it is a party (other than, in the case of Obligors that are Debtors, agreements entered into prior to the commencement of the Cases if the enforcement of such agreement by the counterparty thereto is stayed) or (ii) violate any law, rule, regulation, order, consent or judgment binding on such Obligor.

(d) No liens on the assets of the Obligors except for liens existing on the Closing Date under the SCB facilities that are described on Annex B hereto and Permitted Liens (as defined on Annex E hereto).

(e) Each Obligor has complied in all material respects with applicable laws and regulations including (without limitation) applicable environmental laws and regulations.

(f) No Material Adverse Change has occurred and is continuing.

(g) Other than the Chapter 11 Cases and the Cayman Islands insolvency proceedings relating to the Debtors, no litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of any Obligor, threatened (i) relating to the DIP Facility or DIP Documents or (ii) against such Obligor which could reasonably be expected to have a Material Adverse Change.

(h) Insurance maintained by the Obligors are sufficient and in such amounts as is commercially reasonable and customarily carried by similar companies engaged in similar business.

(i) The structure charts in Annex C-1 hereto set forth the equity percentage ownership owned directly or indirectly by each Obligor in its subsidiaries and their respective portfolio holdings (including all Transaction Holdcos and intermediate companies) (provided that Annex C-1 does not reflect certain non-material changes in shareholdings in the subsidiaries and portfolio holdings (including Transaction Holdcos and intermediate companies) occurring since September 30, 2012).

Except for Permitted Liens and as set forth in Annex C-1 and Annex C-2 hereto, all equity securities of Arcapita and its wholly-owned subsidiaries, and all equity securities directly owned by Arcapita and its wholly-owned subsidiaries in their respective subsidiaries or portfolio companies, are free and clear of liens, shareholder, management or other agreements affecting the voting of such shares or the exercise of other rights with respect thereto, and there are no put/calls, subscriptions, options, warrants, rights or other agreements or commitments with respect to such equity securities, or securities exchangeable or convertible into, such equity securities and there are no other classes of capital (including preferred shares) outstanding or authorized for such companies.

Annex D-1 hereto attaches the KPMG Reports, the SOFA Schedules D, F and G filed on June 8, 2012 and the Waterfall schedules (read together with Footnote 1 of the Commitment Letter) that show the calculation of the value to the Company or its assets and portfolio companies which together identify, in all material respects, except for indebtedness owed to the WCFs and intercompany indebtedness owed by portfolio companies to their direct or indirect equity holders and except as set forth in Annex D-2 hereto, all indebtedness for borrowed money and (x) all guarantees of Arcapita (and all intermediate holding companies between Arcapita and the Transaction Holdcos), and (y) (excluding guarantees) of Arcapita's other subsidiaries, the Transaction Holdcos and their respective portfolio companies (and all intermediate holding companies between the Transaction Holdcos and such portfolio companies).

(j) Subject to the Murabaha DIP Order and of any approval required under the Cayman Islands insolvency proceedings relating to the Debtors, each of the DIP Documents will be effective to create in favor of the Agent, for the benefit of the Participants, a legal, valid and enforceable security interest in the Collateral described therein and upon the filing of any UCC financing statements and the taking of any other actions or making of filings required for perfection under the laws of the relevant jurisdictions and specified in such DIP Documents, such security interest will constitute perfected and continuing liens on such Collateral, securing the applicable obligations described in such DIP Documents, enforceable against the applicable Obligor and all third parties, and having priority over all other liens on such Collateral to the extent provided in the Murabaha DIP Order and such Cayman Islands insolvency proceeding approvals, except liens in favor of SCB under its prepetition documents or granted under the adequate protection order described in "Adequate Protection" in the Term Sheet. Other than the Murabaha DIP Order and any approval required under the Cayman Islands insolvency proceedings relating to the Debtors, no consent, notice to or filing with any governmental authority, corporate or organizational board, director or management or with any other person or entity is required or advisable in connection with the foreclosure or sale of any Collateral by the Agent.

(k) No Obligor is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940. No Obligor nor any of its subsidiaries is engaged principally, as one or more of its important activities, in the business of extending credit for the purpose of purchasing any "margin stock" as defined in Regulation U. Neither the Murabaha Transactions nor the use of the proceeds of the Murabaha Transactions will violate the provisions of Regulation T, U or X of the Board of Governors or the Federal Reserve System.

