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

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	:	
In re:	:	Chapter 11
	:	
ARCAPITA BANK B.S.C.(C), et al.,	:	Case No. 12-11076 (SHL)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**RESPONSE AND LIMITED OBJECTION OF OFFICIAL
COMMITTEE OF UNSECURED CREDITORS TO DEBTORS'
MOTION TO APPROVE DIP COMMITMENT LETTER AND FEE LETTER**

The Official Committee of Unsecured Creditors (the "Committee") of Arcapita Bank B.S.C.(c) ("Arcapita") and the other debtors in possession in the above-captioned jointly administered chapter 11 cases (collectively, the "Debtors") hereby submits this response and limited objection to the *Debtors' Motion for Entry of an Order Authorizing the Debtors to Enter Into a Financing Commitment Letter and Incur Related Fees, Expenses and Indemnities* [Docket No. 513] (the "Motion"),¹ and in support thereof, respectfully states as follows:

¹ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

PRELIMINARY STATEMENT

1. On September 19, 2012, the Debtors came before this Court seeking approval to reimburse up to \$500,000 of expenses to be incurred by a selected post-petition financing lender, stating that such expense reimbursement was necessary to incentivize the lender to begin negotiating the terms of such financing and drafting the necessary documentation.² After extensive discussions with the Debtors and certain modifications to the relief requested, the Committee agreed that an incentive in the form of an expense reimbursement was appropriate.

2. Now, less than three weeks after the expense reimbursement was approved, the Debtors are seeking to commit themselves to pay at least an ***additional \$400,000*** in expense reimbursement, as well as significant fees, to a potential lender who ***has not committed itself*** to provide any post-petition financing to the Debtors. Moreover, even before the Court has had a chance to consider the Motion, the Debtors have precluded themselves (and the Committee) from pursuing alternative post-petition financing despite the lack of any commitment to lend from the potential lender. Since the Motion was filed, other lenders have surfaced and have expressed interest in providing financing on more favorable terms. Notwithstanding their fiduciary duties, the Debtors have decided not to grant such lenders access to necessary information, subject to appropriate confidentiality restrictions, and have refused to allow the Committee, in accordance with its fiduciary duties, to share any information with these parties. Even before the commitment letter (the "Commitment Letter") has been authorized by the Court, the Debtors already treat themselves and the Committee as "locked up" under the

² *Debtors' Motion for an Order Approving Expense Reimbursement in Connection with Prospective Post-Petition Financing* [Docket No. 448] (the "DIP Expense Reimbursement Motion") at 3.

terms of the agreement with the proposed post-petition lender Silver Point Finance, LLC (“Silver Point”).

3. Under the terms of the Commitment Letter and fee letter (the “Fee Letter” and, together with the Commitment Letter, the “Commitment Papers”), the so called “commitment” of Silver Point remains subject to due diligence and internal credit committee approval (the “Commitment Conditions”).³ Clearly the Commitment Conditions render the Commitment Papers a misnomer; they represent no current commitment at all. Nevertheless, the Debtors are seeking authorization to pay Silver Point up to an additional \$400,000 in expense reimbursement *before* the Commitment Conditions have been satisfied, and an *unlimited* amount thereafter.

4. Moreover, there is no deadline by which the Commitment Conditions must be satisfied and no express right for the Debtors to terminate the Commitment Papers in the event the Commitment Conditions are not promptly satisfied. In the meantime, the Debtors have agreed not to solicit any other financing proposals, subject solely to a watered down “fiduciary out,” which allows the Debtors to consider unsolicited offers. However, if the Debtors merely engage in negotiations with other potential lenders, the Commitment Papers authorize Silver Point to terminate the Commitment Papers and earn a break-up fee of \$1.125 million (the “Break-Up Fee”) – even if the Debtors fail to obtain the alternative financing. Clearly, the result of this provision of the Commitment Papers is to severely restrict the Debtors’ ability to obtain more favorable financing terms from other lenders since the mere act of “negotiating” with any other lender gives Silver Point the right to the Break-Up Fee. Even after the Commitment Conditions have been satisfied, the Commitment Papers allow Silver Point to terminate its

³ Commitment Letter § 5(a) and 5(b).

lending commitment based on an extremely broad material adverse effect clause without forfeiting its entitlement to a \$2.25 million commitment fee (the “Commitment Fee”). Taken together, these provisions effectively seek to lock in economic gain to Silver Point at a time when it has not provided, nor even committed to provide, financing to the Debtors while effectively preventing any other financing sources from coming to the negotiating table. Indeed, since the Motion was filed, other lenders have surfaced and, upon information and belief, are conducting due diligence. As such, the relief requested in the Motion is premature and has already foreclosed the Debtors (as well as the Committee) from engaging with the new lenders who could provide an actual commitment on potentially better terms than the *uncommitted* option offered by Silver Point.

5. The Committee understands that lenders often require incentives to perform due diligence before committing to lend, but it does not support the Debtors’ willingness to incur significant obligations to Silver Point in the absence of a firm commitment from Silver Point – particularly when, under the order approving the DIP Expense Reimbursement Motion, Silver Point already has the protection that would satisfy most lenders in similar circumstances.⁴

6. The imbalance of benefits and obligations imposed on the Debtors by the Commitment Papers is especially problematic in the context of these cases. The Debtors’ willingness to obligate themselves under this bloated, costly facility constitutes an expensive frolic and detour on the path to an orderly wind down of the Debtors’ estates, which, in the Committee’s view, may represent the most appropriate resolution of these cases. While the Debtors require some post-petition financing in the near term, they do not require a “super-sized” \$150 million facility now that does not allow any flexibility for multiple draws so as to minimize

⁴ See Hr’g Tr. 17:10-18:10, 1-10 (Sept. 19, 2012) [Docket No. 524].

the payment of unnecessary fees. As drafted, the Commitment Papers require the full \$150 million to be drawn down in one instance (unless the Court requires the Debtors to seek interim relief with respect to the financing) regardless of the Debtors' actual financing needs, and, under any circumstance, require the payment of fees on the full amount of the facility, including an obligation to pay 10.5% per annum on any undrawn amount. Moreover, the Debtors do not need a \$150 million single draw facility because there are other potential cash sources not being accounted for, including any proceeds from the potential initial public offering of the EuroLog assets and the return of the placement funds. Furthermore, although the Debtors claim that they need the proposed facility to successfully exit chapter 11,⁵ they have not presented any plan for an exit strategy. Accordingly, the Court should deny the Motion.

7. If the proposed lender needs additional expense reimbursement to complete its due diligence and come to a firm commitment to lend, the Committee respectfully submits that the preferred course would be for this Court to modify its original order to increase the expense reimbursement cap of \$500,000 without otherwise locking the Debtors into the onerous and expensive provisions of the Commitment Papers. If, however, the Court is inclined to authorize the Debtors to enter into the Commitment Papers, it should condition such authorization on certain critical modifications to the Commitment Papers, including, but not limited to:

- Reducing the expense reimbursement amount available prior to the satisfaction of the Commitment Conditions and capping the overall reimbursement amount in the event the proposed facility is not funded by Silver Point;
- Requiring that the Commitment Conditions be satisfied by a date certain and providing the Debtors with the right to terminate the Commitment Papers

⁵ See e.g., Motion ¶ 3.

(including the exclusivity and Break-Up Fee provisions) if Silver Point is unable to confirm satisfaction of the Commitment Conditions by such date;

- Providing that the Break-Up Fee will only become payable if (i) the Commitment Conditions have been satisfied and (ii) the Debtors have received Court approval for an alternative debtor in possession financing, so that the Debtors can actually fulfill their fiduciary duties to seek the best available financing terms;
- Deleting the material adverse effect clause or, alternatively, providing that, by invoking this clause, Silver Point forfeits the Commitment Fee and any Break-Up Fee; and
- Deleting the requirement that proceeds of avoidance actions be earmarked to pay for any administrative claim held by Silver Point.

8. These modifications will not interfere with Silver Point's protections for the risk of the Debtors choosing an alternative debtor in possession lender, while allowing the Debtors to explore other alternatives without an immediate threat of termination by Silver Point. The Committee has communicated the need for these modifications to the Debtors and Silver Point in an attempt to reach a mutually satisfactory compromise; however, despite its best efforts, a consensual resolution has not been reached. A copy of the markup of the Commitment Letter reflecting the Committee's proposed revisions is attached as Exhibit A hereto and a copy of the markup of the Fee Letter reflecting the Committee's proposed revisions is attached as Exhibit B hereto.⁶ The Committee notes that the term sheet attached to the Commitment Letter (the "Term Sheet") lacks detail in several key areas and, as such, the Committee reserves its rights to object to all or any portion of the proposed facility when, and if, a motion is made by the Debtors for approval of such facility.

