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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	:	**Chapter 11**
ARCAPITA BANK B.S.C.(c), *et al.*,	:	**Case No. 12-11076 (SHL)**
Reorganized Debtors.	:	**Jointly Administered**
IN RE:	:	**Chapter 11**
FALCON GAS STORAGE COMPANY, INC.,	:	**Case No. 12-11790 (SHL)**
Debtor.	:	

FALCON'S SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF CHAPTER 11 PLAN

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued**)**

Page

TABLE OF CONTENTS
(continued**)**

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Rules

PRELIMINARY STATEMENT

Falcon is requesting that the Court enter an order confirming as to Falcon the *Confirmed Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code (With First Technical Modifications)* [Docket No. 1265] (the "***Plan***")[1] that was confirmed with respect to the other Debtors in June 2013.[2] The Plan as to Falcon has been accepted by 100% of the Holders of Claims and Interests that voted in the Impaired Classes, and whose votes remain outstanding.

As explained in greater detail below, all issues that prevented confirmation of the Plan as to Falcon at the time of Plan confirmation as to all other Debtors have been resolved. Based on the Tide/Hopper Settlement separately presented to the Court for approval, the District Court Action between Tide, Falcon and the Hopper Parties and the Claims of Tide and the Hopper Parties against Falcon will be resolved based on an agreed division of the Escrowed Money. The Tide/Hopper Settlement thereby (a) resolves the Tide Subordination Dispute, (b) provides for the withdrawal of Tide's remaining Claim and the withdrawal of Tide's objection to confirmation of the Plan as to Falcon, (c) provides for the withdrawal of the Hopper Parties' remaining Claim as to Falcon (d) provides for the dismissal of the Hopper Adversary Proceeding against Falcon, (e) provides for the dismissal of Tide's Adversary Proceeding to subordinate the claims of the Hopper Parties, (f) provides for the dismissal of Falcon's objection to Tide's Claim, and (g) satisfies HSBC's Secured Claim against Falcon. Further, Falcon and the ACE Companies have

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[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

[2] The Plan constitutes a separate chapter 11 Subplan for each of the Debtors.

agreed to resolve the objection of the ACE Companies to confirmation by the addition of agreed language to the Falcon Confirmation Order. The general objections to Plan confirmation filed by Nasr and Mayhoola do not appear to pertain to Falcon and were resolved as to all other Debtors by the inclusion of agreed language in the Arcapita Confirmation Order. To the extent the Nasr and Mayhoola Objections were intended to apply to Falcon, they are both resolved by the inclusion of the same agreed provisions in the Falcon Confirmation Order.

For the reasons set forth below, the Plan can be confirmed as to Falcon without change or re-solicitation. Such confirmation will ensure payment in full to all of Falcon's General Unsecured Creditors and allow for a substantial distribution to Falcon's equity owners.

I. BACKGROUND

A. General Background of Falcon and the Chapter 11 Cases

1. The Arcapita Group and the NorTex Investment

Falcon is an indirect subsidiary of Arcapita Bank. Prior to the September 17, 2013 Effective Date of the Plan as to the non-Falcon Debtors, the Arcapita Group was in the business of investing in and managing Shari'ah-compliant investments. As part of the ordinary course of the business of the Arcapita Group, in July 2005, Arcapita Group affiliate GAStorage Investments LLC acquired 80% of the stock of Falcon from the Hopper Parties,[3] who retained the remaining 20%. Through Arcapita Group affiliates that owned portions of GAStorage Investments LLC's parent, the Arcapita Group then syndicated a portion of its indirect interest in Falcon to third-party investors. As of early 2010, Falcon's primary asset was 100% of the

[3] The "***Hopper Parties***" are as follows: John M. Hopper, Edmund A. Knolle, Jeffrey H. Foutch, Keith W. Chandler, The Estate of Steven B. Toon, deceased, Thomas B. Wynne, Jr., Steven Jenkins, Tamara Jenkins, Dianne G. Foutch, Lesli Paige Leonard, Sally H. Hopper, Ellecia A Knolle, Michelle P. Foutch, Deborah J. Toon, Rachel Ann Chandler, Daniel Leonard, and Alexander Cocke Trust.

membership interests of NorTex Gas Storage Company, LLC (together with its subsidiaries, "***NorTex***"), a company that owns and operates two large underground natural gas storage facilities and associated equipment near Fort Worth, Texas.

2. Falcon's Sale of NorTex and Related Prepetition Litigation

On March 15, 2010, Falcon entered into a purchase agreement (as amended, the "***NorTex Purchase Agreement***") to sell 100% of its LLC membership interests in NorTex (the "***NorTex Sale***") to Tide Natural Gas Storage I, L.P. and Tide Natural Gas Storage II, L.P. (together, "***Tide***") for $515 million. Arcapita Bank guaranteed certain of Falcon's obligations under the NorTex Purchase Agreement. Prior to closing the NorTex Sale, the Hopper Parties filed actions in state court in Texas against Tide, Falcon, certain of its directors, and NorTex, seeking damages and to enjoin the NorTex Sale to Tide (collectively, the "***Hopper Litigation***") alleging that Falcon's board of directors had breached their fiduciary duties by agreeing to a sales price for the NorTex membership interests purportedly below fair value.

The Texas courts refused to enjoin the NorTex Sale; however, as a result of the pending Hopper Litigation, and as a condition to closing imposed by Tide, Falcon agreed to amend the NorTex Purchase Agreement to (1) indemnify Tide for any liability Tide might suffer as a result of the Hopper Litigation, and (2) place approximately $70 million of the total sales proceeds from the NorTex Sale in escrow (the "***Escrowed Money***") with HSBC Bank USA, National Association ("***HSBC***") to be available to satisfy those specific indemnification obligations.

After the NorTex Sale closed, on July 27, 2010, Falcon and the Hopper Parties settled the Hopper Litigation in exchange for (1) an immediate cash payment of $6.5 million, and (2) the agreement that, when the Escrowed Money was released to Falcon, the Hopper Parties would be

paid an additional $8.25 million ($1,072,500 of which would be paid by one of Falcon's affiliates, GAStorage Investments II LLC), less applicable tax withholding. Because the settlement of the Hopper Litigation fully resolved the contingent indemnification obligations of Falcon to Tide, the dismissal of the Hopper Litigation resulted in the occurrence of an "***Escrow Breakage Trigger***" under the terms of the NorTex Purchase Agreement and the related escrow agreement.

Despite the occurrence of an Escrow Breakage Trigger, Tide refused to provide release instructions to HSBC and filed an action in the United States District Court for the Southern District of New York against Falcon, Arcapita Bank, non-debtor Arcapita Inc. and HSBC, alleging claims for "fraud in the inducement" and intentional misrepresentation in connection with the purchase and sale of securities, among other things. *Tide Natural Gas Storage I, L.P. v. Falcon Gas Storage Co., Inc.*, Case No. 10-cv-05821-KMW (S.D.N.Y.) (the "***District Court Action***"). In the District Court Action, Tide alleged that Falcon had misrepresented the extent and value of the assets held by NorTex and, therefore, Tide had overpaid for the NorTex LLC membership interests. Falcon denies Tide's allegations.

The District Court Action is a complicated suit that seeks $120 million in damages from Falcon and Arcapita Bank. The District Court Action is highly fact-dependent and turns on byzantine analyses relating to, *inter alia*, volumetric calculations and measurements that were performed to estimate the quantities and values of pad gas located in the NorTex natural gas storage facilities, the source of compressor fuel and associated operating expenses, and the source of hydrocarbons produced during NGL extraction facility operations. If post-hoc forensics demonstrate that any of the intricate analyses and calculations performed by NorTex

relating to the foregoing led to unreliable or inaccurate estimates, the District Court Action also involves an inquiry into whether this was something that Falcon's and/or Arcapita's management knew or should have known about.

In the District Court Action, Tide also contends that, as a result of Falcon's alleged "fraud in the inducement", the full amount of the Escrowed Money did not become part of the Falcon bankruptcy estate and that Tide may recover its alleged damages, if any, from the Escrowed Money without sharing with other creditors. Conversely, Falcon contends that title to the Escrowed Money passed to Falcon at the closing of the NorTex Sale and that any fraud or contract claim of Tide is a claim against the Falcon bankruptcy estate subject to subordination.

3. The Thronson Litigation Alleging Claims Under Falcon's 2005 Equity Incentive Plan

On April 26, 2011, the Thronson Parties[4] filed a complaint against Falcon in Texas state court for breach of contract and breach of fiduciary duty by Falcon in connection with Falcon's 2005 Equity Incentive Plan and non-qualified stock option plan. *Lowell C. Thronson, et al. v. Falcon Gas Storage, Inc.*, Cause No. 2011- ED101J016284241 (the "***Thronson Litigation***"). The Thronson Parties allege that Falcon prevented them as "option holders from exercising their options prior to the sale to [Tide], and allegedly fail[ed] to pay the Thronson Parties the difference between the strike price based on a fair valuation of the Falcon shares and the option price." The Thronson Litigation remains unresolved.

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[4] The "***Thronson Parties***" are as follows: Lowell Thronson, Henry Adair, Guy Busk, Galen W. Cantrell, Michelle G. Colombo, Glen M. Coman, Vhonda Cook, Randall L. Crumpley, Stephen Dorcheus, Judy B. Farley, Joe V. Fields, Gregory D. Fletcher, Kenneth Gillespie, Darrell R. Green, Terra Leigh Griffin, Michael L. Gryder, Jack L. Hopkins, John Holcomb, Andy Johnson, Ed McIntosh, Bryan K. Mercer, Carla Nims, Ricky Plumlee, Jimmy Rains, David Robinson, Chad Rogers, Mark Rowland, James Scott, Danny J. Sharp, Derrick M. Shaw, Randall J. Small, Joel P. Stephen, Ray Don Turner, Johnny B. Ulrich, James Bradley Underwood, Hank R. Watson, Royce Williams, and Troyce Willis.

4. The Chapter 11 Cases and Postpetition Litigation

On March 19, 2012 Arcapita Bank and five of its affiliates commenced cases under chapter 11 of the Bankruptcy Code in this Court. On April 30, 2012, Falcon commenced a case under chapter 11 of the Bankruptcy Code, and its bankruptcy case was ordered administratively consolidated with the other six related bankruptcy cases.

a) The Hopper Adversary Proceeding

On May 21, 2012, the Hopper Parties filed adversary proceeding number 12-01662 (SHL) (the "***Hopper Adversary Proceeding***") solely against Falcon and requested a declaration that, prepetition, the Hopper Parties acquired all right, title and interest to $8.25 million of the Escrowed Money and, therefore, the $8.25 million is not property of the Falcon estate. Although the Hopper Parties asserted in the Hopper Adversary Proceeding that the obligations of Falcon in the settlement of the Hopper Litigation had been satisfied by Falcon's alleged prepetition transfer of $8.25 million of the Escrowed Money to the Hopper Parties and that such funds are not property of the Falcon estate, the Hopper Parties filed duplicative proofs of claim against Falcon, each in the amount of $8.25 million (collectively, the "***Hopper Claims***").

b) The Plan and the Subordination Dispute

Both Tide entities filed proofs of claim against Arcapita Bank and Falcon asserting a secured claim of $70 million and an unsecured claim of $50 million (the "***Tide Claims***"). The Thronson Parties have filed proofs of claim against Falcon totaling approximately $1.75 million (the "***Thronson Claims***"). HSBC filed a secured claim against Falcon in the amount of $39,681.63 for fees, costs, and expenses due to HSBC (plus accruing fees, costs, and expenses) for its administration of the Escrowed Money.

Because the Tide Claims are based on "damages arising from the purchase or sale of a security of … an affiliate of the debtor" and because the security purchased by Tide was 100% of Falcon's LLC membership interests in NorTex, the Debtors believe that if the Tide Claims are allowed against the estates, they must be subordinated to all other equity interests in Falcon or Arcapita Bank, as applicable, that are senior or equal to the interest represented by the LLC membership interests in NorTex. *See* 11 U.S.C. § 510(b); *USA Capital Realty Advisors, LLC, et al. v. USA Capital Diversified Trust Deed Fund, LLC et al. (In re USA Commercial Mortgage Company)*, 377 B.R. 608 (9th Cir. BAP 2007).

The Thronson Claims are based on alleged damages arising from the purported breach of an agreement relating to the purchase and sale of the common stock of Falcon. Thus, pursuant to the provisions of section 510(b) of the Bankruptcy Code, any right of distribution with respect to the Thronson Claims must be subordinated to all claims or interests senior to the interests represented by the common stock of Falcon.

With these legal principles in mind, Arcapita Bank, Falcon, and the other affiliated Debtors proposed the Plan, which treats the Tide Claims as Super-Subordinated Claims in Classes 10(a) and 10(g), the Thronson Claims as Subordinated Claims in Class 8(g), the Hopper Claims as General Unsecured Claims in Class 5(g), and the claims filed by HSBC as Other Secured Claims in Class 3(g).[5] As to Falcon, the Plan's distribution scheme is a simple excess cash-flow waterfall: Other Priority Claims in Class 1(g) are paid first; then if there is any remaining cash Other Secured Claims in Class 3(g) are paid; then if there is any remaining cash

[5] Each Debtor's separate chapter 11 Subplan is designated by a letter (from (a) to (g)). Classes in Arcapita Bank's Subplan are designated by the letter (a). Classes in Falcon's Subplan are designated by the letter (g).

General Unsecured Claims in Class 5(g) and Intercompany Claims in Class 7(g) are paid *pro rata*; then if there is any remaining cash Subordinated Claims in Class 8(g) and Interests in Class 9(g) are paid *pro rata*. Super-Subordinated Claims in Class 10(g) will not receive a distribution.

On April 26, 2013, Arcapita Bank and Falcon also both filed objections to the Tide Claims (the "***Tide Claim Objections***"). *See* Docket No. 1051. Therein, they objected to the Tide Claims generally, and specifically objected to the assertion of a secured claim against either Arcapita Bank or Falcon. On the same date, Falcon filed an objection to the Thronson Claims (the "***Thronson Claim Objection***") because, *inter alia*, the Thronson Claims are based on stock options that were never exercised. *See* Docket No. 1052. Thereafter, Falcon, Arcapita Bank, and Tide stipulated to temporarily allow the Tide Claims in Classes 8(a) and 8(g) for Plan voting purposes only, and Tide voted against the confirmation of Plan as to both Falcon and Arcapita Bank. The Tide Claim Objections and the Thronson Claim Objection remain pending before the Court.

Tide objected to confirmation of the Plan based on the fully subordinated treatment of Tide's Claims in Classes 10(a) and 10(g) (the "***Tide Subordination Dispute***"). And, on May 29, 2013, Tide filed an Adversary Proceeding captioned *Tide Natural Gas Storage I, LP et al. v. Hopper Claimants*, Case No. 13-01355, (the "***Tide Adversary Proceeding***") seeking to subordinate the Hopper Claims.

In June 2013, Falcon and the Hopper Parties entered into a Plan Support Agreement (the "***Hopper Plan Support Agreement***") whereby the Hopper Parties agreed to vote in favor of the Plan, and Arcapita Bank and Falcon agreed that:

a. On or before the Effective Date of the Plan as to Falcon, GAStorage Investments II LLC shall pay $1,072,000 to the Hopper Parties as provided in the settlement of the Hopper Litigation;

b. The Hopper Parties shall have an allowed unsecured claim against Falcon in Class 5(g) of the Plan in the amount of $8,250,000, *provided*, *however*, that any payment by on or behalf of GAStorage Investments II LLC to or on behalf of the Hopper Parties shall be fully credited against the amount of the allowed Hopper Claims; and,

c. Subject only to the rights of Tide to object to the Hopper Claims, if any, Arcapita Bank, Falcon, and the affiliated Debtors waive and release any claim they may have to subordinate the Hopper Claims, any claim against the Hopper Parties based on chapter 5 the Bankruptcy Code, or any other objection to the Hopper Claims.

At the hearing before the Court on June 11, 2013 to consider confirmation of the Plan (the "***Initial Confirmation Hearing***"), Tide withdrew its objection to confirmation of the Plan as to Arcapita Bank and all other Debtors except Falcon, and withdrew Tide's objection to the classification of the Tide Claims as to Arcapita Bank in Class 10(a). By an order entered on June 17, 2013, the Plan was confirmed as to all Debtors except Falcon, and the Effective Date of the Plan as to all Debtors except Falcon occurred on September 17, 2013. *See* Docket Nos. 1262 and 1518. In the Order confirming the Plan as to all Debtors except Falcon, the hearing to consider confirmation of the Plan as to Falcon was adjourned pending the resolution of the District Court Action, the Tide Subordination Dispute, and certain other matters. The Tide Subordination Dispute has been fully briefed and argued before the Bankruptcy Court and is currently *sub judice*. The stay has been lifted in the District Court Action and the matter is currently set for trial on March 3, 2014.

5. Falcon Reaches An Agreement with its Most Significant Creditors

As discussed more fully in Falcon's *Motion to Approve Falcon Settlement with Tide, the Hopper Parties, and HSBC* [Docket No. 1721] (the "***Tide/Hopper 9019***"), Falcon has reached an agreement with its most significant creditors (the "***Tide/Hopper Settlement***") that resolves the most significant objections to its Plan, ensures payment in full to all of Falcon's General Unsecured Creditors, allows for a substantial distribution to Falcon's equity owners, and paves the way for immediate confirmation of the Plan. The key terms of the Tide/Hopper Settlement are as follows:[6]

PARTY	**TREATMENT**
Tide	• Tide will receive $44 million of the Escrowed Money and Falcon will agree that this $44 million is not property of Falcon's estate. • Tide will pay 50% of the fees and costs due to HSBC as described below. • Tide will withdraw its claims against Arcapita Bank and Falcon; provided that the Court approves the Tide/Hopper 9019 and the order confirming the Plan as to Falcon provides that the Effective Date of the Plan as to Falcon cannot occur until after the Tide/Hopper Settlement is consummated. • Tide will withdraw its votes to reject the Plan; provided that the Court approves the Tide/Hopper 9019 and the order confirming the Plan as to Falcon provides that the Effective Date of the Plan as to Falcon cannot occur until after the Tide/Hopper Settlement is consummated. • Tide will withdraw its objections to confirmation of the Plan as to Falcon; provided that the Court approves the Tide/Hopper 9019 and the order confirming the Plan as to Falcon provides that the Effective Date of the Plan as to Falcon cannot occur until after the Tide/Hopper Settlement is consummated. • Tide will dismiss the District Court Action with prejudice.

[6] The full terms of the Tide/Hopper Settlement are set forth in the Settlement Agreement annexed to the Tide/Hopper 9019 as Exhibit B (the "***Tide/Hopper Settlement Agreement***"). In the event of any inconsistency between the description set forth herein and the Tide/Hopper Settlement Agreement, the terms of the Tide/Hopper Settlement Agreement shall govern.

	• Tide will dismiss the Tide Adversary Proceeding with prejudice.
Hopper Parties	• As provided in the original 2010 settlement agreement with the Hopper Parties, GAStorage Investments II LLC will pay the Hopper Parties the sum of $1,072,500. • The Hopper Parties will receive $7,177,500 of the Escrowed Money, a portion of which will be transferred to Falcon to pay U.S. federal income and F.I.C.A. withholding taxes applicable to the distribution to the Hopper Parties, and Falcon will agree that the $7,177,500 is not property of Falcon's estate. Falcon will agree promptly to pay such applicable U.S. taxes. • The Hopper Parties will withdraw their claims against Falcon. • The Hopper Parties will dismiss the Hopper Adversary Proceeding with prejudice.
HSBC	• Falcon and Tide will each pay 50% of HSBC's fees and costs incurred in connection with the dispute over the Escrowed Money. • HSBC will dismiss any outstanding claims or counter-claims. • HSBC's claim filed in the Falcon Bankruptcy will be withdrawn or disallowed.
Falcon	• Falcon will pay 50% of the fees and costs due to HSBC as described above. • Falcon will receive all remaining Escrowed Money.

B. Solicitation of the Plan and Notice of the Confirmation Hearing

On February 8, 2013, the Debtors filed a motion to approve their solicitation procedures [Docket No. 828] (the "***Solicitation Procedures Motion***"). By an order entered April 26, 2013 [Docket No. 1045] (the "***Disclosure Statement Approval Order***"), the Court approved the Disclosure Statement and solicitation procedures with respect to voting on the Plan.

As required by the Disclosure Statement Approval Order, on or before May 2, 2013, the Debtors, through their noticing and claims agent, GCG, Inc. ("***GCG***"), timely mailed to Holders of Claims and Interests entitled to vote on the Plan, a Solicitation Package containing (a) written

notice of (i) the Court's approval of the Disclosure Statement, (ii) the deadline for voting on the Plan, (iii) the date of the Initial Confirmation Hearing, and (iv) the deadline and procedures for filing objections to the Confirmation of the Plan; (b) the Plan (either by paper copy or in "pdf" format on a CD-ROM); (c) the Disclosure Statement (either by paper copy or in "pdf" format on a CD-ROM), including all exhibits thereto; (d) the appropriate Ballot, along with Ballot Instructions and a return envelope; and (e) a statement in support of the Plan issued by the Committee. *See* Docket No. 1076. In addition, notice of the Initial Confirmation Hearing was published in (i) *The Wall Street Journal (Global Edition)* on May 6, 2013 (*see* Docket No. 1136) and (ii) *The Financial Times*, on May 6, 2013 (*see* Docket No. 1135). Pursuant to the Disclosure Statement Approval Order, Ballots were required to be submitted to GCG no later than 12:00 p.m., prevailing U.S. Eastern Time, on May 30, 2013 (the "***Voting Deadline***") and objections to the Plan were to be filed by 4:00 p.m., prevailing U.S. Eastern Time, on May 30, 2013.

Notice that the adjourned confirmation hearing with resepect to Falcon would be re-commenced on January 21, 2014 was mailed to each of Falcon's creditors on December 30, 2013. *See* Docket No. 1729.

C. Ballot Tabulation

The Plan as to Falcon has been accepted by 100% of the Holders of Claims and Interests that voted in the Impaired Classes, and whose votes remain outstanding. As discussed above, Tide voted to reject the Plan but has since agreed to withdraw its rejecting votes as part of its settlement with the estate. The resulting voting outcome is as follows:

Voting Classes of Claims								
	Accepting				Rejecting			
Class	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount
5(g)	18	100%	$8,592,278.37	100%	0	0.00%	$0.00	0.00%
7(g)	0	0.00%	$0.00	0.00%	0	0.00%	$0.00	0.00%
8(g)	0	0.00%	$0.00	0.00%	0	0.00%	$0.00	0.00%

Voting Class of Interests		
	Accepting	Rejecting
Class	Number of Shares Voted/ Percentage of Number of Shares Voted	Number of Shares Voted/ Percentage of Number of Shares Voted
9(g)	5,184,113 / 100%	0 / 0.00%

D. Evidence in Support of the Plan

Falcon respectfully refers the Court to (i) the Plan; (ii) the Disclosure Statement; (iii) the *Declaration of Henry A. Thompson in Support of the Debtors' Chapter 11 Petitions and First Day Motions and in Accordance with Local Rule 1007-2* [Docket. No. 6] (the "***Thompson First Day Declaration***"); (iv) the *Declaration of Henry Thompson in Support of Confirmation of the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 1219] (the "***Thompson Declaration***"); (v) the *Declaration of Matthew Kvarda in Support of Confirmation of the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 1220] (the "***Kvarda Declaration***"); (vi) the *Amended Declaration of Jeffrey S. Stein of the Garden City Group, Inc. Certifying the Methodology for the Tabulation of Votes on and Results of Voting With Respect to the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*

[Docket No. 1193] (the "***GCG Tabulation Declaration***"); (vii) the *Declaration of William A. Lundstrom In Support of Confirmation of Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code With Respect To Falcon Gas Storage Company, Inc.*, filed substantially contemporaneously herewith (the "***Lundstrom Declaration***"); (viii) the various Affidavits of Service and Affidavits of Publication that have been filed in the Chapter 11 Cases, including, without limitation, Docket Numbers 1076, 1135, 1136, and 1729; and (ix) the entire record of the Chapter 11 Cases; for an overview of the Debtors and all other relevant facts that may bear on confirmation of the Plan.

E. Expected Distributions Under the Plan

A chart showing the status of all claims filed against the Falcon estate is annexed hereto as Exhibit A. The following chart summarizes the outstanding claims by class following consummation of the Tide/Hopper Settlement:

Plan Class	Claims with No Pending Objection	Claims with Pending Objection	Total:
Unclassified Priority	$8,438.67	n/a	$8,438.67
1(g) Other Priority Claims	n/a	n/a	n/a
3(g) Other Secured Claims	n/a	n/a	n/a
5(g) General Unsecured Claims	$342,278.37	$890,235.11	$1,232,513.48
7(g) Intercompany Claims	n/a	n/a	n/a
8(g) Subordinated Claims	n/a	$1,748,487.50	$1,748,487.50
10(g) Super-Subordinated Claims	n/a	n/a	n/a
Total:	**$350,717.04**	**$2,638,722.61**	**$2,989,439.65**

As a result of the Tide/Hopper Settlement, Falcon will receive approximately $18.8 million of the Escrowed Money prior to the Effective Date of the Plan with respect to Falcon.

With that money and Falcon's other cash on hand,[7] all holders of Allowed unclassified priority claims and Allowed General Unsecured Claims in Class 5(g) will be paid in full.[8] Holders of Allowed Subordinated Claims in Class 8(g) and Interests in Class 9(g) will then receive a *pro rata* share of the remaining funds in accordance with sections 4.8.2.2 and 4.9.2.3 of the Plan. There will not be any Super-Subordinated Claims in Class 10(g).

II. THE PLAN SHOULD BE CONFIRMED

As the Plan proponent, Falcon bears the burden of proof on all elements necessary for confirmation of the Plan. *JPMorgan Chase Bank, N.A. v. Charter Commc'ns Operating, LLC (In re Charter Commc'ns)*, 419 B.R. 221, 243-44 (Bankr. S.D.N.Y. 2009) (citing *Heartland Fed. Savs. & Loan, Ass'n v. Briscoe Enters. (In re Briscoe Enters.)*, 994 F.2d 1160, 1165 (5th Cir. 1993)). To satisfy this burden, Falcon need only show by a preponderance of the evidence that the Plan complies with the applicable provisions of the Bankruptcy Code. *See id.*; *In re Quigley Co., Inc.*, 437 B.R. 102, 125 (Bankr. S.D.N.Y. 2010) ("The proponent of confirmation bears the burden of proof by a preponderance of the evidence.").

Section 1129(a) of the Bankruptcy Code provides that a court shall confirm a chapter 11 plan if all of the requirements of sections 1129(a)(1) through (a)(13) of the Bankruptcy Code are satisfied. Here, the Plan should be confirmed because Falcon has satisfied the requirements of section 1129(a) of the Bankruptcy Code.

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[7] As of December 31, 2013 Falcon had $1,482,845.29 in cash on hand and $1,881,971.64 in other current assets. *See* Lundstrom Declaration ¶ 4.

[8] There will not be any Allowed Other Priority Claims in class 1(g), Other Secured Claims in Class 3(g), or Intercompany Claims in Class 7(g).

A. The Plan Complies with Applicable Provisions of the Bankruptcy Code as Required by Section 1129(a)(1)

Section 1129(a)(1) of the Bankruptcy Code requires that a plan comply with the "applicable provisions" of the Bankruptcy Code. 11 U.S.C. § 1129(a)(1). In determining whether the Plan complies with section 1129(a)(1), the Court must consider section 1123(a) of the Bankruptcy Code, which sets forth certain elements that a plan must contain, and section 1122 of the Bankruptcy Code, which governs the classification of claims. *See* H.R. Rep. No. 95-595, at 412 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6368; *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984).

1. The Plan Designates Classes of Claims and Interests and Such Classification Is Proper (Sections 1122 and 1123(a)(1))

Section 1123(a)(1) of the Bankruptcy Code requires that a plan classify all claims (with the exception of certain administrative and priority claims) and all interests, and that such classification comply with section 1122 of the Bankruptcy Code. With the exception of Administrative Expense Claims, Professional Compensation Claims, and Priority Tax Claims, which are not required to be classified, Article III of the Plan designates Classes of Claims and Interests.

"A plan proponent is afforded significant flexibility in classifying claims under § 1122(a) if there is a reasonable basis for the classification scheme and if all claims within a particular class are substantially similar." *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992). Courts also are afforded broad discretion in approving a plan proponent's classification structure and should consider the specific facts of each case when making such a determination. *See, e.g.*, *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1060-61 (3d

Cir. 1987) (observing that "Congress intended to afford bankruptcy judges broad discretion [under section 1122] to decide the propriety of plans in light of the facts of each case"). "Courts frequently interpret [section] 1122 to permit separate classification of different groups of unsecured claims where a reasonable basis existed for the classification." *In re Drexel Burnham*, 138 B.R. at 757. In so doing, they have emphasized that the "Bankruptcy Code only prohibits the identical classification of dissimilar claims and does not require the same classification for claims sharing some attributes." *In re Enron Corp.*, 2004 Bankr. LEXIS 2549, at *203 (Bankr. S.D.N.Y. Jul. 15, 2004); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177-78 (Bankr. S.D.N.Y. 1989) ("[A] debtor may place claimants of the same rank in different classes and thereby provide different treatment for each respective class.").

Here, the Plan's classification structure meets these standards. The Plan provides for the separation of Claims and Interests into seven Classes based upon differences in the legal nature and/or priority of Claims and Interests. Each Class of Claims or Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. Hence, the Plan's classification structure is factually and legally reasonable and is necessary to implement the Plan. Accordingly, Falcon submits that the Plan satisfies the requirements of section 1122 of the Bankruptcy Code.

2. Specification of Unimpaired Classes and Treatment of Impaired Classes (Sections 1123(a)(2) and 1123(a)(3))

Section 1123(a)(2) of the Bankruptcy Code requires that the Plan "specify any class of claims or interests that is not impaired under the plan." 11 U.S.C. § 1123(a)(2). Section 1123(a)(3) of the Bankruptcy Code requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the plan." 11 U.S.C. § 1123(a)(3). The Classes, which

include all Claims and Interests that are required to be classified, are summarized in Section 3.2 of the Plan along with an indication of whether such Classes are Impaired or Unimpaired. Article IV of the Plan identifies all Classes of Claims and Interests that are Impaired or Unimpaired, and it sets forth the applicable treatment afforded to them under the Plan in a manner consistent with the provisions of the Bankruptcy Code. Thus, the Plan satisfies the requirements of Bankruptcy Code sections 1123(a)(2) and 1123(a)(3).

3. Equal Treatment Within Classes (Section 1123(a)(4))

Section 1123(a)(4) of the Bankruptcy Code requires that the Plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). Article IV of the Plan satisfies this requirement in that all Holders of Claims and Interests within a particular Class are receiving identical treatment under the Plan, unless any such Holder has agreed to accept less favorable treatment.

4. Means for Implementation (Section 1123(a)(5))

Section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide "adequate means" for its implementation. 11 U.S.C. § 1123(a)(5). Articles VI, VII, and VIII of the Plan, along with various other provisions, provide adequate means to implement the very simple transactions contemplated by the Falcon Plan, which principally consist of distributions of cash. As described above, following implementation of the Tide/Hopper Settlement, Falcon will have sufficient cash to pay all holders of Allowed General Unsecured Claims in full and to make a substantial distribution to holders of Subordinated claims and Interests. Accordingly, the Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code.

5. Charter Provisions (Section 1123(a)(6))

Section 1123(a)(6) of the Bankruptcy Code requires that the Plan provide for the inclusion in a debtor's charter provisions (i) prohibiting the issuance of nonvoting equity securities and (ii) providing for an "appropriate distribution" of voting power among the securities possessing voting power. 11 U.S.C. § 1123(a)(6). Section 7.13 of the Plan provides: "The New Governing Documents of the Reorganized Debtors and the New Holding Companies (as applicable), among other things, shall prohibit the issuance of non-voting equity securities to the extent required by section 1123(a) of the Bankruptcy Code." Falcon's Certificate of Incorporation prohibits the issuance of non-voting equity securities and dictates an appropriate distribution of voting power by only authorizing the issuance of Common Stock and by giving each share of Common Stock one vote. Accordingly, the Plan satisfies the requirement of section 1123(a)(6) of the Bankruptcy Code.

6. Selections for Certain Positions (Section 1123(a)(7))

Section 1123(a)(7) of the Bankruptcy Code requires that the Plan's provisions with respect to the manner of selection of any officer, director or trustee, or any successor thereto, be "consistent with the interests of creditors and equity security holders and with public policy." 11 U.S.C. § 1123(a)(7).

Section 7.11 of the Plan provides that "the operation, management, and control of the New Holding Companies and the Reorganized Debtors shall be the general responsibility of their respective boards of directors or managers and senior officers . . . ." As described on pages 127-28 of the Disclosure Statement, "the current officers and directors of Falcon will remain as officers and directors of Reorganized Falcon." Since these officers and directors were selected

by the equity owners that will continue to be the residual beneficiaries of Falcon's Plan, their appointment is consistent with the interests of creditors and equity security holders and with public policy. Therefore, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

B. The Permissive Provisions Contained in the Plan Are Appropriate

Section 1123(b)(6) of the Bankruptcy Code provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). The Plan contains a number of these provisions, each of which is consistent with the applicable provisions of the Bankruptcy Code.

1. The Plan's Provisions Regarding Modification of the Rights of Holders of Claims (Sections 1123(b)(1) and (5))

Consistent with sections 1123(b)(1) and (b)(5) of the Bankruptcy Code, Articles III and IV of the Plan modify or leave unaffected, as the case may be, the rights of Holders of Claims and Interests within each Class.

2. The Plan's Treatment of Executory Contracts (Section 1123(b)(2))

Consistent with section 1123(b)(2) of the Bankruptcy Code, Article VI of the Plan provides for the rejection of Executory Contracts and Unexpired Leases of the Debtors except for any such contract or lease that (i) has been assumed, rejected, or renegotiated and assumed on renegotiated terms, pursuant to an order of the Bankruptcy Court entered prior to the Effective Date; (ii) is the subject of a motion to assume or reject, or a motion to approve renegotiated terms and to assume on such renegotiated terms, that has been filed and served prior to the Effective Date; (iii) is a management, administration, management services, consulting, advisory or similar agreement (including any of the agreements set forth in Exhibit 6 to the Management

Services Agreement), between a Debtor and any Syndication Company, PV, PNV, Transaction Holdco, or any direct or indirect subsidiary of a Transaction Holdco or any other similar entity related to any portfolio investment; or (iv) is identified on the Assumed Executory Contract and Unexpired Lease List or in the Plan. Such treatment of Executory Contracts and Unexpired Leases is typical in chapter 11 cases and is appropriate.

3. Subordination of Claims (Section 1123(b)(6))

Section 510(b) of the Bankruptcy Code mandates that the following types of claims be subordinated:

> [A] claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

11 U.S.C. § 510(b).

Consistent with section 1123(b)(6) of the Bankruptcy Code and Bankruptcy Rule 7001(8), Article IV of the Plan provides for the subordination of certain Claims.

a. Subordination of Thronson Claims

The Thronson Claims are based on alleged damages arising from the purported breach of an agreement relating to the sale of Falcon common stock. The Executory Contracts on which the alleged Thronson Claims are based will be rejected pursuant to Article VI of the Plan. Whether the Thronson Claims are based on the allegations that Falcon failed to issue common stock prior to the sale of the LLC interests in NorTex LLC to Tide, or whether the damages arise from Falcon's rejection of the Executory Contracts with the Thronson Parties makes no

difference. *See* 11 U.S.C. § 365(g)(1) (rejection of executory contract gives rise to prepetition claim). In either event, the Thronson Claims must be subordinated pursuant to section 510(b).

