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

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

**SUPPLEMENT TO DEBTORS’ MOTION FOR THE ENTRY OF INTERIM
AND FINAL ORDERS PURSUANT TO 11 U.S.C. §§ 105, 362, 363(b)(1), 363(m),
364(c)(1), 364(c)(2), 364(c)(3), AND 364(e) AND BANKRUPTCY RULES 4001 AND 6004
(I) AUTHORIZING DEBTORS (A) TO ENTER INTO AND PERFORM UNDER
DIP AGREEMENT, AND (B) TO OBTAIN CREDIT ON A SECURED
SUPERPRIORITY BASIS, (II) SCHEDULING FINAL HEARING PURSUANT TO
BANKRUPTCY RULES 4001(b) AND (c) AND (III) GRANTING RELATED RELIEF**

Arcapita Bank B.S.C.(c), Arcapita Investment Holdings Limited (“*AIHL*”), Arcapita LT Holdings Limited, WindTurbine Holdings Limited, AEID II Holdings Limited and RailInvest Holdings Limited, as debtors and debtors in possession (collectively, the “*Debtors*” and each, a “*Debtor*”) in the above-captioned chapter 11 cases (collectively, the “*Chapter 11 Cases*”) file this supplement (the “*Supplement*”) in connection with the *Debtors’ Motion for the Entry of Interim and Final Orders pursuant to 11 U.S.C. §§ 105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3) and Bankruptcy Rules 4001 and 6004 (I) Authorizing Debtors (A) To Enter into and Perform under DIP Agreement, and (B) To Obtain Credit on a Secured Superpriority Basis, (II) Scheduling Final Hearing pursuant to Bankruptcy Rules 4001(b) and (c) and (III)*

Granting Related Relief [Docket No. 690] (the “**DIP Motion**”) dated December 4, 2012 (the “**Initial Filing Date**”) and represent as follows:

STATEMENT¹

1. The DIP Transaction, if approved, will facilitate the Debtors’ emergence from chapter 11 and enable the Debtors to support the value of their portfolio companies and investments. The Debtors determined to enter into the DIP Transaction after an exhaustive solicitation and auction process, resulting in the Debtors’ execution of the Fortress Commitment Letter. This Court approved the Debtors’ entry into the Fortress Commitment Letter on November 9, 2012 [Docket No. 619] (the “**Commitment Letter Approval Order**”). After the Court’s entry of the Commitment Letter Approval Order, the Debtors and Fortress began work documenting their financing agreement. The DIP Transaction reflects the terms of the Fortress Commitment Letter.

2. No objection has been filed to the DIP Motion. Both prior to and after the Initial Filing Date, the Debtors and Fortress engaged advisors for the Committee, the Joint Provisional Liquidators and SCB regarding the terms of the DIP Transaction. A number of the stakeholders’ proposed changes were incorporated into the DIP Agreement, Investment Agency Agreement and proposed form of order filed with the Court on the Initial Filing Date.

3. Since the Initial Filing Date, Fortress and the Debtors have agreed to a handful of modifications to the transaction documents. A number of these changes were made at the Committee’s request. All of them, the Debtors submit, favor the Debtors or further clarify the parties’ rights under the DIP Transaction Documents.

¹ Capitalized terms not otherwise defined in this Supplement shall have the meanings ascribed to them in the DIP Motion.

4. Annexed hereto are revised versions of the DIP Agreement, the Investment Agency Agreement and the proposed form of Interim Order. A revised version of the DIP Agreement is annexed as *Exhibit A-1*. Changed pages of the agreement which highlight all changes since the Initial Filing Date are annexed as *Exhibit A-2*. Similarly a revised version of the Investment Agency Agreement is annexed as *Exhibit B-1* and changed pages of the same are annexed as *Exhibit B-2*. A revised form of Interim Order is annexed as *Exhibit C-1* (the “*Revised Proposed Order*”) and changed pages of the same are annexed as *Exhibit C-2*. Finally, the proposed fee letter is annexed as *Exhibit D*.

5. For the Court’s convenience, bullet point summaries of the material modifications to the Interim Order, Investment Agency Agreement and the DIP Agreement are set forth below.