⁶ In accordance with the Court's Ex Parte *Order Authorizing the Debtors to File Exhibits Under Seal* [Docket No. 515], the Committee's markup of the Fee Letter is being filed under seal.

OBJECTION

I. The Commitment Papers Unfairly Impose Significant Obligations on the Debtors While Silver Point Remains Uncommitted to Providing Financing

9. Under the circumstances of these cases, the Debtors' request for the Court to authorize their incurrence of additional significant obligations under the Commitment Papers without the benefit of a firm commitment from Silver Point is an unfair burden on the Debtors' estates. Silver Point should not be entitled to up to \$900,000 in expense reimbursement even before the Commitment Conditions have been satisfied (nor an unlimited amount for reimbursement thereafter).

10. In the DIP Expense Reimbursement Motion, the Debtors asserted that approval of the \$500,000 expense reimbursement was necessary to incentivize a potential lender to undertake the drafting and negotiating of documents that are *Shari'ah*-compliant and satisfy the strictures of chapter 11.⁷ The Committee agreed to certain concessions in connection with the DIP Expense Reimbursement Motion, including agreeing to the reimbursement of costs and expenses incurred prior to September 7, 2012. Nevertheless, at the hearing on the DIP Expense Reimbursement Motion, Debtors' counsel informed the Court of the Debtors' intention to request separate approval of the Commitment Papers in advance of approval of definitive post-petition financing documentation.⁸ It is not clear to the Committee why, just three weeks after the approval of the expense reimbursement, additional payments of fees and expenses became necessary to persuade Silver Point to negotiate the proposed financing or why, despite the Debtors' statements to the Court to the contrary, it appears that Silver Point has neither

⁷ DIP Expense Reimbursement Motion at 3.

⁸ Hr'g Tr. 15:3-9 (Sept. 19, 2012) [Docket No. 524].

completed its diligence nor have the parties proceeded with any of the financing documentation for the proposed facility.

11. Moreover, it is not just the additional expense reimbursement amount, but the overall fee structure that imposes an unfair burden on the Debtors. Specifically, the Commitment Papers provide that 0.75% of the amount of the facility (\$1.125 million) is payable to Silver Point as a break-up fee in the event the Debtors' board of directors makes a determination that its fiduciary duties require it to engage in mere *negotiations* with an unsolicited alternative financing source.⁹ The Break-Up Fee is payable even if the Debtors ultimately determine not to pursue a financing with an alternate source – the mere fact of negotiations by the Debtors would trigger it and, if the Commitment Papers are to be read literally, it would seem the Break-Up Fee is payable even if the Debtors then proceed to consummate the financing with Silver Point. It is not at all clear how the Debtors expect to exercise their fiduciary duties if the mere act of negotiation with an unsolicited source results in the ability for Silver Point to terminate the Commitment Papers and collect the Break-Up Fee.

12. Absent a firm commitment from Silver Point to extend post-petition financing to the Debtors in the time frame required by the Debtors, Silver Point should not be entitled to amounts in excess of the previously approved expense reimbursement. Any additional incentives may be sought in connection with approval of definitive documentation for committed financing (if any). If the amount of the previously approved expense reimbursement is insufficient, the Committee may agree to an increase of such amount, but such augmentation should not be accompanied by the Debtors locking themselves into an exclusive period with an uncommitted lender or agreeing to pay a break-up fee.

⁹ Motion ¶ 8.

II. The Material Adverse Effect Clause Is Too Broad

13. The Term Sheet provides that Silver Point may terminate its commitment to lend to the Debtors unless, since the date of the Commitment Letter, “nothing shall have occurred and Silver Point and the Participants shall not have become aware of any facts or conditions not previously known which has had, or could reasonably be expected to have, a material adverse effect, provided that the continuation of the Chapter 11 Cases shall not constitute a material adverse effect.”¹⁰ As currently drafted, this material adverse effect clause is unreasonably broad and creates an unjustifiable risk that Silver Point can abandon its lending commitment without any penalty. Notably, the Debtors remain obligated to pay Silver Point the Commitment Fee and reimburse it for the expenses incurred even if Silver Point fails to fund the facility as a result of invoking the material adverse effect clause. Thus, even after the satisfaction of the Commitment Conditions, Silver Point continues to enjoy a free option to walk away from its commitment.

14. Accordingly, the Court should not authorize the Debtors to enter into the Commitment Papers unless, among other things, the material adverse effect clause is removed or, at the least, the Commitment Papers are modified to provide that Silver Point would forfeit its entitlement to the Commitment Fee and any Break-Up Fee if it terminates its commitment to lend based on the material adverse effect clause. This would ensure that the clause is not merely a free option for Silver Point to terminate its commitment.

III. Avoidance Actions Should Be for Benefit of Unsecured Creditors

15. The Term Sheet also provides that, while the DIP Collateral (as defined in the Term Sheet) does not include actions for preferences, fraudulent conveyances, and other

¹⁰ Commitment Letter, Exhibit B.

avoidance power claims under chapter 5 of the Bankruptcy Code, the proceeds of any such actions will be available to pay administrative claims of Silver Point or other participants in the financing.¹¹

16. Avoidance actions and their proceeds, however, are distinct creatures of bankruptcy law designed to ensure equitable distribution to general unsecured creditors.¹² It is inappropriate for the Debtors to earmark such proceeds for a secured lender and allow Silver Point to receive a priority interest in the funds that should be preserved for the general unsecured creditors. A successful reorganization requires the cooperation of, and a shared risk by, all parties in interest. Accordingly, the proceeds of avoidance actions should not be available to satisfy Silver Point's administrative claims.

RESERVATION OF RIGHTS

18. The Committee fully reserves its right to raise additional arguments in respect of any interim or final order approving the Commitment Papers or the proposed post-petition financing facility with Silver Point.

¹¹ See Term Sheet.

¹² See, e.g., Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.), 226 F.3d 237, 244 (3d Cir. 2000) (avoidance actions are not property of estate, but are essentially rights held by estate for benefit of creditors); Buncher Co. v. Official Comm. of Unsecured Creditors of GenFarm Ltd. P'ship IV, 229 F.3d 245, 250 (3d Cir. 2000) ("When recovery is sought under section 544(b) of the Bankruptcy Code, any recovery is for the benefit of all unsecured creditors . . ."); Gaudet v. Babin (In re Zedda), 103 F.3d 1195, 1203 (5th Cir. 1997) ("A trustee's avoidance powers are intended to benefit the debtor's creditors, as such powers facilitate a trustee's recovery of as much property as possible for distribution to the creditors."); McFarland v. Leyh (In re Tex. Gen. Petroleum Corp.), 52 F.3d 1330, 1335-36 (5th Cir. 1995) ("[T]he proceeds recovered in an avoidance action satisfy the claims of priority and general unsecured creditors before the debtor benefits.' . . . The proceeds recovered in avoidance actions should not benefit the reorganized debtor; rather, the proceeds should benefit the unsecured creditors.") (quoting In re Sweetwater, 55 B.R. 724, 731 (D. Utah 1985) ("The avoiding powers are not 'property' but a statutorily created power to recover property."), aff'd in part, rev'd in part on other grounds, 884 F.2d 1323, 1327 (10th Cir. 1989)).

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court: (i) sustain this Objection; (ii) deny the relief requested in the Motion; and (iii) grant the Committee such other and further relief as is just.

Dated: New York, New York
October 4, 2012

MILBANK, TWEED, HADLEY & M^cCLOY LLP

By: /s/ Dennis F. Dunne

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*Counsel for Official Committee of Unsecured
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Exhibit A

SILVER POINT FINANCE, LLC
2 Greenwich Plaza
Greenwich, CT 06830

CONFIDENTIAL

September 24, 2012

Arcapita Bank B.S.C.(c)
c/o Bernard Douton
Rothschild Inc.
1251 Avenue of the Americas
New York, NY 10022
bernard.douton@rothschild.com

\$150,000,000 Murabaha Debtor-In-Possession Facility
Commitment Letter

Ladies and Gentlemen:

You have advised Silver Point Finance, LLC (“Silver Point”, “we” or “us”) that you have filed separate voluntary petitions for yourself and certain of your subsidiaries (excluding Falcon Gas Storage Company, Inc., the “Company”)¹ for reorganization under Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), Case No. 12-11076 (the “Chapter 11 Cases”) and that you will require a Shari’ah-compliant term Murabaha debtor-in-possession facility (the “Murabaha DIP Facility”) in order to finance the Company’s operations, including on-going operating costs, general corporate purposes, certain investment deal fundings, and bankruptcy-related costs during the Company’s chapter 11 proceedings. Capitalized terms used but not defined herein shall have the meaning assigned to such term in the Murabaha DIP Facility term sheet (“Murabaha DIP Term Sheet”) attached hereto as Exhibit A.