The Second Circuit has "interpret[ed] section 510(b) broadly" to require subordination of any claim arising from the purchase or sale of securities, regardless of the legal theory upon which the claim is based. *Rombro v. Dufrayne (In re Med Diversified, Inc.)*, 461 F.3d 251, 259 (2d Cir. 2006) (subordinating claim for fraudulent inducement and breach of contract arising from debtor's failure to issue stock); *see also In re Enron*, 341 B.R. 141, 144 (Bankr. S.D.N.Y. 2006) ("claims for damages that arise from the ownership of employee stock options . . . should be subordinated pursuant to section 510(b)"); *Weissmann v. Pre-Press Graphics Co. (In re Pre-Press Graphics Co.)*, 307 B.R. 65, 79-80 (N.D. Ill. 2004) (subordinating claim of shareholder and former director, which was based on state court judgment that fellow directors engaged in stockholder oppression and breach of fiduciary duty when they removed him from board position and secretly issued additional stock, which significantly diluted his ownership interest in debtor).

Because the Thronson Claims are based on alleged damages in connection with their inability or failure to exercise their stock options to purchase Falcon common stock, the Thronson Claims arise from the "purchase or sale of a security of the debtor" and must be subordinated to the level of Falcon common stock. 11 U.S.C. § 510(b); *In re Enron*, 341 B.R. 141, 144 (Bankr. S.D.N.Y. 2006) (subordinating stock option claims to the level of common stock interests). Pursuant to the provisions of section 510(b), the Plan provides that, if Allowed, any right of Distribution with respect to the Thronson Claims is subordinated to all Claims or Interests senior to the Interests represented by the common stock of Falcon. Accordingly, the Thronson Claims have been classified in the Plan as Subordinated Claims in Class 8(g).

b. Subordination of the Tide Claims

The Plan provides that if Allowed, the Tide Claims are Super-Subordinated Claims in Class 10(g). However, as discussed above, Falcon has reached a settlement with Tide whereby Tide has agreed to withdraw its Claims against Falcon, and consummation of the Plan with respect to Falcon is conditioned upon consummation of the Tide/Hopper Settlement. Thus, Class 10(g) of the Plan will be a null set.

4. The Release, Exculpation, and Injunctive Provisions (Section 1123(b)(6))

The Plan's exculpation and injunctive provisions are necessary and appropriate for the implementation of the Plan and are otherwise consistent with the Bankruptcy Code and Second Circuit precedent. Accordingly, the exculpation and injunctive provisions should be approved.

a. The Non-Falcon Debtor Release

Sections 9.2.1 and 9.2.2 of the Plan, which contain certain releases granted by the non-Falcon Debtors, do not by their terms apply to Falcon.

b. The Non-Falcon Debtor Third-Party Releases

Section 9.2.4 of the Plan, which contains a consensual third-party release given by certain Holders of Claims against and Interests in the non-Falcon Debtors, does not by its terms apply to Holders of Claims against or Interests in Falcon.

c. Exculpation

Section 9.2.5 of the Plan contains a provision that, in sum, exculpates the Exculpated Parties from liability for acts or omissions occurring during and in connection with the Chapter 11 Cases, except for claims arising from gross negligence, willful misconduct, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages,

ultra vires acts, or breach of the fiduciary duty of loyalty (the "***Exculpation***"). The Exculpated Parties consist of (i) each of the Debtors and their Affiliates; (ii) the Committee and its members, solely in their capacities as members of the Committee; (iii) the JPLs, solely in their capacities as joint provisional liquidators; (iv) the respective current and former officers, directors, employees, managers (in their capacities as officers, directors, employees, or managers, as applicable) of the Debtors and the Debtors' Affiliates; (v) Professionals and other professionals and agents (in their capacities as Professionals or other professionals and agents, as applicable) for services rendered during the pendency of the Chapter 11 Cases to or for the Debtors, the Debtors' Affiliates, the Committee, the JPLs, or the Ad Hoc Group, along with the successors and assigns of each of the foregoing; (vi) SCB; (vii) the Central Bank of Bahrain (including, without limitation, in its capacity as Creditor and regulator); (viii) the members of the Ad Hoc Group; (ix) the Exit Facility Arranger, the Exit Facility Investment Agent, the Exit Facility Collateral Agent, the Exit Facility Participants and their respective current and former officers, directors, employees, managers (in their capacities as officers directors, employees, or managers, as applicable), attorneys, agents, advisors or other professionals (in their capacities as attorneys, agents, advisors or other professionals, as applicable).

Courts evaluate exculpation provisions based upon a number of factors, including whether protection from liability was necessary for plan negotiations, whether the exculpation excludes gross negligence and willful misconduct, and whether the exculpation is consensual. *See Upstream Energy Servs. v. Enron Corp. (In re Enron Corp.)*, 326 B.R. 497, 501, 503 (S.D.N.Y. 2005) (observing that the bankruptcy court approved an exculpation provision where it was necessary to effectuate the plan and excluded gross negligence and willful misconduct); *In*

re DBSD, 419 B.R. at 218 ("exculpation provisions . . . may be used . . . where the provisions are important to a debtor's plan" or "if the affected creditors consent"); *In re Worldcom, Inc.*, 2003 WL 23861928, at *28 (Bankr. S.D.N.Y. Oct. 31, 2003) (approving an exculpation provision where it "was an essential element of the Plan formulation process and negotiations"); *In re Adelphia*, 368 B.R. at 268 (same). Accordingly, exculpation clauses appropriately prevent future collateral attacks against parties that have made substantial contributions to a debtor's reorganization.

Generally speaking, the effect of an appropriate exculpation provision is to set a standard of care of gross negligence or willful misconduct in future litigation for acts arising out of the restructuring, not to eliminate liability altogether. *See, e.g.*, *In re PWS Holding Corp.*, 228 F.3d 224, 246-47 (3d Cir. 2000) (reasoning that an exculpation provision did not eliminate third party liability, but rather "set[] forth the appropriate standard of liability" for the exculpated parties). Here, the Exculpation provision, including its carve out for gross negligence and willful misconduct, is consistent with established practice in this jurisdiction and others in that it "'generally follows the text that has become standard in this district [and] is sufficiently narrow to be unexceptionable.'" *In re Granite Broadcasting Corp.*, 369 B.R. 120, 139 (Bankr. S.D.N.Y. 2007) (quoting *In re Oneida*, 351 B.R. at 94, n.22 (Bankr. S.D.N.Y. 2006)) (brackets in original); *see also In re DJK Residential LLC*, No. 08-10375 (JMP) (Bankr. S.D.N.Y. May 7, 2008) [Docket No. 497] (approving exculpation provision that excluded gross negligence and willful misconduct); *In re Bally*, 2007 WL 2779438, at *8 (Bankr. S.D.N.Y. Sept. 17, 2007) (approving an exculpation provision that excluded gross negligence and willful misconduct and exculpated, among others, prepetition noteholders and new investors); *In re Worldcom, Inc.*, 2003 WL

23861928, at *28 (approving an exculpation provision that excluded gross negligence and willful misconduct).

Here, the Exculpation provision contains the necessary carve-outs for gross negligence, willful misconduct, etc. and is "sufficiently narrow to be unexceptionable." *In re Granite Broadcasting Corp.*, 369 B.R. 120, 139 (Bankr. S.D.N.Y. 2007) (quotation marks and citations omitted). What's more, the Exculpated Parties already have the benefit of the Exculpation as a result of the Court's confirmation of the Plan as to the non-Falcon Debtors. That Exculpation provision extended to any acts taken in connection with the Falcon case in addition to the cases of the other Debtors. Thus, confirmation of the Plan as to Falcon will not expand the Exculpation beyond what has already been approved.

d. Injunction

Section 9.2.6 of the Plan is an injunction provision relating to the exculpation provision and should be approved. The injunction provision is necessary to preserve and enforce the Exculpation. Further, Article XII(B) of the Disclosure Statement and Section 9.2 of the Plan comply with the requirements of Bankruptcy Rule 3016(c) that "the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and entities that would be subject to the injunction." Fed. R. Bankr. P. 3016(c). The applicable exculpation and injunction provisions are clearly identified in the Plan and Disclosure Statement, are displayed in bold font, and specifically identify all acts to be enjoined and all entities that would be subject to the injunction. And, as with the Exculpation, the injunction set forth in Section 9.2.6 of the Plan has already been approved and is currently in

force. Therefore, confirmation of the Plan as to Falcon will not put into place any new injunction that is not already in place.

5. The Authorizations Contained in Section 7.16 of the Plan are Appropriate (Section 1123(b)(6))

Section 7.16 of the Plan ratifies, authorizes, and approves all of the actions contemplated by the Plan. Section 7.16 further provides that the authorizations and approvals contemplated therein shall be effective notwithstanding any requirements under any non-bankruptcy law, but only to the extent permitted by the Bankruptcy Code. Section 1123(a) of the Bankruptcy Code dictates that a plan shall contain various provisions that are operative "[n]otwithstanding any otherwise applicable non-bankruptcy law." 11 U.S.C. § 1123(a). One such provision, section 1123(a)(5), requires that a plan provide adequate means for its implementation. The actions described in Section 7.16 of the Plan are necessary for adequate implementation of the Plan. Accordingly, the authorizations contained in section 7.16 of the Plan are appropriate.

C. The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2))

Section 1129(a)(2) of the Bankruptcy Code requires that the proponent of a plan comply with the applicable provisions of title 11. "Courts have interpreted the 1129(a)(2) requirement to include satisfaction of the disclosure and solicitation requirements of section 1125 of the Bankruptcy Code, as well as section 1126, concerning plan acceptance." *In re Boylan Int'l, Ltd.*, 452 B.R. 43, 51 n.4 (Bankr. S.D.N.Y. 2011) (citations omitted).

1. Compliance with Section 1125 of the Bankruptcy Code

Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan from holders of claims or interests "unless, at the time of or before such

solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved . . . by the court as containing adequate information." 11 U.S.C. § 1125(b).

Here, Falcon has complied with the applicable provisions of section 1125 of the Bankruptcy Code. The Court entered the Disclosure Statement Approval Order on April 26, 2013. The Disclosure Statement, the Plan, appropriate Ballots, notices, and all other related documents were distributed to parties in accordance with the Disclosure Statement Approval Order. *See* GCG Tabulation Declaration ¶¶ 4-15. Similarly, the date and time of the Voting Deadline and the Initial Confirmation Hearing were timely published in (i) *The Wall Street Journal (Global Edition)* on May 6, 2013 [*See* Docket No. 1136] and (ii) *The Financial Times*, on May 6, 2013 [*See* Docket No. 1135]. GCG has filed an affidavit of service demonstrating compliance with section 1125 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Approval Order with respect to the transmittal of the Disclosure Statement, the Plan and all related solicitation materials. *See* Docket No. 1076. Notice that the adjourned confirmation hearing would be re-commenced on January 21, 2014 was mailed to each of Falcon's creditors on December 30, 2013. *See* Docket No. 1729. Furthermore, Falcon has complied with all orders of the Court entered during the pendency of its chapter 11 case and with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules with respect to disclosure and solicitation of votes on the Plan.

2. Compliance with Section 1126 of the Bankruptcy Code

Under section 1126 of the Bankruptcy Code, only holders of claims and interests in impaired classes that will receive or retain property under a plan may vote to accept or reject

such plan. In accordance with section 1126 of the Bankruptcy Code, Falcon only solicited acceptances or rejections from the Holders of Claims and Interests in Classes 5(g), 7(g), 8(g), and 9(g), which were the only Classes eligible to vote (the "***Voting Classes***"). The Voting Classes are Impaired but will receive Distributions under the Plan. The results of voting on the Plan are set forth in the GCG Tabulation Declaration.

The Claims in Classes 1(g) and 3(g) are Unimpaired under the Plan, and, as a result, the Holders Claims in such Classes (if any) are presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

Claims in Class 10(g) are Impaired but would not receive or retain any Distribution or property under the Plan. Holders of such Claims would, therefore, be deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. However, the only Holder of potential Claims in Class 10(g), Tide, has reached a settlement with Falcon and has agreed to withdraw its Claims such that there are no Claims in Class 10(g) of the Plan.

Accordingly, the Debtors have fully complied with all the provisions of title 11 and, in particular, with the provisions of sections 1125 and 1126 of the Bankruptcy Code and the applicable Bankruptcy Rules. Consequently, the Debtors have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

D. The Plan Was Proposed in Good Faith (Section 1129(a)(3))

Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). The Second Circuit has held that "a plan will be found in good faith if it 'was proposed with honesty and good intentions and with a basis for expecting that a reorganization can be effected.'" *Argo Fund Ltd. v. Bd. of*

Directors of Telecom Argentina, S.A. (In re Bd. of Directors of Telecom Argentina, S.A.), 528 F.3d 162, 174 (2d Cir. 2008) (quoting *Koelbl v. Glessing (In re Koelbl)*, 751 F.2d 137, 139 (2d Cir. 1984)). In determining whether the good faith requirement has been satisfied, courts properly focus on "'the plan itself and whether such plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'" *In re Granite Broadcasting*, 369 B.R. at 137 (quoting *In re Madison Hotel Assocs.*, 749 F.2d 410 (7th Cir. 1984)). The overarching purpose of the Bankruptcy Code is to provide the debtor with a fresh start while "preserving going concerns and maximizing property available to satisfy creditors." *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453 (1999).

The Plan has been proposed by Falcon in good faith, with the legitimate and honest purposes of maximizing the value of each of Falcon's creditors and Holders of Interests under the circumstances of its chapter 11 case. The record in this chapter 11 case demonstrates that the Plan is the product of good faith, arm's-length negotiations and settlements among Falcon, Tide, the Hopper Parties, HSBC, and other key constituents. The Plan contemplates that Falcon will distribute its assets to Holders of Claims and Interests in accordance with the priority scheme dictated by the Bankruptcy Code. As such, the Plan was proposed with the legitimate and honest purpose of providing the greatest possible Distribution to Falcon's Claimants. Additionally, the Plan has been proposed in compliance with all applicable laws, rules, and regulations. Clearly, the Plan has been conceived and proposed with "honesty and good intentions"—the hallmarks of "good faith" as required by section 1129(a)(3) of the Bankruptcy Code. *In re Bd. of Directors of Telecom Argentina, S.A.*, 528 F.3d at 174 (citations omitted). Accordingly, the Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code.

E. Payments for Services or Costs and Expenses (Section 1129(a)(4))

Section 1129(a)(4) of the Bankruptcy Code requires that any payments by a debtor "for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case," either be approved by the court as reasonable or subject to approval of the court as reasonable. 11 U.S.C. § 1129(a)(4). To date, all such payments have been approved by this Court or are subject to the approval of the Court pursuant to section 2.2 of the Plan. Section 2.2 of the Plan provides a procedure for Court review of Professional Compensation Claims. These procedures for the Court's review and ultimate determination of the fees, costs, and expenses to be paid by the Debtors satisfy the requirements of section 1129(a)(4) of the Bankruptcy Code.

F. Service of Certain Individuals (Section 1129(a)(5))

Sections 1129(a)(5)(A)(i) and (ii) of the Bankruptcy Code require that the plan proponent disclose the "identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor . . . or successor to the debtor under the plan," and require a finding that the "appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy." 11 U.S.C. § 1129(a)(5)(A)(i)-(ii). In determining whether the post-confirmation management of a debtor is consistent with the interests of creditors, equity security holders, and public policy, a court should consider proposed management's competence, discretion, experience, and affiliation with entities having interests adverse to the debtor. *See In re Sherwood Square Assocs.*, 107 B.R. 872, 878 (Bankr. D. Md. 1989). In general, however, "[t]he [d]ebtor should have first choice of its management, unless compelling cause to the contrary

exists." *Id.* Case law is also clear that a plan may contemplate the retention of the debtor's existing directors and officers. *See, e.g.*, *In re Texaco, Inc.*, 84 B.R. 893, 908 (Bankr. S.D.N.Y. 1988) (determining that section 1129(a)(5) was satisfied where plan disclosed debtor's existing directors and officers who would continue to serve in office after plan confirmation). Section 1129(a)(5)(B) of the Bankruptcy Code requires the plan proponent to "disclose[] the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider." 11 U.S.C. § 1129(a)(5)(B).

Falcon has fully satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code. The Disclosure Statement disclosed the identity and affiliations of each individual proposed to serve as a director or officer of Falcon under the Plan.[9] The continuation in such offices of each such individual is consistent with public policy since they are representatives of Falcon's residual beneficiary. As a result, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

G. Rate Changes (Section 1129(a)(6))

Section 1129(a)(6) of the Bankruptcy Code requires any governmental regulatory commission having jurisdiction over the rates charged by the post-confirmation debtor in the operation of its business to approve any rate change provided for in the plan. Because no governmental regulatory commission will have jurisdiction over Falcon's rates after confirmation of the Plan, the provisions of section 1129(a)(6) of the Bankruptcy Code are not applicable to the Plan and, consequently, should be deemed satisfied.

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[9] These individuals will not be compensated by Falcon. They are employees of AIM and will continue to be compensated by AIM for their services.

H. The Plan Satisfies the "Best Interests" Test (Section 1129(a)(7))

The Bankruptcy Code protects creditors and equity holders who are impaired by the Plan and have not voted to accept the Plan through the "best interests" test of section 1129(a)(7). The "best interests" test requires that holders of impaired claims or interests who do not vote to accept the plan "receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date." 11 U.S.C. § 1129(a)(7)(A). If the Court finds that each non-consenting member of an Impaired Class will receive at least as much under the Plan as it would receive in a chapter 7 liquidation, the Plan satisfies the best interests test. *See, e.g.*, *In re Leslie Fay Cos. Inc.*, 207 B.R. 764, 787 (Bankr. S.D.N.Y. 1997).

With respect to each Impaired Class of Claims or Interests, each Holder of a Claim or Interest in such Impaired Class (i) has accepted the Plan; (ii) will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if Falcon was liquidated under chapter 7 of the Bankruptcy Code on the Effective Date; or (iii) has agreed to receive less favorable treatment.

Pursuant to the waterfall structure of the Plan, all Holders of Allowed unclassified priority claims and Allowed General Unsecured Claims in Class 5(g) will be paid in full,[10] with

[10] Other Priority Claims in Class 1(g), Other Secured Claims in Class 3(g), and Intercompany Claims in Class 7(g) would also be paid in full; however, no such Claims exist.

interest at the legal rate of interest.[11] Holders of Allowed Subordinated Claims in Class 8(g) and Allowed Interests in Class 9(g) will then receive a *pro rata* share of all of Falcon's remaining assets. This Distribution will be greater than or equal to any Distribution in a hypothetical chapter 7 liquidation, if for no other reason than under the Plan such Distribution will not be subject to chapter 7 trustee fees. *See* Lundstrom Declaration ¶ 7. There will not be any Super-Subordinated Claims in Class 10(g).[12]

Therefore, for the reasons set forth above, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

I. Acceptance of the Plan by Each Impaired Class (Section 1129(a)(8))

Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept a plan or be unimpaired under a plan. The Claims and Interests in Classes 1(g) and 3(g) are Unimpaired under the Plan, and the Holders of Claims and Interests in such Classes are conclusively presumed to have accepted the Plan. *See* 11 U.S.C. § 1126(f). Impaired Classes 5(g) and 9(g) have accepted the Plan. *See* GCG Tabulation Declaration ¶ 29.

No vote was cast in Class 7(g), and the only Claim in Class 7(g) will be withdrawn in connection with the Tide/Hopper Settlement. *See id*. Likewise, no Creditors with Claims in

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[11] Section 8.15 of the Plan provides that "[u]nless otherwise specifically provided for in the Plan, the Confirmation Order, or other Final Order of the Bankruptcy Court, no postpetition interest or profit shall accrue or be paid on or in connection with any Claim or Interest, and no Holder of a Claim or Interest shall be entitled to interest or profit during the Postpetition Period, or in connection with any such Claim or Interest." Because not all Holders of filed Claims in Class 5(g) voted to accept the Plan and because section 726(a)(6) requires the payment of postpetition interest on claims at the legal rate before any distributions can be made to interest holders, Falcon proposes that the Confirmation Order as to Falcon provide that Holders of Allowed Claims in Class 5(g) be paid postpetition interest at the legal rate of interest.

[12] Even if there were, the Plan would still satisfy the best interests test with respect to such Claims because those Claims would not receive any distribution under the Plan or in a chapter 7 liquidation.

Class 8(g) voted on the Plan.[13] *See id*. Under similar circumstances, courts routinely hold that a non-voting class is deemed to have accepted a chapter 11 plan. *See, e.g.*, *In re Adelphia*, 368 B.R. at 261 ("[r]egarding non-voters as rejecters runs contrary to the Code's fundamental principle, and the language of section 1126(c)"); *In re DBSD*, 419 B.R. at 206 (non-voting class deemed to accept plan); *see also Heins v. Ruti–Sweetwater, Inc. (In re Ruti–Sweetwater, Inc.)*, 836 F.2d 1263, 1266 (10th Cir.1988) (same). In *Adelphia*, the court reasoned that deemed acceptance by a non-voting class was especially appropriate given that multiple classes did vote, and the effect of not voting was announced in advance. *In re Adelphia*, 368 B.R. at 261. In this case, just like *Adelphia*, Claimants entitled to vote in every Class except Classes 7(g) and 8(g) voted, and the Plan states that the Debtors would seek a determination that such non-voting Classes would be deemed to accept the Plan. Accordingly, the Debtors submit that Classes 7(g) and 8(g) should be deemed to accept the Plan. In any event, the Plan could still be confirmed over Class 7(g)'s or 8(g)'s rejection for the reasons described in Section II.P below.[14]

J. Treatment of Priority Claims (Section 1129(a)(9))

Under section 1129(a)(9) of the Bankruptcy Code, unless otherwise agreed, a plan must satisfy administrative and priority tax claims in full in cash. Accordingly, Section 2.1 of the Plan provides for the payment of Administrative Expense Claims in cash, unless the Debtors and the Holder of such Claims have agreed to other terms. With respect to Professional Compensation Claims, Section 2.2 of the Plan provides that any unpaid portion of such Claims will be paid

[13] Tide was given the right to vote in Class 8(g) for voting purposes only. As noted above, Tide has agreed to withdraw its Class 8(g) vote in connection with the Tide/Hopper Settlement.

[14] Claims in Class 10(g) would be Impaired and, because they would not receive a Distribution under the Plan, Holders of such Claims would be deemed to have rejected the Plan. However, as described elsewhere herein, there are no Claims in Class 10(g). Even if such Claims did exist, the Plan could still be confirmed over Class 10(g)'s deemed rejection for the reasons described in Section II.P below.

within three business days of the date that the order approving the final fee application with respect to such Claims becomes a Final Order (or on the Effective Date, if it occurs at a later date). Further, Section 2.3 of the Plan provides for full payment of Priority Tax Claims in accordance with section 1129(a)(9)(C). Unless otherwise agreed, Other Priority Claims, if any, will also be paid in full, in cash, on the Distribution Date. Thus, the Plan satisfies the requirements of section 1129(a)(9).

K. **Acceptance of at Least One Impaired Class (Section 1129(a)(10))**

If a plan has one or more impaired classes of claims, section 1129(a)(10) of the Bankruptcy Code requires that at least one such class vote to accept the plan, determined without including any acceptance of the plan by any insider. Class 5(g) voted to accept the Plan. *See* GCG Tabulation Declaration ¶ 29. Insiders do not hold any Claims in this Class. *See* Thompson Declaration ¶ 56. Thus, at least one Impaired Class of Claims has voted to accept the Plan, without including any acceptance of the Plan by any insider.

L. Feasibility (Section 1129(a)(11))

Section 1129(a)(11) of the Bankruptcy Code requires, as a condition to confirming a plan of reorganization, that confirmation "is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11) (emphasis added). "A plan does not fail the feasibility test if there is a possibility, or even a probability, of a liquidation under the plan, so long as the means for a liquidation is proposed in the plan. *In re Cellular Information Sys.*, 171 B.R. 926, 945 (Bankr. S.D.N.Y. 1994) (quotation marks and citations omitted). In other words, "feasibility, under the literal wording of §

1129(a)(11) of the Bankruptcy Code, is unnecessary to be shown when 'liquidation . . . is proposed in the plan.'" *In re 47th & Belleview Partners*, 95 B.R. 117, 120 (Bankr. W.D. Mo. 1988) (quoting section 1129(a)(11)). Here, the Plan calls for Falcon's liquidation. In fact, the substantial majority of Falcon's assets have already been liquidated—the principal function of the Plan is merely to distribute these assets to Falcon's stakeholders. Falcon will hold in excess of $20 million in cash on the Effective Date of the Plan as to Falcon. *See* Lundstrom Declaration ¶¶ 4-6. Falcon has no obligation to pay any Claims other than Administrative Expense Claims, Professional Compensation Claims, Priority Tax Claims, and U.S. Trustee Fees under the Plan;[15] all other obligations are only paid if and to the extent that funds are available. Even outside of the liquidation context, the "key element of feasibility is whether there exists the reasonable probability that the provisions of the Plan can be performed." *In re Drexel Burnham*, 138 B.R. at 762. There is no question that the Plan's provisions can be performed with respect to the Falcon estate and therefore the Plan is feasible.

Moreover, all conditions precedent to confirmation contained in Section 10.1.1 of the Plan have been or will be satisfied. For example, the Court has already entered the Disclosure Statement Approval Order, and the Plan Supplement Documents have been filed in form and substance reasonably acceptable to the Debtors. Similarly, all conditions precedent to the Effective Date contained in Section 10.1.2 either were satisfied in connection with the occurrence of the Effective Date as to the non-Falcon Debtors or will be satisfied, so long as the Tide/Hopper 9019 is approved.

In sum, the Plan meets the requirements of Section 1129(a)(11).

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[15] Falcon expects these obligations to be less than $8 million in the aggregate. *See* Lundstrom Declaration ¶ 5.

M. Payment of Certain Fees (Section 1129(a)(12))

Section 1129(a)(12) of the Bankruptcy Code requires that all fees payable under 28 U.S.C. § 1930 "have been paid or the plan provides for the payment of all such fees on the effective date of the plan." 11 U.S.C. § 1129(a)(12). Section 2.5 of the Plan provides that U.S. Trustee Fees incurred by the U.S. Trustee prior to the Effective Date shall be paid on the Distribution Date. Thus, this requirement is satisfied.

N. Retiree Benefits (Section 1129(a)(13))

Section 1129(a)(13) requires a plan to provide for retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code. The Plan provides for the continuation of payment by the Debtors of all "retiree benefits," as defined in section 1114(a) of the Bankruptcy Code, if any, at previously established levels. Accordingly, the Plan complies with section 1129(a)(13) of the Bankruptcy Code.

O. Sections 1129(a)(14) Through 1129(a)(16) are not Applicable

The remaining provisions of section 1129 of the Bankruptcy Code are not applicable to Falcon. Sections 1129(a)(14) and 1129(a)(15) apply only to individual debtors and therefore do not apply to Falcon. Lastly, section 1129(a)(16) is inapplicable because Falcon is not a non-profit organization.

P. The Plan Satisfies the "Cram Down" Requirements with Respect to the Non-Accepting Classes

As stated above, Classes 7(g) and 8(g) did not vote with respect to the Plan, and Class 10(g) was not entitled to vote on the Plan because such Class was deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code (together, the "***Non-Accepting Classes***"). Falcon believes that it has complied with section 1129(a)(8) of the Bankruptcy Code—which

requires that each class of claims or interests either accept the plan or be unimpaired—notwithstanding the Non-Accepting Classes for the reasons discussed above. Namely, Classes 7(g) and 8(g) should be deemed to be "accepting" classes in light of the fact that no member of either class voted to reject the Plan. *See, e.g.*, *In re Adelphia*, 368 B.R. at 261 ("[r]egarding non-voters as rejecters runs contrary to the Code's fundamental principle, and the language of section 1126(c)"); *In re DBSD*, 419 B.R. at 206 (non-voting class deemed to accept plan); *see also Heins v. Ruti–Sweetwater, Inc. (In re Ruti–Sweetwater, Inc.)*, 836 F.2d 1263, 1266 (10th Cir.1988) (same). Moreover, Class 7(g) and Class 10(g) are null sets—following implementation of the Tide/Hopper Settlement there will be no Creditors in those Classes. As such, those hypothetical classes should be disregarded when determining whether each actual class of claims or interests has accepted the Plan for purposes of satisfying the requirements of section 1129(a)(8) of the Bankruptcy Code.

Nonetheless, even if the Court finds that the Plan does not satisfy section 1129(a)(8), section 1129(b) of the Bankruptcy Code provides a mechanism for confirmation of a plan when the plan is not accepted by all impaired classes of claims or interests. Specifically, section 1129(b) provides, in pertinent part:

> [I]f all of the applicable requirements of subsection (a) of [section 1129] other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b).

This section essentially provides two requirements for "cramdown" of a plan on a dissenting impaired class: (i) that the plan does not discriminate unfairly, and (ii) that it be fair and equitable, with respect to such class. 11 U.S.C. § 1129(b)(1).

1. The Plan Complies with Section 1129(b)(1) Because it Does Not Discriminate Unfairly Against Holders of Claims in the Non-Accepting Classes

The section 1129(b)(1) requirement that a plan not discriminate unfairly against impaired, dissenting classes focuses on the treatment of the dissenting class relative to other classes consisting of similar legal rights. *See* H.R. Rep. No. 95-595, at 416 ("The plan may be confirmed . . . if the class is not unfairly discriminated against with respect to equal classes and if junior classes will receive nothing under the plan . . . ."); *see also In re Charter Commc'ns*, 419 B.R. at 267 (dissimilar treatment for dissimilar classes is not "unfair discrimination"); *In re Drexel Burnham Lambert Group, Inc.*, 140 B.R. 347, 350 (S.D.N.Y. 1992) ("[W]here legal claims are sufficiently different as to justify a difference in treatment under a reorganization plan, reasonable differences in treatment are permissible.") (internal quotation marks and citation omitted). Moreover, section 1129(b)(1) does not prohibit discrimination among classes; it only prohibits discrimination that is "unfair" with respect to a dissenting class or classes. *In re Charter Commc'ns*, 419 B.R. at 267 (holding that, even if creditor classes were similarly situated, the "discrimination was justified"). And, a plan does not unfairly discriminate if there is a "reasonable basis for the discrimination" and if the debtor is "unable to confirm and consummate a plan without the proposed discrimination." *In re Tribune Co.*, 476 B.R. 843, 865 (Bankr. D. Del. 2012); *In re Charter Commc'ns*, 419 B.R. at 267. Thus, with respect to the Non-Accepting Classes, there is no unfair discrimination if (i) the Claims in the Non-Accepting Classes are treated the same as other Claims or Interests that are similar to those in the Non-

Accepting Classes, (ii) the Claims or Interests in the Non-Accepting Classes are dissimilar to Claims or Interests in other Classes, or (iii) taking into account the particular facts and circumstances of the case, (a) there is a reasonable basis for disparate treatment of the Non-Accepting Classes, and (b) Falcon is unable to confirm and consummate the Plan without the proposed disparate treatment.

The Plan does not discriminate unfairly with respect to Class 7(g) because (i) following implantation of the Tide/Hopper Settlement there will not be any Claims in Class 7(g), and (ii) even if there were Claims in Class 7(g), those Claims would be treated exactly the same as the differently classified Claims that are similar to those in Class 7(g)—General Unsecured Claims in Class 5(g). In fact, the Plan provides that Allowed Claims in Classes 5(g) and 7(g) share *pro rata* in the same distribution tranche and all Allowed Claims in both Classes will be paid in full. The Plan does not discriminate unfairly with respect to Class 8(g) because (i) there are no other Classes with similar legal rights to those in Class 8(g), which consists of Claims that are subordinated pursuant to section 510(b) of the Bankruptcy Code, and as discussed in more detail below (ii) Claims in Classes 8(g) and Interests in Class 9(g) share *pro rata* in the same distribution tranche—the result dictated by section 510(b) of the Bankruptcy Code with respect to subordinated claims. The Plan does not discriminate unfairly with respect to Class 10(g) because (i) following implantation of the Tide/Hopper Settlement there will not be any Claims in Class 10(g), (ii) there are no other Classes with similar legal rights to those in Class 10(g), which consists of Claims that are subordinated below Interests in Class 9(g) pursuant to section 510(b) of the Bankruptcy Code, and (iii) the treatment of Super-Subordinated Claims in Class 10(g) as being subordinated below Interests in Class 9(g) is dictated by section 510(b) of the Bankruptcy

Code. *See generally Debtors' Memorandum of Law in Support of Subordination of the Tide Claims Pursuant to the Confirmation of the Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c), et al.* [Docket No. 1108]. Accordingly the Plan does not discriminate unfairly with respect to these Classes.

2. The Plan Complies with Section 1129(b)(2) Because it is Fair and Equitable with Respect to Holders of Claims in the Non-Accepting Classes

Under section 1129(b)(2), a plan is fair and equitable with respect to dissenting classes of unsecured claims or interests if it follows the "absolute priority" rule. With respect to unsecured claims, the absolute priority rule requires that either "each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim" or "the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property. . . ." 11 U.S.C. § 1129(b)(2)(B); *see also 203 N. LaSalle St. P'ship*, 526 U.S. at 441-42; *In re PPI Enters. (U.S.), Inc.*, 228 B.R. 339, 352 (Bankr. D. Del. 1998).

Claims in Class 7(g) are treated *pari passu* with General Unsecured Claims in Class 5(g) and take ahead of Subordinated Claims in Class 8(g), Interests in Class 9(g), and Super-Subordinated Claims in Class 10(g). Therefore no holder of a Claim that is junior to the Claims in Class 7(g) will receive or retain anything on account of their claims unless and until the Allowed Claims in Class 7(g), if any, are paid in full.[16] Thus, the Plan is fair and equitable with respect to Class 7(g).

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[16] As noted previously, following implementation of the Tide/Hopper Settlement there will not be any Claims in Class 7(g).

Claims in Class 8(g) are subordinated below General Unsecured Claims and, as such Claims arise from the purchase and sale of common stock, are treated *pari passu* with Interests in Class 9(g) in accordance with section 510(b) of the Bankruptcy Code. Pursuant to the Plan, Holders of Claims in Class 8(g) will receive, to the greatest extent practicable, the same treatment as Holders of Interests in Class 9(g), and no junior Class will receive or retain anything under the Plan.

Because Class 8(g) is a Class of Claims measured in dollars (apples) and Class 9(g) is a Class of Interests whose value is not measurable by a fixed dollar amount (oranges), there is no easy way to compare the relative value of each for the purpose of accomplishing the *pari passu* distribution required by the Bankruptcy Code. *See, e.g.*, *Allen v. Geneva Steel Co. (In re Geneva Steel Co.)*, 281 F.3d 1173, 1177 (10th Cir. 2002) ("[C]laims springing from the purchase or sale of common stock are treated on the same level as common stock."). To do so in the most equitable fashion possible, the Plan contains a formula that assigns the Interests a value of $70,000,000— the approximate equity value of Falcon (as determined by the arm's-length sale of its only material asset) minus the amounts that have already been distributed to Falcon's shareholders. Once the Interests in Class 9(g) are assigned a value that can be compared to the Allowed Claims Class 8(g), the Plan provides for *pari passu* treatment as between Classes 8(g) and 9(g). In this manner, no Class that is junior to Class 8(g) will receive or retain anything under the Plan.