(l) Obligors are in compliance in all respects with the Murabaha DIP Order and any order entered in connection with the insolvency proceeding involving any Obligor in the Cayman Islands. The Murabaha DIP Order and each order authorizing the Murabaha DIP Facility entered in connection with such insolvency proceedings relating to the Debtors in the Cayman Islands is in full force and effect and be in full force and effect and has not been stayed, reversed, vacated, rescinded, modified or amended in any respect. No trustee or examiner shall have been appointed with respect to the Obligors or their respective properties.

(m) Except as permitted not to be filed or paid under the Bankruptcy Code or the Cayman Island proceedings relating to the Debtors, each Obligor has filed all income tax returns and all other material tax returns, domestic and foreign, required to be filed by any of them and have paid all income and other material taxes payable by them that have become due, other than (i) those not yet delinquent, (ii) those contested in good faith as to which adequate reserves have been provided in accordance with generally accepted accounting principles or (iii) those which could not reasonably be expected to have a material adverse effect on the condition, financial or otherwise, business, operations, assets or liabilities of the Company and its subsidiaries taken as a whole.

(n) Subject to any qualifications set out in the opinions to be delivered in connection with the Closing of the DIP Facility, the choice of English law, New York law and Cayman Islands law (as applicable) as the governing law of the DIP Documents will be recognized and enforced in each relevant Obligor's jurisdiction of incorporation and any arbitral award obtained in England

in relation to a DIP Document will be recognized and enforced in such Obligor's jurisdiction of organization.

(o) It is not necessary that the DIP Documents be filed, recorded or enrolled with any court or other authority in the jurisdiction of organization of any Obligor or that any stamp, registration or similar tax be paid on or in relation to the DIP Documents or the transactions contemplated by the DIP Documents.

(p) No Event of Default or unmatured Event of Default is continuing or might reasonably be expected to result from the consummation of any of the transactions contemplated by the Murabaha DIP Facility.

(q) No Obligor will be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of organization in relation to this Agreement.

(r) (i) Each investor in a syndication company or PV has, except in respect of the election of directors, appointed AIML as its proxy and attorney-in-fact for the purpose of voting and giving written consents in respect of such investor's shares in such syndication company or PV, and no such appointments have been revoked, (ii) all of the directors of each syndication company and PV are Arcapita employees, and pursuant to the organizational documents of each syndication company and PV, the removal of the required directors requires approval of 66.67% of the shareholders of such syndication company or PV or an affirmative vote of the board of directors or such syndication company or PV, and (iii) AIML is a party to administration agreements with each syndication company and PV, pursuant to which AIML has the sole power and authority to manage and administer the affairs of each syndication company and PV (subject to the overriding authority and overall supervision of the Board of Directors of such syndication company or PV).

EXHIBIT C

Form of Approval Order

[Attached]

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

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

**ORDER AUTHORIZING THE DEBTORS TO ENTER INTO
THE REVISED FORTRESS COMMITMENT LETTER AND
INCUR RELATED FEES, EXPENSES AND INDEMNITIES**

Upon the *Debtors' Motion for Entry of an Order Authorizing the Debtors to Enter into a Financing Commitment Letter and Incur Related Fees, Expenses and Indemnities in Connection Therewith* [Docket No. 513], as supplemented by the *Supplement to Debtors' Motion for Entry of an Order Authorizing the Debtors to Enter into a Financing Commitment Letter and Incur Related Fees, Expenses and Indemnities in Connection Therewith* [Docket No. 610] and further supplementary documents presented to the Court at the hearing held on November 7, 2012 (as supplemented, the *Motion*)¹ filed in the above-captioned chapter 11 cases, this Court finds and concludes that: (a) the Court has jurisdiction over the subject matter of the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (c) the Debtors have demonstrated that their entry into the Revised Fortress Commitment Letter and payment of related fees, expenses, and indemnity constitute an exercise of sound business judgment under section 363(b)(1) of the Bankruptcy Code; (d)

¹ Each capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Motion or the revised version of the Fortress Commitment Letter annexed hereto as **Annex 1** (the "*Revised Fortress Commitment Letter*").

payment of the Commitment Fee, the Expenses, and indemnity provides a benefit to the Debtors' estates necessary to preserve the value of the Debtors' assets; (e) the legal and factual bases set forth in the Motion and on the record at the Initial Hearing on October 9, 2012 and the hearing held with respect to the Revised Fortress Commitment Letter on November 7, 2012 establish just cause for the relief granted herein; (f) the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; and (g) notice of the Motion was sufficient, and no other or further notice need be provided.