- Investment Agency Agreement, Clause 11.10: At the request of the Committee, the parties modified Clause 11.10 to provide for the replacement of Defaulting Participants, Non-Consenting Participants (each, as defined in the Investment Agency Agreement) and participants who cannot lawfully perform under the transaction documents;
- Revised Proposed Order, Paragraph 8(d): Also at the request of the Committee, the Debtors confirmed that they would provide the Committee with notice in connection with transaction requests;
- DIP Agreement, Clause 1: The parties agreed to modify the definition of “Profit Amount” to incorporate the agreed upon “unused line fee” (which is charged at a lower rate) on available undrawn amounts. This is consistent with the Fortress Commitment Letter;
- DIP Agreement, Clause 1: The parties clarified that Immaterial Subsidiaries (who are carved out from certain default provision under the DIP Agreement) include certain Excluded Businesses identified on Schedule 5F of the DIP Agreement and all subsidiaries of AIHL comprising a part of such businesses.
- DIP Agreement, Clause 3.2: The parties clarified that it is a condition precedent (a) to the initial transaction, that the Interim Order be entered by December 10, 2012 and (b) to the remainder of the commodity purchases, that the Final Order be entered by January 10, 2013. This represents a concession by Fortress. Under the Fortress Commitment Letter, the

deadlines for entry of interim and final orders were December 7, 2012 and December 31, 2012, respectively;

- DIP Agreement, Clause 4.1(b): The parties clarified that transactions above the minimum amount of \$25 million must be in \$5 million increments;
- DIP Agreement, Clause 4.1(e): The parties modified the number of permitted draws outstanding at any one time from two to three. This provides the Debtors with additional flexibility and better reflects the actual structure of the DIP Transaction (\$25 million will be available after entry of the Interim Order, \$100 million will be available after entry of the Final Order and the final \$25 million will be available when Fortress completes its confirmatory due diligence);
- DIP Agreement, Clause 5.8: The parties confirmed that AIHL will receive its initial liquidity through a sale of the commodities to Condor Trade Limited. This is an important mechanic for the transaction;
- DIP Agreement, Clause 8.1(a): At the Committee's request, the parties updated Clause 8.1(a) to note that payments under the Finance Documents are not made without deduction from taxes imposed by a jurisdiction in which the Investment Agent or the applicable DIP Participant is organized.
- DIP Agreement, Clause 11.9(a): The parties modified a carve out to the structure chart representation, making it easier for the Debtors to comply;
- DIP Agreement, Clause 12.25(b): The parties specified that AIHL must cause an obligor to deliver amendments to security documents in respect of after-acquired collateral within 30 days. Previously, the document was unclear as to this point;
- DIP Agreement, Clause 12.25(c): The parties specified that AIHL must cause an additional guarantor to become an obligor within 30 days of its creation or acquisition. Previously, the document was unclear as to this point;
- DIP Agreement, Clause 14.2(b): The parties clarified which events of default are and are not subject to a cure period;
- DIP Agreement, Schedule 1, Clause 4: The parties clarified that the Finance Documents (as defined in the DIP Agreement) include: the Guarantee; U.S. Security Agreement; Cayman Charge; and Cayman Debenture (not debentures); and

- DIP Agreement, Schedule 4: The parties updated the definition of Lusail in connection with Disclosure Schedule 4.

6. Each of these changes clarifies or improves the terms of the DIP Transaction Documents. Accordingly, the DIP Motion, as supplemented by this pleading, should be approved.

7. The terms of the fee letter are consistent with the Fortress Term Sheet filed publicly with the Court.

NOTICE

No trustee or examiner has been appointed in the Chapter 11 Cases. The Debtors have provided notice of filing of the Supplement by electronic mail, facsimile and/or overnight mail to: (i) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); (ii) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq., Abhilash M. Raval, Esq., and Evan R. Fleck, Esq.), counsel for the Committee; (iii) Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York 10036 (Attn: Kenneth S. Ziman), counsel for Fortress Credit Corp., as Investment Agent; (iv) Dechert LLP, 1095 Avenue of the Americas, New York, New York 10036 (Attn: Brian E. Greer, Esq. and Nicole Herther-Spiro, Esq.), counsel to SCB, and (v) all parties listed on the Master Service List established in these Chapter 11 Cases. A copy of the Supplement is also available on the website of the Debtors' notice and claims agent, GCG, at www.gcginc.com/cases/arcapita.