Class10(g) is subordinated below the level of Interests. Because no junior Class will receive or retain anything under the Plan, the Plan complies with section 1129(b)(2)(B)(ii) as to Class 10(g).

Therefore, even if the Court finds that Classes 7(g), 8(g), and 10(g) are not accepting Classes of Claims within the meaning of section 1129(a)(8), the "cramdown" provisions of section 1129(b)(2)(B) are satisfied, and the Plan is confirmable notwithstanding the Non-Accepting Classes.

Q. Only One Plan (Section 1129(c))

Section 1129(c) of the Bankruptcy Code provides that "the court may confirm only one plan, unless the order of confirmation in the case has been revoked under section 1144" of the Bankruptcy Code. 11 U.S.C. § 1129(c). No other plan has been confirmed with respect to Falcon; therefore, section 1129(c) is satisfied.

R. Principal Purpose of the Plan (Section 1129(d))

Section 1129(d) of the Bankruptcy Code provides that "[n]otwithstanding any other provision of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." 11 U.S.C. § 1129(d). No governmental unit has requested that the Plan not be confirmed on the grounds that the primary purpose of the Plan is the avoidance of taxes or the avoidance of application of Section 5 of the Securities Act of 1933, and the primary purpose of the Plan is not avoidance of taxes or avoidance of the requirements of Section 5 of the Securities Act of 1933. Therefore, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

S. Technical Modifications to the Plan

After votes were solicited with respect to the Plan, the Debtors made various changes to the version of the Plan that was disseminated with the Disclosure Statement to address objections

and potential objections, and to make other technical modifications. The version of the Plan that the Court subsequently confirmed as to the non-Falcon Debtors (Docket No. 1265) contained these changes and the order confirming the Plan as to the non-Falcon Debtors found as a fact that none of the changes materially and/or adversely impacted any party in interest. *See Findings of Fact, Conclusions of Law, and Order Confirming the Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors With Respect To Each Debtor Other Than Falcon Gas Storage Company, Inc. Under Chapter 11 of the Bankruptcy Code* [Docket No. 1262] ¶ F; *see also* 11 U.S.C. § 1127; Fed. R. Bankr. P. 3019 ("If the court finds…that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.").

Falcon is asking the Court to confirm the same Plan as to Falcon that was confirmed as to the other Debtors without change. The differences between the solicitation version of the Plan and the version of the Plan Falcon is asking the Court to confirm are reflected in the blackline annexed hereto as Exhibit B. The changes which relate specifically to Falcon are summarized in the following chart:

Plan Section	Solicitation Version Language	Confirmed Plan Language	Effect of Change
7.18	The applicable Reorganized Debtor(s), through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action (other than Released Actions); provided, however, that any	The applicable Reorganized Debtor(s), through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action (other than Released Actions); *provided*, *however*, that any	Preserves the rights of Falcon's creditors to seek standing to prosecute causes of action on behalf of

Plan Section	Solicitation Version Language	Confirmed Plan Language	Effect of Change
	Causes of Action that revest in Reorganized Arcapita or AIHL shall be transferred to New Arcapita Topco in accordance with the Implementation Memorandum and New Arcapita Topco may exclusively enforce any and all such Causes of Action (other than Released Actions); provided further, however, that the Committee may enforce any Causes of Action that the Committee has standing to prosecute pursuant to a Final Order. The Reorganized Debtors, New Arcapita Topco, or the Committee (solely with respect to any Causes of Action that the Committee has standing to prosecute pursuant to a Final Order), as applicable, shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any Causes of Action (other than Released Actions) and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.	Causes of Action that revest in Reorganized Arcapita or AIHL shall be transferred to New Arcapita ~~Topco~~Holdco 2 in accordance with the Implementation Memorandum and New Arcapita ~~Topco~~Holdco 2 may exclusively enforce any and all such Causes of Action (other than Released Actions); *provided further*, *however*, that the Committee may enforce any Causes of Action that the Committee has standing to prosecute pursuant to a Final Order; *provided further, however*, that any Creditor of Falcon may enforce any Causes of Action belonging to Falcon that such Creditor has standing to prosecute pursuant to a Final Order. The Reorganized Debtors, New Arcapita ~~Topco,~~ ~~or~~Holdco 2, the Committee (solely with respect to any Causes of Action that the Committee has standing to prosecute pursuant to a Final Order), or any Creditor of Falcon with standing to prosecute a Cause(s) of Action that belongs to Falcon (solely with respect to any Causes of Action that ~~the Committee~~such Creditor has standing to prosecute pursuant to a Final Order), as applicable, shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle,	Falcon's estate.

Plan Section	Solicitation Version Language	Confirmed Plan Language	Effect of Change
		compromise, release, withdraw, or litigate to judgment any Causes of Action (other than Released Actions) and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.	
8.11	After the Effective Date, no party in interest shall have the right to object to Claims against or Interests in the Debtors or their Estates other than the Reorganized Debtors.	After the Effective Date, no party in interest shall have the right to object to Claims against or Interests in the Debtors (other than Falcon) or their Estates other than the Reorganized Debtors.	Preserves the rights of Falcon's creditors to object to Claims against or Interests in Falcon.
8.12	From and after the Effective Date, and without any further approval by the Bankruptcy Court, the Reorganized Debtors may compromise and settle all Claims and Causes of Action.	From and after the Effective Date, and without any further approval by the Bankruptcy Court, the Reorganized Debtors (other than Falcon) may compromise and settle all Claims and Causes of Action. Falcon may compromise and settle any Claims and Causes of Action with the approval of the Bankruptcy Court.	Requires that any settlement reached by Falcon be approved by the Bankruptcy Court.

None of the changes materially and adversely affects any of Falcon's creditors or equity security holders. *See, e.g.*, *In re Enron Corp.*, 2004 Bankr. LEXIS 2549, at *259 (Bankr. S.D.N.Y. July 15, 2004) ("The…test is whether the modification so affects any creditor or interest holder who accepted the plan that such entity, if it knew of the modification, would be likely to reconsider its acceptance.") (quotations and citations omitted). The Falcon-related changes merely ensure that the procedural rights of parties in interest to the Falcon estate are not

adversely affected by confirmation. In this regard, the Falcon-related changes are actually beneficial to all parties in interest to the Falcon estate.[17]

III. ALL OBJECTIONS HAVE BEEN RESOLVED

A. Limited Objection of Mayhoola for Investment Q.S.P.C. [Docket No. 1165]

Mayhoola for Investment Q.S.P.C. ("***Mayhoola***") objected to confirmation of the Plan unless the confirmation order clarifies that Mayhoola may bring actions (i) against any Debtor as a nominal party on account of any claim held by Mayhoola and to the extent necessary to allow Mayhoola to assert a claim against the Debtors' insurance coverage, and (ii) against the Debtors' officers, directors, managers, agents, employees, representatives, and Professionals.

Mayhoola's objection was resolved as to the non-Falcon Debtors by including the following language in the confirmation order:

> Nothing in the Plan or the Confirmation Order shall operate to enjoin or impede Mayhoola for Investment Q.S.P.C. ("Mayhoola") from commencing a lawsuit against any of the Debtors before a tribunal of competent jurisdiction or taking other action for the sole purpose of establishing the Debtors' liability to Mayhoola on account of a claim held by Mayhoola as a prerequisite of Mayhoola's recovery from the Debtors' insurance carriers. The recovery of Mayhoola in any such action against any of the Debtors shall be limited to recovery of the proceeds of any applicable insurance policies, and in no event shall Mayhoola collect any debt or judgment obtained in connection with such action from the assets of the Debtors or the Reorganized Debtors. Further, notwithstanding Section 9.9 of the Plan, nothing in the Plan or this Confirmation Order shall operate to enjoin or impede the ability of Mayhoola from commencing a lawsuit before a tribunal of competent jurisdiction or taking other action to establish the liability of the Debtors' officers, directors, managers, agents, employees, representatives, and Professionals to Mayhoola on account of a claim held by Mayhoola, or prevent Mayhoola from collecting on any liability established. Notwithstanding the

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[17] The changes that are unrelated to Falcon would not have caused any of Falcon's creditors or interest holders to change their votes and are therefore not "adverse" to such creditors or interest holders within the meaning of Bankruptcy Rule 3019. If the Court believes that any of the changes do materially and adversely affect any parties in interest to the Falcon estate, Falcon respectfully requests that the Court confirm the Plan without such changes.

> foregoing, nothing in this paragraph shall entitle Mayhoola to assert a claim or collect on a claim against any Exculpated Party that is exculpated pursuant to Section 9.2.5 of the Plan.

Falcon proposes that the same language be included in the order confirming the Plan as to Falcon and believes that inclusion of such language will resolve any objection Mayhoola may have had to confirmation of the Plan as to Falcon.

B. Limited Objection of ACE American Insurance Co. and Westchester Fire Insurance Company [Docket No. 1178]

1. The ACE/Falcon Relationship

ACE participated to the extent of $33 million in $100 million in property and casualty coverage issued to Falcon and NorTex by means of three one-year policies covering the period from 2006 through 2009 (the "***Policies***" or "***Policy***"). The final Policy expired by its terms on December, 31, 2009. As noted above, Falcon closed the NorTex Sale in the middle of 2010 and has not had any gas storage operations since that time.

After the filing of ACE's objection, ACE's counsel confirmed in emails that there have been no claims asserted under the Policies and that all premiums have been paid. Accordingly, the three expired Policies are not executory contracts and none of the Policies are subject to assumption or rejection by Falcon. Indeed, Falcon does not propose to "assume" or "reject" the Policies under section 365 and, instead, the policies are treated as agreements that expired three and a half years ago.

2. The Nature of ACE's Limited Objection to Confirmation of the Plan as to Falcon

ACE objected to confirmation of the Plan as to Falcon because it was concerned that Falcon might attempt to assert a claim under the Policies without satisfying its obligations under

the Policies.[18] ACE bases its objection on section 9.3 of the Plan, which ACE contends is "incompatible with Debtors' ongoing obligations in connection with the [Policies]." ACE Objection ¶ 7. Section 9.3 of the Plan provides as follows:

> Except as otherwise expressly provided herein, none of the Released Parties, the New Holding Companies, or the Reorganized Debtors shall be determined to be successors to any of the Debtors with respect to any obligations for which the Debtors may be held legally responsible, by reason of any theory of law or equity, and none can be responsible for any successor or transferee liability of any kind or character. The Released Parties, the New Holding Companies, and the Reorganized Debtors do not agree to perform, pay or indemnify creditors or otherwise have any responsibilities for any liabilities or obligations of the Debtors, whether arising before, on or after the Confirmation Date, except as otherwise expressly provided in the Plan.

3. Resolution of ACE's Objection

To resolve the objection Falcon has agreed that it will not assert any claims under the Policies,[19] and Falcon understands that ACE has agreed to withdraw the objection and its Claims filed against the Falcon estate. By waiving its right to assert claims under the Policies, Falcon is not forfeiting any substantive rights because no Claims were filed against the Falcon estate for which Falcon might seek reimbursement under the Policies and the bar date for filing such Claims expired nearly 17 months ago.

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[18] ACE also objected to confirmation of the Plan as to Arcapita Bank. ACE's objection to confirmation of the Plan as to Arcapita Bank was resolved by the inclusion of paragraph 77 of the order confirming the Plan as to Arcapita Bank. *See* Docket No. 1262. Paragraph 77 of the order confirming the Plan as to Arcapita Bank clarifies that the "limited confirmation objections of the ACE Companies relating to the Falcon Subplan are preserved for the adjourned hearing on Confirmation of the Falcon Subplan."

[19] To assuage ACE's concern that a party in interest might seek standing to pursue such a claim on Falcon's behalf, Falcon has agreed to include language in the order confirming the Plan as to Falcon that clarifies that Falcon's waiver is binding on its estate and any other party that might attempt to assert Falcon's rights under the Policies.

C. Limited Objection of Mounzer Nasr [Docket No. 1182]

The Limited Objection filed by Mounzer Nasr ("***Nasr***") was resolved as to the non-Falcon Debtors by including the following language in the confirmation order:

> Nothing in the Confirmation Order, the Plan, or the Plan Documents shall prejudice or impair the right of Mounzer Nasr or Beatriz Flecha de Lima Nasr (collectively, the "Nasrs") to argue (i) that any property held by the Debtors or the Reorganized Debtors is not property of the Debtors' estates or has been or is being improperly or wrongfully withheld from the Nasrs ("Title Disputes") and (ii) that the Nasrs have timely preserved their right to assert Title Disputes, and for the Nasrs to be granted a remedy with respect thereto; nor shall anything in the Confirmation Order, the Plan, or the Plan Documents prejudice or impair any of the rights of the Debtors or the Reorganized Debtors to object to the Title Disputes or the timeliness of asserting the Title Disputes for any reason whatsoever.

Falcon proposes that the same language be included in the order confirming the Plan as to Falcon and believes that inclusion of such language will resolve any objection Nasr may have had to confirmation of the Plan as to Falcon.

D. Limited Objection of Tide [Docket No. 1173]; Supplemental Objection of Tide [Docket No. 1232]

In connection with the Tide/Hopper Settlement, Tide has agreed to withdraw its Claims against Falcon, its related votes rejecting the Plan, and its objections to confirmation of the Plan as to Falcon; provided that the Court approves the Tide/Hopper 9019 and the order confirming the Plan as to Falcon provides that the Effective Date of the Plan as to Falcon cannot occur until after the Tide/Hopper Settlement is consummated. Falcon has agreed to inclusion of the required language in the order confirming the Plan as to Falcon and therefore Tide's Claims, rejecting votes, and objections can be deemed withdrawn as soon as the Court approves the Tide/Hopper 9019.

E. Reservation of Rights of Al Imtiaz Investment Company K.S.C. [Docket No. 1180]

Al Imtiaz Investment Company K.S.C. ("***Al Imtiaz***") did not object "to confirmation of the Plan," but was merely "concerned about the terms of the documents to be contained in the Plan Supplement. . . ." Al Imtiaz Reservation of Rights ¶ 7. Al Imtiaz, therefore, "reserve[d] its rights to object to confirmation of the Plan and implementation of the Cooperation Settlement Term Sheet. . . ." *Id.*

Falcon believes that Al Imtiaz's Reservation of Rights applied to confirmation of the Plan as to the non-Falcon Debtors and further believes that all of Al Imtiaz's concerns were subsequently assuaged. Accordingly, Falcon believes that Al Imtiaz does not object to confirmation of the Plan as to Falcon, but reserves its right to respond to such objection if and when it is made.

F. Reservation of Rights of HarbourVest Partners L.P. [Docket No. 1191]

Similarly, HarbourVest Partners L.P. and certain affiliated funds ("***HarbourVest***") did not object "to confirmation of the Plan, approval of any Plan document, or assumption of the Debtors' contracts with HarbourVest" but "reserve[d] its rights to object to confirmation of the Plan, approval of any Plan document, or assumption of HarbourVest's contracts, based on its review of the documents contained in the Plan Supplement. . . ." HarbourVest Reservation of Rights ¶ 12.

Falcon believes that HarbourVest's Reservation of Rights applied to confirmation of the Plan as to the non-Falcon Debtors and further believes that all of HarbourVest's concerns were subsequently assuaged. Accordingly, Falcon believes that HarbourVest does not object to

confirmation of the Plan as to Falcon, but reserves its right to respond to such objection if and when it is made.

IV. CONCLUSION

For all the foregoing reasons, the Plan should be confirmed as to Falcon pursuant to section 1129 of the Bankruptcy Code.

Dated: New York, New York
January 15, 2014

Respectfully submitted,

/s/ Michael A. Rosenthal

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ATTORNEYS FOR FALCON GAS STORAGE COMPANY, INC.

Exhibit A

Claims Filed Against Falcon

Falcon Proofs of Claim

Claim Number	Claimant	Claim Amount	Plan Class	Applicable Omnibus Objection	Comments
Priority Claims with No Pending Objection					
4	Harris County et al.	$3,690.52	Unclassified	N/A	Tax claim.
44	New York State Department of Taxation and Finance	$4,748.15	Unclassified	N/A	Tax claim.
Unsecured Claims with No Pending Objection					
303	King & Spalding LLP	$342,278.37	5(g)	N/A	Unpaid prepetition invoices.
Unsecured Claims with Pending Objection					
275	Mounzer Nasr	$690,235.11	5(g)	Third Omnibus Objection Schedule 2 [Docket. No. 1051]	Mr. Nasr has agreed in principle to abide by his scheduled claim only, which would involve withdrawing Claim Number 275 asserted against Falcon. As part of this agreement, Mr. Nasr has also agreed to release certain claims against the Reorganized Debtors, the New Holding Companies, and certain of their affiliates, in exchange for confirmation that certain equity interests were previously transferred to Mr. Nasr in connection with his interests in certain employee incentive programs. This agreement will be finalized as soon as the precise amounts of these equity interests are reconciled and agreed among Mr. Nasr and AIPL Subsidiary Limited, the entity that has issued these

Claim Number	Claimant	Claim Amount	Plan Class	Applicable Omnibus Objection	Comments
					equity interests.
343	Jill Superco LLC	Undetermined	5(g)	Third Omnibus Objection Schedule 2 [Docket No. 1051]	Falcon has no liability for the asserted claim. The objection to the claim has been adjourned to the January 21, 2014 omnibus hearing. *See* Docket No. 1680.
500	Osama Ahmed A. Baeshen	$66,666.67	5(g)	Second Omnibus Objection Schedule 1 [Docket No. 1050]	The claim is based on an alleged equity interest in Falcon. Falcon does not believe that the Claimant holds any interests in Falcon. Falcon has received confirmation that the Claimant does not intend to assert any Claims against Falcon. Thus, Falcon believes this Claim will soon be withdrawn.
501	Khalid Ahmed A. Baeshen	$66,666.67	5(g)	Second Omnibus Objection Schedule 1 [Docket No. 1050]	The claim is based on an alleged equity interest in Falcon. Falcon does not believe that the Claimant holds any interests in Falcon. Falcon has received confirmation that the Claimant does not intend to assert any Claims against Falcon. Thus, Falcon believes this Claim will soon be withdrawn.
502	Sumayya Ahmed A. Baeshen	$33,333.33	5(g)	Second Omnibus Objection Schedule 1 [Docket No. 1050]	The claim is based on an alleged equity interest in Falcon. Falcon does not believe that the Claimant holds any interests in Falcon. Falcon has received confirmation that the Claimant does not intend to assert any Claims against Falcon. Thus, Falcon believes this Claim will soon be withdrawn.
503	Sahar Ahmed A. Baeshen	$33,333.33	5(g)	Second Omnibus Objection Schedule 1	The claim is based on an alleged equity interest in Falcon. Falcon does not believe that the Claimant holds any interests in Falcon. Falcon has received confirmation that the Claimant does not intend to

Claim Number	Claimant	Claim Amount	Plan Class	Applicable Omnibus Objection	Comments
				[Docket No. 1050]	assert any Claims against Falcon. Thus, Falcon believes this Claim will soon be withdrawn.
564	ACE American Insurance Company	Undetermined	5(g)	First Omnibus Objection Schedule 3 [Docket No. 1049]	Falcon has no liability for the asserted claim. The objection to the claim has been adjourned to the January 21, 2014 omnibus hearing. *See* Docket No. 1667. Falcon believes that the claim will be withdrawn in connection with the resolution of ACE's objection to confirmation of the Plan as to Falcon.
Subordinated Claims with Pending Objection					
351	Ray Don Turner	$257,000.00	8(g)	Third Omnibus Objection Schedule 1 [Docket. No. 1051]	These are the Thronson Claims based on Falcon's 2005 Equity Incentive Plan and non-qualified stock option plan. Falcon's objection to the Thronson Claims has been adjourned to January 21, 2014. *See* Docket No. 1667.
352	Johnny B. Ulrich	$55,000.00	8(g)		
353	Henry Adair	$184,687.50	8(g)		
354	David Robinson	$9,500.00	8(g)		
355	Hank R. Watson	$3,575.00	8(g)		
356	James Scott	$6,500.00	8(g)		
357	Royce Williams	$1,300.00	8(g)		
358	Gregory D. Fletcher	$9,050.00	8(g)		
359	Joe V. Fields	$12,625.00	8(g)		
360	Danny J. Sharp	$3,250.00	8(g)		
361	Derrick M. Shaw	$6,500.00	8(g)		
362	Michael L. Gryder	$10,250.00	8(g)		
363	Chad Rogers	$9,500.00	8(g)		

Claim Number	Claimant	Claim Amount	Plan Class	Applicable Omnibus Objection	Comments
399	Darrell R. Green	$16,000.00	8(g)		
400	Troyce Willis	$27,500.00	8(g)		
401	James Bradley Underwood	$9,500.00	8(g)		
402	Lowell C. Thronson	$531,250.00	8(g)		
403	Terra Leigh Griffin	$12,500.00	8(g)		
404	Ricky Plumlee	$39,900.00	8(g)		
405	Judy B. Farley	$10,000.00	8(g)		
406	Glen M. Coman	$3,250.00	8(g)		
407	Andy Johnson	$9,500.00	8(g)		
408	Bryan K. Mercer	$3,250.00	8(g)		
409	Ed McIntosh	$5,000.00	8(g)		
410	Galen W. Cantrell	$5,150.00	8(g)		
411	Joel P. Stephen	$41,500.00	8(g)		
412	Kenneth Gillespie	$19,500.00	8(g)		
413	Vhonda Cook	$4,500.00	8(g)		
414	Randall J. Small	$3,250.00	8(g)		
415	Carla Nims	$62,500.00	8(g)		
416	Stephen Dorcheus	$32,500.00	8(g)		
417	Mark Rowland	$6,500.00	8(g)		

Claim Number	Claimant	Claim Amount	Plan Class	Applicable Omnibus Objection	Comments
418	Joe V. Fields	$12,000.00	8(g)		
419	Jimmy Rains	$12,700.00	8(g)		
420	Jack L. Hopkins	$3,250.00	8(g)		
421	John Holcomb	$283,750.00	8(g)		
422	Michelle G. Colombo	$25,000.00	8(g)		
Equity Interests with No Pending Objection					
235	Combined National Industries Holding Co. for Energy (K.S.C.) Holding	Undetermined	9(g)	Second Omnibus Objection Schedule 1 [Docket No. 1050]	$1,000,000 proof of claim was reclassified as a proof of interest in Falcon in an undetermined amount pursuant to the Court's *Order Granting Debtors' Second Omnibus Objection to Claims* [Docket No. 1389]. Falcon does not believe that the Claimant holds any interests in Falcon and will file an objection to the proof of interest on this basis.
Withdrawn/Expunged Claims					
165	Alexander Cocke Trust	8,250,000.00	5(g)	N/A	These are the Hopper Claims. The Claims will be withdrawn in accordance with the terms of the Tide/Hopper settlement.
166	Daniel Leonard	8,250,000.00	5(g)	N/A	
167	Ellecia A. Knolle	8,250,000.00	5(g)	N/A	
168	Michelle P. Foutch	8,250,000.00	5(g)	N/A	
169	Deborah J. Toon	8,250,000.00	5(g)	N/A	
170	Steven Toon	8,250,000.00	5(g)	N/A	
171	Rachel Ann Chandler	8,250,000.00	5(g)	N/A	

Claim Number	Claimant	Claim Amount	Plan Class	Applicable Omnibus Objection	Comments
172	Steven B. Toon	8,250,000.00	5(g)	N/A	
173	John M. Hopper	8,250,000.00	5(g)	N/A	
174	Thomas B. Wynne Jr.	8,250,000.00	5(g)	N/A	
175	Leslie Page Leonard	8,250,000.00	5(g)	N/A	
176	Keith W. Chandler	8,250,000.00	5(g)	N/A	
177	Sally H. Hopper	8,250,000.00	5(g)	N/A	
178	Dianne G. Foutch	8,250,000.00	5(g)	N/A	
179	Tamara Jenkins	8,250,000.00	5(g)	N/A	
180	Steven Jenkins	8,250,000.00	5(g)	N/A	
181	Edmund A. Knolle	8,250,000.00	5(g)	N/A	
182	Jeffery H. Foutch	8,250,000.00	5(g)	N/A	
223	Arcapita Inc.	Undetermined	7(g)	N/A	This was a contingent claim for reimbursement filed by Arcapita Inc. related to the District Court Action. Since the matter has settled without liability to Arcapita Inc., the claim will be withdrawn.
259	Kirkland & Ellis International LLP	$426,358.25	5(g)	N/A	Withdrawn by Claimant. *See* Docket No. 968.
297	Tide Natural Gas Storage II LP	120,000,000.00	10(g)	Third Omnibus Objection Schedule 3 [Docket No. 1051]	These are the Tide Claims. The Claims will be withdrawn in accordance with the terms of the Tide/Hopper settlement.
298	Tide Natural Gas Storage I LP	120,000,000.00	10(g)		
323	Mayhoola for	7,000,000.00	5(g)	Third Omnibus	Disallowed and expunged by stipulation. *See*

Claim Number	Claimant	Claim Amount	Plan Class	Applicable Omnibus Objection	Comments
	Investment, Q.S.P.C.			Objection Schedule 1 [Docket No. 1051]	Docket No. 1535.
396	Credit Suisse AG, Cayman Islands Branch as Agent	Undetermined	5(g)	Third Omnibus Objection Schedule 2 [Docket No. 1051]	Disallowed and expunged by this Court's *Order Granting Relief with Respect to Certain Omnibus Claim Objections and Setting a Schedule as to Other Claims Objections* [Docket No. 1663].
433	Jaidah Investment and Real Estate Development Company W.L.L.	100,000.00	5(g)	Second Omnibus Objection Schedule 1 [Docket No. 1050]	Disallowed and expunged by this Court's *Order Granting Debtors' Second Omnibus Objection to Claims* [Docket No. 1389].
498	HSBC Bank USA National Association	$39,681.63 plus accruing fees, costs, and expenses	3(g)	N/A	This is HSBC's claim for fees and expenses associated with the Escrowed Money. The Claim will be withdrawn in accordance with the terms of the Tide/Hopper settlement.
527	IDF Investment Foundation	$2,500,000.00	5(g)	Third Omnibus Objection Schedule 1 [Docket No. 1051]	Disallowed and expunged by this Court's *Amended Order Granting Debtors' Third Omnibus Objection to Claims* [Docket No. 1423].
528	BMF Holding Limited	$1,000,000.00	5(g)	Third Omnibus Objection Schedule 2 [Docket No.	Disallowed and expunged by this Court's *Amended Order Granting Debtors' Third Omnibus Objection to Claims* [Docket No. 1423].

Claim Number	Claimant	Claim Amount	Plan Class	Applicable Omnibus Objection	Comments
				1051]	
529	Atwill Holding Limited	$5,500,000.00	5(g)	Third Omnibus Objection Schedule 2 [Docket No. 1051]	Disallowed and expunged by this Court's *Amended Order Granting Debtors' Third Omnibus Objection to Claims* [Docket No. 1423].
548	Agar International Holdings Limited	$10,000,000.00	5(g)	Third Omnibus Objection Schedule 2 [Docket No. 1051]	Disallowed and expunged by this Court's *Amended Order Granting Debtors' Third Omnibus Objection to Claims* [Docket No. 1423].

Exhibit B

Blackline of Solicitation Version of Plan v. Confirmed Plan

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

CONFIRMED SECOND AMENDED JOINT PLAN OF REORGANIZATION OF ARCAPITA BANK B.S.C.(c) AND RELATED DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE (WITH FIRST TECHNICAL MODIFICATIONS)

Dated: New York, New York
~~April 25,~~ As of June 11, 2013

TABLE OF CONTENTS

Page

INTRODUCTION

Arcapita Bank B.S.C.(c), Arcapita Investment Holdings Limited, Arcapita LT Holdings Limited, Windturbine Holdings Limited, AEID II Holdings Limited, Railinvest Holdings Limited, and Falcon Gas Storage Company, Inc., as debtors and debtors in possession (collectively, the "***Debtors***"), respectfully propose the following Second Amended Joint Plan of Reorganization pursuant to section 1121(a) of the Bankruptcy Code for the resolution of outstanding Claims against and Interests in each of the Debtors (the "***Plan***").

Reference is made to the Disclosure Statement with respect to the Plan, distributed contemporaneously herewith, for a discussion of the Debtors' history, businesses, properties, operations, risk factors, a summary and analysis of the Plan, and certain related matters. Subject to the restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtors respectfully reserve the right to alter, amend, modify, revoke, or withdraw the Plan in the manner set forth herein prior to consummation of the Plan. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

THIS PLAN SHOULD BE CONSIDERED ONLY IN CONJUNCTION WITH THE DISCLOSURE STATEMENT AND RELATED MATERIALS TRANSMITTED THEREWITH. THE DISCLOSURE STATEMENT IS INTENDED TO PROVIDE YOU WITH THE INFORMATION THAT YOU NEED TO MAKE AN INFORMED JUDGMENT WHETHER TO ACCEPT OR REJECT THE PLAN.

I.
DEFINED TERMS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME

1.1. Definitions. As used in the Plan, capitalized terms not otherwise defined herein shall have the meanings specified in Appendix A. Unless the context otherwise requires, any capitalized term used and not defined in the Plan, but that is defined in the Bankruptcy Code, shall have the meaning assigned to that term in the Bankruptcy Code.

1.2. Rules of Construction. For purposes of the Plan, unless otherwise provided herein: (i) any reference in the Plan to a contract, instrument, release, indenture, or other agreement, whether existing or contemplated, or document being in a particular form or on particular terms and conditions means that such contract, instrument, release, indenture, or other agreement, whether existing or contemplated, or document shall be substantially in such form or substantially on such terms and conditions, (ii) unless otherwise specified, all references in the Plan to the Introduction, Articles, Sections, and Exhibits are references to the Introduction, Articles, Sections, and Exhibits of or to the Plan, as the same may be amended, waived, or modified from time to time, (iii) captions and headings to Articles and Sections are intended for convenience of reference only and are not intended to be part of or to affect interpretation of the Plan, (iv) the words "herein," "hereof," "hereunder," "hereto," and other words of similar import refer to the Plan in its entirety rather than to a particular portion of the Plan, (v) whenever it appears appropriate from the context, each pronoun stated in the masculine, feminine, or neuter includes the masculine, feminine, and neuter, and (vi) the rules of construction set forth in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

1.3. Computation of Time. In computing time prescribed or allowed by the Plan, unless otherwise expressly provided, Bankruptcy Rule 9006(a) shall apply.

II.
TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, PROFESSIONAL COMPENSATION CLAIMS, PRIORITY TAX CLAIMS, AND DIP FACILITY CLAIMS AGAINST THE DEBTORS

2.1. Administrative Expense Claims. On the later of (i) the Effective Date or (ii) if an Administrative Expense Claim is not Allowed as of the Effective Date, 30 days after the date on which such Administrative Expense Claim becomes Allowed, the Debtors or the Reorganized Debtors, as applicable, shall either (a) pay to each Holder of an Allowed Administrative Expense Claim, in Cash, the full amount of such Allowed Administrative Expense Claim, or (b) satisfy and discharge such Allowed Administrative Expense Claim in accordance with such other terms that the Debtors (or the Reorganized Debtors, as applicable) and such Holder shall have agreed upon; *provided*, *however*, that such agreed-upon treatment shall not be more favorable than the treatment provided in clause (a). Other than with respect to Professional Compensation Claims and Cure Claims, any Person asserting an Administrative Expense Claim must submit a proof of claim with respect to such Administrative Expense Claim to the Balloting and Claims Agent **so that it is actually received** on or before the Administrative Expense Claims Bar Date.

Notwithstanding anything to the contrary set forth herein, any Administrative Expense Claims that are also Intercompany Claims held by Arcapita Bank, AIHL, or Arcapita LT Holdings Limited against any of (i) Arcapita Bank, (ii) AIHL, or (iii) Arcapita LT Holdings Limited, shall be released and discharged on the Effective Date.

2.2. Professional Compensation Claims. Notwithstanding any other provision of the Plan dealing with Administrative Expense Claims, any Person asserting a Professional Compensation Claim shall, no later than the Effective Date, provide the Debtors with a summary of the compensation for services rendered and expense reimbursement that such Person will seek to be allowed as Professional Compensation Claim (which summary shall include, without limitation, a good faith estimate of accrued but unbilled fees and expenses through the Effective Date), and shall, no later than 30 days after the Effective Date, file a final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date. To the extent that such an application is granted by the Bankruptcy Court, the requesting Person shall receive: (i) payment of Cash from the Professional Compensation Claims Escrow Account in an amount equal to the amount Allowed by the Bankruptcy Court less all interim compensation paid to such Professional during the Chapter 11 Cases, such payment to be made before the later of (a) the Effective Date or (b) three Business Days after the order granting such Person's final fee application becomes a Final Order, or (ii) payment on such other terms as may be mutually agreed upon by the Holder of the Professional Compensation Claim and the Reorganized Debtors (but in no event shall the payment exceed the amount Allowed by the Bankruptcy Court less all interim compensation paid to such Professional during the Chapter 11 Cases). All Professional Compensation Claims for services rendered after the Effective Date shall be paid by the Reorganized Debtors upon receipt of an invoice therefor, or on such other terms as the Reorganized Debtors and the Professional may agree, without the requirement of any order of the Bankruptcy Court.

On the Effective Date, the Debtors shall establish and fund the Professional Compensation Claims Escrow Account in an amount sufficient to pay, in full, any then unpaid fees and expenses (including, without limitation, any estimated, accrued but unbilled fees and expenses through the Effective Date) owed to any Person asserting a Professional Compensation ~~Claims~~Claim. Amounts held in the Professional Compensation Claims Escrow Account shall not constitute property of the Debtors or the Reorganized Debtors and shall only be distributed in accordance with this Section 2.2. In the event there is a remaining balance in the Professional Compensation Claims Escrow Account following payment of all Allowed Professional Compensation Claims in accordance with the preceding paragraph, such remaining amount, if any, shall be paid to New Arcapita ~~Topco~~Holdco 2. In the event that there are insufficient funds in the Professional Compensation Claims Escrow Account to pay any Allowed Professional Compensation Claims in accordance with the terms of the Professional Compensation Claims Escrow Account, the unpaid portion of such Allowed Professional Compensation Claims shall be paid by the New Holding Companies.

2.3. Priority Tax Claims. Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge thereof, each Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code, or, at the Debtors' election, upon notice to the Holder of an Allowed Priority Tax Claim no later than five days before the Plan Objection Deadline, in accordance with the terms set forth in section 1129(a)(9)(A) or 1129(a)(9)(B) of the Bankruptcy Code.

2.4. DIP Facility Claims. Notwithstanding any other provision of the Plan dealing with Administrative Expense Claims or Secured Claims to the contrary, Holders of DIP Facility Claims shall, in full and final satisfaction, settlement, release, and discharge of their DIP Facility Claims ~~and in accordance with the New Facility Distribution Procedures~~, be paid the full amount of each such Holder's outstanding DIP Facility Claims in full in Cash on the Effective Date and the DIP Facility shall terminate and be of no further force or effect other than those provisions therein that by their terms expressly survive termination.

2.5. U.S. Trustee Fees. Any accrued but unpaid U.S. Trustee Fees incurred prior to the Effective Date shall be paid on the Effective Date. Until each of the Chapter 11 Cases is closed by entry of a final decree of the Bankruptcy Court, any additional U.S. Trustee Fees shall be paid by the applicable Reorganized Debtor in accordance with the schedule for the payment of such fees.