This Commitment Letter (defined below) and the Murabaha DIP Term Sheet describe terms and conditions under which Silver Point currently would propose to provide to the Company \$150,000,000 (the “Facility Amount”) under the Murabaha DIP Facility.

Please note that those matters that are not covered or made clear herein, in the Murabaha DIP Term Sheet or the related fee letter of even date herewith (the “Fee Letter”) are subject to mutual agreement of the parties hereto.

¹ The exclusion of Falcon Gas Storage Company, Inc. and any non-Debtor affiliates remains subject to due diligence.

1. Commitments.

In connection with the foregoing, Silver Point is pleased to advise you of its commitment to provide 100% of the commitments under the Murabaha DIP Facility, upon the terms and subject to the conditions set forth or referred to in this commitment letter (together with the Murabaha DIP Term Sheet, this "Commitment Letter") and in the Fee Letter. Silver Point agrees to conduct its due diligence under Section 5(a) below and to negotiate Definitive Financing Documentation (as defined in Exhibit B hereto) in a commercially reasonable manner after the entering of an order in form and substance reasonably acceptable to Silver Point by the Bankruptcy Court approving Sections 6 and 8 this Commitment Letter and Sections 1(a) and 1(b) of the Fee Letter; provided that, if Silver Point determines in good faith that the Company will not be required to reimburse it for fees and expenses due pursuant to the conditions set forth in Section 6 below, Silver Point shall not be required to continue such due diligence or negotiate Definitive Financing Documentation.

2. Titles and Roles.

Silver Point shall have the right (in consultation with you) to award such roles or titles as may be reasonably determined by Silver Point, to one or more other banks, financial institutions and other institutional lenders or affiliates thereof (together the "Participants"), in each case as determined by Silver Point. You agree that, except as contemplated above, no other agents, co-agents or arrangers will be appointed, no other titles will be awarded and no compensation (other than that expressly contemplated by this Commitment Letter and Definitive Financing Documentation) will be paid in connection with the Murabaha DIP Facility, unless you and we shall so agree.

3. Additional Participants.

In our sole discretion, we may commence our efforts to bring in additional Participants with respect to the Murabaha DIP Facility promptly upon your execution and delivery to us of this Commitment Letter. Timing for this, potential Participants to be approached, titles, allocations and division of fees, shall be determined by (and coordinated exclusively through) Silver Point in consultation with you. You agree actively to assist us in this process in a manner that is reasonably satisfactory to us.

4. Information.

You represent, warrant and covenant that (a)(i) no information which has been or is hereafter furnished by you or on your behalf in connection with the Murabaha DIP Facility including, without limitation, information provided in response to the diligence requests set forth on Exhibit C hereto and other confirmatory due diligence (other than the estimates, forecasts, projections and other forward-looking financial information regarding the future performance of the Company (collectively, the "Projections")) and (ii) no other information supplied or approved by you or on your behalf (other than the Projections) (such written information and other information being referred to herein collectively as the "Information"), taken as a whole contained (or, in the case of Information furnished after the date hereof, will contain), as of the time it was (or hereafter is) furnished, any material misstatement of fact or omitted (or will omit) as of such time to state any material fact necessary to make the statements therein taken as a

whole not misleading, in the light of the circumstances under which they were (or hereafter are) made and (b) the Projections that have been or will be made available to us by you or any of your representatives have been or will be prepared in good faith based upon assumptions that you believe to be reasonable at the time made and at the time such Projections are made available to us, it being recognized by the Participants and Silver Point that such Projections are not to be viewed as facts and that actual results during the period or periods covered by any such Projections may differ significantly from the projected results, and that no assurance can be given that the projected results will be realized. You understand that, in arranging the Murabaha DIP Facility, we will be entitled to use and rely on the Information and the Projections without responsibility for independent verification thereof.

5. Conditions Precedent.

Silver Point's agreement to provide commitments and agreements described herein, is subject to:

(a) Silver Point's completion of its business, legal, tax, financial, and accounting due diligence with respect to the Murabaha DIP Facility and the Company including, without limitation, due diligence with regards to the high priority matters as set forth on Exhibit C hereto and confirmatory due diligence, in each case, to Silver Point's full satisfaction with the results thereof, which completion shall occur no later than October [9], 2012;

(b) approval of this Commitment Letter and the Murabaha DIP Facility by Silver Point's credit committee, which approval shall occur no later than October [], 2012;

(c) Silver Point not becoming aware (whether as a result of its due diligence analyses and review or otherwise), after Silver Point has notified you in writing that the conditions precedent set forth in Sections 5(a) and 5(b) above have been satisfied, of any information not previously known to Silver Point which is materially negative information with respect to the property, assets, business, operations, liabilities, condition (financial or otherwise) or prospects of the Company, or which is inconsistent in a material and adverse manner with any such information or other matter disclosed to Silver Point prior to the satisfaction of the conditions precedent set forth in Sections 5(a) and 5(b) above;

(d) your written acceptance of, and compliance with, the terms and conditions, of the Fee Letter and pursuant to which you agree to pay, or cause to be paid, to Silver Point certain fees and expenses and to fulfill certain other obligations including the reimbursement of expenses as provided in this Commitment Letter;

(e) the other conditions set forth or referred to in the Murabaha DIP Term Sheet or, when executed, the Definitive Financing Documentation;

(f) the Company having reasonably cooperated with Silver Point in arranging the Murabaha DIP Facility, including, without limitation, by promptly providing Silver Point with all information reasonably deemed necessary by it in order to bring in additional Participants; and

(g) satisfaction of the conditions precedent set forth on Exhibit B hereto.

6. Expenses; Indemnification.

To induce Silver Point to issue this Commitment Letter and to proceed with the Definitive Financing Documentation, you hereby agree that all reasonable and documented fees and expenses (including the reasonable and documented fees and expenses of counsel and consultants) of Silver Point and its affiliates arising in connection with this Commitment Letter and the Murabaha DIP Facility and the preparation, negotiation, execution, delivery and enforcement of this Commitment Letter, the Fee Letter and the Definitive Financing Documentation (including in connection with our due diligence and syndication efforts), whether incurred before, on, or after the date hereof, shall be for your account (and that you shall, on demand, reimburse Silver Point and its affiliates for any reasonable and documented out-of-pocket outstanding and unreimbursed fees and expenses paid or incurred by them), whether or not the Murabaha DIP Facility is made available or the Definitive Financing Documentation is executed. Notwithstanding anything set forth herein, until Silver Point has notified you that the conditions precedent set forth in Sections 5(a) and 5(b) below have been satisfied, your obligation to reimburse the reasonable and documented fees and expenses of Silver Point shall be subject to a cap of ~~\$900,000~~[TBD] [Before satisfaction of Sections 5(a) and 5(b), the cap on expense reimbursement should be lower than \$900,000, in an amount to be discussed. After satisfaction of Sections 5(a) and 5(b), there should be a total cap on expense reimbursement in an amount to be determined. Also, in all instances the expenses shall be subject to Committee review and objection rights consistent with the order approving the Debtors' motion to reimburse expenses incurred by the Selected Lender]. You further, jointly and severally, agree to indemnify and hold harmless Silver Point, each Participant, and their respective affiliates and each director, officer, employee, representative and agent thereof (each, an "Indemnified Person") from and against any and all actions, suits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever which may be incurred by or asserted against or involve Silver Point, any Participant or any other such Indemnified Person as a result of or arising out of or in any way related to or resulting from (i) this Commitment Letter, the Definitive Financing Documentation, or any related transaction or (ii) the use or the contemplated use of the proceeds of the Murabaha DIP Facility and, upon demand, to pay and reimburse Silver Point, each Participant and each other Indemnified Person for any reasonable legal or other out-of-pocket expenses paid or incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding (including any inquiry or investigation) or claim (whether or not Silver Point, any Participant or any other such Indemnified Person is a party to any action or proceeding out of which any such expenses arise or such matter is initiated by a third party or by you or any of your affiliates); provided, however, that you shall not have to indemnify any Indemnified Person against any loss, claim, damage, expense or liability (a) to the extent same resulted from the gross negligence or willful misconduct of such Indemnified Person (as determined by a court of competent jurisdiction in a final and non-appealable judgment), (b) for any disputes solely among Indemnified Persons and not arising out of any act or omission of you or any of your subsidiaries or affiliates (other than any proceeding against any Indemnified Person fulfilling its role as agent or any similar role under the Murabaha DIP Facility) or (c) for a material breach of the obligations of such Indemnified Person (or any of such Indemnified Person's controlled affiliates or any of its or their respective officers, directors, employees, agents, controlling persons or members) under this Commitment Letter. Neither Silver Point nor any other Indemnified Person shall be responsible or liable to you or any other person or entity

for (x) any determination made by it pursuant to this Commitment Letter in the absence of gross negligence or willful misconduct on the part of such person or entity (as determined by a court of competent jurisdiction in a final and non-appealable judgment), (y) any damages arising from the use by others of information or other materials obtained through electronic, telecommunications or other information transmission systems or (z) any indirect, special, exemplary, incidental, punitive or consequential damages (including, without limitation, any loss of profits, business or anticipated savings) which may be alleged as a result of this Commitment Letter or the financing contemplated hereby.