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

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted to the extent provided herein.
2. The Revised Fortress Commitment Letter and all provisions set forth therein are approved in their entirety.
3. The Debtors are authorized enter into the Revised Fortress Commitment Letter and perform all obligations thereunder on the terms and conditions set forth therein, without notice, hearing or further order of the Court as, when and to the extent they become due under the Revised Fortress Commitment Letter.
4. The Debtors are authorized to pay to Fortress the Commitment Fee on the terms and conditions set forth in the Revised Fortress Commitment Letter, without notice, hearing or further order of the Court as, when and to the extent it becomes due and payable under the terms of the Revised Fortress Commitment Letter.
5. The Debtors are authorized to indemnify and hold harmless each Indemnified Party on the terms and conditions set forth in the Revised Fortress Commitment

Letter (the “*Indemnification*”), without notice, hearing or further order of the Court as, when and to the extent such obligation becomes due and payable under the terms of the Revised Fortress Commitment Letter.

6. Upon entry of this Order, and subject to the notice requirements in paragraphs 7–9 below, the Debtors are authorized to pay all Expenses incurred prior to the date hereof. In addition, the Debtors are authorized to pay to Fortress the Deposit and any Deposit Top-Up on the terms and conditions set forth in the Revised Fortress Commitment Letter, without notice, hearing or further order of the Court as, when and to the extent such obligation becomes due and payable under the terms of the Revised Fortress Commitment Letter. Upon the earlier of (a) the Closing Date, or (b) the termination of the Revised Fortress Commitment Letter, Fortress shall return any unused balance of the Deposit. Fortress shall maintain the Deposit in JPMorgan Chase or a similar financial institution in the United States acceptable to the Debtors, the Committee and Fortress.

7. The Debtors are authorized to pay the Expenses as provided in the Revised Fortress Commitment Letter. Prior to payment by the Debtors of any Expenses, including from funds held in the Deposit, the Committee and the Debtors shall have three days (the “*Notice Period*”) after Committee counsel’s receipt of any related invoice or invoices to review such invoice or invoices and serve the Debtors (or the Committee, as applicable) and Fortress with notice of any objection setting forth the amount of costs or expenses to which the Committee or the Debtors, as applicable, objects (the “*Disputed Costs or Fees*”).

8. As soon as practicable after the expiration of the Notice Period in respect of a particular invoice or invoices, the Debtors are authorized to reimburse Fortress (or if

applicable, Fortress may draw down on the Deposit) for reasonable and actual costs and expenses as set forth in such invoice or invoices, excluding any Disputed Costs or Fees.

9. If the Committee or the Debtors object to the payment of any costs or expenses within the Notice Period, such objection shall be resolved by (a) the Committee, the Debtors and Fortress or (b) the Court, in either case, prior to any payment of the Disputed Costs or Fees subject to such objection (from the Debtors or the Deposit, as applicable).

10. The Commitment Fee, Expenses, and Indemnification, to the extent payable under the Revised Fortress Commitment Letter and this Order, are actual, necessary costs and expenses of preserving the Debtors' estates and shall be treated as allowed administrative priority claims against the Debtors under sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code; *provided, however*, to the extent that WTHL, AEID II or RailInvest are obligated to pay the Commitment Fee pursuant to the Revised Fortress Commitment Letter, such obligations shall be subordinated to the existing guarantees by such entities in favor of SCB in accordance with the terms of the *Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing and Approving the Settlement with Standard Chartered Bank* [Docket No. 587].

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

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

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

Dated: _____, 2012
New York, New York

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

ANNEX 1

REVISED FORTRESS COMMITMENT LETTER

Annex A

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

Annex A shall survive any termination or completion of the arrangement provided by the Term Sheet, and this Term Sheet shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws.