2.6. Ad Hoc Group Fees. On the Effective Date, the New ~~Arcapita Topco~~Holding Companies shall pay in Cash the Ad Hoc Group Fees, without the need for the Ad Hoc Group to file fee applications with the Bankruptcy Court; *provided*, *however*, that (i) the Ad Hoc Group shall provide the Debtors and the Committee with the invoices for which it seeks payment at least ten (10) days prior to the Effective Date, and (ii) the Debtors and the Committee do not object to the reasonableness of the Ad Hoc Group Fees; *provided further*, *however*, that notwithstanding the foregoing, the New ~~Arcapita Topco~~Holding Companies shall not be required to pay any Ad Hoc Group Fees unless the Ad Hoc Group supports the Plan. To the extent that the Debtors or the Committee object to the reasonableness of any portion of the Ad Hoc Group Fees, the New ~~Arcapita Topco~~Holding Companies shall not be required to pay such disputed portion until either

such objection is resolved or a further order of the Bankruptcy Court is entered providing for payment of such disputed portion.

III.
CLASSIFICATION OF CLAIMS AGAINST AND INTERESTS IN DEBTORS

3.1. Classification of Claims. Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims against and Interests in the Debtors. A Claim or Interest is placed in a particular Class for the purposes of voting on the Plan and receiving Distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and such Claim or Interest has not been paid, released, withdrawn, or otherwise settled prior to the Effective Date. The fact that a particular Class of Claims is designated for a Debtor does not necessarily mean there are any Allowed Claims in such Class against such Debtor. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims of the kinds specified in sections 507(a)(2) and 507(a)(8), respectively, of the Bankruptcy Code have not been classified and their treatment is set forth in Article II.

The Plan constitutes a separate chapter 11 Subplan for each of the Debtors. Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims against and Interests in the Debtors.

3.2. Classes. The Claims against and Interests in the Debtors are classified as follows:

3.2.1. Classes 1(a)-(g): Other Priority Claims.

Class	Claims and Interests	Status	Voting Rights
Class 1(a)	Other Priority Claims against Arcapita Bank B.S.C.(c)	Unimpaired	Not entitled to vote (Presumed to accept)
Class 1(b)	Other Priority Claims against Arcapita Investment Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 1(c)	Other Priority Claims against Arcapita LT Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 1(d)	Other Priority Claims against Windturbine Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 1(e)	Other Priority Claims against AEID II Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 1(f)	Other Priority Claims against Railinvest Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 1(g)	Other Priority Claims against	Unimpaired	Not entitled to vote

	Falcon Gas Storage Company, Inc.		(Presumed to accept)

3.2.2. Classes 2(a)-(f): SCB Claims.

Class	Claims and Interests	Status	Voting Rights
Class 2(a)	SCB Claims against Arcapita Bank B.S.C.(c)	Impaired	Entitled to vote
Class 2(b)	SCB Claims against Arcapita Investment Holdings Limited	Impaired	Entitled to vote
Class 2(c)	SCB Claims against Arcapita LT Holdings Limited	Impaired	Entitled to vote
Class 2(d)	SCB Claims against Windturbine Holdings Limited	Impaired	Entitled to vote
Class 2(e)	SCB Claims against AEID II Holdings Limited	Impaired	Entitled to vote
Class 2(f)	SCB Claims against Railinvest Holdings Limited	Impaired	Entitled to vote

3.2.3. Classes 3(a)-(g): Other Secured Claims.

Class	Claims and Interests	Status	Voting Rights
Class 3(a)	Other Secured Claims against Arcapita Bank B.S.C.(c)	Unimpaired	Not entitled to vote (Presumed to accept)
Class 3(b)	Other Secured Claims against Arcapita Investment Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 3(c)	Other Secured Claims against Arcapita LT Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 3(d)	Other Secured Claims against Windturbine Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 3(e)	Other Secured Claims against AEID II Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 3(f)	Other Secured Claims against Railinvest Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 3(g)	Other Secured Claims against	Unimpaired	Not entitled to vote

	Falcon Gas Storage Company, Inc.		(Presumed to accept)

3.2.4. Classes 4(a)-(b): Syndicated Facility Claims and Arcsukuk Claims.

Class	Claims and Interests	Status	Voting Rights
Class 4(a)	Syndicated Facility Claims and Arcsukuk Claims against Arcapita Bank B.S.C.(c)	Impaired	Entitled to vote
Class 4(b)	Syndicated Facility Claims and Arcsukuk Claims against Arcapita Investment Holdings Limited	Impaired	Entitled to vote

3.2.5. Classes 5(a)-(g): General Unsecured Claims.

Class	Claims and Interests	Status	Voting Rights
Class 5(a)	General Unsecured Claims against Arcapita Bank B.S.C.(c)	Impaired	Entitled to vote
Class 5(b)	General Unsecured Claims against Arcapita Investment Holdings Limited	Impaired	Entitled to vote
Class 5(c)	General Unsecured Claims against Arcapita LT Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 5(d)	General Unsecured Claims against Windturbine Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 5(e)	General Unsecured Claims against AEID II Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 5(f)	General Unsecured Claims against Railinvest Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 5(g)	General Unsecured Claims against Falcon Gas Storage Company, Inc.	Impaired	Entitled to vote

3.2.6. Class 6(a): Convenience Claims.

Class	Claims and Interests	Status	Voting Rights
Class 6(a)	Convenience Claims against Arcapita Bank B.S.C.(c)	Impaired	Entitled to vote

3.2.7. Classes 7(a)-(g): Intercompany Claims.

Class	Claims and Interests	Status	Voting Rights
Class 7(a)	Intercompany Claims against Arcapita Bank B.S.C.(c)	Impaired	Entitled to vote
Class 7(b)	Intercompany Claims against Arcapita Investment Holdings Limited	Impaired	Entitled to vote
Class 7(c)	Intercompany Claims against Arcapita LT Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 7(d)	Intercompany Claims against Windturbine Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 7(e)	Intercompany Claims against AEID II Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 7(f)	Intercompany Claims against Railinvest Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 7(g)	Intercompany Claims against Falcon Gas Storage Company, Inc.	Impaired	Entitled to vote

3.2.8. Classes 8(a) and 8(g): Subordinated Claims.

Class	Claims and Interests	Status	Voting Rights
Class 8(a)	Subordinated Claims against Arcapita Bank B.S.C.(c)	Impaired	Entitled to vote
Class 8(g)	Subordinated Claims against Falcon Gas Storage Company, Inc.	Impaired	Entitled to vote

3.2.9. Classes 9(a)-(g): Interests.

Class	Claims and Interests	Status	Voting Rights
Class 9(a)	Interests in Arcapita Bank B.S.C.(c)	Unimpaired; except as provided in Section 4.9.2	Not entitled to vote (Presumed to accept or deemed to reject)
Class 9(b)	Intercompany Interests in Arcapita Investment Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 9(c)	Intercompany Interests in Arcapita	Unimpaired	Not entitled to vote

	LT Holdings Limited		(Presumed to accept)
Class 9(d)	Intercompany Interests in Windturbine Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 9(e)	Intercompany Interests in AEID II Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 9(f)	Intercompany Interests in Railinvest Holdings Limited	Unimpaired	Not entitled to vote (Presumed to accept)
Class 9(g)	Interests in Falcon Gas Storage Company, Inc.	Impaired	Entitled to vote

3.2.10. Classes 10(a) and 10(g): Super-Subordinated Claims.

Class	Claims and Interests	Status	Voting Rights
Class 10(a)	Super-Subordinated Claims against Arcapita Bank B.S.C.(c)	Impaired	Not Entitled to vote (Deemed to reject)
Class 10(g)	Super-Subordinated Claims against Falcon Gas Storage Company, Inc.	Impaired	Not Entitled to vote (Deemed to reject)

3.3. Effect of Non-Voting; Modifications. At the Confirmation Hearing, the Debtors will seek a ruling that if no Holder of a Claim or Interest eligible to vote in a particular Class timely votes to accept or reject the Plan, the Plan will be deemed accepted by the Holders of such Claims or Interests in such Class for the purposes of section 1129(b) of the Bankruptcy Code. Subject to section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtors reserve the right to modify the Plan to the extent that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, *provided*, such modifications are consistent with Section 12.5 below.

IV.
TREATMENT OF CLAIMS AND INTERESTS AND DESIGNATION WITH RESPECT TO IMPAIRMENT

4.1. Treatment of Classes 1(a)-(g): Other Priority Claims.

4.1.1. Impairment and Voting. Classes 1(a)-(g) are Unimpaired by the Plan. Each Holder of an Allowed Other Priority Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

4.1.2. Treatment. On the Distribution Date, each Holder of an Allowed Other Priority Claim as of the Distribution Record Date shall receive in full satisfaction, release, and discharge of and in exchange for such Claim: (i) payment of Cash in an amount equal to the unpaid portion of such Allowed Other Priority Claim, or (ii) such other treatment that the Debtors and

such Holder shall have agreed upon in writing; *provided*, *however*, that such agreed-upon treatment shall not be more favorable than the treatment provided in clause (i).

4.2. Treatment of Classes 2(a)-(f): SCB Claims.

4.2.1. Impairment and Voting. Classes 2(a)-(f) are Impaired by the Plan. SCB, as the Holder of the Allowed SCB Claims as of the Record Date is entitled to vote to accept or reject the Plan.

4.2.2. Treatment. ~~On the Effective Date, SCB, as the Holder of the~~The SCB Claims ~~as of the Distribution Record Date shall, in full satisfaction, release, and discharge of and in exchange for such SCB Claims and in accordance with the New Facility Distribution Procedures, receive the New SCB Facility Obligations. It is a condition precedent to the receipt of the New SCB Facility Obligations that SCB, as the Holder of the Allowed SCB Claims, comply with the New Facility Distribution Procedures.~~ shall be treated as set forth in the SCB Plan Settlement.

4.3. Treatment of Classes 3(a)-(g): Other Secured Claims.

4.3.1. Impairment and Voting. Classes 3(a)-(g) are Unimpaired by the Plan. Each Holder of an Allowed Other Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

4.3.2. Treatment. Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, each Allowed Other Secured Claim shall be Reinstated or otherwise rendered Unimpaired as of the Effective Date.

4.4. Treatment of Classes 4(a)-(b): Syndicated Facility and Arcsukuk Claims.

4.4.1. Impairment and Voting. Classes 4(a)-(b) are Impaired by the Plan. Each Holder of an Allowed Syndicated Facility Claim or an Allowed Arcsukuk Claim as of the Record Date is entitled to vote to accept or reject the Plan.

4.4.2. Treatment. Each Holder of an Allowed Syndicated Facility Claim or an Allowed Arcsukuk Claim as of the Distribution Record Date shall, in full satisfaction, release, and discharge of and in exchange for such Holder's Syndicated Facility Claim or Arcsukuk Claim and in accordance with the New Unsecured Claim Distribution Procedures, receive (i) on account of its Allowed Class 4(a) Syndicated Facility Claim or Allowed Class 4(a) Arcsukuk Claim, its Pro Rata Share of the Bank Syndicated Facility/Arcsukuk Consideration, (ii) on account of its Allowed Class 4(b) Syndicated Facility Claim or Allowed Class 4(b) Arcsukuk Claim, its Pro Rata Share of the AIHL Syndicated Facility/Arcsukuk Consideration, and (iii) with respect to any such Holder whose Class 4(b) Syndicated Facility Claim or Class 4(b) Arcsukuk Claim has been Disallowed in whole or in part, its Pro Rata Share of the Contingent Class 4(a) Consideration; *provided*, *however*, that if any Holder of an Allowed Syndicated Facility Claim or an Allowed Arcsukuk Claim entitled to receive such consideration is a Non-Eligible Claimant, any Bank Syndicated Facility/Arcsukuk Consideration, AIHL Syndicated Facility/Arcsukuk Consideration, and Contingent Class 4(a) Consideration distributable to such Non-Eligible Claimant shall be liquidated by the Disbursing Agent and such Non-Eligible Claimant shall receive the proceeds

thereof in lieu of any other Distribution. Each Holder of an Allowed Syndicated Facility Claim or Allowed Arcsukuk Claim must, as a condition precedent to the receipt of the Bank Syndicated Facility/Arcsukuk Consideration, AIHL Syndicated Facility/Arcsukuk Consideration, and Contingent Class 4(a) Consideration (or the proceeds thereof), comply with the New Unsecured Claim Distribution Procedures.

4.5. Treatment of Classes 5(a)-(g): General Unsecured Claims.

4.5.1. Impairment and Voting.

4.5.1.1. *Classes 5(a)-(b)*. Classes 5(a)-(b) are Impaired by the Plan. Each Holder of an Allowed General Unsecured Claim in Classes 5(a)-(b) as of the Record Date is entitled to vote to accept or reject the Plan.

4.5.1.2. *Classes 5(c)-(f)*. Classes 5(c)-(f) are Unimpaired by the Plan. Each Holder of an Allowed General Unsecured Claim in Classes 5(c)-(f) is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

4.5.1.3. *Class 5(g)*. Class 5(g) is Impaired by the Plan. Each Holder of an Allowed General Unsecured Claim in Class 5(g) as of the Record Date is entitled to vote to accept or reject the Plan.

4.5.2. Treatment.

4.5.2.1. *Class 5(a)*. Each Holder of an Allowed General Unsecured Claim in Class 5(a) as of the Distribution Record Date shall receive, subject to the Convenience Class Election, in full satisfaction, release, and discharge of and in exchange for such Holder's Class 5(a) General Unsecured Claim and in accordance with the New Unsecured Claim Distribution Procedures, its Pro Rata Share of the Class 5(a) Consideration; *provided*, *however*, that if any Holder of an Allowed General Unsecured Claim in Class 5(a) entitled to receive such Class 5(a) Consideration is a Non-Eligible Claimant, the Class 5(a) Consideration distributable to such Non-Eligible Claimant shall be liquidated by the Disbursing Agent and such Non-Eligible Claimant shall receive the proceeds thereof in lieu of any other Distribution. Each Holder of an Allowed Class 5(a) General Unsecured Claim must, as a condition precedent to the receipt of the Class 5(a) Consideration (or the proceeds thereof), comply with the New Unsecured Claim Distribution Procedures. Notwithstanding the foregoing, each Holder of an Allowed Class 5(a) General Unsecured Claim shall be entitled, by exercise of the election set forth on the Ballot with respect to such Class 5(a) General Unsecured Claim, to make the Convenience Class Election with respect to all of such Holder's Allowed Class 5(a) General Unsecured Claims. Making the Convenience Class Election is voluntary. By making the Convenience Class Election for any Allowed Class 5(a) General Unsecured Claim, such Holder will be deemed to have made such Election with respect to all of such Holder's Allowed Class 5(a) General Unsecured Claims and to have agreed to reduce the amount of its aggregate Allowed Class 5(a) General Unsecured Claims to the lesser of (i) the aggregate amount of such claims or (ii) $25,000, which reduced claim shall be the Holder's Allowed Class 6(a) Convenience Claim. Making the Convenience Class Election shall constitute a Class 6(a) vote to accept the Plan and shall constitute the Holder's agreement to

waive Class 5(a) treatment; instead such Holder shall be deemed to have an Allowed Class 6(a) Convenience Claim and receive the treatment specified for Class 6(a) Convenience Claims below.

4.5.2.2. *Class 5(b)*. Each Holder of an Allowed General Unsecured Claim in Class 5(b) as of the Distribution Record Date shall receive, in full satisfaction, release, and discharge of and in exchange for such Holder's Class 5(b) General Unsecured Claim and in accordance with the New Unsecured Claim Distribution Procedures, its Pro Rata Share of the Class 5(b) Consideration; *provided*, *however*, that if any Holder of an Allowed General Unsecured Claim in Class 5(b) entitled to receive such Class 5(b) Consideration is a Non-Eligible Claimant, the Class 5(b) Consideration distributable to such Non-Eligible Claimant shall be liquidated by the Disbursing Agent and such Non-Eligible Claimant shall receive the proceeds thereof in lieu of any other Distribution. Each Holder of an Allowed Class 5(b) General Unsecured Claim must, as a condition precedent to the receipt of the Class 5(b) Consideration, (or the proceeds thereof) comply with the New Unsecured Claim Distribution Procedures.

4.5.2.3. *Classes 5(c)-(f)*. Except to the extent that a Holder of an Allowed General Unsecured Claim in Classes 5(c)-(f) agrees to a less favorable treatment or has been paid prior to the Effective Date, each Allowed General Unsecured Claim in Classes 5(c)-(f) shall, in the discretion of the applicable Debtor, be Reinstated, paid in full, or otherwise rendered Unimpaired, and the applicable Reorganized Debtors shall remain liable for each such Allowed General Unsecured Claim until paid in full. Without limiting the generality of the foregoing, if an Allowed General Unsecured Claim in Classes 5(c)-(f) arises (i) based on liabilities incurred in, or to be paid in, the ordinary course of business, or (ii) pursuant to an Executory Contract or Unexpired Lease, the Holder of such Allowed General Unsecured Claim shall be paid in Cash by the applicable Debtor (or, after the Effective Date, by the applicable Reorganized Debtor) pursuant to the terms and conditions of the particular transaction and/or agreement giving rise to such Allowed General Unsecured Claim. The Debtors and the Reorganized Debtors, as applicable, reserve their rights to dispute in the Bankruptcy Court or any other court with jurisdiction the validity or amount of any General Unsecured Claim at any time prior to or after the Claims Objection Bar Date.

4.5.2.4. *Class 5(g)*. Each Holder of an Allowed General Unsecured Claim in Class 5(g) as of the Distribution Record Date shall receive its Pro Rata Share of a percentage of Falcon Available Cash equal to the quotient obtained by dividing (i) the aggregate Allowed Claims in Class 5(g), by (ii) the aggregate Allowed Claims in Classes 5(g) and 7(g).

4.6. Treatment of Classes 6(a): Convenience Claims.

4.6.1. Impairment and Voting. Class 6(a) is Impaired by the Plan. Class 6(a) is an elective class for those making the Convenience Class Election, and, as a condition to such Election, each Holder of an Allowed Convenience Claim in Class 6(a) as of the Record Date is deemed to have accepted the Plan.

4.6.2. Treatment. On the Distribution Date, each Holder of an Allowed Convenience Claim in Class 6(a) as of the Distribution Record Date shall receive, in full satisfaction, release, and discharge of and in exchange for all Allowed Class 5(a) General Unsecured Claims held by such Holder and in accordance with the New Unsecured Claim

Distribution Procedures, Cash equal to 50% of its Allowed Convenience Claim; *provided*, *however*, that each Holder of an Allowed Convenience Claim must, as a condition precedent to the receipt of the foregoing Cash consideration, comply with the New Unsecured Claim Distribution Procedures; *provided further*, *however*, that the aggregate Cash consideration payable to Holders of Allowed Convenience Claims shall not exceed $9,700,000 and the Cash consideration payable to each Holder of an Allowed Convenience Claim shall be reduced proportionately to the extent aggregate payments would otherwise exceed such amount. The Convenience Class Election shall only be effective if the Effective Date occurs.

4.7. Treatment of Classes 7(a)-(g): Intercompany Claims.

4.7.1. Impairment and Voting.

4.7.1.1. *Classes 7(a)-(b)*. Classes 7(a)-(b) are Impaired by the Plan. Each Holder of an Allowed Intercompany Claim in Classes 7(a)-(b) as of the Record Date is entitled to vote to accept or reject the Plan.

4.7.1.2. *Classes 7(c)-(f)*. Classes 7(c)-(f) are Unimpaired by the Plan. Each Holder of an Allowed Intercompany Claim in Classes 7(c)-(f) is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

4.7.1.3. *Class 7(g)*. Class 7(g) is Impaired by the Plan. Each Holder of an Allowed Intercompany Claim in Class 7(g) as of the Record Date is entitled to vote to accept or reject the Plan.

4.7.2. Treatment.

4.7.2.1. *Classes 7(a)-(b)*. Each Holder of an Allowed Intercompany Claim in Classes 7(a)-(b) as of the Distribution Record Date shall, in full satisfaction, release, and discharge of and in exchange for such Holder's Intercompany Claim, receive USD $100.00 in Cash on the Effective Date.

4.7.2.2. *Classes 7(c)-(f)*. Intercompany Claims in Classes 7(c)-(f) will be Reinstated as of the Effective Date, except as provided in the Implementation Memorandum.

4.7.2.3. *Class 7(g)*. Each Holder of an Allowed Intercompany Claim in Class 7(g) as of the Distribution Record Date shall receive its Pro Rata Share of a percentage of Falcon Available Cash equal to the quotient obtained by dividing (i) the aggregate Allowed Claims in Class 7(g), by (ii) the aggregate Allowed Claims in Classes 5(g) and 7(g).

4.8. Treatment of Classes 8(a) and 8(g): Subordinated Claims.

4.8.1. Impairment and Voting. Classes 8(a) and 8(g) are Impaired by the Plan. Each Holder of an Allowed Subordinated Claim in Classes 8(a) and 8(g) as of the Record Date is entitled to vote to accept or reject the Plan.

4.8.2. Treatment.

4.8.2.1. *Class 8(a)*. Each Holder of an Allowed Subordinated Claim in Class 8(a) as of the Distribution Record Date shall, in full satisfaction, release, and discharge of and in exchange for such Holder's Subordinated Claim, receive its Pro Rata Share of the Subordinated Claim Warrants; *provided*, *however*, that if any Holder of an Allowed Subordinated Claim in Class 8(a) entitled to receive such Subordinated Claim Warrants is a Non-Eligible Claimant, the Subordinated Claim Warrants distributable to such Non-Eligible Claimant shall be liquidated by the Disbursing Agent and such Non-Eligible Claimant shall receive the proceeds thereof in lieu of any other Distribution; *provided further*, *however*, that if either (i) the Bankruptcy Court determines that the Plan cannot be confirmed in light of the fact that Interests in Class 9(a) are left Unimpaired, or (ii) the Holders of a majority of Shares in Arcapita Bank do not agree to transfer them to New Arcapita Bank Holdco in exchange for a Pro Rata Share of the Transferring Shareholder Warrants prior to the Effective Date, then the Plan may be amended to provide that Holders of Allowed Subordinated Claims in Class 8(a) shall not receive any Distributions or retain any property on account of such Claims. Each Holder of an Allowed Class 8(a) Subordinated Claim must, as a condition precedent to the receipt of the Subordinated Claim Warrants, (or the proceeds thereof) comply with the New Unsecured Claim Distribution Procedures.

4.8.2.2. *Class 8(g)*. Holders of Allowed Subordinated Claims in Class 8(g) shall not receive any Distributions on account of such Claims unless and until all Holders of Allowed Claims in Classes 1(g), 3(g), 5(g), and 7(g) are satisfied in full, in which case each Holder of an Allowed Subordinated Claim in Class 8(g) as of the Distribution Record Date shall receive its Pro Rata Share of a percentage of Falcon Available Cash equal to the quotient obtained by dividing (i) the aggregate amount of Allowed Class 8(g) Subordinated Claims, by (ii) the aggregate amount of Allowed Class 8(g) Subordinated Claims plus $70,000,000.

4.9. Treatment of Classes 9(a)-(g): Interests.

4.9.1. Impairment and Voting.

4.9.1.1. *Class 9(a)*. Class 9(a) is Unimpaired by the Plan. Each Holder of an Interest in Class 9(a) is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan; *provided*, *however*, that if either (i) the Bankruptcy Court determines that the Plan cannot be confirmed in light of the fact that Interests in Class 9(a) are left Unimpaired, or (ii) the Holders of a majority of Shares in Arcapita Bank do not agree to transfer them to New Arcapita Bank Holdco in exchange for a Pro Rata Share of the Transferring Shareholder Warrants prior to the Effective Date, then the Plan may be amended as set forth in Section 4.9.2.1 hereof, in which case each Interest in Class 9(a) shall be Impaired and each Holder of an Interest in Class 9(a) shall be deemed to have rejected the Plan and will not be entitled to vote to accept or reject the Plan.

4.9.1.2. *Classes 9(b)-(f)*. Classes 9(b)-(f) are Unimpaired by the Plan. Each Holder of an Interest in Classes 9(b)-(f) is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

4.9.1.3. *Class 9(g)*. Class 9(g) is Impaired by the Plan. Each Holder of an Interest in Class 9(g) as of the Record Date is entitled to vote to accept or reject the Plan.

4.9.2. Treatment.

4.9.2.1. *Class 9(a)*. Interests in Class 9(a) shall be Reinstated and, subject to compliance with the Warrant Distribution Conditions, each Holder of a Share in Arcapita Bank that agrees to be a Transferring Shareholder shall be entitled to receive, in exchange for transferring all Shares in Arcapita Bank held by such Holder to New Arcapita Bank Holdco prior to the Effective Date, a Pro Rata Share of the Transferring Shareholder Warrants; *provided*, *however*, that if either (i) the Bankruptcy Court determines that the Plan cannot be confirmed in light of the fact that Interests in Class 9(a) are left Unimpaired, or (ii) the Holders of a majority of Shares in Arcapita Bank do not agree to transfer them to New Arcapita Bank Holdco in exchange for a Pro Rata Share of the Transferring Shareholder Warrants prior to the Effective Date, then the Plan may be amended to provide that Interests in Class 9(a) are Impaired, in which case all Interests in Class 9(a) shall be cancelled and all rights and interests therein shall be terminated as of the Effective Date and new Shares in Arcapita Bank shall be issued to New Arcapita Bank Holdco in accordance with the Implementation Memorandum and the New Arcapita Shareholder Warrants shall not be issued.

4.9.2.2. *Classes 9(b)-(f)*. To preserve the Debtors' corporate structure for the benefit of the Holders of Syndicated Facility Claims, ~~SCB Claims,~~ Arcsukuk Claims, and General Unsecured Claims, the Interests in each of Classes 9(b)-(f) shall be Reinstated. Shares in Arcapita LT Holdings Limited shall be transferred to New Arcapita Holdco 2, as provided in the Implementation Memorandum.

4.9.2.3. *Class 9(g)*. Holders of Interests in Class 9(g) shall not receive any Distributions on account of such Interests unless and until all Holders of Allowed Claims in Classes 1(g), 3(g), 5(g), and 7(g) are satisfied in full, in which case each Holder of an Interest in Class 9(g) as of the applicable quarterly distribution date as set forth in Section 8.3.5 shall receive its Pro Rata Share of a percentage of Falcon Available Cash equal to the quotient obtained by dividing (i) $70,000,000, by (ii) the aggregate amount of Allowed Class 8(g) Subordinated Claims plus $70,000,000.

4.10. Treatment of Classes 10(a) and 10(g): Super-Subordinated Claims.

4.10.1. Impairment and Voting. Classes 10(a) and 10(g) are Impaired by the Plan. Each Holder of a Claim in Classes 10(a) and 10(g) is deemed to have rejected the Plan and is not entitled to vote to accept or reject the Plan.

4.10.2. Treatment. Holders of Allowed Claims in Classes 10(a) and 10(g) shall not receive any Distributions or retain any property on account of such Claims.

V.
PROVISIONS REGARDING VOTING, EFFECT OF REJECTION BY IMPAIRED CLASSES, AND CONSEQUENCES OF NON-CONFIRMABILITY

5.1. Voting Rights. Each Holder of an Allowed Claim or Interest as of the Record Date in an Impaired Class of Claims or Interests that is not deemed to have rejected the Plan, shall be entitled to vote to accept or reject the Plan as provided in the Disclosure Statement Approval Order.

5.2. Acceptance Requirements. An Impaired Class of Claims shall have accepted the Plan if votes to accept the Plan have been cast by at least two-thirds in amount and more than one-half in number of the Allowed Claims in such Class that have voted on the Plan. An Impaired Class of Interests shall have accepted the Plan if votes to accept the Plan have been cast by at least two-thirds in amount of the Allowed Interests in such Class that have voted on the Plan.

5.3. Cram Down. If all applicable requirements for Confirmation of any Subplan are met as set forth in section 1129(a) of the Bankruptcy Code, except subsection (8) thereof, the Plan shall be treated as a request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, notwithstanding the failure to satisfy the requirements of subsection 1129(a)(8) of the Bankruptcy Code, on the basis that the Plan is fair and equitable and does not discriminate unfairly with respect to each Class of Claims and Interests that is Impaired under, and has not accepted, the Plan or any Subplan incorporated therein. If the Debtors determine that the Plan cannot be confirmed under section 1129(b) of the Bankruptcy Code without eliminating the distribution to any junior Class or Classes, the Plan may, in the Debtors' sole discretion, be modified to eliminate such distribution, the Class or Classes as to which distributions are eliminated shall be deemed to be a rejecting Class or Classes, and the Plan may be treated as a request that the Bankruptcy Court confirm the Plan, as so modified, in accordance with section 1129(b) of the Bankruptcy Code, notwithstanding the failure to satisfy the requirements of section 1129(a)(8) of the Bankruptcy Code, on the basis that the Plan is fair and equitable and does not discriminate unfairly with respect to each Class of Claims and Interests that is Impaired under, and has not accepted, the Plan.

5.4. Tabulation of the Votes. The Debtors shall tabulate all votes by Class on a non-consolidated basis. If no Impaired Classes accept the Plan, or any Debtor's Subplan incorporated therein, the Debtors may modify the Plan, or such Subplan, to appropriately address the rights of the Holders of Allowed Claims.

5.5. Non-Confirmability. If the Plan, or any Debtor's Subplan incorporated therein, has not been accepted by the Classes of Claims and Interests entitled to vote with respect thereto in accordance with Section 5.2 hereof, and the Debtors determine that the Plan, or such Subplan, cannot be confirmed under section 1129(b) of the Bankruptcy Code, or if the Bankruptcy Court, upon consideration, declines to approve Confirmation of the Plan, or such Subplan, the Debtors may seek to (i) propose a new plan or plans of reorganization for the Debtors or for the Debtor that is the subject of such Subplan, (ii) amend the current Plan or any Subplan incorporated therein to satisfy any and all objections, (iii) withdraw the Plan or the relevant Subplan, or (iv) convert or dismiss the Chapter 11 Cases or any thereof.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

6.1. Assumption and Rejection of Contracts and Unexpired Leases. Except as otherwise provided herein or pursuant to the Confirmation Order, all Executory Contracts and Unexpired Leases that exist between any Debtor and any Person, shall be rejected pursuant to section 365(a) of the Bankruptcy Code as of the Effective Date, except for any such contract or lease (i) that has been assumed, rejected, or renegotiated and assumed on renegotiated terms, pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) that is the subject of a motion to assume or reject, or a motion to approve renegotiated terms and to assume

on such renegotiated terms, that has been filed and served prior to the Effective Date, (iii) that is an ~~Intercompany Contract~~Existing Management/Administration Agreement, or (iv) that is identified on the Assumed Executory Contract and Unexpired Lease List or in this Plan. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the rejection, pursuant to section 365(a) of the Bankruptcy Code, of the Executory Contracts and Unexpired Leases other than those identified above, and shall constitute the Bankruptcy Court's approval of the assumption and assignment (if applicable), pursuant to sections 365(a) and 365(f) of the Bankruptcy Code, of the Executory Contracts and Unexpired Leases identified in sections (iii) and (iv) of the preceding sentence. For the avoidance of doubt, on the Effective Date, the applicable Debtors shall assume the Senior Management Global Settlement~~; and shall assume~~, the obligations of the Debtors under the Employee Program and Global Settlement Order, the Existing Management/Administration Agreements, and the Lusail Transaction Documents ~~on modified terms to ensure that no payments will be due to QRE Investments W.L.L. unless and until the Lusail Option is exercised or a similar monetization transaction takes place that monetizes the Arcapita Group's interests in the Lusail Land, and shall assign the Lusail Transaction Documents~~and shall assign the these agreements and obligations to one of the New Holding Companies. Each Executory Contract and Unexpired Lease assumed pursuant to this Section 6.1 or by any order of the Bankruptcy Court, which has not been or is not assigned to a third party or one of the New Holding Companies on or prior to the ~~Confirmation~~Effective Date, shall revest in and be fully enforceable by the applicable Reorganized Debtor(s) in accordance with its terms, except as such terms are modified by the provisions of the Plan or any order of the Bankruptcy Court.

6.2. Claims Based on Rejection of Executory Contracts or Unexpired Leases. A Proof of Claim with respect to a Claim, if any, arising from the rejection of an Executory Contract or Unexpired Lease, pursuant to the Plan or otherwise must be filed with the Bankruptcy Court within 30 days after the date of entry of the order of the Bankruptcy Court (including the Confirmation Order, if applicable) approving such rejection. Any Claim arising from the rejection of an Executory Contract or Unexpired Lease not filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors or the Reorganized Debtors, the Estates, or their respective property, without the need for any objection by the Reorganized Debtors or further notice to, or action, order, or approval of the Bankruptcy Court. All Claims arising from the rejection of Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims, Subordinated Claims, or Super-Subordinated Claims, as applicable, and shall be treated in accordance with Section 4.5, 4.8, or 4.10 of the Plan, as applicable, or in such other manner as directed by the Bankruptcy Court.

6.3. Cure of Defaults. Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Claim in Cash on the later of (i) the Effective Date or (ii) the date on which such Cure Claim is Allowed, or on such other terms as the parties to any such Executory Contract or Unexpired Lease may otherwise agree. In the event of a dispute regarding (i) the existence or amount of the Cure Claim, (ii) the ability of the applicable Reorganized Debtor(s) or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (iii) any other matter pertaining to assumption, the payments required by section 365(b)(1) of the Bankruptcy Code in respect of Cure Claims shall be made

following the entry of a Final Order or orders resolving the dispute and approving the assumption. At least 20 days prior to the Confirmation Hearing, the Debtors shall provide notices of proposed assumption and proposed Cure Claims to the counterparties to the Executory Contracts and Unexpired Leases to be assumed. Any objection by any such counterparty to a proposed assumption or related Cure Claim must be filed and served in accordance with, and otherwise comply with, the provisions of the Disclosure Statement Approval Order. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption or amount of any Cure Claim will be deemed to have assented to such assumption or amount of such Cure Claim.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise, upon the payment of the applicable Cure Claim, if any, shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting change in control, change in ownership-interest or composition, or other bankruptcy-related defaults, arising under any such Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. Any Proof of Claim filed with respect to an Executory Contract or Unexpired Lease that has been assumed shall be deemed disallowed in its entirety and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

6.4. Contracts and Leases Entered into after the Petition Date. Contracts and leases entered into during the Postpetition Period by any Debtor, including any Executory Contracts and Unexpired Leases assumed by any Debtor during the Postpetition Period, will be performed by the Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business. Such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

6.5. Modifications, Amendments, Supplements, Restatements, or Other Agreements. Unless otherwise provided in the Plan or in the order assuming an Executory Contract or Unexpired Lease, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to any prepetition Executory Contracts or Unexpired Leases that have been executed by the Debtors during the Postpetition Period shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith, unless specifically addressed in such modification, amendment, supplements, or restatement.

6.6. Reservation of Rights. Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Assumed Executory Contract and Unexpired Lease List, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized

Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of purported assumption or rejection, the Debtors or Reorganized Debtors, as applicable, shall have 30 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

VII.
MEANS OF IMPLEMENTATION OF THE PLAN

7.1. Plan Settlement. As discussed in detail in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates a proposed compromise and settlement of numerous inter-Debtor, Debtor-Creditor, inter-Creditor, and Debtor-investor issues designed to achieve an economic settlement of Claims against all of the Debtors and an efficient resolution of the Chapter 11 Cases. These issues include, without limitation, the potential substantive consolidation of the Arcapita Group, the appropriate allocation of administrative and other fees and expenses among the various Debtors, the ownership and rights of the various Debtors and their Affiliates with respect to certain assets, the responsibilities of the various Debtors and their Affiliates to continue funding certain investments, the value of the ability to control the Debtors' investments, the nature and characterization of certain intercompany transactions, the relationship between the Debtors and their co-investors relative to the disposition of the Debtors' investments, claims related to the Debtors' Bahrain headquarters, claims against and rights of the Existing Senior Management, and potential avoidance actions against the Debtors' directors, officers, employees, shareholders, co-investors and others. In consideration for the classification of Claims and Interests, Distribution, releases, and other benefits provided under the Plan, upon the Effective Date, the Plan shall constitute a good faith compromise and settlement of all Claims, Interests, and disputes dealt with therein. Subject to Article VIII hereof, all Distributions made to Holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

7.2. Sources of Consideration for Plan Distributions.

7.2.1. Debtors' Available Cash. Cash will be available from the Debtors' operations, from the liquidation of the Debtors' assets, and from the proceeds of the Exit Facility. DIP Facility Claims shall be paid in Cash, pursuant to Section 2.4 hereof.