Dated: New York, New York
December 6, 2012

/s/ Matthew J. Williams

Matthew J. Williams (MW-4081)

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ATTORNEYS FOR THE DEBTORS
AND DEBTORS IN POSSESSION

Exhibit A-1
Revised DIP Agreement

Exhibit A-2
DIP Agreement Changed Pages

Exhibit B-1
Revised Investment Agency Agreement

Exhibit B-2
Investment Agency Agreement Changed Pages

Exhibit C-1
Revised Interim Order

Exhibit C-2
Interim Order Changed Pages

Exhibit D
Fee Letter

DATED DECEMBER __, 2012

ARCAPITA INVESTMENT HOLDINGS LIMITED,
a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code

– and –

FORTRESS CREDIT CORP.,
as Investment Agent, as agent for the Participants.

SUPERPRIORITY DEBTOR-IN-POSSESSION
MASTER MURABAHA AGREEMENT

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THIS SUPERPRIORITY DEBTOR-IN-POSSESSION MASTER MURABAHA AGREEMENT (as amended, modified or supplemented from time to time, this “**Agreement**”) IS DATED DECEMBER __, 2012.

BETWEEN:

- (1) **Arcapita Investment Holdings Limited**, an exempted company incorporated with limited liability under the laws of the Cayman Islands with company number 78594, a debtor and debtor-in-possession in the Cases under Chapter 11 the Bankruptcy Code (“**AIHL**”); and
- (2) **Fortress Credit Corp.** in its capacity as investment agent for the Participants (the “**Investment Agent**”).

RECITALS

- A On the Petition Date, AIHL and certain of its Affiliates filed voluntary petitions with the Bankruptcy Court initiating their respective cases under Chapter 11 of the Bankruptcy Code and have continued in possession of their assets and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code.
- B By an investment agency agreement (the “**Investment Agency Agreement**”) dated on or about the date of this Agreement and made between the Investment Agent, AIHL, the Guarantors, the Arranger, the Security Agent and the Participants, the Participants have, among other things, appointed the Investment Agent as their agent to enter into the murabaha transactions contemplated by the Facility.
- C AIHL has requested that the Investment Agent, as agent for the Participants pursuant to the Investment Agency Agreement, provide the Facility, and the Investment Agent is willing to do so on the terms and subject to the conditions set forth herein and in the other Finance Documents.
- D To provide guarantees and security for the payment of the Obligations of the Obligors hereunder and under the other Finance Documents, the Obligors will provide and grant to the Investment Agent, for its benefit and the benefit of the Participants, certain Liens and superpriority administrative expense claims pursuant to Chapter 11 of the Bankruptcy Code, as more fully described herein.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement (including its Preamble and the Recitals):

“**Accession Letter**” means a document substantially in the form set out in **Schedule 6**.

“**Additional Guarantor**” has the meaning given to it in **clause 12.25(c)**.

“**Additional Guarantee**” means any guarantee by an Additional Guarantor in favor of the Security Agent in accordance with **clause 12.25(c)**.

“**AEID II**” means AEID II Holdings Limited an exempted company incorporated with limited liability under the laws of the Cayman Islands with company number 203354, and a debtor and a debtor-in-possession in the Cases.

“**Affiliates**” means, in relation to any Person, a Subsidiary of that Person or a Holding Company of that Person or any other Subsidiary of that Holding Company or any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“**Aggregate Cost Price**” has the meaning given in **clause 3.2(d)**.

“**AIHL**” has the meaning given in the Recitals.

“**AIHL Sub**” means Arcapita LT Holdings Limited, an exempted company incorporated with limited liability in the Cayman Islands with company number 239999, and a debtor and a debtor-in-possession in the Cases.

“**AIML**” means Arcapita Investment Management Limited, an exempted company incorporated with limited liability under the laws of the Cayman Islands with company number CR-77989.

“**Anti-Terrorism Laws**” has the meaning given in **clause 11.22**.

“**Arcapita Bank**” means Arcapita Bank, B.S.C.(c) a closed joint stock company with registered address, Arcapita Building, Road 4612, Area 346, Bahrain Bay, Manama, Kingdom of Bahrain, and a debtor and a debtor-in-possession in the Cases.

“**Arranger**” means Fortress Credit Corp.

“**Attributable Amount**” means, with respect to the Net Cash Proceeds of any Prepayment Event, (a) if such Prepayment Event occurs at any Obligor or any wholly-owned Subsidiary of any Obligor, 100% of such Net Cash Proceeds and (b) if such Prepayment Event occurs at any other Person, the proportion of such Net Cash Proceeds equal to the proportion that the Obligors (or any of them) would receive in connection with any liquidating distribution of such Person and its direct and indirect parent entities (taking into account any preferred Equity Interests of such Person and its direct and indirect parent entities owned directly or indirectly by the Obligors or any of them and

any third party, respectively, and without giving effect to the payment of indebtedness or any other claims).