Annex B

Arcapita Bank B.S.C.(c) is the borrower under two facilities made available by Standard Chartered Bank: (i) a \$50 million facility dated May 30, 2011 (as the same may be amended, the “SCB May 2011 Facility”); and (ii) a \$50 million facility dated December 22, 2011 (as the same may be amended, the “SCB December 2011 Facility” and, together with the SCB May 2011 Facility).

The SCB May 2011 Facility is guaranteed by each of Arcapita Investment Holdings Limited (“AIHL”), Arcapita LT Holdings Limited (“AIHL Sub”) and WindTurbine Holdings Limited (“WTHL”). These guarantees are secured by: (i) a first priority pledge of AIHL’s shares in AIHL Sub; (ii) a first priority pledge of AIHL Sub’s shares in WTHL; and (iii) a second priority pledge of AIHL Sub’s shares in AEID II Holdings Limited (“AEID II”) and RailInvest Holdings Limited (“RailInvest”).

The SCB December 2011 Facility is guaranteed by each of AIHL, AIHL Sub, WTHL, AEID II, and RailInvest. These guarantees are secured by: (i) a second priority pledge of AIHL’s shares in AIHL Sub; (ii) a first priority pledge of AIHL Sub’s shares in AEID II and RailInvest; and (iii) a second priority pledge in AIHL Sub’s shares in WTHL.

Annex C-1

Structure Charts – as provided to Agent’s counsel on October 24, 2012.

Annex C-2

1. Arcapita Industrial Management Sarl and its subsidiaries are party to certain agreements entered into in connection with the pending EuroLog IPO.2. Administration Agreements – lists as provided to Agent’s counsel on October 24, 2012 and October 30, 2012.
3. HarborVest Agreements – list as provided to Agent’s counsel on October 24, 2012 and separate disclosure as provided on November 1, 2012.
4. Share Purchase Agreements by Middle East institutional investor in connection with its confidential investments in (i) J. Jill Group, (ii) Viridian Group Holding Limited, (iii) CEPL Group, and (iv) Freightliner Group Limited. Separate disclosure regarding the foregoing as provided on November 1, 2012.
5. See disclosure on Annex B.

Annex D-1

1. KPMG Reports – as provided to Agent prior to the date hereof and to Agent’s counsel on October 24, 2012.

2. SOFA Schedules D, F and G filed on June 8, 2012 – as provided to Agent’s counsel on October 24, 2012

3. Waterfalls – as provided to Agent prior to the date hereof and to Agent’s counsel on October 27, 2012.

Annex D-2

1. See disclosure on Annex B.

2. US\$1.1 Billion Master Murabaha Agreement (as amended and restated by an Amendment and Re-statement Agreement dated 11 April 2007) dated 28 March 2007 between Arcapita Bank B.S.C.(c) and WestLB AG, London Branch, as Investment Agent.

Annex E

Permitted Liens means (i) any lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with generally acceptable accounting principles, (ii) any statutory lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent, (iii) any lien created by operation of law, such as materialmen's liens, mechanics' liens and other similar liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iv) liens (A) upon or in any equipment acquired or held by the Obligors or any of their subsidiaries to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition or lease of such equipment, or (B) existing on such equipment at the time of its acquisition, provided that the lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment, (v) easements, rights-of-way, municipal and zoning and building ordinances and similar charges, encumbrances, title defects or other irregularities, governmental restrictions on the use of property or conduct of business, and liens in favor of governmental authorities and public utilities, that do not materially interfere with the ordinary course of business of the Obligors and their subsidiaries, taken as a whole; (vi) liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Obligors or any of their subsidiaries in the ordinary course of business of the Obligors or any of their subsidiaries; (vii) liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by liens of the type described in clauses (i) through (vi) above, provided that any extension, renewal or replacement lien shall be limited to the property encumbered by the existing liens and the principal amount of the indebtedness being extended, renewed or refinanced does not increase, (viii) leases or subleases and licenses and sublicenses granted to others in the ordinary course of the Obligors business, not interfering in any material respect with the business of the Obligors and their subsidiaries taken as a whole, and (ix) liens in favor of customs and revenue authorities arising as a matter of law to secure payments of custom duties in connection with the importation of goods.