7.2.2. Exit Facility. On the Effective Date, the Exit Facility Obligors shall enter into the Exit Facility with the Exit Facility Investment Agent. Confirmation of the Plan shall be deemed approval of the Exit Facility (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Exit Facility Obligors in connection therewith) and authorization and direction for the Exit Facility Obligors to enter into and execute the Exit Facility, subject to such modifications as they may deem to be reasonably necessary to consummate their entry into the Exit Facility.

~~**7.2.3. New SCB Facility**. On the Effective Date, the New SCB Facility Obligors shall enter into the New SCB Facility. Confirmation shall be deemed approval of such New SCB Facility (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the New SCB Facility Obligors in connection therewith) and authorization and direction for the New SCB Facility Obligors to enter into and~~

~~execute all instruments, documents and agreements in connection therewith, subject to such modification as may be necessary to consummate their entry into the New SCB Facility.~~

7.2.3. ~~7.2.4.~~ **Sukuk Facility; Issuance of Sukuk Obligations**. On the Effective Date, the Sukuk Facility Obligors shall enter into the Sukuk Facility. Confirmation shall be deemed approval of such Sukuk Facility (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Sukuk Facility Obligors in connection therewith) and authorization and direction for the Sukuk Facility Obligors to enter into and execute all instruments, documents and agreements in connection therewith, subject to such modification as may be necessary to consummate their entry into the Sukuk Facility.

The Sukuk Obligations shall be issued as provided in Articles IV, VII, and VIII of the Plan, the Implementation Memorandum, and the Sukuk Facility, as applicable. Each Distribution and issuance referred to in Article VIII hereof shall be governed by the terms and conditions set forth in the Plan applicable to such Distribution or issuance and by the terms and conditions of the applicable instruments, which terms and conditions shall bind each Person receiving such Distribution. No Distribution shall be made with respect to a Claim unless the Holder of such Claim complies with the applicable Distribution Procedures, if any.

7.2.4. ~~7.2.5.~~ **Issuance of New Arcapita Shares, New Arcapita Creditor Warrants, and New Arcapita Shareholder Warrants**. The New Arcapita Shares, New Arcapita Creditor Warrants, and New Arcapita Shareholder Warrants, if issued, shall be issued as provided in Articles IV, VII, and VIII of the Plan and the Implementation Memorandum, as applicable. All of the New Arcapita Shares, New Arcapita Creditor Warrants, and New Arcapita Shareholder Warrants shall be duly authorized, validly issued, and, to the extent applicable, fully paid, and non-assessable. Each Distribution and issuance referred to in Article VIII hereof shall be governed by the terms and conditions set forth in the Plan applicable to such Distribution or issuance and by the terms and conditions of the applicable instruments, which terms and conditions shall bind each Person receiving such Distribution. No Distribution shall be made with respect to a Claim unless the Holder of such Claim complies with the applicable Distribution Procedures, if any. The New Arcapita Ordinary Shares will be subject to dilution by the New Arcapita Creditor Warrants. The New Arcapita Ordinary Shares, including any distributed in connection with exercise of the New Arcapita Creditor Warrants, will be subject to dilution by the New Arcapita Shareholder Warrants, if issued.

7.2.5. ~~7.2.6.~~ **Use of Proceeds**. Cash, debt and equity available from the sources described in Sections 7.2.1-7.2.5 above shall be used by the Disbursing Agent to fund all Distributions to be made on the Distribution Date and to fund ongoing operating expenses of the Reorganized Debtors.

7.3. Rule 2004 Examinations. The power of the Reorganized Debtors to conduct examinations pursuant to Bankruptcy Rule 2004 shall be expressly preserved following the Effective Date.

7.4. Continued Existence. Except as provided herein, each Debtor will continue to exist on or after the Effective Date as a separate legal entity, with all the rights and powers

applicable to such entity under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution, or otherwise) under applicable law, subject to the Implementation Memorandum.

7.5. Revesting of Assets. Except as expressly provided herein or the Implementation Memorandum, the Assets of each Debtor's Estate shall revest in the applicable Reorganized Debtor on the Effective Date. The Bankruptcy Court shall retain jurisdiction to determine disputes as to property interests created or vested by the Plan. From and after the Effective Date, the Reorganized Debtors may operate their businesses, and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code, except as provided herein. As of the Effective Date, all property of the Reorganized Debtors shall be free and clear of all Claims and Interests, except as, and to the extent, provided in the Plan Documents.

7.6. Implementation Transactions. In connection with implementation of the Plan and the creation of the New Holding Companies, the Disbursing Agent and the Debtors (or, after the Effective Date, the Reorganized Debtors) (i) shall effectuate the Plan through the transactions described in the Implementation Memorandum and the Cooperation Settlement Term Sheet, (ii) may merge, dissolve, transfer assets, or otherwise consolidate any of the Debtors (other than Falcon) in furtherance of the Plan, and (iii) may engage in any other transaction in furtherance of the Plan. Any such transaction may be effected prior to, on or subsequent to the Effective Date without the necessity for any further authorization by Holders of Interests or the directors, managers or other responsible persons of any of the Debtors.

7.7. Sale of AIHL Assets. As set forth in more detail in the Implementation Memorandum, Reorganized AIHL shall transfer all of its Assets (including all AIHL assets that have revested in Reorganized AIHL pursuant to Section 7.5 of the Plan) to New Arcapita Holdco 2, in exchange for the AIHL Sukuk Obligations, the New Arcapita AIHL Class A Shares, the New Arcapita AIHL Ordinary Shares, the New Arcapita Creditor Warrants, and the obligation of New Arcapita Holdco 2 to assume and pay AIHL's obligations under the DIP Facility and the SCB Facilities, as provided herein. The Confirmation Order shall, pursuant to section 1123(a)(5) of the Bankruptcy Code, authorize and approve the sale of Reorganized AIHL's Assets to New Arcapita Holdco 2.

7.8. Transfer of Arcapita Bank Shares. Each Holder of a Share in Arcapita Bank will be offered the option to exchange all such Shares held by such Holder to New Arcapita Bank Holdco in exchange for a Pro Rata Share of the Transferring Shareholder Warrants which may be accepted at any time prior to the one-year anniversary of the Effective Date; *provided*, *however*, that if the Holders of a majority of such Shares do not agree to transfer them to New Arcapita Bank Holdco in exchange for a Pro Rata Share of the Transferring Shareholder Warrants prior to the Effective Date, then the Transferring Shareholder Warrants may not be issued to any such Holders. Any Holder of a Share in Arcapita Bank who does not elect to exchange its Shares for a Pro Rata Share of the Transferring Shareholder Warrants prior to the expiration of the one-year deadline shall retain its Shares in Arcapita Bank and the Pro Rata Share of Transferring Shareholder Warrants which such Holder would have received shall expire and be cancelled.

7.9. Cancellation of Securities and Agreements. On the Effective Date, the Plan shall be consummated in accordance with the provisions set forth herein and: (i) the Claims against and

Interests in the Debtors, whether arising under the Syndicated Facility, the SCB Facilities, the Arcsukuk Facility, or under any other Certificate, Interest, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document, evidencing or creating, directly or indirectly, any indebtedness or obligation of or ownership interest in any of the Debtors (except such Certificates, notes, or other instruments or documents evidencing indebtedness or obligations of or ownership interest in any of the Debtors that are Reinstated pursuant to the Plan and as provided in Section 2.4 of the Plan), shall be cancelled, and the Reorganized Debtors shall not have any continuing obligations therefor; and (ii) the Claims against and Interests in the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation, formation or similar documents governing the shares, Certificates, notes, bonds, indentures, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in any of the Debtors (except such agreements, Certificates, notes, or other instruments or documents evidencing indebtedness or obligations of or ownership interest in the Debtors that are Reinstated pursuant to the Plan and as provided in Section 2.4 of the Plan) shall be released and discharged; *provided*, *however*, that notwithstanding Confirmation or consummation, the Syndicated Facility, the SCB Facilities, the Arcsukuk Facility and any other similar agreement that governs the rights of Holders of Claims thereunder shall continue in effect solely for the purpose of allowing such Holders to receive Distributions under and in accordance with the Plan and with respect to any party that, notwithstanding the provisions of the Plan that are binding on creditors and equity holders of the Arcapita Group wherever located, alleges not to be bound by the Plan; *provided further*, *however*, that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan, or result in any expense or liability to the Reorganized Debtors without the express, written consent of the applicable Reorganized Debtors.

7.10. Reorganized Debtors; New Holding Companies. On the Effective Date, the New Boards of the New Holding Companies and each Reorganized Debtor shall be appointed, and each shall adopt its New Governing Documents. The Reorganized Debtors shall be authorized to adopt any other agreements, documents, and instruments and to take any other action necessary or desirable to consummate the Plan. The Corporate Structure and Governance Documents, which evidence the new corporate and corporate governance structures of the New Holding Companies and the Reorganized Debtors, will be substantially in the form filed in the Plan Supplement.

7.11. Post Effective Date Management. Pursuant to the provisions of the Corporate Structure and Governance Documents and the Reorganized Debtors' constituent documents, which may be amended from time to time, the operation, management, and control of the New Holding Companies and the Reorganized Debtors shall be the general responsibility of their respective boards of directors or managers and senior officers (as provided under applicable law), which shall, after the Effective Date, have the responsibility for the management, control, and operation of the New Holding Companies and the Reorganized Debtors; *provided*, *however*, that certain of these functions will be outsourced to AIM pursuant to the Management Services Agreement. Entry of the Confirmation Order shall ratify and approve all actions taken by each of the Debtors from the Petition Date through and until the Effective Date.

7.12. Directors and Officers of the Reorganized Debtors. The members of the New Boards~~, as well as the officers, directors, managers or other responsible persons with respect to the~~

~~New Holding Companies and the Reorganized Debtors~~ will be identified in the Plan Supplement, together with their respective biographical information. A schedule of the annual compensation to be paid to persons serving as executives, officers, directors, managers or responsible persons as of the Effective Date that are Insiders (as defined in the Bankruptcy Code) will ~~also~~ be ~~set forth in the Plan Supplement~~filed with the Bankruptcy Court.

7.13. New Governing Documents of the Reorganized Debtors and New Holding Companies. The New Governing Documents of the Reorganized Debtors and the New Holding Companies (as applicable), among other things, shall prohibit the issuance of non-voting equity securities to the extent required by section 1123(a) of the Bankruptcy Code. After the Effective Date, the Reorganized Debtors and the New Holding Companies may amend and restate their New Governing Documents, as permitted under applicable laws, subject to the terms and conditions of such documents.

7.14. Employment, Retirement, Indemnification, and Other Related Agreements. On the Effective Date, the Senior Management Global Settlement, the Key Employee Incentive Plan, and the definitive documents evidencing same, shall, automatically and without further action on the part of the New Boards of the Reorganized Debtors or the New Holding Companies, be deemed to be adopted by the Reorganized Debtors and the New Holding Companies and shall be fully operative and enforceable, and the Reorganized Debtors and the New Holding Companies, and their New Boards, shall be authorized and directed to take any and all actions necessary and appropriate to implement and perform under these plans and agreements.

On and after the Effective Date, except as set forth herein, the Reorganized Debtors and the New Holding Companies shall have the authority, as determined by the New Boards, to: (i) maintain, amend, or revise existing employment, retirement, welfare, incentive, severance, indemnification, and other agreements with its active and retired directors or managers, officers, and employees, subject to the terms and conditions of any such agreement, and to continue to maintain and provide benefits, including all post-employment benefits, in connection therewith; and (ii) enter into new employment, retirement, welfare, incentive, severance, indemnification, and other agreements for active and retired employees.

For purposes only of implementing the benefits provided pursuant to the Employee Program and Global Settlement Order~~ and the Senior Management Global Settlement~~, all employees ~~participating in any employee benefit program thereunder and employed by~~of the Arcapita Group as of the Effective Date shall be treated as if they had been terminated ~~on~~prior to the Effective Date, and all amounts due and owing to each such ~~employees~~employee thereunder at termination of ~~their~~its employment shall be immediately due and payable by the New Holding Companies, subject to compliance by such employees with ~~their~~its obligations pursuant to the Employee Program and Global Settlement Order~~ or the Senior Management Global Settlement, as applicable~~.

For purposes only of implementing the benefits provided pursuant to the Senior Management Global Settlement, each member of Existing Senior Management shall be treated as if they had been terminated prior to the Effective Date. Reorganized Arcapita and the New Holding Companies shall honor the obligations of the Debtors and such entities under the Senior Management Global Settlement, and the members of Existing Senior Management shall only be

entitled to the treatment afforded to them, and amounts due and owing to them, pursuant to the Senior Management Global Settlement.

7.15. Effectuating Documents; Further Transactions. On and after the Effective Date, the New Holding Companies and the Reorganized Debtors, and the officers and members of the New Boards, are authorized to and may, in the name of and on behalf of the applicable New Holding Companies and Reorganized Debtors, issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the securities issued pursuant to the Plan, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

7.16. Entity Action. Upon the Effective Date, all actions contemplated by the Plan shall be deemed ratified, authorized, and approved in all respects, including but not limited to: (i) entry into the Senior Management Global Settlement, (ii) the selection of the directors and officers for the New Holding Companies and the Reorganized Debtors; (iii) the distribution of the New Arcapita Shares, New Arcapita Creditor Warrants, and New Arcapita Shareholder Warrants in accordance with the Plan; (iv) the execution and entry into the Exit Facility, ~~the New SCB Facility,~~ the Sukuk Facility, and related transaction security agreements, indentures, and any other ancillary agreements relating thereto; (v) the adoption of the Key Employee Incentive Plan; (vi) the performance of any and all obligations required by or related to the Employee Program and Global Settlement Order in accordance with the terms thereof as modified herein; and (vii) all other actions contemplated by the Plan, including the actions described in the Implementation Memorandum (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan involving the entity structure of the Debtors, the Reorganized Debtors or the New Holding Companies, and any entity action required by the Debtors, the Reorganized Debtors or the New Holding Companies in connection with the Plan shall be deemed to have occurred and shall be in effect without any requirement of further action by the security holders, directors, or officers of the Debtors, the Reorganized Debtors, or the New Holding Companies. On or prior to the Effective Date, as applicable, the appropriate officers of the Debtors, the Reorganized Debtors, or the New Holding Companies, as applicable, shall be authorized and directed, as applicable, to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan) in the name of and on behalf of the Reorganized Debtors or the New Holding Companies, as applicable, including, without limitation, the Exit Facility, ~~the New SCB Facility,~~ the Sukuk Facility, the Senior Management Global Settlement, the Key Employee Incentive Plan, and any and all other agreements, documents, indentures, securities, and instruments relating to the foregoing. To the extent permitted by the Bankruptcy Code, the authorizations and approvals contemplated herein shall be effective notwithstanding any requirements under any non-bankruptcy law. The issuance of the New Arcapita Shares, New Arcapita Creditor Warrants, and New Arcapita Creditor Warrants shall be exempt from the requirements of section 16(b) of the Securities Exchange Act of 1934 (pursuant to Rule 16b-3 promulgated thereunder) with respect to any acquisition of securities by an officer or director (or a director deputized for purposes thereof) as of the Effective Date.

7.17. Section 1146 Exemption. Pursuant to section 1146 of the Bankruptcy Code, any transfers of property (whether from a Debtor to a Reorganized Debtor or to any other Person) pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (i) the issuance,

distribution, transfer, or exchange of any debt, Equity Security, or other Interest in the Debtors, the Reorganized Debtors, or the New Holding Companies; (ii) the creation, modification, consolidation, termination, refinancing and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (iii) the making, assignment, or recording of any lease or sublease; (iv) the grant of collateral as security for ~~any~~either or ~~all~~both of the Exit Facility~~, the New SCB Facility,~~ and the Sukuk Facility; or (v) the making, delivery, or recording of any deed or other instruments of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local government officials or agents shall, and shall be directed, to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

7.18. Preservation of Causes of Action. In accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action other than Released Actions, whether arising before or after the Petition Date, including, but not limited to, any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action (other than Released Actions) shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtors may pursue such Causes of Action (other than Released Actions), as appropriate, in accordance with the best interests of the Reorganized Debtors. No Person may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action (other than Released Actions) against such Person as any indication that the Debtors or Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action against such Person (other than Released Actions). The Debtors or Reorganized Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action (other than Released Actions) against any Person, except as otherwise expressly provided in the Plan. Unless any Causes of Action (other than Released Actions) against any Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action (other than Released Actions), for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to Causes of Action (other than Released Actions) upon, after, or as a consequence of the Confirmation of the Plan or the occurrence of the Effective Date.

The Reorganized Debtors reserve and shall retain any applicable Causes of Action (other than Released Actions) notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action (other than Released Actions) that a Debtor may hold against any Person shall vest in the applicable Reorganized Debtor(s). The applicable Reorganized Debtor(s), through its authorized agents or representatives, shall retain and

may exclusively enforce any and all such Causes of Action (other than Released Actions); *provided*, *however*, that any Causes of Action that revest in Reorganized Arcapita or AIHL shall be transferred to New Arcapita ~~Topco~~Holdco 2 in accordance with the Implementation Memorandum and New Arcapita ~~Topco~~Holdco 2 may exclusively enforce any and all such Causes of Action (other than Released Actions); *provided further*, *however*, that the Committee may enforce any Causes of Action that the Committee has standing to prosecute pursuant to a Final Order; *provided further*, *however*, that any Creditor of Falcon may enforce any Causes of Action belonging to Falcon that such Creditor has standing to prosecute pursuant to a Final Order. The Reorganized Debtors, New Arcapita ~~Topco, or~~Holdco 2, the Committee (solely with respect to any Causes of Action that the Committee has standing to prosecute pursuant to a Final Order), or any Creditor of Falcon with standing to prosecute a Cause(s) of Action that belongs to Falcon (solely with respect to any Causes of Action that ~~the Committee~~such Creditor has standing to prosecute pursuant to a Final Order), as applicable, shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any Causes of Action (other than Released Actions) and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court. New Arcapita ~~Topco~~Holdco 2 shall stand in the shoes of the Debtors and the Reorganized Debtors for purposes of the attorney client privilege held by the Debtors or the Reorganized Debtors as to any legal advice or legal services provided to or for the benefit of the Debtors or the Reorganized Debtors relating to the Causes of Action transferred to New Arcapita ~~Topco,~~Holdco 2, and the disclosure or transfer of information protected by the attorney client privilege or the work product doctrine from the Debtors or Reorganized Debtors (or their counsel) to New Arcapita Holdco 2 (or its counsel) shall not constitute a waiver of the attorney client privilege or the ~~work product doctrine from the Debtors or Reorganized Debtors (or their counsel) to New Arcapita Topco (or its counsel) shall not constitute a waiver of the attorney client privilege or the~~ work product doctrine. For the avoidance of doubt, the Released Actions shall be expressly waived, released, and relinquished on the Effective Date.

This Plan expressly reserves the right of the Debtors and the Reorganized Debtors (or any other Person authorized to prosecute the rights of the Debtors' Estates) to file an adversary proceeding or other appropriate proceeding, before or after the Effective Date, to subordinate any Claim subject to subordination.

7.19. Non-occurrence of Effective Date. In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

7.20. Fountains Guarantee. In connection with the implementation of the Plan, on the Effective Date Reorganized Arcapita Bank shall execute the Fountains Guarantee and become liable for all of the obligations arising thereunder.

7.21. HQ Settlement. Confirmation of the Plan shall constitute approval of the HQ Settlement and shall bind the parties thereto to the terms thereof, as evidenced by the definitive documents with respect thereto which shall be substantially in the form filed in the Plan Supplement.

7.22. Cooperation Settlement Term Sheet. Confirmation of the Plan shall constitute approval of the documents implementing the Cooperation Settlement Term Sheet and shall bind the parties thereto to the terms thereof, including, without limitation, the Management Services Agreement, which shall be substantially in the form filed in the Plan Supplement. Pursuant to the IP Asset Transfer Agreement, the Transferred IP Assets, together with the goodwill of the business represented thereby, shall be transferred to AIM on the Effective Date in partial consideration of the services to be provided by AIM pursuant to the Management Services Agreement. Pursuant to the Fixed Asset Purchase Agreement, and the Hard Assets shall be transferred to AIM on the Effective Date for fair market value.

7.23. SCB Plan Settlement. Confirmation of the Plan shall constitute approval of the SCB Plan Settlement and shall bind the parties thereto to the terms thereof.

VIII.
METHOD OF DISTRIBUTIONS UNDER THE PLAN AND CLAIMS RECONCILIATION

8.1. Distributions. The Disbursing Agent shall make or cause to be made the Distributions required under the Plan to all Holders of Allowed Claims and Interests. No Distribution shall be made to any Holder until such Holder satisfies any applicable distribution condition, including compliance with any applicable Distribution Procedures. Notwithstanding anything to the contrary in the foregoing, Distributions on account of the DIP Facility Claims shall be made on the Effective Date.

8.2. Distribution Record Date. For purposes of the Plan, as of 5:00 p.m. prevailing U.S. Eastern Time on the Distribution Record Date, the records of ownership of Claims against the Debtors (including the claims register in the Chapter 11 Cases) will be closed. For purposes of the Plan, the Debtors, the Estates, the Reorganized Debtors and the Disbursing Agent shall have no obligation to recognize the transfer of any Claim occurring after the Distribution Record Date, and shall be entitled for all purposes relating to the Plan to recognize and deal only with those Holders of record as of 5:00 p.m. prevailing U.S. Eastern Time on the Distribution Record Date.

8.3. Dates of Distributions. Except as provided in this Section 8.3 and in Sections 8.3.1, 8.3.2, 8.3.3, 8.3.4, and 8.3.5 hereof, Distributions under the Plan shall be made by the Disbursing Agent on the Distribution Date. Whenever any Distribution to be made under the Plan shall be due on a day other than a Business Day, such Distribution shall instead be made, without interest, on the immediately following Business Day. Distributions due on the Effective Date shall be paid on such date or as soon thereafter as reasonably practicable, *provided* that if other provisions of the Plan require the surrender of securities or establish other conditions precedent to receiving a Distribution, the Distribution may be delayed until such surrender occurs or conditions are satisfied.

8.3.1. Distributions of Sukuk Obligations. On the Effective Date, the Disbursing Agent shall calculate the allocation of Sukuk Obligations to be distributed in accordance with Article IV of the Plan as if all Claims in Classes 4(a)-(b) and 5(a)-(b) are Allowed Claims. On the Effective Date, each Holder of an Allowed Claim entitled to receive Sukuk Obligations shall receive a Distribution of Sukuk Obligations in the amount determined by the

preceding sentence. Every 180 days following the Effective Date, the Disbursing Agent shall recalculate the allocation of Sukuk Obligations to be distributed in accordance with Article IV of the Plan as if all Claims in Classes 4(a)-(b) and 5(a)-(b) that have not been Disallowed are Allowed Claims. Each Holder of an Allowed Claim entitled to receive Sukuk Obligations shall then receive a Distribution of Sukuk Obligations (and the proceeds thereof, including any interest accrued thereon) in an amount sufficient to make the total of all Distributions of Sukuk Obligations (and the proceeds thereof, including any interest accrued thereon) to such Holder equal to the total amount of such Distributions of Sukuk Obligations to which such Holder is entitled, as determined by the preceding sentence. At all times, the undistributed Sukuk Obligations and any proceeds thereof shall be held by the Disbursing Agent in a segregated account.

8.3.2. Distributions of New Arcapita Shares. On the Effective Date, the Disbursing Agent shall calculate the allocation of New Arcapita Shares to be distributed in accordance with Article IV of the Plan as if all Claims in Classes 4(a)-(b), and 5(a)-(b) are Allowed Claims and, for purposes of calculating the amount of Contingent Class 4(a) Claims only, as if all Claims in Class 4(b) have been Disallowed. On the Effective Date, each Holder of an Allowed Claim entitled to receive New Arcapita Shares shall receive a Distribution of New Arcapita Shares in the amount determined by the preceding sentence. Every 180 days following the Effective Date, the Disbursing Agent shall recalculate the allocation of New Arcapita Shares to be distributed in accordance with Article IV of the Plan as if all Claims in Classes 4(a)-(b) and 5(a)-(b) that have not been Disallowed are Allowed Claims and, for purposes of calculating the amount of Contingent Class 4(a) Claims only, as if all Claims in Class 4(b) that have not been Allowed have been Disallowed. Each Holder of an Allowed Claim entitled to receive New Arcapita Shares shall then receive a Distribution of New Arcapita Shares (and the proceeds thereof, if any) in an amount sufficient to make the total of all Distributions of New Arcapita Shares (and the proceeds thereof, if any) to such Holder equal to the total amount of such Distributions of New Arcapita Shares to which such Holder is entitled, as determined by the preceding sentence. At all times, the undistributed New Arcapita Shares and any proceeds thereof, if any, shall be held by the Disbursing Agent in a segregated account. In the event a vote or election is required by the holders of the New Arcapita Shares, the Disbursing Agent, unless otherwise directed by the Bankruptcy Court, shall vote or make elections with respect to the New Arcapita Shares held by the Disbursing Agent on the record date for such vote or election in the same manner and proportion as all other securities of the same class(es) are voted or with respect to which elections are made by holders other than the Disbursing Agent. No partial New Arcapita Shares shall be issued; the number of New Arcapita Shares distributable to any Claimant pursuant to this Section 8.3.2 shall be calculated by disregarding any fractional portion of New Arcapita Shares to which such Claimant might otherwise be entitled.

8.3.3. Distributions of New Arcapita Shareholder Warrants. On the Effective Date, the Disbursing Agent shall calculate the allocation of New Arcapita Shareholder Warrants to be distributed in accordance with Article IV of the Plan as if all Claims in Class 8(a) are Allowed Claims. On the Effective Date, each Holder of an Allowed Claim and each Transferring Shareholder entitled to receive New Arcapita Shareholder Warrants shall receive a Distribution of New Arcapita Shareholder Warrants in the amount determined by the preceding sentence. Every 180 days following the Effective Date, the Disbursing Agent shall recalculate the allocation of New Arcapita Shareholder Warrants to be distributed in accordance with Article IV of the Plan as if all Claims in Class 8(a) that have not been Disallowed are Allowed Claims. Each Holder of an

Allowed Claim and each Transferring Shareholder entitled to receive New Arcapita Shareholder Warrants shall then receive a Distribution of New Arcapita Shareholder Warrants (and the proceeds thereof, if any) in an amount sufficient to make the total of all Distributions of New Arcapita Shareholder Warrants (and the proceeds thereof, if any) to such Holder or Transferring Shareholder equal to the total amount of such Distributions of New Arcapita Shareholder Warrants to which such Holder or Transferring Shareholder is entitled, as determined by the preceding sentence. At all times, the undistributed New Arcapita Shareholder Warrants and any proceeds thereof, if any, shall be held by the Disbursing Agent in a segregated account. No New Arcapita Shareholder Warrants that may be exercised for partial New Arcapita ~~Shareholder Warrants~~Ordinary Shares shall be issued; the number of New Arcapita Shareholder Warrants distributable to any Claimant or Transferring Shareholder pursuant to this Section 8.3.3 shall be calculated by disregarding any ~~fractional portion of~~ New Arcapita Shareholder Warrants that would be exercisable to purchase partial New Arcapita Shares to which such Claimant or Transferring Shareholder might otherwise be entitled.

8.3.4. Distributions of New Arcapita Creditor Warrants. On the Effective Date, the Disbursing Agent shall calculate the allocation of New Arcapita Creditor Warrants to be distributed in accordance with Article IV of the Plan as if all Claims in Classes 4(b) and 5(b) are Allowed Claims. On the Effective Date, each Holder of an Allowed Claim entitled to receive New Arcapita Creditor Warrants shall receive a Distribution of New Arcapita Creditor Warrants in the amount determined by the preceding sentence. Every 180 days following the Effective Date, the Disbursing Agent shall recalculate the allocation of New Arcapita Creditor Warrants to be distributed in accordance with Article IV of the Plan as if all Claims in Classes 4(b) and 5(b) that have not been Disallowed are Allowed Claims. Each Holder of an Allowed Claim entitled to receive New Arcapita Creditor Warrants shall then receive a Distribution of New Arcapita Creditor Warrants (and the proceeds thereof, if any) in an amount sufficient to make the total of all Distributions of New Arcapita Creditor Warrants (and the proceeds thereof, if any) to such Holder equal to the total amount of such Distributions of New Arcapita Creditor Warrants to which such Holder is entitled, as determined by the preceding sentence. At all times, the undistributed New Arcapita Creditor Warrants and any proceeds thereof, if any, shall be held by the Disbursing Agent in a segregated account. No New Arcapita Creditor Warrants that may be exercised for partial New Arcapita ~~Creditor Warrants~~Ordinary Shares shall be issued; the number of New Arcapita Creditor Warrants distributable to any Claimant or Transferring Shareholder pursuant to this Section 8.3.4 shall be calculated by disregarding any ~~fractional portion of~~ New Arcapita Creditor Warrants that would be exercisable to purchase partial New Arcapita Shares to which such Claimant or Transferring Shareholder might otherwise be entitled.

8.3.5. Distributions of Falcon Available Cash. The Disbursing Agent shall calculate the amount of Falcon Available Cash quarterly, and shall distribute any Falcon Available Cash on a quarterly basis in accordance with Article IV of the Plan as if all Claims and Interests in Classes 5(g), 7(g), 8(g), and 9(g) are Allowed. On the Effective Date, each Holder of an Allowed Claim or Interest entitled to receive Falcon Available Cash shall receive a Distribution of Falcon Available Cash in the amount determined by the preceding sentence. Any remaining Falcon Available Cash and any proceeds thereof shall be held by the Disbursing Agent in a segregated account for Distribution pursuant to this Section 8.3.5. On the last day of each quarter following the Effective Date, the Disbursing Agent shall calculate the allocation of Falcon Available Cash to be distributed in accordance with Article IV of the Plan as if all Claims and Interests in Classes

5(g), 7(g), 8(g), and 9(g) that have not been Disallowed are Allowed. Each Holder of an Allowed Claim or Interest entitled to receive Falcon Available Cash shall then receive a Distribution of Falcon Available Cash in an amount sufficient to make the total of all Distributions of Falcon Available Cash to such Holder or equal to the total amount of such Distributions of Falcon Available Cash to which such Holder is entitled, as determined by the preceding sentence. Any remaining Falcon Available Cash and any proceeds thereof shall be held by the Disbursing Agent in a segregated account for Distribution pursuant to this Section 8.3.5.

8.4. Cash Payments. Any Cash payments made pursuant to the Plan will be made in U.S. dollars or the currency in which the Claim is denominated under the applicable agreements related thereto. Cash payments made pursuant to the Plan in the form of a check shall be null and void if not cashed within 180 days of the date of issuance thereof.

8.5. Delivery of Distributions. If the Distribution to any Holder of an Allowed Claim or Interest is returned as undeliverable, the Disbursing Agent shall use commercially reasonable efforts to determine the current address of such Holder. Undeliverable Distributions shall be held by the Disbursing Agent subject to Section 8.8 hereof.

8.6. Minimum Cash Distributions. No Cash payment less than twenty-five U.S. dollars shall be made to any Holder of an Allowed Claim unless a request therefor is made in writing to the Disbursing Agent.

8.7. Withholding Taxes.

8.7.1. The Disbursing Agent shall comply with all withholding, reporting, certification, and information requirements imposed by any federal, state, local, or foreign taxing authority and all Distributions hereunder shall, to the extent applicable, be subject to any such withholding, reporting, certification, and information requirements.

8.7.2. Persons entitled to receive Distributions hereunder shall, as a condition to receiving such Distributions, provide such information and take such steps as the Disbursing Agent may reasonably require to ensure compliance with such withholding and reporting requirements, and to enable the Disbursing Agent to obtain the certifications and information as may be necessary or appropriate to satisfy the provisions of any tax law.

8.7.3. Any Person that does not provide the Disbursing Agent with requisite information after the Disbursing Agent has made at least three attempts (by written notice or request for such information, including on the Ballots in these Chapter 11 Cases) to obtain such information, may be deemed to have forfeited such Person's right to any Distributions that such Person is otherwise entitled to, and such Distributions shall be treated as Unclaimed Property under Section 8.8.

8.8. Unclaimed Property. Any Person that fails to claim any Distribution to be distributed hereunder by the Forfeiture Date shall forfeit all rights to such Distribution, and shall have no claim whatsoever with respect thereto against the New Holding Companies, the Debtors, their Estates, the Reorganized Debtors, their property, or any Holder of an Allowed Claim or Interest that has received any Distributions under the Plan.

8.9. Forfeited Property. Upon the forfeiture of Cash, such Cash shall be the property of New Arcapita Holdco 1 (except for Cash to be distributed by Falcon, which forfeited Cash shall be the property of Falcon); upon the forfeiture of the right to Distributions of any Sukuk Obligations, such Obligations shall be redistributed as if the related Claims have become Disallowed in accordance with the provisions of Section 8.3.1; upon the forfeiture of the right to Distributions of any New Arcapita Shares, such Shares shall be redistributed as if the related Claims have become Disallowed in accordance with the provisions of Section 8.3.2; upon the forfeiture of the right to Distributions of any New Arcapita Shareholder Warrants, such Warrants shall be redistributed as if the related Claims have become Disallowed in accordance with the provisions of Section 8.3.3; upon the forfeiture of the right to Distributions of any New Arcapita Creditor Warrants, such Warrants shall be redistributed as if the related Claims have become Disallowed in accordance with the provisions of Section 8.3.4. Nothing herein shall require further efforts to attempt to locate or notify any Person with respect to any forfeited property.

8.10. Disputed Claims and Interests. If the Debtors, the Reorganized Debtors, or any other party in interest disputes any Claim against or Interest in the Debtors, such dispute shall be (i) adjudicated in the Bankruptcy Court or, to the extent that the Bankruptcy Court does not have jurisdiction, in any other court having jurisdiction over such dispute, or (ii) settled or compromised by the Debtors or the Reorganized Debtors as provided for in Sections 8.11 and 8.12 hereof. Among other things, the Debtors (on or before the Effective Date), or the Reorganized Debtors (after the Effective Date) may elect, at their respective sole option, to object to or seek estimation under section 502 of the Bankruptcy Code with respect to any Proof of Claim or Proof of Interest filed by or on behalf of a Holder of a Claim against or Interest in the Debtors. Upon Allowance of a Disputed Claim or Interest in whole or in part by Final Order, the Distribution on any portion of such Claim or Interest that is Allowed shall be made as provided in such Final Order in accordance with the Plan.