“**Authorization**” means an authorization, consent, approval, resolution, license, exemption, filing, notarization or registration.

“**Availability Period**” means the period from and including the Effective Date to and including the date that is one month prior to the Termination Date.

“**Bankruptcy Code**” means title 11 of the United States Code entitled “Bankruptcy”, codified as 11 U.S.C. Section 101 et seq., as now and hereafter in effect.

“**Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of New York or any other court having jurisdiction over the Cases from time to time.

“**Board**” means the Board of Governors of the Federal Reserve System of the United States (or any successor).

“**Bringdown Date**” means, for the three month period commencing on the date that is three months after the Effective Date, and for each three month period thereafter until the Termination Date, the first Transaction Date that occurs in such period.

“**Business Day**” means a day (other than a Friday, Saturday or a Sunday) on which banks are open for business in the Kingdom of Bahrain, London and New York.

“**Call Options**” means any option granted by any Person to any LT CayCo or any Investment Company to purchase the Equity Interests of any other Investment Company.

“**Carve-Out**” means, except as otherwise provided by the Orders, (i) any unpaid fees due to the United States Trustee pursuant to 28 U.S.C. section 1930 or otherwise and any fees due to the clerk of the Bankruptcy Court, (ii) all 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 exceeding \$25,000, (iii) the reasonable and documented expenses of members of the Committee appointed in the Cases (excluding fees and expenses of professional persons employed by the Committee and/or such Committee members individually) in an aggregate amount not exceeding \$200,000, (iv) to the extent allowed at any time, all unpaid fees and expenses allowed by the Bankruptcy Court of professionals or professional firms retained pursuant to sections 327, 328, 330, 363 or 1103 of the Bankruptcy Code (the “**Professional Persons**”) and the reasonable fees and expenses of the Joint Provisional Liquidators, in each case that were accrued or incurred, as applicable, through the date upon which AIHL and the Committee receives from the Investment Agent a written notification of the occurrence of an Event of Default and the intention to invoke the Carve-Out (a “**Carve-Out Notice**”), and (v) to the extent allowed at any time, all fees and expenses of Professional Persons and the Joint Provisional Liquidators incurred after the date upon which AIHL and counsel for the Committee receive from the Investment Agent a Carve-Out Notice, in an aggregate amount not to exceed \$15,000,000; *provided* that (1) the dollar limitations in **clause (v)**

on fees and expenses shall not be reduced or increased by the amount of any compensation or reimbursement of expenses incurred by or paid to any Professional Person or the Joint Provisional Liquidators prior to the date AIHL and counsel for the Committee receive from the Investment Agent a Carve-Out Notice or by any fees, expenses, indemnities, or other amounts paid to the Investment Agent, any Participant, or their respective attorneys or agent under this Agreement or otherwise, and (2) to the extent the dollar limitation in **clause (v)** on fees and expenses is reduced by an amount as a result of the payment of such fees and expenses during the continuation of and Event of Default and after delivery of a Carve-Out Notice, and such Event of Default is subsequently cured or waived and the Carve-Out Notice rescinded in writing, such dollar limitation shall be increased by an amount equal to the amount by which it has been so reduced.

“**Cases**” means the cases commenced under chapter 11 of the Bankruptcy Code by Arcapita Bank and its affiliated debtors and debtors in possession by the filing of voluntary petitions with the Bankruptcy Court (other than the case commenced by Falcon).

“**Cayman Charge**” means the Charges Over Shares entered into by Arcapita Bank in favor of the Security Agent pursuant to which the Security Agent has been granted Liens over the Equity Interests Arcapita Bank owns in its direct Cayman Islands Subsidiaries.

“**Cayman Debentures**” means the Debentures entered into between an Obligor and the Security Agent pursuant to which the Security Agent has been granted Liens on any of the Collateral.

“**Cayman Proceedings**” means the provisional liquidation of AIHL being performed in the Cayman Islands for which Simon Appell and Gordon MacRae were appointed joint provisional liquidators (the “**Joint Provisional Liquidators**”) of AIHL on March 20, 2012.