7. Sharing Information; Absence of Fiduciary Relationship; Affiliate Activities.

Silver Point reserves the right to employ the services of its affiliates in providing the commitments and/or the services contemplated by this Commitment Letter and to allocate, in whole or in part, to its affiliates certain fees payable to Silver Point in such manner as Silver Point and its affiliates may agree in their sole discretion. You acknowledge that (i) Silver Point may share with any of its affiliates, and such affiliates may share with Silver Point, any information related to the Company, or any of the matters contemplated hereby and (ii) Silver Point and its affiliates may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which you may have conflicting interests regarding the transactions described herein or otherwise. Silver Point will not, however, furnish confidential information obtained from you by virtue of the transactions contemplated by this Commitment Letter, the Fee Letter or its other relationships with you to other companies (other than your and affiliates). You also acknowledge that Silver Point has no obligation to use in connection with the transactions contemplated by this Commitment Letter, or to furnish to you, confidential information obtained by it from other companies.

You further acknowledge and agree that (a) no fiduciary, advisory or agency relationship between you and us is intended to be or has been created in respect of any of the transactions contemplated by this Commitment Letter, irrespective of whether we or our affiliates have advised or are advising you on other matters, (b) we, on the one hand, and you, on the other hand, have an arms-length business relationship that does not directly or indirectly give rise to, nor do you rely on, any fiduciary duty on our part, (c) you are capable of evaluating and understanding, and you understand and accept, the terms, risks and conditions of the transactions contemplated by this Commitment Letter, (d) you have been advised that we and our affiliates are engaged in a broad range of transactions that may involve interests that differ from your interests and that we and our affiliates have no obligation to disclose such interests and transactions to you by virtue of any fiduciary, advisory or agency relationship, and (e) you waive, to the fullest extent permitted by law, any claims you may have against us or our affiliates for breach of fiduciary duty or alleged breach of fiduciary duty with respect to the Murabaha DIP Facility and agree that we and our affiliates shall have no liability (whether direct or indirect) to you in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of you, including your stockholders, employees or creditors.

8. Exclusivity.

You acknowledge and agree that Silver Point has been appointed exclusively to provide and arrange the Murabaha DIP Facility and that the syndication of the Murabaha DIP Facility

could be adversely affected if you or any of your affiliates raises, or attempts to raise, other financing prior to the Murabaha DIP Closing Date.

Save as set out below, from the date of acceptance of this Commitment Letter to the Murabaha DIP Closing Date or the termination of this Commitment Letter, you agree that you will not (and will ensure that none of your affiliates, agents, professionals or other representatives will) directly or indirectly raise or attempt to raise any debt financing (including debtor-in-possession financing or any similar transaction) or debt security to be syndicated, issued or privately placed by or on behalf of you or any of your affiliates (and there shall be no announcement, negotiations or discussion of, or any attempt to effect, any such syndication, issue or placement) other than to or with Silver Point or with the prior written consent of Silver Point.

In all events, the agreements in this Section 8 shall not prevent the Company's board of directors (or its equivalent, the "Board") from receiving any unsolicited proposal for debtor-in-possession financing or similar transaction during the Chapter 11 Cases from a third party and negotiating such proposal with a third party and providing due diligence information regarding the Company to such third party if the Board, on advice of its financial and legal advisors, determines (a "Determination") that doing so is reasonably required to comply with its fiduciary duties to the Company; provided that, in the event the Board or the Company receives any proposal, you shall promptly notify Silver Point of such receipt, and promptly deliver to Silver Point copies (or summaries) of all such proposal documents ~~and summaries of any and all oral and other communications between the Company or the Board, on the one hand, and the proposed counterparty under such debtor in possession financing or similar transaction on the other, and cooperate with Silver Point in its reasonable requests for further information and communications regarding such proposal;~~ and provided further that if the Company or the Board makes a Determination, (i) the Company shall immediately notify Silver Point in writing, and (ii) (a) Silver Point may ~~thereafter~~ terminate this Commitment Letter at any time if the Company has received Bankruptcy Court approval for an alternative debtor-in-possession financing or similar transaction and (b) the Company may terminate this Commitment Letter at any time if it has sought Bankruptcy Court approval ~~to execute definitive documentation regarding a fully-financed, for an~~ alternative debtor-in-possession financing or similar transaction ~~from a creditworthy counterparty not subject to due diligence or credit committee approval~~ if the Board has determined based upon advice of financial & legal advisors that termination of this Commitment Letter under such circumstance is reasonably required for the Board to comply with its fiduciary duties to the Company, in which case, under the circumstances of either of the immediately preceding clauses (a) or (b), the expense reimbursement described in Section 6 of this Commitment Letter and the portion of the Commitment Fee described in clause (y) of paragraph 1(b) of the Fee Letter will be payable ~~immediately in cash on the date Silver Point or the Company terminates this Commitment Letter, provided, that, with respect to the portion of the Commitment Fee described in clause (y) of paragraph 1(b)~~ in accordance with the terms of the Fee Letter; ~~if the Company determines (acting reasonably) that it has insufficient funds on hand to immediately pay such portion of the Commitment Fee in cash, such amount shall be payable on the date of the closing of such alternative debtor in possession financing or other similar transaction, with the first proceeds of such financing or other transaction,~~ and, in any event, for the avoidance of doubt, any accrued and/or earned but unpaid amounts hereunder or under the Fee Letter payable to Silver Point shall have administrative expense priority status in

the Chapter 11 Cases of the Debtor Obligors pursuant to section 503(b)(1) of the Bankruptcy Code.

9. Confidentiality.

This Commitment Letter is delivered to you on the understanding that neither this Commitment Letter nor the Fee Letter nor any of their terms or substance shall be disclosed, directly or indirectly, by you to any other person or entity except (a) to your affiliates, officers, directors, employees, attorneys, accountants and advisors who are directly involved in the consideration of this matter and on a confidential and need-to-know basis or (b) as required by applicable law or compulsory legal process or in connection with any pending legal proceeding (in which case you agree, to the extent permitted by applicable law, to inform us promptly thereof) or regulatory review; provided that you may disclose this Commitment Letter and the contents hereof (but you may not disclose the contents of the Fee Letter) to any rating agencies or pursuant to any public filings which in the opinion of your counsel are required pursuant to applicable law. Notwithstanding the foregoing, you shall be permitted, with prior notice to Silver Point, to furnish a copy of this Commitment Letter and the Fee Letter to any committee appointed in the Chapter 11 Case, the joint provisional liquidators appointed in the Cayman Island proceedings of Arcapita Investment Holdings Limited (the "Joint Provisional Liquidators"), the Office of the United States Trustee and such other parties in interest as may be necessary to obtain the required Bankruptcy Court approvals of the Murabaha DIP Facility and the agreements and obligations related thereto, in all cases on a confidential basis. You may file this Commitment Letter with the Bankruptcy Court and to the court overseeing the Cayman Island proceedings of Arcapita Investment Holdings Limited; you may also file the Fee Letter under seal with either court and may disclose the aggregate fees thereunder, as well as the portion of the Commitment Fee described in clause (y) of section 1(b) of the Fee Letter, on the record in either proceeding.

Silver Point and its affiliates will use all confidential information provided to it or such affiliates by or on behalf of you hereunder solely for the purpose of providing the commitments and services which are the subject of this Commitment Letter and shall treat confidentially all such information and this Commitment Letter and the Fee Letter (and the respective terms and substance set forth herein and therein); provided that nothing herein shall prevent Silver Point from disclosing any such information (a) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process (in which case Silver Point, to the extent permitted by law, agrees to inform you promptly thereof), (b) upon the request or demand of any regulatory authority having jurisdiction over Silver Point or any of its affiliates, (c) to the extent that such information becomes publicly available other than by reason of improper disclosure by Silver Point or any of its affiliates, (d) to the extent that such information is received by Silver Point from a third party that is not to its knowledge (after due inquiry) subject to confidentiality obligations to you, (e) to the extent that such information is independently developed by Silver Point without the use of confidential information, (f) to Silver Point's affiliates and their respective employees, legal counsel, independent auditors and other experts or agents who need to know such information and are informed of the confidential nature of such information and without the use of confidential information, (g) to potential Participants or assignees or any potential counterparty (or its advisors) to any swap or derivative transaction relating to the Company or any of its affiliates or any of their respective obligations, in each case who agree in

writing to be bound by the terms of this paragraph (or language substantially similar to this paragraph), (h) to the Bankruptcy Court for approval of this Commitment Letter, the Fee Letter and the Murabaha DIP Facility; provided further that such Confidential Information is filed under seal or to any other court of competent jurisdiction for purposes of establishing a “due diligence” defense, provided such information is filed under seal. Silver Point’s obligations under this paragraph shall automatically terminate and be superseded by the confidentiality provisions in the Definitive Financing Documentation upon the Murabaha DIP Closing Date.