8.11. Objections to Claims and Interests. Unless a different time is set by an order of the Bankruptcy Court or otherwise established by other provisions of the Plan, all objections to Claims and Interests must be filed by the Claims Objection Bar Date; *provided*, *however*, that no such objection may be filed with respect to any Claim or Interest after the Bankruptcy Court has determined by entry of an order that such Claim or Interest is an Allowed Claim or Interest. The failure by any party in interest, including the Debtors and the Committee to object to any Claim or Interest, for purposes of voting shall not be deemed a waiver of such party's rights to object to, or re-examine, any such Claim or Interest in whole or in part. After the Effective Date, no party in interest shall have the right to object to Claims against or Interests in the Debtors (other than Falcon) or their Estates other than the Reorganized Debtors.

8.12. Compromises and Settlements. From and after the Effective Date, and without any further approval by the Bankruptcy Court, the Reorganized Debtors (other than Falcon) may compromise and settle all Claims and Causes of Action. Falcon may compromise and settle any Claims and Causes of Action with the approval of the Bankruptcy Court.

8.13. Reservation of Debtors' Rights. Prior to the Effective Date, the Debtors expressly reserve the right to compromise and settle (subject to the approval of the Bankruptcy Court) Claims against them or claims they may have against other Persons.

8.14. No Distributions Pending Allowance. If a Claim or Interest, or any portion of a Claim or Interest, is Disputed, no payment or Distribution will be made on account of the Disputed portion of such Claim (or the entire Claim, if the entire Claim is Disputed), unless such Disputed Claim or Interest or portion thereof becomes an Allowed Claim.

8.15. No Postpetition Interest on Claims. Unless otherwise specifically provided for in the Plan, the Confirmation Order, or other Final Order of the Bankruptcy Court, no postpetition interest or profit shall accrue or be paid on or in connection with any Claim or Interest, and no Holder of a Claim or Interest shall be entitled to interest or profit during the Postpetition Period on or in connection with any such Claim or Interest.

8.16. Claims Paid or Payable by Third Parties. The Disbursing Agent shall reduce in full a Claim, and such Claim shall be disallowed without a Claim objection having to be Filed and without further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not the Disbursing Agent. To the extent a Holder of a Claim receives a Distribution on account of such Claim and receives payment from a party that is not the Disbursing Agent on account of such Claim, such Holder shall, within two weeks of receipt thereof, repay or return the Distribution to the Disbursing Agent to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the Allowed amount of such Claim as of the date of any such Distribution under the Plan. The failure of such Holder to timely repay or return such Distribution shall result in the Holder owing the Disbursing Agent annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the two-week grace period specified above until the amount is repaid.

8.17. Effect of Acceptance of Distribution. Acceptance of any Distribution or other property under the Plan will constitute the recipient's acknowledgment and agreement that all Claims, demands, liabilities, other debts against, or Interests in, the Debtors (other than those created by the Plan) have been discharged and enjoined in accordance with Article IX of the Plan.

IX.
EFFECT OF CONFIRMATION OF PLAN

9.1. Discharge.

9.1.1. Discharge of Claims Against the Debtors and the Reorganized Debtors. Except as otherwise expressly provided in the Plan ~~or~~, the Confirmation Order, or the SCB Plan Settlement, the Confirmation of the Plan shall, as of the Effective Date: (i) discharge the Debtors (other than Falcon), the Reorganized Debtors (other than Reorganized Falcon) and any of its or their Assets from all Claims, demands, liabilities, other debts and Interests that arose on or before the Effective Date (other than Claims, demands, liabilities, or other debts that arise pursuant to the Exit Facility), including all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, whether or not (a) a Proof of Claim based on such debt is filed or deemed filed pursuant to section 501 of the Bankruptcy Code, (b) a Claim based on such debt is Allowed pursuant to section 502 of the Bankruptcy Code, or (c) the Holder of a Claim based on such debt has accepted the Plan; and (ii) preclude all Persons from asserting against the Debtors (other than Falcon), the Reorganized Debtors (other than Reorganized Falcon), or any of its or their Assets,

any other or further Claims or Interests based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, all pursuant to sections 524 and 1141 of the Bankruptcy Code. The discharge provided in this provision shall void any judgment obtained against any of the Debtors at any time, to the extent that such judgment relates to a discharged Claim or Interest.

9.1.2. Injunction Related to the Discharge. **Except as otherwise provided in the Plan ~~or~~, the Confirmation Order, or the SCB Plan Settlement, all entities, wherever located in the world, that have held, currently hold, or may hold Claims or other debts or liabilities against the Debtors, or any Interest in any or all of the Debtors, that are discharged pursuant to the terms of the Plan, are permanently enjoined, on and after the Effective Date, from taking, or causing any other entity to take, any of the following actions on account of any such Claims, debts, liabilities or Interests or rights: (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim, debt, liability, Interest, or right, other than to enforce any right to a Distribution pursuant to the Plan; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or order against the Debtors, the Reorganized Debtors, or any of their Assets on account of any such Claim, debt, liability, Interest, or right; (iii) creating, perfecting, or enforcing any Lien or encumbrance against the Debtors, the Reorganized Debtors, or any of their Assets on account of any such Claim, debt, liability, Interest or right; (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any debt, liability, or obligation due to the Debtors, the Reorganized Debtors, or with respect to any of their Assets on account of any such Claim, debt, liability, Interest, or right; and (v) commencing or continuing any action, in any manner, in any place in the world that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order; *provided*, *however*, that Holders of Guarantee Claims shall be permitted to deliver upon the Debtors or the Reorganized Debtors, as applicable, any demand, notice or other document with respect to such Holder's Guarantee Claims, for the sole purpose of enabling such Holders to trigger the applicable Debtor's payment obligation pursuant to such Guarantee Claims; *provided further*, *however*, that the preceding proviso shall not allow any Holder of any Claim to assert or deliver any demand, notice or other document with respect to any other Claim. Such injunction shall extend to any successor of the Debtors, the Reorganized Debtors, and any of their Assets. Any Person entitled to a Distribution pursuant to the Plan that is found by the Bankruptcy Court to have willfully violated the injunction set forth in this Section 9.1.2 shall be deemed to have forfeited all rights to such Distribution or any other benefits under the Plan, and shall have no claim whatsoever with respect thereto against the New Holding Companies, the Debtors, their Estates, the Reorganized Debtors, their property, or any Holder of an Allowed Claim or Interest that has received any Distributions under the Plan. Any Person injured by any willful violation of the injunction set forth in this Section 9.1.2 shall recover actual damages, including costs and attorneys' and experts' fees and disbursements, and, in appropriate circumstances, may recover punitive damages, from the willful violator**.

9.2. Releases.

9.2.1. Releases by the Debtors on Behalf of the Estates. **Except as otherwise provided in the Plan or in the Confirmation Order, as of the Effective Date, for good and**

valuable consideration, the adequacy of which is hereby confirmed, the Debtors (other than Falcon) in their individual capacities and as debtors in possession on behalf of their Estates will be deemed to release and forever waive and discharge the Released Parties from and against all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date (including prior to the Petition Date) in any way relating to the Debtors or their Affiliates, the Chapter 11 Cases, the Plan, or the Disclosure Statement, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, including, without limitation, the Incentive Programs, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan, the Plan Supplement, the Disclosure Statement, or related agreements, instruments, or other documents, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place before the Effective Date and that could have been asserted by or on behalf of the Debtors or their Estates at any time on or prior to the Effective Date against the Released Parties, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes fraud, willful misconduct ~~or~~, gross negligence, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, or ultra vires acts. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan~~.~~, including, without limitation, any obligations arising under the Exit Facility. Notwithstanding anything to the contrary the foregoing, nothing in this Section 9.2.1 shall limit the liability of the Professionals of the Debtors or the Reorganized Debtors to their respective clients pursuant to DR 6-102 of the Code of Professional Responsibility.

9.2.2. Releases of Avoidance Actions. Except as otherwise provided in the Plan or in the Confirmation Order, as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors (other than Falcon) in their individual capacities and as debtors in possession on behalf of their Estates will be deemed to release and forever waive and discharge any Avoidance Actions against (i) the Debtors and their Affiliates, (ii) the Released Parties, (iii) any Persons that have had funds on deposit with Arcapita Bank in a restricted investment account or an unrestricted investment account (other than Placement Banks or their Affiliates, Portigon Financial Services AG (f/k/a West LB AG), Alubaf Arab International Bank BSC, and Arcsukuk (2011) Limited), (iv) QIB (with respect to ~~any payments received in connection with~~ the Lusail Transactions only), and (v) QInvest LLC (with respect to ~~any payments received in connection with~~ the Lusail Transactions only). Notwithstanding the foregoing, QIB and QInvest LLC shall only receive the release set forth in this Section 9.2.2 if both QIB and QInvest LLC provide all consents needed with respect to the assumption and assignment of the QRE Letter Agreement, the Lusail Lease, and the Lusail Option.

9.2.3. Certain Waivers. Although the Debtors do not believe that California law is applicable to the Plan, nevertheless, in an abundance of caution, each Debtor hereby understands and waives the effect of section 1542 of the California Civil Code to the extent that such section is applicable to the Debtors. Section 1542 of the California Civil Code provides:

> **§1542. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

EACH DEBTOR AGREES TO ASSUME THE RISK OF ANY AND ALL UNKNOWN, UNANTICIPATED OR MISUNDERSTOOD DEFENSES, CLAIMS, CAUSES OF ACTION, CONTRACTS, LIABILITIES, INDEBTEDNESS AND OBLIGATIONS WHICH ARE RELEASED BY THE PLAN AND EACH DEBTOR HEREBY WAIVES AND RELEASES ALL RIGHTS AND BENEFITS WHICH IT MIGHT OTHERWISE HAVE UNDER THE AFOREMENTIONED SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH REGARD TO THE RELEASE OF SUCH UNKNOWN, UNANTICIPATED OR MISUNDERSTOOD DEFENSES, CLAIMS, CAUSES OF ACTION, CONTRACTS, LIABILITIES, INDEBTEDNESS AND OBLIGATIONS. TO THE EXTENT (IF ANY) ANY OTHER LAWS SIMILAR TO SECTION 1542 OF THE CALIFORNIA CIVIL CODE MAY BE APPLICABLE, EACH DEBTOR WAIVES AND RELEASES ANY BENEFIT, RIGHT OR DEFENSE WHICH IT MIGHT OTHERWISE HAVE UNDER ANY SUCH LAW WITH REGARD TO THE RELEASE OF UNKNOWN, UNANTICIPATED OR MISUNDERSTOOD DEFENSES, CLAIMS, CAUSES OF ACTION, CONTRACTS, LIABILITIES, INDEBTEDNESS AND OBLIGATIONS.

9.2.4. Releases by Holders of Claims and Interests. Except as otherwise provided in the Plan or in the Confirmation Order, as of the Effective Date and for good and valuable consideration, the adequacy of which is hereby confirmed, and except as may be otherwise ordered by the Bankruptcy Court, Holders of Claims and Interests (other than Holders of Claims against or Interests in Falcon) that (i) vote to accept or reject the Plan and (ii) do not elect (as permitted on the Ballots) to opt out of the releases contained in this paragraph, shall be deemed to have released and forever waived and discharged the Third Party Released Parties from all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date (including prior to the Petition Date) in any way relating to the Debtors or their Affiliates, the Chapter 11 Cases, the Plan, or the Disclosure Statement, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Third-Party Released Party, the restructuring of Claims and Interests prior

to or in the Chapter 11 Cases, the negotiations, formulation, or preparation of the Plan, the related Disclosure Statement, the related Plan Supplement, or related agreements, instruments, or other documents, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place before the Effective Date and that could have been asserted by or on behalf of such Holders of Claims and Interests (in their capacities as Holders of Claims or Interests) at any time up to the Effective Date against the Third-Party Released Parties, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes fraud, willful misconduct ~~or~~, gross negligence, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, or ultra vires acts. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations (except Cure Claims that have not been filed timely) of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan. Notwithstanding anything to the contrary the foregoing, nothing in this Section 9.2.4 shall limit the liability of the Professionals of the Debtors or the Reorganized Debtors to their respective clients pursuant to DR 6-102 of the Code of Professional Responsibility.

9.2.5. Exculpation. Except as may be otherwise ordered by the Bankruptcy Court, on and after the Effective Date, to the extent permitted pursuant to section 1125(e) of the Bankruptcy Code, none of the Exculpated Parties shall have or incur any liability for, and each Exculpated Party is hereby released from, any claim, cause of action, or liability for any act or omission that occurred during and in connection with the Chapter 11 Cases or in connection with the preparation and filing of the Chapter 11 Cases, the formulation, negotiation, and/or pursuit of confirmation of the Plan, the consummation of the Plan, and/or the administration of the Plan and/or the property to be distributed under the Plan, except for claims, causes of action, or liabilities arising from the gross negligence, willful misconduct, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, ultra vires acts, or breach of the fiduciary duty of loyalty of any Exculpated Party, in each case subject to determination of such by Final Order and provided that any Exculpated Party shall be entitled to reasonably rely upon the advice of counsel with respect to its duties and responsibilities (if any) under the Plan. Without limiting the generality of the foregoing, the Exculpated Parties shall be entitled to and granted the protections and benefits of section 1125(e) of the Bankruptcy Code. Notwithstanding anything to the contrary the foregoing, nothing in this Section 9.2.5 shall limit the liability of the Professionals of the Debtors or the Reorganized Debtors to their respective clients pursuant to DR 6-102 of the Code of Professional Responsibility.

9.2.6. Injunction Related to Releases and Exculpation. To the fullest extent allowed by law, and except as otherwise provided in the Plan or the Confirmation Order, all Persons that have held, currently hold, or may hold claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities that are released, waived, or exculpated pursuant to Sections 9.2.1, 9.2.2, 9.2.3, 9.2.4, and 9.2.5 are permanently enjoined, on and after the Effective Date, from taking or causing any other Person to take, any of the following actions, at any time or at any place in the world, on account of any such claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities: (i) commencing or continuing in any manner any action or other proceeding of

any kind against a Released Party or Exculpated Party with respect to any such claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against any Released Party or any Exculpated Party or any of its or their assets on account of any such claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities; (iii) creating, perfecting, or enforcing any Lien or encumbrance against any Released Party or any Exculpated Party or any of its or their assets on account of any such claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities; (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any debt, liability, or obligation due to any Released Party or any Exculpated Party or any of its or their assets on account of any such claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities; and (v) commencing or continuing any action, in any manner, in any place in the world that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order. Such injunction shall extend to any successor of any Released Party or any Exculpated Party or any of its or their assets. Any Person entitled to a Distribution pursuant to the Plan that is found by the Bankruptcy Court to have willfully violated the injunction set forth in this Section 9.2.6 shall be deemed to have forfeited all rights to such Distribution or any other benefits under the Plan, and shall have no claim whatsoever with respect thereto against the New Holding Companies, the Debtors, their Estates, the Reorganized Debtors, their property, or any Holder of an Allowed Claim or Interest that has received any Distributions under the Plan. Any Person injured by any willful violation of the injunction set forth in this Section 9.2.6 shall recover actual damages, including costs and attorneys' and experts' fees and disbursements, and, in appropriate circumstances, may recover punitive damages, from the willful violator.

9.3. No Successor Liability. Except as otherwise expressly provided herein, none of the Released Parties, the New Holding Companies, or the Reorganized Debtors shall be determined to be successors to any of the Debtors with respect to any obligations for which the Debtors may be held legally responsible, by reason of any theory of law or equity, and none can be responsible for any successor or transferee liability of any kind or character. The Released Parties, the New Holding Companies, and the Reorganized Debtors do not agree to perform, pay, or indemnify creditors or otherwise have any responsibilities for any liabilities or obligations of the Debtors, whether arising before, on, or after the Confirmation Date, except as otherwise expressly provided in the Plan.

9.4. Release of Liens and Indemnity. Except as otherwise expressly provided in the Plan or the SCB Plan Settlement, the Confirmation Order will release any and all prepetition Liens against the Debtors, the Reorganized Debtors, and any of their Assets.

9.5. Term of Injunctions. **All injunctions or stays provided in, or in connection with, the Chapter 11 Cases, whether pursuant to section 105, section 362, or any other provision of the Bankruptcy Code, other applicable law or court order, in effect immediately prior to Confirmation will remain in full force and effect until the Effective Date and shall remain in full force and effect thereafter if so provided in the Plan, the Confirmation Order or by their own terms. In addition, the Confirmation Order shall incorporate various release, injunction, discharge and exculpation provisions of the Plan which shall be in effect**

after the Effective Date and, on and after the Confirmation Date, the Debtors may seek further orders to preserve the status quo during the time between the Confirmation Date and the Effective Date or to enforce the provisions of the Plan.

9.6. Binding Effect. The Plan shall be binding upon, and inure to the benefit of, the Debtors, the Reorganized Debtors, Holders of Claims and Interests, parties in interest, Persons, and Governmental Units and their respective successors and assigns, whether or not the Claims or Interests of any such Holder are Impaired under the Plan and whether or not such Holders have accepted the Plan or are entitled to receive any Distribution thereunder.

9.7. Dissolution of the Committee. The Committee shall be dissolved on the later of (i) Effective Date, and (ii) the date on which any actions that the Committee has sought standing to prosecute prior to the Effective Date (including, for the avoidance of doubt, the Committee Challenge Right, to the extent not waived and released pursuant to the SCB Plan Settlement) are abandoned, withdrawn, or resolved by Final Order (including a Final Order denying such standing to the Committee). The Committee shall not continue to exist thereafter except for the limited purposes of filing any remaining fee applications, and the Professionals retained by the Committee shall be entitled to compensation for services performed and reimbursement of expenses incurred in connection therewith. Upon dissolution of the Committee, the members of the Committee shall be released and discharged from all duties, responsibilities, and obligations related to and arising from and in connection with the Chapter 11 Cases.

9.8. Post-Effective Date Retention of Professionals. After the Effective Date, any requirement that professionals employed by the Debtors comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors shall be free to employ and compensate professionals in the ordinary course of business and without the need for Bankruptcy Court approval.

9.9. Survival of Certain Indemnification Obligations. The obligations of the Debtors, pursuant to the Debtors' operating agreements, certificates of incorporation or formation, articles of association, by-laws, or equivalent corporate governance documents, applicable statutes, or employment agreements, to indemnify individuals who during the course of the Chapter 11 Cases served as their respective directors, officers, managers, agents, employees, representatives, and professionals, in respect of all present and future actions, suits, and proceedings against any of such officers, directors, managers, agents, employees, representatives, and professionals, based upon any act or omission related to service with, for, or on behalf of the Debtors on or before the Effective Date, as such obligations were in effect at the time of any such act or omission, shall not be discharged or impaired by confirmation or consummation of the Plan but shall survive unaffected by the reorganization contemplated by the Plan and shall be performed and honored by the Reorganized Debtors regardless of such confirmation, consummation, and reorganization.

9.10. Termination of Committee Challenge Right. ~~If SCB votes to accept the Plan and the Confirmation Order is entered confirming the Plan with the treatment set forth in Section 4.2.2, so long as neither the SCB Settlement nor the SCB Term Sheet has been terminated or otherwise modified without the Committee's consent, the~~The Committee Challenge Right shall ~~terminate~~

~~and the Committee shall not have any right to challenge SCB's right to any SCB Adequate Protection Claim that is accrued prior to the Effective Date~~be modified as set forth in the SCB Plan Settlement.

X.
EFFECTIVENESS OF THE PLAN

10.1. Conditions Precedent. The Plan shall not become effective unless and until the following conditions have been satisfied or waived:

10.1.1. Conditions to Confirmation.

10.1.1.1. *Disclosure Statement Approval Order*. The Disclosure Statement Approval Order shall have been entered by the Bankruptcy Court in form and substance reasonably acceptable in all material respects to the Debtors.

10.1.1.2. *Plan Supplement*. All documents to be provided in the Plan Supplement are in form and substance reasonably acceptable in all material respects to the Debtors, and have been filed with the Bankruptcy Court.

10.1.1.3. *Confirmation Order*. The Confirmation Order shall have been entered by the Bankruptcy Court in form and substance reasonably acceptable in all material respects to the Debtors, and must provide for the confirmation of the Plan with respect to each Debtor.

10.1.1.4. *Approval of Settlements*. The Bankruptcy Court shall have entered an order, which order may be the Confirmation Order, approving the settlements implemented by the Plan, including, without limitation, the Senior Management Global Settlement, the HQ Settlement, ~~and~~ the settlements embodied in the Cooperation Settlement Term Sheet, and the SCB Plan Settlement.

10.1.2. Conditions to Effective Date.

10.1.2.1. *Confirmation Order*. The Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable in all material respects to the Debtors.

10.1.2.2. *No Stay of Confirmation*. There shall not be in force any order, decree, or ruling of any court or governmental body having jurisdiction, restraining, enjoining, or staying the consummation of, or rendering illegal the transactions contemplated by, the Plan.

10.1.2.3. *Receipt of Required Authorization*. All authorizations, consents, and regulatory approvals (if any) necessary to effectuate the Plan shall have been obtained.

10.1.2.4. *Cayman Order*. The Cayman Court shall have entered the Cayman Order in form and substance reasonably acceptable in all material respects to the Debtors.

10.1.2.5. *Exit Facility*. The documents evidencing the Exit Facility shall have been executed and delivered ~~by the respective parties thereto, and all conditions precedent to the effectiveness of such documents shall have been satisfied or waived.~~

~~10.1.2.6. *New SCB Facility*. The documents evidencing the New SCB Facility shall have been executed and delivered~~ by the respective parties thereto, and all conditions precedent to the effectiveness of such documents shall have been satisfied or waived.

10.1.2.6. ~~10.1.2.7.~~ *Sukuk Facility*. The documents evidencing the Sukuk Facility shall have been executed and delivered by the respective parties thereto, and all conditions precedent to the effectiveness of such documents shall have been satisfied or waived.

10.1.2.7. ~~10.1.2.8.~~ *Implementation Transactions*. The transactions described in the Implementation Memorandum that are required to be completed on or before the Effective Date have been completed in a manner reasonably acceptable in all material respects to the Debtors.

10.1.2.8. ~~10.1.2.9.~~ *Cooperation Settlement Term Sheet*. The definitive documents implementing the Cooperation Settlement Term Sheet, including, without limitation, the Management Services Agreement, shall have been executed and delivered by the respective parties thereto, and all conditions precedent to the effectiveness of such documents shall have been satisfied or waived.

10.1.2.9. ~~10.1.2.10.~~ *HQ Settlement Agreement*. The HQ Settlement Agreement shall have been executed and delivered by the respective parties thereto, and all conditions precedent to the effectiveness of such HQ Settlement Agreement shall have been satisfied or waived.

10.1.3. Waiver. Any of the conditions set forth in Sections 10.1.1 and 10.1.2 hereof, other than those contained in Sections 10.1.1.1 10.1.2.1, and 10.1.2.4 may be waived by the Debtors with the consent of the Committee.

10.2. Effect of Failure of Conditions. In the event that the conditions specified in Section 10.1 have not been satisfied or waived in accordance with Section 10.1.3 hereof on or before 120 days after the Confirmation Date, then the Debtors may seek an order from the Bankruptcy Court vacating the Confirmation Order. Such request shall be served upon counsel for SCB, the JPLs, the Committee, the U.S. Trustee, and all parties listed on the Master Service List established in the Chapter 11 Cases. If the Confirmation Order is vacated, (i) the Plan shall be null and void in all respects; (ii) any settlement of Claims or Interests provided for hereby shall be null and void without further order of the Bankruptcy Court; and (iii) the time within which the Debtors may assume and assign or reject all Executory Contracts and Unexpired Leases shall be extended for a period of 60 days after the date the Confirmation Order is vacated.

XI.
RETENTION OF JURISDICTION

11.1. Bankruptcy Court. Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the

Bankruptcy Court will retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan (other than interpretation or enforcement of the Cayman Order) to the fullest extent permitted by law, including, among other things, jurisdiction to:

11.1.1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority or Secured or unsecured status of any Claim or Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim or Priority Tax Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;

11.1.2. hear and rule upon all Causes of Action retained by the Debtors and commenced and/or pursued by the Debtors or the Reorganized Debtors;

11.1.3. resolve any matters related to: (i) the rejection, assumption, or assumption and assignment of any Executory Contract or Unexpired Lease to which any Debtor is a party or with respect to which the Debtors may be otherwise liable and to hear, determine, and, if necessary, liquidate any Claims arising therefrom, including, without limitation, any Cure Claim, (ii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed by any of the Debtors, and (iii) any dispute regarding whether a contract is or was executory or a lease is or was expired;

11.1.4. ensure that Distributions on account of Allowed Claims are accomplished pursuant to the provisions of the Plan;

11.1.5. decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications that may be pending on the Effective Date;

11.1.6. adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

11.1.7. enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Plan Supplement, the Disclosure Statement, or the Confirmation Order;

11.1.8. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

11.1.9. resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan or any contract, instrument, release, or other agreement or document that is executed or created pursuant to the Plan, or any Person's rights arising from or obligations incurred in connection with the Plan or such documents;

11.1.10. approve any modification of the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or approve any modification of the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or

document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

11.1.11. hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 363, 503(b), 1103, and 1129(a)(9) of the Bankruptcy Code, which shall be payable by the Debtors, or the Reorganized Debtors, as applicable, only upon allowance thereof pursuant to the order of the Bankruptcy Court; *provided*, *however*, that the fees and expenses of the Debtors incurred after the Effective Date, including attorneys' fees, may be paid by the Reorganized Debtors in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

11.1.12. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with consummation, implementation, or enforcement of the Plan or the Confirmation Order;

11.1.13. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

11.1.14. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked, or vacated, or if Distributions pursuant to the Plan are enjoined or stayed;

11.1.15. determine any other matters that may arise in connection with or related to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement, or document created in connection with the Plan, the Plan Supplement, the Disclosure Statement, or the Confirmation Order;

11.1.16. enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases;

11.1.17. hear and determine all matters related to (i) the property of the Debtors and the Estates from and after the Confirmation Date, including, without limitation, any dispute as to (a) whether property (including any insurance policies and/or the proceeds thereof) is property of the Estates or (b) turnover of property of the Estates, in accordance with sections 541, 542, and 543 of the Bankruptcy Code, and (ii) the activities of the Debtors or the Reorganized Debtors;

11.1.18. enter an order or final decree concluding or closing the Chapter 11 Cases; and

11.1.19. hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code.

XII.
MISCELLANEOUS PROVISIONS

12.1. Plan Supplement. No later than 10 days prior to the ~~Confirmation Hearing~~Effective Date, the Debtors shall File with the Bankruptcy Court the Plan Supplement, which shall contain such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. Holders of Claims or Interests may obtain a copy of the Plan Supplement upon written request to the Balloting and Claims Agent.

12.2. Exemption from Registration Requirements. Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and Distribution of any securities contemplated by the Plan shall be exempt from, among other things, the registration requirements of Section 5 of the Securities Act and any state or local law requiring registration prior to the offering, issuance, distribution, or sale of securities. In addition, any securities contemplated by the Plan will be tradable by the recipients thereof, subject to (i) the provisions of section 1145(b)(1) of the Bankruptcy Code, and (ii) the contractual restrictions, if any, on the transferability of such securities and instruments.

12.3. Statutory Fees. All fees payable pursuant to section 1930 of title 28 of the United States Code, shall be paid (i) by the Debtors on or before the Effective Date, and (ii) by the Reorganized Debtors after the Effective Date.

12.4. Third Party Agreements. The Distributions to the various Classes of Claims and Interests hereunder shall not affect the right of any Person to levy, garnish, attach, or employ any other legal process with respect to such Distributions by reason of any claimed subordination rights or otherwise. All of such rights and any agreements relating thereto shall remain in full force and effect, except as compromised and settled pursuant to the Plan. Distributions shall be subject to and modified by any Final Order directing distributions other than as provided in the Plan.

12.5. Amendment or Modification of Plan. As provided in section 1127 of the Bankruptcy Code, modification of the Plan may be proposed in writing by the Debtors at any time before Confirmation, *provided*, that the Plan, as modified, shall meet the requirements of sections 1122 and 1123 of the Bankruptcy Code, and the Debtors shall have complied with section 1125 of the Bankruptcy Code. The Debtors may modify the Plan at any time after Confirmation and before consummation of the Plan, *provided*, that the Plan, as modified, shall meet the requirements of sections 1122 and 1123 of the Bankruptcy Code, the Debtors shall have complied with section 1125 of the Bankruptcy Code, and the Bankruptcy Court, after notice and a hearing, confirms the Plan as modified. Except as specifically provided herein, a Holder of a Claim that has accepted the Plan prior to modification shall be deemed to have accepted such Plan as modified, *provided* that the Plan, as modified, does not materially and adversely change the treatment of the Claim or Interest of such Holder.

12.6. Severability. In the event that the Bankruptcy Court determines, prior to the Confirmation Date, that any provision in the Plan is invalid, void, or unenforceable, the Debtors may, at their option, (i) treat such provision as invalid, void, or unenforceable with respect to the

Holder or Holders of such Claims or Interests that the provision is determined to be invalid, void, or unenforceable, in which case such provision shall in no way limit or affect the enforceability and operative effect of any other provision of the Plan, or (ii) amend or modify, in accordance with Section 12.5 above, or revoke or withdraw the Plan, in accordance with Section 12.7 below.

12.7. Revocation or Withdrawal of Plan. The Debtors reserve the right, in their sole discretion, to revoke and withdraw the Plan or to adjourn the Confirmation Hearing at any time prior to the occurrence of the Effective Date. If the Debtors revoke or withdraw the Plan, or if Confirmation or consummation does not occur, then (i) the Plan shall be null and void in all respects, (ii) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (iii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims by or against, or Interests in, such Debtors or any claims against any other Person, (b) prejudice in any manner the rights of such Debtors or any other Person, or (c) constitute an admission of any sort by the Debtors or any other Person.

For the avoidance of doubt, if the Confirmation Hearing is adjourned, the Debtors reserve the right to amend, modify, revoke or withdraw the Plan and/or submit any new plan of reorganization at such times and in such manner as they consider appropriate, subject to the provisions of the Bankruptcy Code.

12.8. Rules Governing Conflicts Between Documents. To the extent any provision of the Disclosure Statement or any other solicitation document may be inconsistent with the terms of the Plan, the terms of the Plan shall be binding and conclusive. In the event of a conflict between the terms or provisions of the Plan and any Plan Documents other than the Plan, the terms of the Plan shall control over such Plan Documents. In the event of a conflict between the terms of the Plan or the Plan Documents, on the one hand, and the terms of the Confirmation Order, on the other hand, the terms of the Confirmation Order shall control.

12.9. Governing Law. Except to the extent that federal law (including, but not limited to, the Bankruptcy Code and the Bankruptcy Rules) is applicable or the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without giving effect to its conflicts of law principles.

12.10. Notices. Any notice required or permitted to be provided under the Plan shall be in writing and served by either (i) certified mail, return receipt requested, postage prepaid, (ii) hand delivery, or (iii) overnight delivery service, charges prepaid. If to the Debtors, any such notice shall be directed to the following at the addresses set forth below:

Arcapita Bank B.S.C.(c)
Arcapita Bank Building
Bahrain Bay, P.O. Box 1406
Manama, Kingdom of Bahrain
Attention: Henry A. Thompson

-- with copies to –

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166-0193
Attention: Michael A. Rosenthal, Esq.
Craig H. Millet, Esq.
Matthew K. Kelsey, Esq.

12.11. No Admissions. As to contested matters, adversary proceedings, and other causes of action or threatened causes of action, nothing in the Plan, the Plan Supplement, the Disclosure Statement, or other Plan Documents shall constitute or be construed as an admission of any fact or liability, stipulation, or waiver, but rather as a statement made in settlement negotiations. The Plan shall not be construed to be conclusive advice on the tax, securities, and other legal effects of the Plan as to Holders of Claims against, or Interests in, the Debtors or any of their subsidiaries and Affiliates.

12.12. Exhibits. All Exhibits and Schedules to the Plan are incorporated into and are a part of the Plan as if set forth in full herein.

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The undersigned have executed this Joint Plan of Reorganization as of the ~~25~~11th day of ~~April~~June, 2013.

Respectfully submitted,

ARCAPITA BANK B.S.C.(c)

By: /s/ Atif Abdulmalik
Name: Atif Abdulmalik
Title: Chief Executive Officer

ARCAPITA INVESTMENT HOLDINGS LIMITED
ARCAPITA LT HOLDINGS LIMITED
WINDTURBINE HOLDINGS LIMITED
AEID II HOLDINGS LIMITED
RAILINVEST HOLDINGS LIMITED

By: /s/ Mohammed Chowdhury
Name: Mohammed Chowdhury
Title: Director

FALCON GAS STORAGE COMPANY, INC.

By: ~~/s/ Kevin Keough~~
Name: Kevin Keough
Title: Director

AS DEBTORS AND DEBTORS IN POSSESSION

OF COUNSEL:

/s/ Michael A. Rosenthal
GIBSON, DUNN & CRUTCHER LLP
Michael A. Rosenthal
Craig H. Millet (admitted *pro hac vice*)
Matthew K. Kelsey

200 Park Avenue
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

APPENDIX A

to

Confirmed Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code (With First Technical Modifications),
dated ~~April 25,~~as of June 11, 2013

proposed by

ARCAPITA BANK B.S.C.(c); ARCAPITA INVESTMENT HOLDINGS LIMITED; ARCAPITA LT HOLDINGS LIMITED; WINDTURBINE HOLDINGS LIMITED; AEID II HOLDINGS LIMITED; RAILINVEST HOLDINGS LIMITED; AND FALCON GAS STORAGE COMPANY, INC.

Uniform Glossary of Defined Terms for Plan Documents

Unless the context otherwise requires, the following terms, when used in initially capitalized form in the Plan, the Disclosure Statement, related exhibits, and Plan Documents, shall have the following meanings. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in capitalized form that is not defined herein but that is defined in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning ascribed to such term by the Bankruptcy Code or the Bankruptcy Rules (with the Bankruptcy Code controlling in the event of a conflict or ambiguity). Certain defined terms used in only one Section of the Disclosure Statement are defined in such Section. The rules of construction set forth herein and in section 102 of the Bankruptcy Code shall apply. All references to the "***Plan***" shall be construed, where applicable, to include references to the Plan and all its exhibits, appendices, schedules, and annexes (and any amendments made in accordance with their terms or applicable law).

1. ***Ad Hoc Group*** means that certain ad hoc group of Holders of Syndicated Facility Claims represented by Kirkland & Ellis LLP.

2. ***Ad Hoc Group Fees*** means the reasonable and documented fees and expenses, including, without limitation, professional fees and expenses, of the Ad Hoc Group incurred on or after the Petition Date.

3. ***Administrative Expense*** means any cost or expense of administration of the Chapter 11 Cases incurred before the Effective Date and allowable under section 503(b) of the Bankruptcy Code and entitled to priority under section 507(a)(2) of the Bankruptcy Code, including: (i) any actual and necessary postpetition cost or expense of preserving the Estates or operating the businesses of the Debtors; (ii) any payment required to cure a default on an assumed Executory Contract or Unexpired Lease; (iii) any postpetition cost, indebtedness, or contractual obligation duly and validly incurred or assumed by a Debtor in the ordinary course of its business; (iv) compensation or reimbursement of expenses of Professionals to the extent allowed by the Bankruptcy Court under sections 330(a) or 331 of the Bankruptcy Code; (v) Claims entitled to administrative expense status under any order with respect to the use of Cash Collateral entered in the Chapter 11 Cases; and (vi) any expense reimbursement or other fees or costs owed under a Commitment Letter and approved as an administrative expense by the Bankruptcy Court.

4. ***Administrative Expense Claim*** means any Claim for the payment of an Administrative Expense other than a DIP Facility Claim or SCB Claim.