“**Cayman Validation Order**” means the validation order referred to in **clause 6.3** of **Schedule 1**.

“**Change of Control**” means any Person or group of Persons acting in concert gains Control of any Obligor. For the purpose of this definition, “acting in concert” means, in the reasonable opinion of the Investment Agent, a group of Persons who, pursuant to an agreement or understanding (whether formal or informal), actively cooperate, to obtain or consolidate Control of any Obligor.

“**Collateral**” means the property of the Debtors, whether now owned or hereafter acquired, upon which a Lien is purported to be granted under the Orders in favor of any or all of the Finance Parties, and the property of the Obligors, whether now owned or hereafter acquired, upon which a Lien is purported to be granted under any Finance Document in favor of any or all of the Finance Parties.

“**Commitment Letter**” means the commitment letter, dated November 1, 2012, between AIHL and the Investment Agent.

“**Committee**” means the official committee of unsecured creditors appointed by the Office of the United States Trustee in the Cases.

“**Commodities**” means, in relation to a Purchase Contract, the commodities specified in a Transaction Request, which may comprise Shari’ah compliant London Metal Exchange metals, platinum group metals or such 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 of the United Kingdom.

“**Conditional Amount**” has the meaning given in **clause 9.4(a)**.

“**Conditional Increase**” has the meaning given in **clause 9.4(a)**.

“**Consolidated Financial Statements**” means, starting in June 2013, the audited consolidated financial statements of AIHL and Arcapita Bank for each of its financial years ending June 30.

“**Contract Period**” means, for any Purchase Contract, at any time, the one-month period commencing on the Transaction Date for such Purchase Contract and ending on the Deferred Payment Date applicable to such Purchase Contract.

“**Contribution**” has the meaning given in the Investment Agency Agreement.

“**Control**” means in respect of any Person:

- (a) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (i) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of that Person; or
 - (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of that Person; or
 - (iii) give directions with respect to the operating and financial policies of that Person which the directors or other equivalent officers of that Person are obliged to comply with; or
- (b) the holding of more than one-half of the issued voting share capital of the Person.

“**Cost Price**” means the amount (in 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 a Purchase Contract.

“**Currency of Obligations**” has the meaning given in **clause 16.3(a)**.

“**Currency of Payment**” has the meaning given in **clause 16.3(a)**.

“**DD&Co Ltd Agreements**” means:

- (a) the Letter of Understanding dated on or about the date of this Agreement and made between the Seller and the Investment Agent▶ [; and
- (b) the letter from the Seller to the Investment Agent dated on or about the date of this Agreement relating to such Letter of Understanding.]

“**Debtors**” means Arcapita Bank, AIHL, AIHL Sub, WTHL, AEID II and RailInvest, all in their capacities as debtors and as debtors-in-possession in the Cases (and, for the avoidance of doubt, not including Falcon).

“**Default**” means an Event of Default or any event or circumstance specified in **clause 14** which, with the giving of any notice, the lapse of time, determination of materiality, or fulfillment of any other applicable condition (or any combination of the foregoing), would constitute an Event of Default.

“**Deferred Payment Date**” means, in respect of a Deferred Sale Price, the date set out in the Offer Letter applicable to that Deferred Sale Price and which shall be the date falling on the last day of the 1 month period following the Transaction Date selected in the applicable Transaction Request, but if:

- (a) there is no numerically corresponding day in the succeeding calendar month, such date shall be the last Business Day of such succeeding calendar month;
- (b) such date is not a Business Day, then the next Business Day in the same calendar month if there is one, or the preceding Business Day if there is not; or
- (c) such date otherwise would fall after the Termination Date, the Termination Date.

“**Deferred Sale Price**” means, in relation to a Purchase Contract, the amount (in Dollars) payable by AIHL to the Investment Agent for the purchase of Commodities, calculated in accordance with **clause 5.2(e)**, excluding any Tax, if applicable.

“**DIP Budget**” means the budget to be prepared by AIHL and agreed with the Investment Agent prior to the date hereof, as such initial budget may be modified or supplemented from time to time by additional budgets (covering any time period covered by a prior budget or covering additional time periods), with the written consent of the Investment Agent to be given in its sole discretion.

“**Disclosure Schedule**” means **Schedule 4**.

“**Dollars**” and “**\$**” means lawful money of the United States of America.