Silver Point shall have the right to review and approve any public announcement or public filing made by you or your representatives relating to the Murabaha DIP Facility or in connection therewith, before any such announcement or filing is made (such approval not to be unreasonably withheld or delayed). Silver Point shall also have the right to review and approve any public announcement or public filing made by you or your representatives relating to Silver Point before any such announcement or filing is made (such approval not to be unreasonably withheld or delayed).

10. Assignments; Etc.

This Commitment Letter (and your rights and obligations hereunder) shall not be assignable by you without the prior written consent of Silver Point (and any attempted assignment without such consent shall be null and void), is intended to be solely for the benefit of the parties hereto (and Indemnified Persons), is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto (and Indemnified Persons) and may not be relied upon by any person or entity other than you.

Silver Point shall not assign its rights hereunder absent the prior written consent of the Company (and any attempted assignment without such consent shall be null and void); provided that such consent shall not be unreasonably withheld and any and all commitments and other obligations of, and services to be provided by Silver Point hereunder may be performed, and any and all rights of Silver Point hereunder may be exercised, by or through any of its affiliates or branches.

11. Amendments; Governing Law; Etc.

This Commitment Letter and the Fee Letter may not be amended or modified, or any provision hereof waived, except by an instrument in writing signed by you and Silver Point. This Commitment Letter and the Fee Letter may be executed in any number of counterparts, each of which shall be an original and all of which, when taken together, shall constitute one agreement. Delivery of an executed signature page of this Commitment Letter or the Fee Letter by facsimile (or other electronic) transmission shall be effective as delivery of a manually executed counterpart hereof. Section headings used herein and in the Fee Letter are for convenience of reference only, are not part of this Commitment Letter or the Fee Letter, as the case may be, and are not to affect the construction of, or to be taken into consideration in interpreting, this Commitment Letter or the Fee Letter, as the case may be. You acknowledge that information and documents relating to the Murabaha DIP Facility may be transmitted through Intralinks, the internet, email or similar electronic transmission systems, and that Silver Point shall not be liable for any damages arising from the use by others of information or documents transmitted in such manner. Silver Point may, in consultation with you, place

customary advertisements in financial and other newspapers and periodicals or on a home page or similar place for dissemination of customary information on the Internet or worldwide web as it may choose, and circulate similar promotional materials, after the Murabaha DIP Closing Date in the form of a “tombstone” or otherwise describing the names of the Company and its affiliates (or any of them), and the amount, type and closing date of the transactions contemplated hereby, all at the expense of Silver Point. This Commitment Letter and the Fee Letter set forth the entire agreement between the parties hereto as to the matters set forth herein and supersedes all prior understandings, whether written or oral, between us with respect to the matters herein. Matters that are not covered or made clear in this Commitment Letter or in the Fee Letter are subject to mutual agreement of the parties hereto. **THIS COMMITMENT LETTER AND THE FEE LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF, TO THE EXTENT THAT THE SAME ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION).**

12. Jurisdiction.

Each of the parties hereto hereby irrevocably and unconditionally (a) submits, for itself and its property, to the exclusive jurisdiction of ~~any New York State court or Federal court of the United States of America sitting in the County~~ the Bankruptcy Court for the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Commitment Letter or the transactions contemplated hereby, or for recognition or enforcement of any judgment, and agrees that all claims in respect of any such action or proceeding may be heard and determined only in such courts located within New York County, provided, however, that Silver Point shall be entitled to assert jurisdiction over you and your property in any court in which jurisdiction may be laid over you or your property, (b) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Commitment Letter, the Fee Letter or the transactions contemplated hereby or thereby in any New York State or Federal court, as the case may be, (c) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court and (d) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Service of any process, summons, notice or document by registered mail or overnight courier addressed to you at the address above shall be effective service of process against you for any suit, action or proceeding brought in any such court.

13. Waiver of Jury Trial.

EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, SUIT, CLAIM OR COUNTERCLAIM BROUGHT BY OR ON BEHALF OF ANY PARTY RELATED TO OR ARISING OUT OF THIS COMMITMENT LETTER, THE FEE LETTER OR THE PERFORMANCE OF SERVICES HEREUNDER OR THEREUNDER.

14. Surviving Provisions.

[The provisions of Sections 2 [necessary?], 6, 7, 9, 10, 11 and 12 of this Commitment Letter shall remain in full force and effect regardless of whether Definitive Financing Documentation shall be executed and delivered and notwithstanding the termination of this Commitment Letter and our agreements to provide commitments and perform the services described herein]; provided that your obligations under this Commitment Letter, other than those provisions relating to confidentiality and the payment of agency fees to Silver Point as provided in the Fee Letter, shall automatically terminate and be superseded by the Definitive Financing Documentation upon the initial funding thereunder and the payment of all amounts owing at such time hereunder and under the Fee Letter. [The provisions of Sections 6, 7, 9, 10, 11, 12, 13 and 14 of this Commitment Letter shall survive the expiration or termination of this Commitment Letter regardless of whether Definitive Financing Documentation shall be executed and delivered.] [The last sentence is duplicative of the first clause of the first sentence.]

15. PATRIOT Act Notification.

Silver Point hereby notifies you that pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the “PATRIOT Act”), Silver Point is required to obtain, verify and record information that identifies the Company under the Murabaha DIP Facility, which information includes the name, address, tax identification number and other information regarding the Company that will allow Silver Point to identify the Company in accordance with the PATRIOT Act. This notice is given in accordance with the requirements of the PATRIOT Act and is effective as to Silver Point and each Participant.

16. Termination and Acceptance.

To the extent the transactions contemplated herein have not been consummated, (x) Silver Point shall have the right to terminate its agreement to provide commitments and perform the services described herein by giving written notice to you (without further action or notice and without further obligation to you) any time after the later of (a) October 15, 2012 or (b) 21 days after the Company has been notified in writing that the conditions precedent set forth in Sections 5(a) and 5(b) above have been satisfied; provided that, in no case may Silver Point terminate if such failure to meet one of the foregoing deadlines is a sole and direct consequence of Silver Point’s material breach of its material obligations hereunder, and (y) you have the right to terminate this Commitment Letter by giving written notice to Silver Point (without further action or notice and without further obligation to Silver Point) if Silver Point is in material breach of its material obligations hereunder or the conditions set forth in Sections 5(a) and 5(b) hereof shall not have been satisfied by the dates set forth therein.

If the foregoing correctly sets forth our agreement with you, please indicate your acceptance of the terms of this Commitment Letter by returning to us executed counterparts hereof and of the Fee Letter and providing the Expense Deposit (as defined therein) not later than 11:59 P.M., New York City time, on September 25, 2012. Silver Point’s agreement to provide commitments and perform the services described herein, will expire automatically (and without further action or notice and without further obligation to you) at such time in the event that we have not received such executed counterparts in accordance with the immediately preceding sentence.

[Remainder of this page intentionally left blank]

We are pleased to have been given the opportunity to assist you in connection with this important financing.