5. ***Administrative Expense Claims Bar Date*** means 4:00 p.m. (Prevailing U.S. Eastern time) on the date that is 30 days after the Effective Date.

6. ***Affiliate*** has the meaning set forth in section 101(2) of the Bankruptcy Code.

7. ***AHQ Cayman I Investors*** means the third-party investors in AHQ Cayman Holding Company I Limited.

8. ***AIHL*** means Arcapita Investment Holdings Limited.

9. ***AIHL Sukuk Obligations*** means 85% of the Sukuk Obligations.

10. ***AIHL Syndicated Facility/Arcsukuk Class A Shares*** means a percentage of the New Arcapita AIHL Class A Shares equal to the quotient obtained by dividing (i) the aggregate Allowed Class 4(b) Syndicated Facility Claims and Allowed Class 4(b) Arcsukuk Claims by (ii) the aggregate Allowed Class 4(b) Syndicated Facility Claims, Allowed Class 4(b) Arcsukuk Claims, and Allowed Class 5(b) General Unsecured Claims.

11. ***AIHL Syndicated Facility/Arcsukuk Consideration*** means the AIHL Syndicated Facility/Arcsukuk Sukuk Obligations, the AIHL Syndicated Facility/Arcsukuk Class A Shares, the AIHL Syndicated Facility/Arcsukuk Ordinary Shares, and the AIHL Syndicated Facility/Arcsukuk Warrants.

12. ***AIHL Syndicated Facility/Arcsukuk Ordinary Shares*** means a percentage of the New Arcapita AIHL Ordinary Shares equal to the quotient obtained by dividing (i) the aggregate Allowed Class 4(b) Syndicated Facility Claims and Allowed Class 4(b) Arcsukuk Claims by (ii) the aggregate Allowed Class 4(b) Syndicated Facility Claims, Allowed Class 4(b) Arcsukuk Claims, and Allowed Class 5(b) General Unsecured Claims.

13. ~~12. ***AIHL Syndicated Facility/Arcsukuk Ordinary Shares*** means a percentage of the New Arcapita AIHL Ordinary Shares~~***AIHL Syndicated Facility/Arcsukuk Sukuk Obligations*** means a percentage of the AIHL Sukuk Obligations equal to the quotient obtained by dividing (i) the aggregate Allowed Class 4(b) Syndicated Facility Claims and Allowed Class 4(b) Arcsukuk Claims by (ii) the aggregate Allowed Class 4(b) Syndicated Facility Claims, Allowed Class 4(b) Arcsukuk Claims, and Allowed Class 5(b) General Unsecured Claims.

~~13. ***AIHL Syndicated Facility/Arcsukuk Sukuk Obligations*** means a percentage of the AIHL Sukuk Obligations equal to the quotient obtained by dividing (i) the aggregate Allowed Class 4(b) Syndicated Facility Claims and Allowed Class 4(b) Arcsukuk Claims by (ii) the aggregate Allowed Class 4(b) Syndicated Facility Claims, Allowed Class 4(b) Arcsukuk Claims, and Allowed Class 5(b) General Unsecured Claims.~~

14. ***AIHL Syndicated Facility/Arcsukuk Warrants*** means a percentage of the New Arcapita Creditor Warrants equal to the quotient obtained by dividing (i) the aggregate Allowed Class 4(b) Syndicated Facility Claims and Allowed Class 4(b) Arcsukuk Claims by (ii) the aggregate Allowed Class 4(b) Syndicated Facility Claims, Allowed Class 4(b) Arcsukuk Claims, and Allowed Class 5(b) General Unsecured Claims.

15. ***AIM*** means AIM Group Limited, a Cayman Islands exempted company.

16. ***Allowed*** means with respect to any Claim or Interest: (i) a Claim or Interest that is scheduled by the Debtors on their Schedules as neither disputed, contingent, nor unliquidated, (ii) a Claim or Interest as to which a Proof of Claim or a proof of Interest, as the case may be, has been timely Filed or, by a Final Order, is not required to be Filed, or (iii) a

Claim or Interest that has been allowed by the Plan or by a Final Order; and with respect to Claims or Interests in (i) and (ii) above, such Claim or Interest is not Disputed.

17. ***Allowed Amount*** of any Claim or Interest means the amount at which that Claim or Interest is Allowed.

18. ***Arcapita Bank*** means Arcapita Bank B.S.C.(c), a Bahrain closed corporation.

19. ***Arcapita Group*** means the Debtors and their Affiliates.

20. ***Arcsukuk Claim*** means any Claim arising under the Arcsukuk Facility, including, without limitation, all interest, fees, and expenses that were accrued but unpaid as of the Petition Date, and other obligations owed pursuant to the Arcsukuk Facility.

21. ***Arcsukuk Facility*** means that certain Murabaha and Wakala Agreement dated as of September 7, 2011 by and between Arcapita Bank, Arcsukuk (2011-1) Limited as Issuer and Trustee, Arcapita Investment Funding Limited as Wakeel, and BNY Mellon Corporate Trustee Services Limited as Delegate (as amended, restated, supplemented, and/or otherwise modified) together with all mortgages, documents, notes, instruments and any other agreements delivered pursuant thereto or in connection therewith.

22. ***Assets*** means all property wherever located in which any of the Debtors holds a legal or equitable interest, including all property described in section 541 of the Bankruptcy Code and all property disclosed in the Debtors' respective Schedules and the Disclosure Statement.

23. ***Assumed Executory Contract and Unexpired Lease List*** means the list (as may be amended from time to time), as determined jointly by the Committee and the Debtors or the Reorganized Debtors, of Executory Contracts and Unexpired Leases (including any amendments or modifications thereto) that will be assumed by the Reorganized Debtors pursuant to Article VI of the Plan, it being understood that to the extent the Plan, the Disclosure Statement, or any of the exhibits filed with the Disclosure Statement provides that a given Executory Contract or Unexpired Lease will be assumed or rejected, then such Executory Contract or Unexpired Lease will be included in, or excluded from, the Assumed Executory Contract and Unexpired Lease List, as necessary to give effect to such provision.

24. ***Avoidance Actions*** means any and all actual or potential claims to avoid a transfer of property or an obligation incurred by any of the Debtors pursuant to any applicable section of the Bankruptcy Code, including, without limitation, sections 544, 545, 547, 548, 549, 550, 551, 553(b), and 724(a) of the Bankruptcy Code.

25. ***Ballot*** means each of the ballot forms for voting to accept or reject the Plan distributed to all Holders of Impaired Claims entitled to vote on the Plan.

26. ***Balloting and Claims Agent*** means GCG, Inc., retained by the Debtors in the Chapter 11 Cases.

27. ***Ballot Instructions*** means the instructions for completion of a Ballot; the Ballot Instructions applicable to a Ballot shall be distributed to a Holder concurrently with the Ballot.

28. ***Bank Sukuk Obligations*** means 15% of the Sukuk Obligations.

29. ***Bank Syndicated Facility/Arcsukuk Class A Shares*** means a percentage of the New Arcapita Bank Class A Shares equal to the quotient obtained by dividing (i) the aggregate Allowed Class 4(a) Syndicated Facility Claims and Allowed Class 4(a) Arcsukuk Claims by (ii) the aggregate Allowed Class 4(a) Syndicated Facility Claims, Allowed Class 4(a) Arcsukuk Claims, and Allowed Class 5(a) General Unsecured Claims (excluding any such Allowed Class 5(a) General Unsecured Claims that have made the Convenience Class Election).

30. ***Bank Syndicated Facility/Arcsukuk Consideration*** means the Bank Syndicated Facility/Arcsukuk Sukuk Obligations and the Bank Syndicated Facility/Arcsukuk Class A Shares.

31. ***Bank Syndicated Facility/Arcsukuk Sukuk Obligations*** means a percentage of the Bank Sukuk Obligations equal to the quotient obtained by dividing (i) the aggregate Allowed class 4(a) Syndicated Facility Claims and Class 4(a) Arcsukuk Claims by (ii) the aggregate Allowed Class 4(a) Syndicated Facility Claims, Allowed Class 4(a) Arcsukuk Claims, and Allowed Class 5(a) General Unsecured Claims (excluding any such Allowed Class 5(a) General Unsecured Claims that have made the Convenience Class Election).

32. ***Bankruptcy Code*** means title 11 of the United States Code, 11 U.S.C. sections 101-1532, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made, to the extent applicable to the Chapter 11 Cases.

33. ***Bankruptcy Court*** means the United States Bankruptcy Court for the Southern District of New York or any other court having jurisdiction over the Chapter 11 Cases.

34. ***Bankruptcy Rules*** means the Federal Rules of Bankruptcy Procedure and the local rules and general orders of the Bankruptcy Court, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made applicable to the Chapter 11 Cases.

35. ***Business Day*** means any day other than a Saturday, Sunday, or a federal holiday observed in the United States of America.

36. ***Cash*** means the legal tender of the United States of America, or the Euro, as applicable.

37. ***Cash Collateral*** has the meaning set forth in section 363(a) of the Bankruptcy Code.

38. ***Causes of Action*** means all actions, causes of action, liabilities, obligations, rights, suits, damages, judgments, remedies, demands, setoffs, defenses, recoupments, crossclaims, counterclaims, third-party claims, indemnity claims, contribution

claims, or any other claims whatsoever, in each case held by the Debtors, whether known or unknown, matured or unmatured, fixed or contingent, liquidated or unliquidated, disputed or undisputed, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in law, equity, or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases, including through the Effective Date.

39. ***Cayman Court*** means the Grand Court of the Cayman Islands.

40. ***Cayman Order*** means an order of the Cayman Court providing assistance to the Bankruptcy Court in giving effect to the Plan in the Cayman Islands, validating the transfers of AIHL's assets pursuant to the Plan, and authorizing the distribution of the proceeds payable to AIHL on account of such transfer to the creditors of AIHL, whether: (i) pursuant to Section 86 of the Companies Law (2012 Revision), sanctioning a Scheme of Arrangement between AIHL, its creditors and members (as applicable) that is materially consistent with the Plan; (ii) recognizing and enforcing or giving effect to the Confirmation Order or such parts of the Confirmation Order that are amenable to recognition; (iii) pursuant to Section 99 of the Companies Law (2012 Revision), validating all transfers of AIHL's assets to New Arcapita Holdco 2 pursuant to Section 7.7 of the Plan, the Confirmation Order, and the Implementation Memorandum; (iv) pursuant to Order 18 Rule 5 of the Companies Winding Up Rules 2008 (as amended), authorizing the in specie distribution of the proceeds payable to AIHL on account of such transfer to the creditors of AIHL; and/or (v) otherwise in accordance with the laws of the Cayman Islands.

41. ***Certificate*** means any instrument evidencing a Claim or an Interest.

42. ***Chapter 11 Cases*** means (i) when used with reference to a particular Debtor, the chapter 11 case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court, and (ii) when used with reference to all Debtors, the procedurally consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court.

43. ***Claim*** has the meaning set forth in section 101(5) of the Bankruptcy Code, against any Debtor or any Estate whether or not asserted.

44. ***Claimant*** means the Holder of a Claim or Interest.

45. ***Claims Objection Bar Date*** means, with respect to any Claim, the 180th day following the latest of the Effective Date, the date such Claim is Filed, and such later date as may be established from time to time by the Bankruptcy Court as the last date for filing objections to such Claim.

46. ***Class*** means a category of Claims or Interests, as set forth in Article III of the Plan, pursuant to section 1122 of the Bankruptcy Code.

47. ***Class 5(a) Consideration*** means (i) a percentage of the Bank Sukuk Obligations equal to the quotient obtained by dividing (a) the aggregate Allowed Class 5(a) General Unsecured Claims (excluding any such Allowed Class 5(a) General Unsecured Claims that have made the Convenience Class Election) by (b) the aggregate Allowed Class 4(a)

Syndicated Facility Claims, Allowed Class 4(a) Arcsukuk Claims, and Allowed Class 5(a) General Unsecured Claims (excluding any such Allowed Class 5(a) General Unsecured Claims that have made the Convenience Class Election), (ii) a percentage of the New Arcapita Bank Class A Shares equal to the quotient obtained by dividing (a) the aggregate Allowed Class 5(a) General Unsecured Claims (excluding any such Allowed Class 5(a) General Unsecured Claims that have made the Convenience Class Election) by (b) the aggregate Allowed Class 4(a) Syndicated Facility Claims, Allowed Class 4(a) Arcsukuk Claims, and Allowed Class 5(a) General Unsecured Claims (excluding any such Allowed Class 5(a) General Unsecured Claims that have made the Convenience Class Election), and (iii) a percentage of the New Arcapita Bank Ordinary Shares equal to the quotient obtained by dividing (a) the aggregate Allowed Class 5(a) General Unsecured Claims (excluding any such Allowed Class 5(a) General Unsecured Claims that have made the Convenience Class Election) by (b) the aggregate Allowed Class 5(a) General Unsecured Claims (excluding any such Allowed Class 5(a) General Unsecured Claims that have made the Convenience Class Election) and Contingent Class 4(a) Claims.

48. ***Class 5(b) Consideration*** means (i) a percentage of the AIHL Sukuk Obligations equal to the quotient obtained by dividing (a) the aggregate Allowed Class 5(b) General Unsecured Claims by (b) the aggregate Allowed Class 4(b) Syndicated Facility Claims, Allowed Class 4(b) Arcsukuk Claims, and Allowed Class 5(b) General Unsecured Claims, (ii) a percentage of the New Arcapita AIHL Class A Shares equal to the quotient obtained by dividing (a) the aggregate Allowed Class 5(b) General Unsecured Claims by (b) the aggregate Allowed Class 4(b) Syndicated Facility Claims, Allowed Class 4(b) Arcsukuk Claims, and Allowed Class 5(b) General Unsecured Claims, (iii) a percentage of the New Arcapita AIHL Ordinary Shares equal to the quotient obtained by dividing (a) the aggregate Allowed Class 5(b) General Unsecured Claims by (b) the aggregate Allowed Class 4(b) Syndicated Facility Claims, Allowed Class 4(b) Arcsukuk Claims, and Allowed Class 5(b) General Unsecured Claims, and (iv) a percentage of the New Arcapita Creditor Warrants equal to the quotient obtained by dividing (a) the aggregate Allowed Class 5(b) General Unsecured Claims by (b) the aggregate Allowed Class 4(b) Syndicated Facility Claims, Allowed Class 4(b) Arcsukuk Claims, and Allowed Class 5(b) General Unsecured Claims.

49. ***Collateral*** means any property or interest in property of an Estate that is subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance or otherwise invalid under the Bankruptcy Code or applicable law.

50. ***Commitment Letter*** means that certain Commitment Letter for Arcapita, dated November 1, 2012, executed by Fortress Credit Corp. and AIHL, which sets out the terms and conditions of the DIP Facility.

51. ***Committee*** means the official committee of unsecured creditors for the Debtors appointed in the Chapter 11 Cases by the U.S. Trustee.

52. ***Committee Challenge Right*** means the ~~right of the~~ Committee ~~to challenge any SCB Adequate Protection Claim in accordance with the terms and conditions of~~Challenge Right as defined in the SCB Settlement.

53. ***Confirmation, Confirmation of the Plan***, or ***Plan Confirmation*** means the confirmation of the Plan by the Bankruptcy Court.

54. ***Confirmation Date*** means the date on which the Confirmation Order is entered on the docket of the Bankruptcy Court.

55. ***Confirmation Hearing*** means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider Confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

56. ***Confirmation Order*** means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 and other applicable sections of the Bankruptcy Code.

57. ***Contingent Class 4(a) Claims*** means an amount equal to the difference obtained by subtracting (i) the Aggregate Allowed Class 4(b) Claims, from (ii) $1,202,357,331.

58. ***Contingent Class 4(a) Consideration*** means a percentage of the New Arcapita Bank Ordinary Shares equal to the quotient obtained by dividing (i) the aggregate Contingent Class 4(a) Claims, by (ii) the aggregate Allowed Class 5(a) General Unsecured Claims (excluding any such Allowed Class 5(a) General Unsecured Claims that have made the Convenience Class Election) and Contingent Class 4(a) Claims.

59. ***Convenience Claim*** means, with respect to all Allowed General Unsecured Claims of a creditor in Class 5(a) that timely makes the Convenience Class Election on its Ballot, the lesser of (i) $25,000 or (ii) the aggregate Allowed Amount of its General Unsecured Claims in Class 5(a).

60. ***Convenience Class Election*** means an election by a Holder of a General Unsecured Claim(s) in Class 5(a) on its Ballot, and within the time fixed by the Bankruptcy Court, to have the aggregate amount of such Holder's Allowed Claim(s) in Class 5(a) treated as Convenience Claims.

61. ***Cooperation Settlement Term Sheet*** means that certain term sheet, annexed as **Exhibit L** to the Disclosure Statement, which, among other things, effectuates a settlement among the parties thereto with respect to cooperation regarding the disposition of the Debtors' investments, and the agreement of the Debtors and AIM with respect to the Management Services Agreement. The definitive documents implementing the Cooperation Settlement Term Sheet shall be materially consistent with the Cooperation Settlement Term Sheet and shall be substantially in the form filed in the Plan Supplement.

62. ***Corporate Structure and Governance Documents*** means the documents evidencing the corporate structure and governance applicable to the New Holding Companies and the Reorganized Debtors, including the New Governing Documents, and any other agreements set forth in the Equity Term Sheet, which definitive documents will be substantially in the form filed in the Plan Supplement.

63. ***Creditor*** means any Person holding a Claim against a Debtor's Estate or pursuant to section 101(5) of the Bankruptcy Code against property of the Debtor that arose or is deemed to have arisen on or prior to the Petition Date.

64. ***Creditor Release*** means that certain form of release, attached to the Disclosure Statement as **Exhibit I** that constitutes the applicable Claimant's acknowledgment and agreement that, except as provided in the Plan, all Claims, demands, liabilities, other debts against, or Interests in, the Debtors have been released, discharged and enjoined in accordance with Article IX of the Plan.

65. ***Cure Claim*** means a Claim based upon the applicable Debtor's monetary default(s) under an Executory Contract or Unexpired Lease existing as of the time such contract or lease is assumed by the Debtors pursuant to section 365 of the Bankruptcy Code.

66. ***Debtor*** means any of the Debtors.

67. ***Debtors*** means Arcapita Bank B.S.C.(c), Arcapita Investment Holdings Limited, Arcapita LT Holdings Limited, Windturbine Holdings Limited, AEID II Holdings Limited, Railinvest Holdings Limited, and Falcon Gas Storage Company, Inc.

68. ***DIP Agent*** means the investment agent for the DIP Facility Participants under the DIP Facility.

69. ***DIP Facility*** means that certain Superpriority Debtor-in-Possession Master Murabaha Agreement, dated as of December 14, 2012, by and between AIHL and CF ARC LLC, as Investment Agent (as amended, restated, supplemented, and/or otherwise modified) together with all mortgages, documents, notes, instruments and any other agreements delivered pursuant thereto or in connection therewith, or any replacement or refinancing thereof, together with all mortgages, documents, notes, instruments and any other agreements delivered pursuant such replacement or refinancing or in connection with such replacement or refinancing.

70. ***DIP Facility Claim*** means any Claim arising under the DIP Facility, including, without limitation, all accrued and unpaid interest, fees, and expenses, and all other obligations owed under the DIP Facility.

71. ***DIP Facility Participants*** means ~~CF ARC LLC and any other parties from time to time as~~any Participants (as defined in the DIP Facility) under the DIP Facility.

72. ***Disallowed*** means (i) any Claim or Interest that has been withdrawn by the applicable Claimant, (ii) any Claim or Interest, or portion of a Claim or Interest, that has been disallowed by a Final Order, (iii) any portion of a Claim or Interest that exceeds the estimated amount of such Claim or Interest for purposes of Distribution, as set forth in a Final Order, or (iv) any Claim or Interest underlying any property that becomes Unclaimed Property in accordance with Section 8.8 of the Plan.

73. ***Disbursing Agent*** means, as the context requires, the Debtors, the Reorganized Debtors, or any other Person designated by the Debtors or the Reorganized Debtors to act as the Disbursing Agent under the Disbursing Agent Agreement~~, if any, or such other~~

~~Person or Persons identified in the Plan Supplement as the disbursing agent for the Distributions required under the Plan~~.

74. ***Disbursing Agent Agreement*** means ~~that certain~~the agreement by and among ~~[_____]~~the third-party Disbursing Agent, the New Holding Companies, and the Debtors governing the rights and obligations of the parties to such agreement with respect to Distributions to Holders of ~~Class 4(a) (b) and Class 5(a) (b)~~ Claims and Interests under the Plan. ~~The form of the Disbursing Agent Agreement will be filed with the Plan Supplement.~~

75. ***Disclosure Statement*** means that certain "Second Amended Disclosure Statement in Support of the Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code," dated April 25, 2013, including all exhibits attached thereto or referenced therein, as submitted by the Debtors pursuant to section 1125 of the Bankruptcy Code and approved by the Bankruptcy Court in the Disclosure Statement Approval Order, as such Disclosure Statement may be further amended, supplemented, or modified from time to time with the approval of the Bankruptcy Court.

76. ***Disclosure Statement Approval Order*** means that certain order entered by the Bankruptcy Court on April 26, 2013 [Docket No. 1045], (i) approving the Disclosure Statement and (ii) establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan.

77. ***Disputed*** means, with respect to a Claim or Interest, a Claim or Interest as to which an objection to the allowance thereof, or action to subordinate or otherwise seek recovery from the Holder of the Claim or Interest, has been interposed by the Claims Objection Bar Date or within any other applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or a Final Order, and has not been Allowed in whole or in part by a Final Order.

78. ***Distribution*** means any distribution by the Disbursing Agent to the Holders of Allowed Claims or Interests pursuant to Article VIII of the Plan.

79. ***Distribution Date***, when used with respect to each Claim, means the date that shall take place as soon as practicable after the later of: (i) the Effective Date, (ii) the date a Claim becomes payable pursuant to the Plan or any agreement with the Disbursing Agent, or (iii) with respect to Claims that are not Allowed as of the Effective Date, no later than 30 days after the date upon which any such Claim becomes an Allowed Claim.

80. ***Distribution Procedures*** means the New Unsecured Claim Distribution Procedures, the New Facility Distribution Procedures, and the Warrant Distribution Conditions, as applicable.

81. ***Distribution Record Date*** means the record date for purposes of making Distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date.

82. ***Effective Date*** means the date specified by the Debtors in a notice filed with the Bankruptcy Court as the date on which the Plan shall take effect, which date shall be

after the later of (i) the date on which the Confirmation Order shall have been entered and is not subject to any stay, and (ii) the date on which the conditions to the Effective Date provided for in Section 10.1.2 of the Plan have been satisfied or waived.

83. ***Employee Program and Global Settlement Order*** means that certain *Order Pursuant To Sections 363(b) And 503(c) of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing Debtors To Implement Employee Programs and Global Settlement of Claims*, dated July 6, 2012 [Docket No. 303].

84. ***Equity Security*** means any equity security, as defined in section 101(16) of the Bankruptcy Code, in a Debtor.

85. ***Equity Term Sheet*** means that certain term sheet providing for the issuance of equity in, and the corporate governance of, the New Holding Companies and the Reorganized Debtors, which Equity Term Sheet (together with any schedules and attachments) is attached as **Exhibit D** to the Disclosure Statement. The provisions of the Equity Term Sheet, will be incorporated into the Corporate Structure and Governance Documents.

86. ***Estate*** means, as to each Debtor, the estate created for such Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

87. ***Exculpated Parties*** means (i) each of the Debtors and their Affiliates, (ii) the Committee and its members, solely in their capacities as members of the Committee, (iii) the JPLs, solely in their capacities as joint provisional liquidators, (iv) the respective current and former officers, directors, employees, managers (in their capacities as officers, directors, employees, or managers, as applicable) of the Debtors and the Debtors' Affiliates, (v) Professionals and other professionals and agents (in their capacities as Professionals or other professionals and agents, as applicable) for services rendered during the pendency of the Chapter 11 Cases to or for the Debtors, the Debtors' Affiliates, the Committee, the JPLs, SCB, or the Ad Hoc Group, along with the successors, and assigns of each of the foregoing, (vi) SCB, *provided*, *however*, that SCB shall not be an Exculpated Party ~~if and only if SCB votes to accept~~solely with respect to the Committee Challenge Right if and to the extent a SCB Termination Event occurs on or prior to the ~~Plan~~Effective Date, (vii) the Central Bank of Bahrain (including, without limitation, in its capacity as Creditor and regulator), ~~and~~ (viii) the members of the Ad Hoc Group, and (ix) the Exit Facility Arranger, the Exit Facility Investment Agent, the Exit Facility Collateral Agent, the Exit Facility Participants and their respective current and former officers, directors, employees, managers (in their capacities as officers, directors, employees, or managers, as applicable), attorneys, agents, advisors or other professionals (in their capacities as attorneys, agents, advisors or other professionals, as applicable).

88. ***Executory Contract*** means a contract to which one or more of the Debtors is a party and that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

89. ***Existing Management/Administration Agreement*** means any Executory Contract that is a management, administration, management services, consulting, advisory or similar agreement (including any of the agreements set forth in Exhibit 6 to the Management

Services Agreement), whether written or oral, between a Debtor and any Syndication Company, PV, PNV, Transaction Holdco or any direct or indirect subsidiary of a Transaction Holdco or any other similar entity related to any portfolio investment.

90. ~~89.~~ ***Existing Senior Management*** means Atif Abdulmalik, Martin Tan, Hisham Al Raee, Henry Thompson, Mohammed Chowdhury, Essa Zainal, and Peter Karacsonyi.

91. ~~90.~~ ***Exit Facility*** means ~~a new Murabaha facility with a cost price of up to $350 million, to be entered into by certain Reorganized Debtors and/or New Holding Companies and certain of their Affiliates, the terms of which shall be~~that certain Superpriority Debtor-in-Possession and Exit Facility Master Murabaha Agreement, between AIHL, as the DIP purchaser, and Goldman Sachs International, as the investment agent for the participants, the terms of which are substantially in accordance with the terms set forth on the Exit Facility Term Sheet. The Exit Facility will be substantially in the form filed in the Plan Supplement.

92. ***Exit Facility Arranger*** means Goldman Sachs International.

93. ***Exit Facility Collateral Agent*** means Goldman Sachs International or a permitted designee thereof in accordance with the Exit Facility.

94. ~~91.~~ ***Exit Facility Investment Agent*** means ~~[_____]~~Goldman Sachs International or a permitted designee thereof in accordance with the Exit Facility.

95. ~~92.~~ ***Exit Facility Participants*** means ~~[_____]~~the participants in the Exit Facility, solely in their capacities as such.

96. ~~93.~~ ***Exit Facility Obligations*** any Claim arising under the Exit Facility ~~and~~, including, without limitation, all accrued and unpaid interest, fees, and expenses, and other obligations owed to the Exit Facility Participants, ~~including, without limitation, all accrued and unpaid interest, fees, and expenses, and other obligations owed to the Exit Facility Participants~~the Exit Facility Investment Agent, the Exit Facility Collateral Agent, or the Exit Facility Arranger under the Exit Facility.

97. ~~94.~~ ***Exit Facility Obligors*** means the Reorganized Debtors and/or New Holding Companies and certain of their Affiliates that are party to the Exit Facility.

98. ~~95.~~ ***Exit Facility Term Sheet*** means that certain term sheet, attached as **Exhibit F** to the Disclosure Statement, that sets forth the terms of the Exit Facility.

99. ~~96.~~ ***Falcon*** means Falcon Gas Storage Company, Inc.

100. ~~97.~~ ***Falcon Available Cash*** means (i) all Cash of Falcon realized from its business operations (current or former), the sale or other disposition of its Assets, the interest or profit earned on its invested funds, return of any funds held in escrow, recoveries from litigation claims, or from any other source or otherwise less (ii) the amount of Cash (a) necessary to pay Holders of Allowed Administrative Expense Claims, Priority Tax Claims, Professional Compensation Claims, Other Priority Claims, and Secured Claims against Falcon in accordance with the Plan, and (b) estimated and reserved by Falcon to (1) adequately fund the reasonable

and necessary projected costs to carry out the provisions of the Plan with respect to Falcon on and after the Effective Date, which amount shall include the funds necessary to defend all pending litigation against Falcon, (2) pay all fees payable under section 1930 of chapter 123 of title 28 of the United States Code, and (3) fund and maintain any postpetition reserve requirements in connection with any agreements or otherwise. Falcon Available Cash shall include the applicable portions of excess amounts retained for Disputed Claims that become available in accordance with Sections 8.8 and 8.13 of the Plan and any funds that are segregated in accordance with Section 8.3.4 of the Plan.

101. ~~98.~~ ***Federal Judgment Rate*** means the federal judgment interest rate which was in effect in the United States of America as of the Petition Date.

102. ~~99.~~ ***File*** or ***Filed*** means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

103. ~~100.~~ ***Final Order*** means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter, which has not been reversed, stayed, modified, or amended, and as to which the time to appeal, seek certiorari, or move for a new trial, reargument, or rehearing has expired and no appeal, petition for certiorari, or motion for a new trial, reargument, or rehearing has been timely filed, or as to which any appeal that has been taken, any petition for certiorari, or motion for a new trial, reargument, or rehearing that has been or may be Filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought; *provided*, *however*, that the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code or under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order shall not cause such order to not be a "Final Order."

104. ***Fixed Asset Purchase Agreement*** means an agreement to be entered into on the Effective Date by and between (i) the Reorganized Debtors and/or New Holding Companies and (ii) AIM for the transfer of the Hard Assets to AIM pursuant to the Plan.

105. ~~101.~~ ***Forfeiture Date*** means the date that is the later of (i) the one-year anniversary of the Effective Date, or (ii) the one-year anniversary of the date on which such Distribution is made available to the applicable Claimant by the Disbursing Agent.

106. ~~102.~~ ***Fountains Guarantee*** means the Replacement Arcapita Guaranty, as defined in that certain Second Amendment to Second Amended and Restated Loan Agreement and Omnibus Amendment and Reaffirmation of Loan Documents, by and between HSH Nordbank AG, Cayman Islands Branch, as Lender; HSH Nordbank AG, New York Branch, as Lead Arranger, Administrative Agent, and Collateral Agent; Fountains Senior Living Holdings, LLC; and US Senior Living Investments, LLC; dated as of September 28, 2012, which Fountains Guarantee shall be executed by Reorganized Arcapita Bank on the Effective Date.

107. ~~103.~~ ***General Unsecured Claim*** means, with respect to each Debtor, any Claim against such Debtor that is not an SCB Claim, a Syndicated Facility Claim, an Arcsukuk Claim, an Intercompany Claim, a Subordinated Claim, or a Super-Subordinated Claim, and that

is neither Secured nor entitled to priority under the Bankruptcy Code or any order of the Bankruptcy Court, including any Claim arising from the rejection of an Executory Contract or Unexpired Lease under section 365 of the Bankruptcy Code.

108. ~~104.~~ ***Governmental Unit*** has the meaning ascribed to such term in section 101(27) of the Bankruptcy Code.

109. ~~105.~~ ***Guarantee Claims*** means claim numbers 45, 65, 66, 131, 256, 276, 281, 504, and 508, as numbered in the claims register maintained in the Chapter 11 Cases by the Balloting and Claims Agent.

110. ***Hard Assets*** means the assets to be transferred to AIM pursuant to the Fixed Asset Transfer Agreement.

111. ~~106.~~ ***Holder*** means any Person holding an Interest or a Claim.

112. ~~107.~~ ***HQ Settlement*** means that certain settlement by and among the Debtors and the AHQ Cayman I Investors on the terms and conditions set forth in Section VI.B.8 of the Disclosure Statement.

113. ~~108.~~ ***HQ Settlement Agreement*** means that certain agreement by and among the Debtors and the AHQ Cayman I Investors memorializing the HQ Settlement. The HQ Settlement Agreement shall be materially consistent with the terms of the HQ Settlement and shall be substantially in the form filed in the Plan Supplement.

114. ~~109.~~ ***Impaired*** means a Claim or a Class of Claims that is impaired within the meaning of section 1124 of the Bankruptcy Code.

115. ~~110.~~ ***Implementation Memorandum*** means the memorandum describing the restructurings, transfers, and other corporate transactions that the Debtors determine to be necessary or appropriate to effectuate the Restructuring in compliance with the Bankruptcy Code and other applicable United States, Cayman, Bahrain, and other applicable law and, to the maximum extent possible, in a tax efficient manner. A non-final form of the Implementation Memorandum is attached to the Disclosure Statement as **Exhibit E**. The Plan Supplement will include a substantially final form of the Implementation Memorandum.

116. ~~111.~~ ***Incentive Programs*** means the incentive programs maintained by the Arcapita Group that enabled participating employees to incur obligations to the Arcapita Group in order to invest alongside the Arcapita Group in certain investments. The Incentive Programs include the Investment Participation Program and the Investment Incentive Program described in the Senior Management Global Settlement Approval Motion.

117. ~~112.~~ ***Intercompany Claim*** means any Claim held by a Debtor against another Debtor or any Claim against a Debtor held by a wholly-owned direct or indirect subsidiary of a Debtor; *provided*, *however*, that Claims held by Falcon against any other Debtor are not Intercompany Claims.

~~113. ***Intercompany Contracts*** means any Executory Contract by or between or among any of the Debtors or between or among any of the Debtors and any of the Debtors' Affiliates.~~

118. ~~114.~~ ***Intercompany Interests*** means the Interests held in a Debtor by another Debtor.

119. ~~115.~~ ***Interests*** means, as to each Debtor, any: (i) Equity Security of such Debtor, including all shares or similar securities in any Debtor, whether or not transferable or denominated "stock", and whether issued, unissued, authorized, or outstanding; (ii) any warrants, options, or contractual rights to purchase, sell, subscribe or acquire such Equity Security at any time and all rights arising with respect thereto; and (iii) any similar interest in a Debtor. Notwithstanding the foregoing, the term Interests does not include any warrants, options, or contractual rights to purchase, sell, subscribe or acquire any Share of Falcon or any similar interest in Falcon.

120. ~~116.~~ ***Investment Company Act*** means the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1—80a-64, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made applicable to the Chapter 11 Cases.

121. ***IP Asset Transfer Agreement*** means an agreement to be entered into on the Effective Date by and between (i) the Reorganized Debtors and/or New Holding Companies and (ii) AIM for the transfer of the Transferred IP Assets to AIM pursuant to the Plan.

122. ~~117.~~ ***JPLs*** means Gordon MacRae and Simon Appell.

123. ~~118.~~ ***Key Employee Incentive Plan*** means the restructuring incentive plan for key employees, which incentive plan was approved by the Bankruptcy Court in an order dated July 6, 2012 [Docket No. 303].

124. ~~119.~~ ***Knowledgeable Employee*** has the meaning ascribed to such term in Rule 3c-5, promulgated under the Investment Company Act.

125. ~~120.~~ ***Lien*** has the meaning set forth in section 101(37) of the Bankruptcy Code.

126. ~~121.~~ ***Liquidation Analysis*** means the liquidation analysis attached as **Exhibit B** to the Disclosure Statement.

127. ~~122.~~ ***Lusail Land*** means the 3,659,080 square meter plot of land in Lusail City, Qatar known as Golf-REC/01.

128. ~~123.~~ ***Lusail Lease*** means that certain Lease Agreement dated March 5, 2012 between Arcapita Bank and QIB.

129. ~~124.~~ ***Lusail Transactions*** means all transactions related to the Lusail Land following its acquisition by Al-Imtiaz Investment Co. K.S.C.(c) on June 6, 2008.