“**Effective Date**” means the date on which the conditions precedent specified in **clauses 3.1** and **3.2** (other than **clause 3.2(b)**) are satisfied or waived in accordance with the terms hereof and the initial Purchase Contract is entered into pursuant hereto.

“**Embargoed Person**” means any Person that (a) is publicly identified on the most current list of “Specially Designated Nationals and Blocked Persons” published by OFAC or resides, is organized or chartered, or has a place of business in a country or territory subject to OFAC sanctions or embargo programs (a “**Sanctioned Country**”) or (b) is publicly identified as prohibited from doing business with the United States under the International Emergency Economic Powers Act, the Trading With the Enemy Act, or any other requirement of any Governmental Authority.

“**Equity Interest**” shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership, whether outstanding on the Effective Date or issued thereafter, but excluding debt securities convertible or exchangeable into such equity.

“**Eurolog IPO**” shall have the meaning set forth in the SCB Order.

“**Event of Default**” means any event specified as such in **clause 14**.

“**Excluded Businesses**” means those businesses identified on **Schedule 5F** hereof, and all Subsidiaries of AIHL comprising a part of such businesses.

“**Existing Security**” means:

- (a) the first ranking charge over the shares of AIHL Sub dated May 30, 2011 granted by AIHL in favor of Standard Chartered Bank;
- (b) the second ranking equitable mortgage over the shares of AIHL Sub dated December 22, 2011 granted by AIHL in favor of Standard Chartered Bank;
- (c) the first ranking charge over the shares of WTHL dated May 30, 2011 granted by AIHL Sub in favor of Standard Chartered Bank;
- (d) the second ranking equitable mortgage over the shares of WTHL dated December 22, 2011 granted by AIHL Sub in favor of Standard Chartered Bank;
- (e) the first ranking equitable mortgage over the shares of AEID II dated December 22, 2011 granted by AIHL Sub in favor of Standard Chartered Bank;
- (f) the second ranking equitable mortgage and charge over the shares of AEID II dated December 28, 2011 granted by AIHL Sub in favor of Standard Chartered Bank;
- (g) the first ranking equitable mortgage over the shares of RailInvest dated December 22, 2011 granted by AIHL Sub in favor of Standard Chartered Bank; and

- (h) the second ranking equitable mortgage and charge over the shares of RailInvest dated December 28, 2011 granted by AIHL Sub in favor of Standard Chartered Bank.

“**Existing US\$ Facilities**” means

- (a) the \$50 million master murabaha agreement dated May 30, 2011 as amended on October 2, 2011, November 2, 2011, November 29, 2011, December 28, 2011, January 30, 2012, February 13, 2012, February 28, 2012, March 14, 2012, and as amended pursuant to the SCB Order, between Arcapita Bank and Standard Chartered Bank, and, solely to the extent permitted in accordance with **clause 12.32**, as amended, supplemented or otherwise modified from time to time after the Effective Date; and
- (b) the \$50 million master murabaha agreement dated December 22, 2011 as amended on January 30, 2012, February 13, 2012, February 28, 2012, March 14, 2012 and as amended pursuant to the SCB Order, between Arcapita Bank and Standard Chartered Bank, and, solely to the extent permitted in accordance with **clause 12.32**, as amended, supplemented or otherwise modified from time to time after the Effective Date.

“**Exit Plan Subsidiary**” means any Subsidiary of Arcapita Bank designated in writing to the Investment Agent by AIHL as an “Exit Plan Subsidiary,” that (a) is formed in accordance with, and solely for the purpose of, implementing a Reorganization Plan and (b) prior to the effective date of a Reorganization Plan, has no operations and no assets other than those received in connection with any minimum capitalization requirements of such Exit Plan Subsidiary’s jurisdiction of organization.

“**Extended Maturity Date**” has the meaning given in **clause 2.3(a)**.

“**Extension Availability Date**” means the date that the Investment Agent receives a report from KPMG LLP, which report shall be in form and substance satisfactory to the Investment Agent and shall cover the information required to be delivered pursuant to **clause 12.2(a)(vi)**, and such additional information as the Investment Agent may reasonably request.

“**Extension Effective Date**” has the meaning given in **clause 2.3(b)**.

“**Facility**” as defined in **clause 2.1**.

“**Facility Commitment**” has the meaning given in the Investment Agency Agreement.