Very truly yours,
SILVER POINT FINANCE, LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

Accepted and agreed to as of
the date first above written:

ARCAPITA INVESTMENT HOLDINGS
LIMITED

By:

Name:

Title:

ARCAPITA BANK B.S.C.(c)

By:

Name:

Title:

ARCAPITA LT HOLDINGS LIMITED

By:

Name:

Title:

WINDTURBINE HOLDINGS LIMITED

Name:

Title:

AEID II ~~HOLDING~~HOLDINGS LIMITED

By:

Name:

Title:

RAILINVEST HOLDINGS LIMITED

By:

Name:

Title:

Signature Page to Commitment Letter

MURABAHA DIP FACILITY TERM SHEET

Purchaser	<ul style="list-style-type: none"> ▪ Arcapita Investment Holdings Limited (“<u>AIHL</u>”), as a obligor and purchaser under the Murabaha DIP Facility and debtor-in-possession in the Chapter 11 Cases (defined below)
Guarantors	<ul style="list-style-type: none"> ▪ Arcapita Bank B.S.C.(c) (“<u>Arcapita</u>”), each of AIHL’s subsidiaries (other than Falcon Gas Storage Company, Inc.)² that is a debtor and debtor-in-possession (the “<u>Subsidiary Debtors</u>” and, together with AIHL, the “<u>Debtors</u>”) in the chapter 11 cases pending in the U.S. Bankruptcy Court for the Southern District of New York, Case No. 12-11076 (the “<u>Chapter 11 Cases</u>”), Arcapita Investment Management Limited (“<u>AIML</u>”), Arcapita Inc., Arcapita Structured Finance Ltd, Arcapita Investment Funding Limited, Arcapita Industrial Management Ltd, Arcapita Limited and Arcapita Pte. Limited (Singapore) (collectively with the Subsidiary Debtors, the “<u>Guarantors</u>” and, collectively with the Debtors, the “<u>Obligors</u>”) ³, <u>provided</u> that the guarantee will be structured to avoid unreasonably material interference with the EuroLog IPO [(to be defined)]⁴.
Investment Agent	<ul style="list-style-type: none"> ▪ Silver Point Finance, LLC (“<u>Silver Point</u>”) or an affiliate or designee thereof, as investment agent on behalf of the Participants (in such capacity, the “<u>Investment Agent</u>”)
Participants	<ul style="list-style-type: none"> ▪ The Investment Agent and the banks and financial institutions that from time to time become

² These subsidiaries are: (i) Arcapita LT Holdings Limited (“ALTHL”); (ii) WindTurbine Holdings Limited (“WTHL”); (iii) AEID II Holding Limited (“AEID II”); and (iv) RailInvest Holdings Limited (“RailInvest”). The exclusion of Falcon Gas Storage Company, Inc. and any non-Debtor affiliates remains subject to due diligence.

³ Other non-Debtor affiliates to be included as Obligors if Silver Point deems them material and if granting such entities’ assets as collateral is not prohibitive or unreasonable.

⁴ Subject to due diligence.

	party to the Investment Agency Agreement
Murabaha DIP Facility	<ul style="list-style-type: none"> A senior secured debtor in possession US Dollar term Murabaha facility (the “<u>Murabaha DIP Facility</u>”) made available by the Investment Agent in an aggregate amount up to US\$150,000,000 for general corporate purposes in accordance with a rolling 13-week budget reasonably satisfactory to the Participants and for the other purposes listed under “Use of Proceeds” below (the “<u>Budget</u>”).⁵
Murabaha DIP Commitment Letter	<ul style="list-style-type: none"> Silver Point and the Obligors have executed that certain \$150,000,000 Murabaha Debtor-In-Possession Facility Commitment Letter dated September 25, 2012 (the “<u>Murabaha DIP Commitment Letter</u>”)
Investment Agency Agreement	<ul style="list-style-type: none"> Agreement to be entered into by AIHL, the Guarantors, the Investment Agent, the Participants and others by which the Participants, among other things, appoint the Investment Agent as their agent to enter into the Murabaha Transactions contemplated by the Murabaha DIP Facility
Murabaha Transactions	<ul style="list-style-type: none"> Each transaction involves the sale by the Investment Agent (on behalf of the Participants) of Commodities specified by AIHL pursuant to Purchase Contracts. Under each Purchase Contract and the Murabaha DIP Facility, AIHL is obliged to pay the Deferred Sale Price for the Commodities.
Murabaha WCF Entities	<ul style="list-style-type: none"> Certain of those Cayman Islands WCF entities owned by AIHL and used for making Murabaha investments in the Debtors’ portfolio companies (collectively, the “<u>Murabaha WCF Entities</u>”)
Commodities	<ul style="list-style-type: none"> In relation to a Purchase Contract, the Shari’ah-compliant commodities as specified in the transaction request thereunder which may comprise London Metal Exchange metals and such

⁵ Credit support package, intercreditor provisions, and any adequate protection package for existing secured parties to be reasonably satisfactory to Silver Point.

	<p>other Shari'ah compliant commodities as may be agreed from time to time by AIHL and the Investment Agent and, in any event, will only include allocated commodities physically located outside the United Kingdom</p>
Purchase Contract	<ul style="list-style-type: none"> ▪ Each agreement for the sale by the Investment Agent of Commodities and the purchase of those Commodities by AIHL pursuant to the Murabaha DIP Facility (including each replacement purchase contract)
Deferred Sale Price	<ul style="list-style-type: none"> ▪ In relation to a Purchase Contract, an amount equal to the aggregate sum of: <ul style="list-style-type: none"> - The Cost Price, - All unpaid accrued Profit, - All other unpaid accrued amounts (including mandatory costs, increased costs and VAT (if any)) due and payable under the Murabaha DIP Facility on the Maturity Date
Cost Price	<ul style="list-style-type: none"> ▪ The amount (in US Dollars) payable or paid by the Investment Agent to the Seller for the purchase of Commodities by the Investment Agent (on a spot basis on the value date upon which the payment is made, or is to be made) to be on-sold by the Investment Agent to AIHL under the Purchase Contract.
Profit	<ul style="list-style-type: none"> ▪ $Cost\ Price * (L + M) * (N / 360)$ ▪ Where: <ul style="list-style-type: none"> - L is LIBOR, - M is the Margin and - N is the number of days to elapse from, and including, the date of the Purchase Contract in respect of the relevant Commodities, but excluding the Maturity Date

Seller	<ul style="list-style-type: none"> ▪ Broker to be determined
LIBOR	<ul style="list-style-type: none"> ▪ 3 month LIBOR contracts with LIBOR floor of 2.00%
Margin	<ul style="list-style-type: none"> ▪ 10.50% percent per annum
Availability Period	<ul style="list-style-type: none"> ▪ Single draw at closing unless the Court requires the Debtors to seek interim relief with respect to the Murabaha DIP Facility. ▪ If more than one draw is required, the Company shall pay to Silver Point 10.5 <u> </u> % per annum (to be calculated on the number of days lapsed on the basis of 360 days) on the undrawn commitments for the period commenced with the Murabaha DIP Closing Date until the last day the available commitments are reduced to zero or are terminated, payable on each of (x) the date that is the earlier of (i) the date of each drawing of the Murabaha DIP Facility and (ii) the date of the next Purchase Contract in respect of the relevant Commodities and (y) the date the availability of the commitments is reduced to zero.
Deferred Payment Period⁶	<ul style="list-style-type: none"> ▪ The Maturity Date or, if applicable as provided herein, the Extended Maturity Date
Prepetition Secured Indebtedness	<ul style="list-style-type: none"> ▪ Arcapita is the counterparty under two Murabaha facilities made available by Standard Chartered Bank (“<u>SCB</u>”): <ul style="list-style-type: none"> - A US\$50 million facility, dated May 30, 2011, of which approximately US\$46.6 million is outstanding and which matured on March 28, 2012 (the “<u>SCB May 2011 Facility</u>”); and - A US\$50 million facility dated December 22, 2011, of which approximately US\$50.1 million is outstanding and which matured on March 28, 2012 (the “<u>SCB December 2011</u>”);

⁶ The Deferred Sale Price (excluding the Cost Price (which will be payable on the Maturity Date or, if applicable, the Extended Maturity Date)) will be payable at the end of each 3 month period (or such shorter period as reasonably determined by Silver Point) and on the Maturity Date or, if applicable, the Extended Maturity Date.

Facility” and, together with the SCB May 2011 Facility, the “SCB Facilities”).

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

Priority and Liens⁷

- The Murabaha DIP Facility will be a secured facility which will:
 - (i) Pursuant to section 364(c)(1) of the Bankruptcy Code, be entitled to superpriority administrative claim status having priority over any and all other claims;
 - (ii) Pursuant to section 364(c)(2) of the Bankruptcy Code, be secured by a perfected first-priority lien on all now owned or after acquired assets of Arcapita, AIHL and ALTHL, in each case, that are not otherwise subject to a lien (including (a) AIHL’s interests in the Murabaha WCF Entities (but only those that are reasonably determined to be material by Silver Point), (b) AIHL’s interests in the LT Caycos [to be defined] (but only those that are reasonably determined to be material by Silver Point) and (c) AIHL’s non-syndicated interests in the syndication companies (but only those that are reasonably determined to be material by Silver Point)); and

⁷ Credit support package, intercreditor provisions, and adequate protection package for secured parties to be [reasonably](#) satisfactory to Silver Point.