130. ~~125.~~ ***Lusail Transaction Documents*** means the Lusail Lease, the Lusail Option, and the QRE Letter Agreement.

131. ~~126.~~ ***Lusail Option*** means that certain Promise to Sell, dated March 5, 2012 between Arcapita Bank and QIB, as modified by that certain letter, dated June 12, 2013, by and between QIB and Arcapita Bank, which letter shall be in the form filed in the Plan Supplement.

132. ~~127.~~ ***Management Services Agreement*** means ~~that~~those certain ~~agreement~~agreements to be entered into by and between New Arcapita ~~Topco and AIM~~Holdco 3 (or, in certain instances, one of its subsidiaries) and AIM (or, in certain instances one of its subsidiaries) for the provision of management and advisory services. The Management Services Agreement shall be materially consistent with the terms set forth in the Cooperation Settlement Term Sheet and shall be substantially in the form filed in the Plan Supplement.

133. ~~128.~~ ***Master Service List*** means the 2002 Service List filed from time to time on the docket of the Chapter 11 Cases.

134. ~~129.~~ ***New Arcapita AIHL Class A Shares*** means 55% of the New Arcapita Class A Shares. The terms of the New Arcapita AIHL Class A Shares, including governance rights, will be consistent with the Equity Term Sheet, and the form of definitive documents with respect to such New Arcapita AIHL Class A Shares will be filed in the Plan Supplement.

135. ~~130.~~ ***New Arcapita AIHL Ordinary Shares*** means 2.5% of the New Arcapita Ordinary Shares. The terms of the New Arcapita AIHL Ordinary Shares, including governance rights, will be consistent with the Equity Term Sheet, and the form of definitive documents with respect to such New Arcapita AIHL Ordinary Shares will be filed in the Plan Supplement.

136. ~~131.~~ ***New Arcapita Bahrain Minorityco*** means the limited liability company that may be incorporated in the Cayman Islands and formed on or prior to the Effective Date that will be wholly owned, after the Effective Date, by New Arcapita Topco and own, after the Effective Date, 0.01% of the issued and outstanding shares in New Bahraini Arcapita Holdco.

137. ~~132.~~ ***New Arcapita Bank Class A Shares*** means 45% of the New Arcapita Class A Shares. The terms of the New Arcapita Bank Class A Shares, including governance rights, will be consistent with the Equity Term Sheet, and form of the definitive documents with respect to such New Arcapita Bank Class A Shares will be filed in the Plan Supplement.

138. ~~133.~~ ***New Arcapita Bank Holdco*** means the limited liability company to be incorporated in Delaware and formed on or prior to the Effective Date that will be wholly owned by New Arcapita Topco, unless New Bahraini Arcapita Holdco is formed. If New Bahraini Arcapita Holdco is formed, New Arcapita Bank Holdco will be wholly owned by New Bahraini Arcapita Holdco. New Arcapita Bank Holdco will own, after the Effective Date, more than 50% of the issued and outstanding Shares in Reorganized Arcapita Bank.

139. ~~134.~~ ***New Arcapita Bank Ordinary Shares*** means 97.5% of the New Arcapita Ordinary Shares. The terms of the New Arcapita Bank Ordinary Shares, including governance rights, will be consistent with the Equity Term Sheet, and the form of definitive documents with respect to such New Arcapita Bank Ordinary Shares will be filed in the Plan Supplement.

140. ~~135.~~ ***New Arcapita Class A Shares*** mean the senior preference shares with an aggregate liquidation preference of $810 million to be issued by New Arcapita Topco, as provided in the Implementation Memorandum, which New Arcapita Class A Shares shall be senior to the New Arcapita Ordinary Shares and the New Arcapita Warrant Ordinary Shares. The terms of the New Arcapita Class A Shares will be consistent with the Equity Term Sheet, and the form of definitive documents with respect to such New Arcapita Class A Shares will be filed in the Plan Supplement.

141. ~~136.~~ ***New Arcapita Creditor Warrants*** means warrants or similar instruments in New Arcapita Topco that, in the aggregate, will entitle the holders thereof to New Arcapita AIHL Ordinary Shares that constitute up to 47.5% of the New Arcapita Ordinary Shares, subject to dilution by the New Arcapita Shareholder Warrants and as otherwise set forth in the Equity Term Sheet, all on the terms and conditions set forth in the Equity Term Sheet. The terms of the New Arcapita Creditor Warrants will be consistent with the Equity Term Sheet, and the form of definitive documents with respect to such New Arcapita Creditor Warrants will be filed in the Plan Supplement.

142. ~~137.~~ ***New Arcapita Holdco 1*** means the limited liability company to be incorporated in the Cayman Islands and formed on or prior to the Effective Date that will own, after the Effective Date, 100% of the issued and outstanding shares in New Arcapita Holdco 2. If New Bahraini Arcapita Holdco is formed, New Bahraini Arcapita Holdco will own 99.99% of the issued and outstanding shares in New Arcapita Holdco 1 and Arcapita (HK) Limited will own 0.01% of the issued and outstanding shares in New Arcapita Holdco 1. If Bahraini Arcapita Holdco is not formed, New Arcapita Topco will own 99.99% of the issued and outstanding shares in New Arcapita Holdco 1 and Arcapita (HK) Limited will own 0.01% of the issued and outstanding shares in New Arcapita Holdco 1.

143. ~~138.~~ ***New Arcapita Holdco 2*** means the limited liability company to be incorporated in Delaware and formed on or prior to the Effective Date that will be wholly owned by New Arcapita Holdco 1 and own, after the Effective Date, 100% of the issued and outstanding shares in New Arcapita Holdco 3 and all of the assets currently owned directly or indirectly by AIHL.

144. ~~139.~~ ***New Arcapita Holdco 3*** means the limited liability company to be incorporated in the Cayman Islands and formed on or prior to the Effective Date that will be owned, after the Effective Date, by New Arcapita Holdco 2 and own, after the Effective Date, all of the assets currently owned directly or indirectly by Arcapita Bank other than interests in, and assets currently owned directly or indirectly by, AIHL and Arcapita (HK) Limited.

145. ~~140.~~ ***New Arcapita Ordinary Shares*** means the Class A and Class B ordinary shares to be issued by New Arcapita Topco, as provided in the Implementation

Memorandum. The New Arcapita Ordinary Shares will be subject to dilution by the New Arcapita Creditor Warrants ~~and~~, the New Arcapita Shareholder Warrants, ~~if issued~~and as otherwise set forth in the Equity Term Sheet. The terms of the New Arcapita Ordinary Shares will be consistent with the Equity Term Sheet, and the form of definitive documents with respect to such New Arcapita Ordinary Shares will be filed in the Plan Supplement.

146. ~~141.~~ ***New Arcapita Shareholder Warrants*** means warrants or similar instruments in New Arcapita Topco that, in the aggregate, will entitle the holders thereof to the New Arcapita Warrant Ordinary Shares, which will constitute ~~up to~~ 80% of the common equity of New Arcapita Topco ~~on a fully diluted basis~~, subject to dilution on the terms and conditions set forth in the Equity Term Sheet. The terms of the New Arcapita Shareholder Warrants will be consistent with the Equity Term Sheet, and the form of definitive documents with respect to such New Arcapita Shareholder Warrants will be filed in the Plan Supplement.

147. ~~142.~~ ***New Arcapita Shares*** means the New Arcapita Class A Shares the New Arcapita Ordinary Shares, and the New Arcapita Warrant Ordinary Shares.

148. ~~143.~~ ***New Arcapita Topco*** means the entity to be incorporated in the Cayman Islands and formed on or prior to the Effective Date that will issue the New Arcapita Shares and own, after the Effective Date, 100% of the issued and outstanding shares in New Arcapita Bank Holdco and 99.99% of the issued and outstanding shares in New Arcapita Holdco 1.

149. ~~144.~~ ***New Arcapita Warrant Ordinary Shares*** means the Class C ordinary shares to be issued by New Arcapita Topco, as provided in the Implementation Memorandum. The terms of the New Arcapita Warrant Ordinary Shares will be consistent with the Equity Term Sheet, and the form of definitive documents with respect to such New Arcapita Warrant Ordinary Shares will be filed in the Plan Supplement.

150. ~~145.~~ ***New Bahraini Arcapita Holdco*** means the entity that may be incorporated in the Kingdom of Bahrain and formed on or prior to the Effective Date that will own, after the Effective Date, 99.99% of the issued and outstanding shares in New Arcapita Holdco 1 and 100% of the issued and outstanding shares in New Arcapita Bank Holdco. New Arcapita Topco will own 99.99% of the issued and outstanding shares in New Bahraini Arcapita Holdco and New Arcapita Bahrain Minorityco will own 0.01% of the issued and outstanding shares in New Bahraini Arcapita Holdco.

151. ~~146.~~ ***New Boards*** means the initial boards of directors (or their equivalents under applicable law) of the Reorganized Debtors, the New Holding Companies, and their subsidiaries.

~~147. *New Facility Distribution Procedures* means the following procedures:~~

~~i. In the case of any Holder of Claims in Classes 2(a)-(f), execution of the New SCB Facility, binding such Holder to the provisions of the New SCB Facility and the other documents related thereto;~~

~~ii. Provision of such information and documentation as the Debtors and the Disbursing Agent, in the case of the DIP Agent, or the New SCB Facility Agent, in the case of any Holder of Claims in Classes 2(a)-(f), may reasonably require to ensure compliance with applicable withholding and reporting requirements, including delivery of the applicable Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9;~~

~~iii. Provision of any other item reasonably required by the Disbursing Agent or New SCB Facility Agent, as applicable; and~~

~~iv. All Distributions to be made under the Plan to Holders of DIP Facility Claims shall be made to the DIP Agent and shall be distributed by the DIP Agent to such Holders in accordance with the provisions of the DIP Facility.~~

152. ~~148.~~ ***New Governing Documents*** means the form of the revised certificates of incorporation, bylaws, limited liability company agreements, memoranda and articles of association, certificates of formation, shareholders' agreements, or similar governing document of each of the Reorganized Debtors and the New Holding Companies, which New Governing Documents shall be substantially in the form filed in the Plan Supplement.

153. ~~149.~~ ***New Holding Companies*** means New Arcapita Holdco 1, New Arcapita Holdco 2, New Arcapita Holdco 3, New Arcapita Topco, and New Arcapita Bank Holdco, New Bahraini Arcapita Holdco (if formed), and New Arcapita Bahrain Minorityco (if formed).

~~150. ***New SCB Facility*** means a new Murabaha facility with a cost price equal to the amount of the Allowed SCB December 2011 Claim and the Allowed SCB May 2011 Claim, to be entered into by (i) certain Reorganized Debtors and/or New Holding Companies and certain of their Affiliates and (ii) SCB on the Effective Date, the terms of which shall be substantially in accordance with the terms set forth on the SCB Term Sheet. The New SCB Facility will be substantially in the form filed in the Plan Supplement.~~

~~151. ***New SCB Facility Agent*** means SCB.~~

~~152. ***New SCB Facility Obligations*** means the obligations of the New SCB Facility Obligors under the New SCB Facility.~~

~~153. ***New SCB Facility Obligors*** means the Reorganized Debtors and/or New Holding Companies and certain of their Affiliates that are party to the New SCB Facility.~~

154. ***New Unsecured Claim Distribution Procedures*** means, as to any Claimant in Classes 4(a)-(b), 5(a)-(b), 5(g), 6(a), and 8(a), compliance by such Claimant with the following procedures, except and to the extent requiring compliance with such procedures violates applicable law or unless the Disbursing Agent determines that the Claimant would still be bound by the applicable documents notwithstanding the failure to execute them:

i. With respect to Claimants in Classes 5(~~b~~a), 5(g), 6(a), and 8(a) only, execution and delivery of the Creditor Release and any ancillary documents required thereby;

ii. With respect to Claimants in Classes 4(a)-(b) and 5(a)-(b) that are not Non-Eligible Claimants only, execution of the Sukuk Facility binding such Claimant to the provisions of the Sukuk Facility and the other documents related thereto;

iii. Provision of such information and documentation as the Disbursing Agent may reasonably require to ensure compliance with applicable withholding and reporting requirements, including delivery of the applicable Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9; and

iv. Provision of any other item reasonably required by the Disbursing Agent.

155. ***Non-Eligible Claimant*** means any Holder of a Claim or Interest that is not any of (i) a Qualified Purchaser, (ii) a Knowledgeable Employee, or (iii) a Non-U.S. Person.

156. ***Non-U.S. Person*** means any entity that is not a "U.S. person," as that term is defined under Regulation S, promulgated under the Securities Act.

157. ***Other Priority Claim*** means any Claim, other than an Administrative Expense Claim, a DIP Facility Claim, an SCB Claim, or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

158. ***Other Secured Claim*** means any Secured Claim that is not a SCB Claim.

159. ***Person*** means any person, including without limitation, any individual, entity, corporation, partnership, limited liability company, limited liability partnership, joint venture, association, joint stock company, estate, trust, unincorporated association or organization, official committee, ad hoc committee or group, governmental agency or political subdivision thereof, the U.S. Trustee, and any successors or assigns of any of the foregoing.

160. ***Petition Date*** means, with respect to Arcapita Bank, AIHL, Arcapita LT Holdings Limited, Windturbine Holdings Limited, AEID II Holdings Limited, and Railinvest Holdings Limited, March 19, 2012; and with respect to Falcon Gas Storage Company, Inc., April 30, 2012.

161. ***Placement Banks*** means Al Baraka Islamic Bank, Bahrain Islamic Bank, and Tadhamon Capital.

162. ***Plan*** means the Confirmed Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors under Chapter 11 of the Bankruptcy Code (With First Technical Modifications) proposed by the Debtors, dated ~~April 25,~~as of June 11, 2013, and all documents or exhibits attached thereto or referenced therein including, without limitation, the Plan Documents, as the same may be amended, modified, or supplemented from time to time.

163. ***Plan Documents*** means the Plan, the Plan Supplement, the Disclosure Statement, and all documents, attachments, and exhibits attached to the Plan, the Plan Supplement, or the Disclosure Statement, including, without limitation, those that aid in effectuating the Plan, as the same may be amended, modified, or supplemented, in accordance with their terms.

164. ***Plan Objection Deadline*** means 4:00 p.m. on May 30, 2013 (Prevailing U.S. Eastern Time) and is the deadline by which objections to the Plan must be Filed with the Bankruptcy Court and served in accordance with the Disclosure Statement Approval Order.

165. ***Plan Supplement*** means the ~~supplement~~supplements to the Plan Filed by the Debtors with the Bankruptcy Court ~~on or before~~at least 10 days prior to the ~~commencement of the Confirmation Hearing~~Effective Date, which ~~supplement~~supplements shall contain substantially final ~~forms~~versions of the ~~key substantive~~principal documents ~~required for the implementation of~~implementing the Plan.

166. ***Postpetition Period*** means the period of time following the Petition Date through the Effective Date.

167. ***Priority Tax Claim*** means a Claim of a kind specified in section 507(a)(8) of the Bankruptcy Code.

168. ***Professional Compensation Claim*** means all Administrative Expense Claims for compensation, indemnification, or reimbursement of expenses incurred by Professionals through the Confirmation Date pursuant to section 327, 328, 330, 331, 363, or 503(b) of the Bankruptcy Code in connection with the Chapter 11 Cases.

169. ***Professional Compensation Claims Escrow Account*** means an escrow account at Citibank N.A., or such other U.S. financial institution acceptable to the Committee and the Debtors, established by the Debtors on the Effective Date for the payment of Professional Compensation Claims in accordance with Section 2.2 of the Plan. The Professional Compensation Claims Escrow Account may, to the extent permitted by Shari'ah, bear profit. The definitive documents evidencing the Professional Compensation Claims Escrow Account shall be filed in the Plan Supplement.

170. ***Professionals*** means those Persons (i) employed pursuant to an order of the Bankruptcy Court in accordance with sections 327, 328, 363, or 1103 of the Bankruptcy Code and to be compensated for services pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code, for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(1) of the Bankruptcy Code and/or, (ii) for which compensation and reimbursement has been Allowed by the Bankruptcy Court or is sought pursuant to section 503(b)(4) of the Bankruptcy Code. For the avoidance of doubt, the term Professionals does not include any Person employed by SCB, the Exit Facility Arranger, the Exit Facility Investment Agent, the Exit Facility Collateral Agent, or the Exit Facility Participants.

171. ***Proof of Claim*** means any proof of claim filed with the Bankruptcy Court or the Balloting and Claims Agent with respect to a Debtor pursuant to section 501 of the Bankruptcy Code and Bankruptcy Rule 3001 or 3002.

172. ***Proof of Interest*** means any proof of interest filed with the Bankruptcy Court or the Balloting and Claims Agent with respect to a Debtor pursuant to section 501 of the Bankruptcy Code and Bankruptcy Rule 3002.

173. ***Pro Rata Share*** means, with reference to any Distribution on account of any Allowed Claim or Allowed Interest in a Class, a Distribution equal in amount to the ratio (expressed as a percentage) that the amount of such Claim or Interest bears to the aggregate amount of all Allowed Claims or Allowed Interests in the same Class. With reference to the distribution of Transferring Shareholder Warrants to the Holders of Shares in Arcapita Bank that agree to become Transferring Shareholders, a Pro Rata Share is a distribution equal in amount to the ratio (expressed as a percentage) that the number of Shares held by the applicable Transferring Shareholder bears to the aggregate amount of all Shares in Arcapita Bank that were outstanding as of the Petition Date.

174. ***PNVs*** means the special purpose Cayman Islands companies known as "program non-voting companies" that hold non-voting shares of the Syndication Companies related to U.S.-based portfolio investments.

175. ***PVs*** means the special purpose Cayman Islands companies known as "program voting companies" that hold the voting shares of the Syndication Companies related to U.S.-based portfolio investments.

176. ***QIB*** means Qatar Islamic Bank Q.S.C.

177. ***QRE Letter Agreement*** means that certain Letter Agreement, dated March 12, 2012 between Arcapita Bank and QRE Investments W.L.L, as modified by that certain Agreement and Consent to Assumption and Assignment of Lusail Related Contracts, which shall be in a form substantially consistent with the form filed with the Bankruptcy Court as Annex 19 to the *Debtors' Notice of Filing of Plan Supplement Documents* [Docket No. 1195].

178. ***Qualified Purchaser*** has the meaning ascribed to such term in Rule 2a51-1, promulgated under the Investment Company Act.

179. ***Record Date*** means April 26, 2013, the date on which the Bankruptcy Court entered the Disclosure Statement Approval Order.

180. ***Reinstated*** means, as to an Allowed Claim or Allowed Interest, leaves unaltered the legal, equitable and contractual rights to which such Claim or Interest entitles its Holder.

181. ***Released Actions*** means any Causes of Action that are released by the Debtors pursuant to the Plan.

182. ***Released Parties*** means (i) Debtors AIHL and Arcapita Bank, (ii) the Committee and its members, solely in their capacities as members of the Committee, (iii) the JPLs, solely in their capacities as joint provisional liquidators, (iv) the respective current and former officers, members of the board of directors, employees, managers (in their capacities as officers, members of the board of directors, employees, or managers, as applicable) of the

Debtors and the Debtors' Affiliates, (v) Professionals and other professionals and agents (in their capacities as Professionals or other professionals and agents, as applicable) for services rendered during the pendency of the Chapter 11 Cases to or for the Debtors, the Debtors' Affiliates, the Committee, the JPLs, SCB, or the Ad Hoc Group, along with the successors, and assigns of each of the foregoing, (vi) SCB, *provided*, *however*, that SCB shall not be a Released Party ~~if and only if SCB votes to accept~~solely with respect to the Committee Challenge Right if and to the extent a SCB Termination Event occurs on or prior to the ~~Plan~~Effective Date, (vii) the third-party holders of interests in the Syndication Companies, the PVs, and the PNVs, *provided*, *however*, that if any such holder of an interest is also a Placement Bank, such holder shall be a Released Party solely in its capacity as a holder of an interest in the Syndication Companies, the PVs, and/or the PNVs, as applicable, (viii) the Central Bank of Bahrain (including, without limitation, in its capacity as Creditor and regulator), (ix) the AHQ Cayman I Investors, (x) Holders of Interests in Arcapita Bank, ~~and~~ (xi) the members of the Ad Hoc Group, and (xii) the Exit Facility Arranger, the Exit Facility Investment Agent, the Exit Facility Collateral Agent, the Exit Facility Participants and their respective current and former officers, directors, employees, managers (in their capacities as officers, directors, employees, or managers, as applicable, for services rendered in connection with the Chapter 11 Cases), attorneys, agents, advisors or other professionals (in their capacities as attorneys, agents, advisors or other professionals, as applicable, for services rendered in connection with the Chapter 11 Cases).

183. ***Reorganized*** means, when used with reference to a Debtor, such Debtor on and after the Effective Date.

184. ***Restructuring*** means the restructuring of the Debtors' capital structure implemented by the Plan, the Equity Term Sheet, and the transactions contemplated in connection therewith.

185. ***Rights Offering*** means that certain prepetition rights offering commenced in late 2010 by Arcapita Bank pursuant to which eligible participants purchased rights to purchase Shares in Arcapita Bank at a price of $3.00 each.

186. ***Rights Offering Claim*** means any Claim derived from or based upon the Rights Offering, including, without limitation, any Claim identified in the *Notice of Amendment to Schedule F of Debtors' Schedules of Assets and Liabilities and Deadline to Object to Such Amendment Pursuant to Rule 1009(a) of the Federal Rules of Bankruptcy Procedure* [Docket No. 821].

187. ***SCB*** means Standard Chartered Bank.

188. ***SCB Adequate Protection Claim*** means an Adequate Protection Claim, as defined in the SCB Settlement.

189. ***SCB Claims*** means any SCB Adequate Protection Claim, the SCB December 2011 Claim, the SCB May 2011 Claim, ~~and~~ any SCB Superpriority Claim, SCB Expenses, and any other Claims, including Administrative Expense Claims, that SCB has against any of the Debtors; *provided, however*, that the SCB Claims shall not include any Syndicated

Facility Claims held by SCB or any Claims related to the TDIC Guaranty (as defined in the SCB Plan Settlement) and the Indemnity Obligations (as defined in the SCB Plan Settlement).

190. ***SCB December 2011 Claim*** means any Claim arising under the SCB December 2011 Facility and owed to SCB, including, without limitation, all accrued and unpaid interest, fees, and expenses, and other obligations owed to SCB under the SCB December 2011 Facility.

191. ***SCB December 2011 Facility*** means that certain Master Murabaha Agreement dated December 22, 2011 by and between Arcapita Bank and SCB as Investment Agent (as amended, restated, supplemented, and/or otherwise modified) together with all mortgages, documents, notes, instruments and any other agreements delivered pursuant thereto or in connection therewith.

192. ***SCB Expenses*** means any Claim for the SCB Expenses, as defined in the SCB Settlement.

193. ~~192.~~ ***SCB Facilities*** means the SCB December 2011 Facility and the SCB May 2011 Facility.

194. ~~193.~~ ***SCB May 2011 Claim*** means any Claim arising under the SCB May 2011 Facility and owed to SCB, including, without limitation, all accrued and unpaid interest, fees, and expenses, and other obligations owed to SCB under the SCB May 2011 Facility.

195. ~~194.~~ ***SCB May 2011 Facility*** means that certain Master Murabaha Agreement dated May 30, 2011 by and between Arcapita Bank and SCB as Investment Agent (as amended, restated, supplemented, and/or otherwise modified) together with all mortgages, documents, notes, instruments and any other agreements delivered pursuant thereto or in connection therewith.

196. ***SCB Plan Settlement*** means that certain Settlement Agreement, dated as of June 6, 2013 by and among: (i) the Debtors (other than Falcon), (ii) the Committee, (iii) SCB, (iv) Standard Chartered Bank (China) Limited (Huhhot Branch), and (v) Honiton Energy (Xilinguole) Company Limited and Honiton Energy (Baotou) Company Limited.

197. ~~195.~~ ***SCB Settlement*** means the Settlement Term Sheet attached as Exhibit 1 to the SCB Settlement Approval Order.

198. ~~196.~~ ***SCB Settlement Approval Order*** means the *Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing and Approving the Settlement with Standard Chartered Bank*, entered by the Bankruptcy Court on October 19, 2012 [Docket No. 587].

199. ~~197.~~ ***SCB Superpriority Claim*** means any SCB Superpriority Claims, as defined in the SCB Settlement.

200. ~~198.~~ ***SCB ~~Term Sheet~~Termination Event*** means ~~that certain term sheet, attached as **Exhibit G** to the Disclosure Statement, that sets forth the terms of the New SCB~~

~~Facility~~a Termination Event, as defined in the SCB Plan Settlement, unless waived by the parties to the SCB Plan Settlement.

201. ~~199.~~ ***Schedules*** means the schedules, statements, and lists filed by the Debtors with the Bankruptcy Court pursuant to Bankruptcy Rule 1007, as they may be amended or supplemented from time to time.

202. ~~200.~~ ***Section 510(b) Claim*** means any Claim against the Debtors arising from rescission of a purchase or sale of a security of the Debtors or any of them or an Affiliate of the Debtors, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

203. ~~201.~~ ***Secured*** means, when referring to a Claim: (i) secured by a Lien on property in which an Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law, or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the Creditor's interest in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code, or (ii) Allowed as such pursuant to the Plan or a Final Order. For the avoidance of doubt, a Claim shall be "Secured" if such security would be recognized as valid and enforceable under applicable law of the foreign jurisdiction pursuant to which such security was created.

204. ~~202.~~ ***Securities Act*** means the Securities Act of 1933, 15 U.S.C. §§ 77a-77m, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made applicable to the Chapter 11 Cases.

205. ~~203.~~ ***Senior Management Global Settlement*** means that certain agreement, more particularly described in the Senior Management Global Settlement Term Sheet attached as **Exhibit J** to the Disclosure Statement, between the Debtors and Existing Senior Management to resolve certain issues related to their employment by the Debtors. The final form of the Senior Management Global Settlement will be filed in the Plan Supplement.

206. ~~204.~~ ***Senior Management Global Settlement Approval Motion*** means the *Debtors' Motion for an Order Pursuant to Sections 363(b) and 503(c) of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing Debtors to Implement Global Settlement of Senior Management Claims* [Docket No. 487].

207. ~~205.~~ ***Shareholder Acknowledgment and Assignment*** means, as to each Transferring Shareholder, that certain Shareholder Acknowledgment and Assignment, the form of which is attached as Exhibit K to the Disclosure Statement.

208. ~~206.~~ ***Shares*** means, as to each Debtor, the common shares or similar securities in each Debtor that are issued and outstanding as of the Record Date.

209. ~~207.~~ ***Solicitation Package*** means the package mailed to Holders of Claims entitled to vote to accept or reject the Plan, which package contains, among other things, (i) a

copy of the Plan, (ii) a copy of the Disclosure Statement, (iii) the appropriate Ballot, Ballot Instructions, and Ballot return envelope, and (iv) a cover letter from the Debtors.

210. ~~208.~~ ***Subordinated Claim*** means any Section 510(b) Claim and any Claim that is neither Secured nor entitled to priority under the Bankruptcy Code or any order of the Bankruptcy Court and that is subordinated to General Unsecured Claims; *provided*, *however*, that Super-Subordinated Claims shall not be Subordinated Claims. For the avoidance of doubt, to the extent Allowed, the Thronson Claims and the Rights Offering Claims are Subordinated Claims.

211. ~~209.~~ ***Subordinated Claim Warrants*** means a percentage of the New Arcapita Shareholder Warrants equal to the quotient obtained by dividing (i) the aggregate amount of Allowed Class 8(a) Subordinated Claims by (ii) the aggregate amount of Allowed Class 8(a) Subordinated Claims plus $1,634,446,889.

212. ~~210.~~ ***Subplan*** means, when used in connection with a Debtor, the Plan of Reorganization under chapter 11 of the Bankruptcy Code for such Debtor that is incorporated into the Plan.

213. ~~211.~~ ***Sukuk Agent*** means ~~[_____]~~the agent under the Sukuk Facility.

214. ~~212.~~ ***Sukuk Facility*** means certain agreements comprising a new Shari'ah-compliant mudaraba sukuk of up to $550 million, to be entered into by (i) certain Reorganized Debtors and/or New Holding Companies and certain of their Affiliates, (ii) ~~[New Arcapita Investment Ltd.] as~~the Sukuk Issuer~~, Rab-al Maal and Trustee~~, and (iii) certain other third parties, the terms of which shall be evidenced by definitive documentation substantially in accordance with the terms set forth on the Sukuk Facility Term Sheet. ~~The Sukuk Facility will be substantially in the form filed in the Plan Supplement.~~

215. ~~213.~~ ***Sukuk Facility Term Sheet*** means that certain term sheet, attached as **Exhibit H** to the Disclosure Statement, that sets forth the terms of the Sukuk Facility.

216. ~~214.~~ ***Sukuk Facility Obligors*** means ~~[New Arcapita Investment Ltd.]~~the Sukuk Issuer, the Reorganized Debtors and/or New Holding Companies and certain of their Affiliates and other third parties that are party to the Sukuk Facility.

217. ***Sukuk Issuer*** means the Issuer, Rab-al Maal and Trustee under the Sukuk Facility.

218. ~~215.~~ ***Sukuk Obligations*** means the obligations of ~~[New Arcapita Investment Ltd.]~~the Sukuk Issuer, the New Holding Companies, and the Reorganized Debtors under the Sukuk Facility, to be distributed to certain Holders of Syndicated Facility Claims, Arcsukuk Claims, and General Unsecured Claims on the Effective Date, as provided in Article IV of the Plan.

219. ~~216.~~ ***Super-Subordinated Claim*** means any Section 510 Claim that is subordinated below Shares. For the avoidance of doubt, to the extent Allowed, the Tide Claims are Super-Subordinated Claims.

220. ~~217.~~ ***Syndicated Facility*** means that certain means that certain Master Murabaha Agreement dated as of March 28, 2007 by and between Arcapita Bank, AIHL as guarantor, and WestLB, AG, London Branch as Investment Agent (as amended, restated, supplemented, and/or otherwise modified) together with all mortgages, documents, notes, instruments and any other agreements delivered pursuant thereto or in connection therewith.

221. ~~218.~~ ***Syndicated Facility Agent*** means WestLB, AG, London Branch.

222. ~~219.~~ ***Syndicated Facility Claim*** means a Claim arising under the Syndicated Facility, including, without limitation, all interest, fees, and expenses that were accrued but unpaid as of the Petition Date, and other obligations owed pursuant to the Syndicated Facility.

223. ~~220.~~ ***Syndication Companies*** means the Cayman Islands holding companies through which the Arcapita Group syndicated interests in the Arcapita Group's investments to third-party investors.

224. ~~221.~~ ***Third-Party Released Parties*** means (i) the respective current and former officers, members of the board of directors, employees, managers (in their capacities as officers, directors, employees, or managers, as applicable), Professionals, other professionals and agents (in their capacities as Professionals, other professionals or agents, as applicable, for services rendered during the pendency of the Chapter 11 Cases) to or for the Debtors or the Debtors' Affiliates and (ii) Exit Facility Arranger, the Exit Facility Investment Agent, the Exit Facility Collateral Agent, the Exit Facility Participants (solely in their capacities as Exit Facility Arranger, Exit Facility Investment Agent, Exit Facility Collateral Agent, and Exit Facility Participants) and their respective current and former officers, directors, employees, managers (in their capacities as officers, directors, employees, or managers, as applicable, for services rendered in connection with the Chapter 11 Cases), attorneys, agents, advisors or other professionals (in their capacities as attorneys, agents, advisors or other professionals, as applicable, for services rendered in connection with the Chapter 11 Cases).

225. ~~222.~~ ***Thronson Claims*** means any Proofs of Claim Filed by any of the Thronson Parties, including, without limitation, claim numbers 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, and 422, as numbered in the claims register maintained in the Chapter 11 Cases by the Balloting and Claims Agent.

226. ~~223.~~ ***Thronson Parties*** means Lowell Thronson, Henry Adair, Guy Busk, Galen W. Cantrell, Michelle G. Colombo, Glen M. Coman, Vhonda Cook, Randall L. Crumpley, Stephen Dorcheus, Judy B. Farley, Joe V. Fields, Gregory D. Fletcher, Kenneth Gillespie, Darrell R. Green, Terra Leigh Griffin, Michael L. Gryder, Jack L. Hopkins, John Holcomb, Andy Johnson, Ed McIntosh, Bryan K. Mercer, Carla Nims, Ricky Plumlee, Jimmy Rains, David Robinson, Chad Rogers, Mark Rowland, James Scott, Danny J. Sharp, Derrick M. Shaw, Randall J. Small, Joel P. Stephen, Ray Don Turner, Johnny B. Ulrich, James Bradley Underwood, Hank R. Watson, Royce Williams, and Troyce Willis.

227. ~~224.~~ ***Tide Claims*** means claim numbers 295, 296, 297, and 298, as numbered in the claims register maintained in the Chapter 11 Cases by the Balloting and Claims Agent.

228. ***Transaction Holdco*** means, for each of the Arcapita Group's investments, the top-level holding company through which the Arcapita Group and the Syndication Companies hold their interests in such investment.

229. ***Transferred IP Assets*** means any trademarks, service marks, trade dress, logos, trade names, corporate names, domain names, other source identifiers, and similar types of intellectual property rights owned by the Debtors.

230. ~~225.~~ ***Transferring Shareholder*** means any Holder of Shares in Arcapita Bank that agrees to transfer such Shares to New Arcapita Bank Holdco in exchange for such Holder's Pro Rata Share of the Transferring Shareholder Warrants on or before the one year anniversary of the Effective Date.

231. ~~226.~~ ***Transferring Shareholder Warrants*** means a percentage of the New Arcapita Shareholder Warrants equal to the quotient obtained by dividing (i) $1,634,446,889 by (ii) the aggregate amount of Allowed Class 8(a) Subordinated Claims plus $1,634,446,889.

232. ~~227.~~ ***Unclaimed Property*** means unclaimed Cash or other property held by the Disbursing Agent under the Disbursing Agent Agreement and any Distributions returned to or otherwise held by the Disbursing Agent on the Forfeiture Date as well as any other Distributions not claimed on or before the Forfeiture Date.

233. ~~228.~~ ***Unexpired Lease*** means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

234. ~~229.~~ ***Unimpaired*** means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

235. ~~230.~~ ***USD*** means United States Dollars, the legal tender of the United States of America.

236. ~~231.~~ ***U.S. Trustee*** means the United States Trustee for the Southern District of New York.

237. ~~232.~~ ***U.S. Trustee Fees*** means all fees and charges assessed against the Estates under section 1930 of title 28 of the United States Code, and interest, if any, for delinquent quarterly fees pursuant to section 3717 of title 31 of the United States Code.

238. ~~233.~~ ***Voting Deadline*** means 12:00 p.m. (Prevailing U.S. Eastern Time) on May 30, 2013, which is the deadline for submitting Ballots.

239. ~~234.~~ ***Voting Report*** means the report prepared by the Balloting and Claims Agent which reports the results of the tabulation of votes to accept or reject the Plan.

240. ~~235.~~ ***Warrant Distribution Conditions*** means, as to any Transferring Shareholder, compliance by such Transferring Shareholder with the following procedure:

i. Execution and delivery of the Shareholder Acknowledgment and Assignment and any ancillary documents required thereby or to otherwise give full effect thereto prior to the one year anniversary of the Effective Date;

ii. Provision of such information and documentation as the Disbursing Agent may reasonably require to ensure compliance with applicable withholding and reporting requirements, including delivery of the applicable Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9; and

iii. Provision of any other item reasonably required by the Disbursing Agent.