“**Facility Limit**” means, at any time, the total amount of the Investment Agent’s Cost Price commitment to purchase Commodities at such time under this Agreement, as such amount may be reduced, increased or terminated pursuant to **clause 9** or **clause 14.20**; *provided*, however, that such amount may never be greater than that which is authorized under the Orders. Subject to the proviso in the preceding sentence, the Facility Limit on the Effective Date is \$150,000,000, as such amount may be reduced, increased or

terminated pursuant to **clause 9** or **clause 14.20**; *provided* that, prior to the Increase Effective Date, the Facility Limit shall be reduced by the Conditional Amount.

“**Facility Office**” means the office notified by a Participant to the Investment Agent:

- (a) on or before the date it becomes a Participant; or
- (b) by not less than 5 Business Days’ notice, as the office(s) through which it will perform all or any of its obligations under the Investment Agency Agreement.

“**Falcon**” means Falcon Gas Storage Company, Inc.

“**Falcon Escrow Agreement**” means that certain Escrow Agreement, dated as of April 1, 2010, by and among Alinda Natural Gas Storage I, L.P., Alinda Natural Gas Storage II, L.P., Falcon, and HSBC Bank USA.

“**FCPA**” has the meaning given in **clause 11.22(c)**.

“**Fee Letter**” means the fee letter dated on or about the date of this Agreement between AIHL and the Investment Agent, Security Agent and Arranger relating to certain fees payable in relation to this Agreement.

“**Final Order**” means an order of the Bankruptcy Court entered in the Cases, in substantially the form of the Interim Order, with such modifications thereto as are satisfactory to the Investment Agent in its sole discretion, as the same may be amended, modified or supplemented from time to time with the consent of the Investment Agent (which consent shall be given or withheld in the sole discretion of the Investment Agent).

“**Final Order Entry Date**” means the date the Final Order is entered in the Cases.

“**Finance Documents**” means:

- (a) this Agreement;
- (c) the Investment Agency Agreement;
- (d) each Guarantee;
- (e) the Security Documents;
- (f) when entered into, each Purchase Contract;
- (g) the Netting Letter;
- (h) the Fee Letter; and
- (i) such other documents at any time designated as such by the parties.

“**Finance Parties**” means the Investment Agent, the Security Agent, the Arranger and the Participants.

“**Financial Indebtedness**” means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of sukuk, bonds, notes, debentures, loan stock or any similar instrument, including any debt securities convertible or exchangeable into Equity Interests;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any purchase agreement and any murabaha agreement) having the commercial effect of a borrowing;
- (g) any obligations in respect of one or more Hedging Agreements (for purposes of determining Financial Indebtedness under this **clause (g)**, the “principal amount” of the obligations of any Obligor or any of its Subsidiaries in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting arrangements) that such Obligor or Subsidiary would be required to pay if such Hedging Agreement were terminated at such time);
- (h) the supply of any goods or services which is more than 30 days past the original due date for payment;
- (i) any counter-indemnity or reimbursement obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank, surety or financial institution;
- (j) any obligation of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on assets owned or acquired by such Person, whether or not the obligations secured thereby have been assumed; and
- (k) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in **paragraphs (a) to (i)** above.

provided, however, that any obligations arising in connection with professional fees and expenses incurred in connection with the Cases shall not constitute or comprise Financial Indebtedness hereunder.

“**Financial Statements**” means, starting June 2013, the audited financial statements of Arcapita Bank and AIHL for each of their financial years ending June 30.

“**Governmental Authority**” means any federal, state, provincial, municipal, national, foreign or other government, governmental department, commission, board, bureau, court, tribunal, agency or instrumentality or political subdivision thereof, any government sponsored entity or any authority, body, regulatory or self-regulatory organization or other entity or officer exercising executive, legislative, judicial (including any arbitrator), statutory, regulatory or administrative functions of or pertaining to any government or any court (including any supranational bodies such as the European Union), in each case whether associated with the United States or any state, commonwealth, province, district or territory thereof, or a foreign entity or government.

“**Governmental Authorization**” means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

“**Group**” means Arcapita Bank and AIHL and their respective Subsidiaries from time to time, other than a Subsidiary which is an Investment Company.

“**Guarantee**” means each joint and several guarantee by the Guarantors in favor of the Security Agent dated on or about the date of this Agreement, and each Additional Guarantee.