- (iii) Pursuant to section 364(c)(3) of the Bankruptcy Code, be secured by a perfected junior lien on all now owned or after acquired assets of the Debtor Obligors that are subject to (x) any valid, perfected and non-avoidable lien in existence on the Petition Date or (y) any valid lien in existence on the Petition Date that is perfected subsequent to the Petition Date by section 546(b) of the Bankruptcy Code (including, in each case, the liens on the collateral securing the obligations under the SCB Facilities) (together with the assets described in clause (ii) above, the “DIP Collateral”).
- (iv) Notwithstanding the foregoing, DIP Collateral will not include actions for preferences, fraudulent conveyances, and other avoidance power claims under sections 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code ~~(“Avoidance Actions”); provided, however the proceeds of Avoidance Actions shall be available to pay any administrative claim held by Silver Point or the Participants.~~
- (v) For the avoidance of doubt, be secured by perfected first-priority liens on all now owned or after acquired assets of the non-Debtor Obligors (but only those that are reasonably determined to be material by Silver Point); provided, however, (a) with respect to AIML, the Murabaha DIP Facility may, subject to due diligence, be secured by only AIML’s performance and management fee receivables and (b) with respect to AIFL, the Murabaha DIP Facility may, subject to due diligence, not be secured by AIFL’s interests in PointPark Properties s.r.o.⁸

Murabaha DIP Closing Date

- The Murabaha DIP Facility shall close promptly on the entry of an order of the Bankruptcy Court approving the financing (in form and substance satisfactory to the Investment Agent, the “Murabaha DIP Order”) and the satisfaction or waiver by the Investment Agent of the “Conditions to Murabaha DIP Closing and Transaction” as described below (the “Murabaha DIP Closing Date”).

⁸ To be structured to avoid ~~unreasonably~~ material interference with the EuroLog IPO.

Maturity Date	<ul style="list-style-type: none">▪ AIHL shall pay the Deferred Sale Price on the earliest of:<ul style="list-style-type: none">(i) March 31, 2013,(ii) The Effective Date of a chapter 11 plan for the Debtors,(iii) The date the Bankruptcy Court orders the conversion of the bankruptcy case of any Debtor Obligor to a chapter 7 liquidation or the dismissal of the bankruptcy case of any Debtor Obligor,(iv) the acceleration of the Deferred Sale Price in accordance with the definitive agreement in respect of the Murabaha DIP Facility (the “<u>Master Murabaha DIP Agreement</u>”), and(v) the date upon which the sale of all or substantially all of the Obligors’ assets is consummated. ▪ Subject to satisfaction of certain Chapter 11-related milestones to be determined if set forth in <u>the definitive documentation</u>, no more than 30 and no fewer than 7 days prior to the Maturity Date, AIHL, in its sole discretion, delivers a written notice to the prospective lender indicating that AIHL wishes to extend the Maturity Date by an additional 180 days, then, so long as no default or event of default has occurred and is continuing, the Maturity Date will be extended to the date which is 180 days from March 31, 2013 (the “<u>Extended Maturity Date</u>”); provided, however, that on or before the Maturity Date, AIHL pays to the Investment Agent a fee in the amount of one percent (1.00%) of the maximum amount of the Murabaha DIP Facility as of the Maturity Date (the “<u>Extension Fee</u>”)
Use of Proceeds	<ul style="list-style-type: none">▪ Pay profits, fees, and other expenses due and payable under the Murabaha DIP Facility ▪ Pay other amounts in accordance with the Budget including, without limitation, investment deal fundings to the extent the Participants have a first priority security interest in such

investment deal fundings⁹

- Pay amounts due under the Carve Out (as defined herein)
- No portion of the Murabaha DIP Facility or the DIP Collateral may be used to commence or prosecute any action, proceeding, or objection with respect to or related to any claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, or obligations that are subjects of the Release (as defined herein)

Carve Out

- “Carve Out” shall mean: [Carve Outs should run from a notice invoking the Carve Out and not a notice of Event of Default.]
 - a. any unpaid fees due to the United States Trustee pursuant to 28 U.S.C. § 1930 or otherwise and any fees due to the clerk of the Bankruptcy Court,
 - b. the reasonable fees and expenses approved by the Bankruptcy Court incurred by a trustee under section 726(b) or 1104 of the Bankruptcy Code in an aggregate amount not to exceed US\$25,000,
 - c. the reasonable and documented expenses of members of the official committee of unsecured creditors (the “Committee”) appointed in the chapter 11 cases (excluding fees and expenses of professional persons employed by Committee and / or such Committee member individually) ~~in an amount not to exceed US\$75,000,~~
 - d. to the extent allowed at any time, all unpaid fees and expenses allowed by the Bankruptcy Court of professionals or professional firms retained pursuant to sections 327, 328, 330, 363, or 1103 of the Bankruptcy Code (the “Professional Persons”); and the reasonable fees and expenses of the Joint Provisional Liquidators, in each case, that were incurred or

⁹ Portfolio companies to be funded by Murabaha WCF Entities whose interests are pledged to Participants on a First Lien basis, subject to due diligence.

accrued through the date upon which AIHL receives from the Investment Agent a written notice of an [\[Event of Default\]](#), and

- e. to the extent allowed at any time, all fees and expenses of Professional Persons incurred after the date upon which AIHL receives from the Investment Agent actual written receipt of an [\[Event of Default\]](#), in the aggregate amount not to exceed US\$15,000,000; provided that:
- (1) the dollar limitations in clause (e) above on fees and expenses shall not be reduced by the amount of any compensation or reimbursement of expenses incurred by or paid to any Professional Person or the Joint Provisional Liquidator prior to the written notification of AIHL by the Investment Agent of the occurrence of an [\[Event of Default\]](#) in respect of which the Carve Out is invoked or by any fees, expenses, indemnities, or other amounts paid to the Investment Agent, Participant, or their respective attorneys or agents under the DIP Murabaha Facility or otherwise, and
 - (2) to the extent the dollar limitation in clause (e) on fees and expenses is reduced by an amount as a result of payment of such fees and expenses during the continuation of an [\[Event of Default\]](#), and such [\[Event of Default\]](#) is subsequently cured or waived, such dollar limitation shall be increased by an amount equal to the amount by which it has been so reduced

Mandatory Prepayments¹

- The Murabaha DIP Facility will be subject to customary mandatory prepayments [\(including exceptions and carve-outs to be agreed\)](#) to be included in the definitive legal documentation of the Master Murabaha DIP Agreement (including prepayments with the proceeds of the incurrence of financing (other than under the Murabaha DIP Facility), non-ordinary course sales of assets, tax refunds, and casualty events by the Obligor).

¹ [Documents to provide for optional prepayment at any time without penalty or premium.](#)

Representations	<ul style="list-style-type: none">▪ Representations and warranties customary or appropriate in the context of the proposed Murabaha DIP Facility
Affirmative Covenants	<ul style="list-style-type: none">▪ Covenants customary or appropriate in the context of the proposed Murabaha DIP Facility
Negative Covenants	<ul style="list-style-type: none">▪ Covenants customary or appropriate in the context of the proposed Murabaha DIP Facility
Financial and Reporting Covenants	<ul style="list-style-type: none">▪ Financial covenants to include compliance with the expenditure categories detailed under the Budget with actual results to be tested against such Budget on a rolling four-week aggregate basis, subject to a permitted variance of 10% from the aggregate expenditures under the Budget for each applicable four-week test period (the “<u>Permitted Variation</u>”); provided that (i) <u>[</u>line items other than the “Deal-Fundings” line item (as set forth in the most recent Budget provided) shall be subject to a separate permitted variance of 10% from the aggregate expenditures for such line items under the Budget for each applicable four-week test period and (ii) the “Deal Fundings” line item shall be subject to a separate permitted variance of 10% from the expenditures for such line item under the Budget for each applicable four-week test period.<u>]</u> <u>[To be discussed.]</u>▪ Delivery of annual, semi-annual and quarterly financial statements.▪ Delivery of quarterly report on value of a subset (to be determined) of the investment assets by agreed third party valuation expert.▪ <u>[</u>Other financial covenants to be discussed, but shall include a collateral value coverage covenant of 3.0:1.0 based upon regularly updated agreed third party valuation of DIP Collateral.<u>]</u>▪ The Obligors shall allow the Investment Agent and the Participants reasonable access to the Obligors’ representatives and books and records during regular business hours to monitor financial performance, Budget compliance, and the DIP Collateral.

Conditions to Murabaha DIP Closing and Transaction	<ul style="list-style-type: none">▪ The obligation of the Investment Agent (on behalf of the Participants) to enter into Murabaha Transactions under the Murabaha DIP Facility will be subject to the conditions precedent set forth (i) in the Murabaha DIP Commitment Letter, (ii) on Exhibit B to the Murabaha DIP Commitment Letter and (iii) other conditions precedent that are customary or appropriate in the context of the proposed Murabaha DIP Facility.
Murabaha DIP Order	<ul style="list-style-type: none">▪ The Murabaha DIP Order shall be reasonably satisfactory to the Investment Agent and the Participants and shall include provisions customary or appropriate in the context of the proposed Murabaha DIP Facility.
Events of Default	<ul style="list-style-type: none">▪ The Master Murabaha DIP Agreement shall contain events of default customary or appropriate in the context of the proposed Murabaha DIP Facility, including but not limited to:<ul style="list-style-type: none">- The entry of an order dismissing the case or converting any Debtor's case to a chapter 7 case;- The entry of an order appointing a chapter 11 trustee in any Debtor's case or an examiner with enlarged powers under section 1106 of the Bankruptcy Code;- The entry of an order granting any other claim superpriority status or a lien equal or superior to that granted to the prospective lender for the ratable benefit of the Participants;- The entry of an order staying, reversing, vacating, or modifying the Murabaha DIP Facility or the Final Order without the prospective lender's prior written consent;- The failure of AIHL to pay the Deferred Sale Price or fees when due;- The failure of any Obligor to comply with financial or certain other covenants;- Any representation or warranty by any Obligor shall be incorrect in any material respect when made;

	<ul style="list-style-type: none"> - The entry of an order granting relief from the automatic stay so as to allow a third party to proceed against any material asset of any of the Obligor with a value in excess of US\$[TBD]¹⁰; - The violation of any material term, provision or condition in the Murabaha DIP Order; - The making of any payment or disbursement that is not set forth in the Budget <u>subject to Permitted Variation</u> without the prior written consent of the prospective lender <u>Agent</u>,⁺² and - Any adverse deviation of more than the Permitted Variation from the amount set forth for the total expenditures [(or expenditures relating to the “Deal Fundings” and non-“Deal Fundings” line items thereof as provided above)] under the Budget for any four-week budget period.
Remedies	<ul style="list-style-type: none"> ▪ The Master Murabaha DIP Agreement and Murabaha DIP Order shall contain remedies customary or appropriate to be determined in the context of the proposed Murabaha DIP Facility, including, without limitation, foreclosing on the DIP Collateral.
Release	<ul style="list-style-type: none"> ▪ The Obligor will provide customary releases and exculpations for any claims, demands, liabilities, responsibilities, disputes, remedies causes of action, indebtedness, or obligations related to or arising out of the Murabaha DIP Facility (the “<u>Release</u>”).
Conversion to Murabaha Exit Facility	<ul style="list-style-type: none"> ▪ At AIHL’s election, the outstanding Murabaha DIP Facility shall be paid off and satisfied from the proceeds of a new Murabaha exit facility to be provided by the Investment Agent and the Participants (collectively, the “<u>Murabaha Exit Facility</u>”).

¹⁰ Subject to due diligence.

⁺² A “miscellaneous” line item may be included in the Budget in an amount to be agreed.

- Maturity of Murabaha Exit Facility: the date which is the three-year anniversary of the effective date of the Plan.
- Profit for the Murabaha Exit Facility: shall be calculated on a similar basis as Profit under the Murabaha DIP Facility except that the Margin may be increased by up to 2.00% per annum.
- Mandatory prepayments shall be made in respect of asset sales in an amount of net proceeds equal to a percent, to be agreed, of a release price to be agreed for such asset, with remaining proceeds made available to the Company for general corporate purposes (so long as no default or event of default has occurred and is continuing).
- Until paid in full, the Murabaha Exit Facility shall have payment priority rights with respect to proceeds of 75% of the net excess cash. “Net excess cash” to be defined, but shall be cash of AIHL net of anticipated expenses, minimum liquidity, and structurally prior costs, expenses and obligations.
- Fees, call protection, covenants and other terms to be ~~determined~~ contained in the definitive documents for the DIP.

Governing Law

- The Master Murabaha DIP Agreement and other finance documents in connection with the Murabaha DIP Facility shall be governed by the laws of the state of New York (or, as and where applicable, local jurisdictions solely for the purposes of perfecting liens on the DIP Collateral).

CONDITIONS PRECEDENT TO BORROWING UNDER DIP FACILITY

Capitalized terms used in this Exhibit B but not defined herein shall have the meanings set forth in the commitment letter to which this Exhibit B is attached (the "Commitment Letter") and in the other Exhibits to the Commitment Letter. In the case of any such capitalized term that is subject to multiple and differing definitions, the appropriate meaning thereof in this Exhibit B shall be determined by reference to the context in which it is used.

The transactions under the Murabaha DIP Facility on the Murabaha DIP Closing Date shall be subject to the following additional conditions precedent:

1. Murabaha DIP Facility Documentation: The execution and delivery of definitive collateral and other credit documentation consistent with the terms of the Commitment Letter and the Murabaha DIP Term Sheet, in each case prepared by counsel to Silver Point and otherwise satisfactory to Silver Point (the "Definitive Financing Documentation").
2. Murabaha DIP Order: The Murabaha DIP Order shall have been entered by the Bankruptcy Court on or prior to November 30, 2012 and shall be in full force and effect and unstayed.
3. Budget; Financial Statements: The Participants shall have received copies of (i) a 13-week cash flow forecast prepared by AIHL (as supplemented from time to time in accordance with the Murabaha DIP Facility, the "Budget") in form and substance satisfactory to Silver Point and (ii) such historical and pro forma financial statements with respect to such periods as Silver Point may reasonably request, all of the foregoing to be in form and substance reasonably satisfactory to Silver Point.
4. Shari'ah Board Approval: The Obligors' "Shari'ah Advisory Board" shall approve the execution of the Murabaha DIP Facility and the finance documents and issue a "Fatwa" that the Murabaha DIP Facility and the finance documents are in compliance with Shari'ah principles, as well as related Shari'ah compliance representations, warranties and covenants.
5. Intercreditor Arrangements Intercreditor arrangements with or among Silver Point, the Company and/or third parties shall be in form and substance satisfactory to Silver Point.
6. Opinion from Third Party Shari'ah Consultant The Participants shall have received an opinion from a third party Shari'ah consultant reasonably satisfactory to Silver Point.
7. No Material Adverse Effect: [Since the date of the Murabaha DIP Commitment Letter, nothing shall have occurred and Silver Point and the Participants shall not have become

aware of any facts or conditions not previously known which has had, or could reasonably be expected to have, a material adverse effect, provided that the continuation of the Chapter 11 Cases shall not constitute a material adverse effect. [\[Remove material adverse effect clause as covered in the Commitment Letter.\]](#)

8. Fees and Expenses: All reasonable and documented costs, fees, expenses (including, without limitation, legal fees and expenses and the fees and expenses of any third party Shari'ah consultant and the fees, costs and expenses of the commodity brokers, to the extent the foregoing are reasonable and documented) and other compensation contemplated by the Fee Letter and herein, payable to Silver Point and the Participants or otherwise payable, shall have been paid to the extent due.
9. Events of Default: There shall exist no default or Event of Default (including, without limitation, with respect to the collateral value coverage covenant).
10. Representations and Warranties: All representations and warranties contained in the Commitment Letter, the Murabaha DIP Term Sheet and the Definitive Credit Documentation shall be true and correct in all material respects.
11. Miscellaneous: The Participants shall have received (x) legal opinions from counsel (including, without limitation, New York counsel) covering matters reasonably acceptable to Silver Point and (y) appropriate officer certifications relating to closing conditions and items to be delivered in connection therewith.

DUE DILIGENCE TOPICS

The due diligence topics listed below are high priority matters. However, Silver Point's diligence requests may be broader. Silver Point reserves its rights to request additional information in connection with its diligence efforts pursuant to the Commitment Letter.

With respect to (i) Freightliner, (ii) J. Jill, (iii) Honiton, (iv) Arcapita European Industrial I, (v) Arcapita European Industrial II, (vi) Arcapita European Industrial Yielding I, (vii) Viridian, (viii) US Senior Living (Fountains), (ix) Lusail and (x) such other subsidiaries of Arcapita Bank B.S.C.(c) identified as material as a result of confirmatory due diligence (each of the entities described in clauses (i) – (x) an "Arcapita Company"), Silver Point requests confirmatory diligence with respect to each of the following:

1. Economic rights and obligations of each Arcapita Company, including, without limitation, confirmation of the distribution waterfalls and payment of management fees;
2. The governance and voting rights of each Arcapita Company;
3. Ownership of the collateral and material assets held by the Obligor as well as each Arcapita Company that is not an Obligor, including, in each case, applicable valuations;
4. Liens, restrictions, rights and other obligations with respect to a transfer, disposition or pledge of any Arcapita Company's capital stock or assets (including, for the avoidance of doubt, information regarding any limitations on establishing, or requirement to subordinate, the DIP Collateral package for the proposed transaction); and
5. Rights of third parties potentially triggered by the filing by the Company Group of the chapter 11 cases pending in the U.S. Bankruptcy Court for the Southern District of New York, Case No. 12-11076 and/or the Proposed Transaction, including, but not limited to, technical defaults, litigations, notice requirements, potential change of control or termination rights or obligations.

[4839-9549-9537, v. 2](#)

Exhibit B

Fee Letter reflecting the Committee's proposed revisions - **REDACTED**