“**Guarantor**” means each of Arcapita Bank, AEID II, AIHL Sub, RailInvest, WTHL, AIML, Arcapita Inc., Arcapita Structured Finance Ltd., Arcapita Investment Funding Limited, Arcapita Industrial Management I Ltd, Arcapita (US) Limited, Arcapita (Europe) Limited, Arcapita (Singapore) Limited, each other LT CayCo, each WCF and each Syndication Company, in each case that is wholly-owned by AIHL, and each Additional Guarantor that becomes a Guarantor pursuant to **clause 12.25(c)**, other than (x) those Persons identified on **Schedule 5G** hereto (which schedule shall include the Specified Non-Guarantor Subsidiaries) and (y) each Exit Plan Subsidiary.

“**Hedging Agreement**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of ISDA Master Agreement, including any such obligations or liabilities under any ISDA Master Agreement.

“**Holding Company**” means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

“**IFRS**” means International Financial Reporting Standards from time to time, published by the International Accounting Standards Board.

“**Immaterial Subsidiary**” means (x) the Specified Non-Guarantor Subsidiaries, (y) Subsidiaries comprising parts of the Excluded Businesses and (z) any other Subsidiary of Arcapita Bank (other than an Obligor) designated in writing to the Investment Agent by AIHL as an “Immaterial Subsidiary” (which designation may be withdrawn by AIHL in a writing delivered to the Investment Agent), that, individually as of the relevant date of determination has total assets as of such date of less than \$2,000,000, as determined in accordance with IFRS; *provided* that at no time shall all Immaterial Subsidiaries identified as Immaterial Subsidiaries under this clause (z) (and not withdrawn) shall have in the aggregate total assets in excess of \$5,000,000, as determined in accordance with IFRS. The Immaterial Subsidiaries on the Effective Date are listed on **Schedule 5G**.

“**Increase Availability Date**” means, if the Rejection Date has not occurred, the later to occur of (a) December 31, 2012 and (b) the date that the Investment Agent provides written notice to AIHL that the Investment Agent has completed additional confirmatory due diligence the results of which are reasonably satisfactory to the Investment Agent.

“**Increase Effective Date**” has the meaning given in **clause 9.4(b)**.

“**Increased Costs**” has the meaning given in **clause 16.5(b)**.

“**Increased Costs Amount**” means Increased Costs incurred by a Finance Party.

“**Indemnified Party**” has the meaning given in **clause 16.1(a)**.

“**Information Exception**” means misstatements or omissions which would not be reasonably expected to decrease the aggregate value to Arcapita of its assets and Investment Companies based on the low-point valuations contained in the KPMG Reports and Waterfalls delivered to the Investment Agent prior to the Effective Date by more than \$70,000,000 (calculated as of the date in question and with such adjusted valuation for a given asset or Investment Company calculated pursuant to the methodology similar to the methodology utilized in the low-point valuations in the KPMG Reports and the Waterfalls).

“**Inter-Obligor Indebtedness**” means any Financial Indebtedness owing by any Obligor to any other Obligor.

“**Interim Facility Limit**” means \$25,000,000, as such amount may be reduced, increased or terminated pursuant to **clause 9** or **clause 14.13**; *provided*, however, that such amount may never be greater than that which is authorized under the Interim Order.

“**Interim Order**” means an order of the Bankruptcy Court entered in the Cases granting interim approval of the transactions involving the Debtors contemplated by this

Agreement and the other Finance Documents and granting the Liens on the Collateral and the Superpriority Claims in favor of the Investment Agent and the Participants, substantially in the form of **Exhibit A** hereto, with such changes thereto as may be in form and substance satisfactory to the Investment Agent in its sole discretion, as the same may be amended, modified or supplemented from time to time with the consent of the Investment Agent (such consent to be given or withheld in the sole discretion of the Investment Agent).

“**Interim Order Entry Date**” means the date on which the Interim Order is entered by the Bankruptcy Court.

“**Investment Agency Agreement**” means the agreement defined as such in Recital (A).

“**Investment Agent**” has the meaning given in the Recitals.

“**Investment Companies**” means the Transaction Holdcos and any entity in which the Transaction Holdcos have a direct or indirect Equity Interest.

“**Investment Company Murabaha Facility**” means each murabaha financing facility between Arcapita Bank or any of its Subsidiaries and an Investment Company from time to time.

“**Investment Company Murabaha Facility Assignment**” means each assignment of an Investment Company Murabaha Facility, between Arcapita Bank or any of its Subsidiaries (as assignor) and the Security Agent, in a form acceptable to the Security Agent.

“**Investments**” has the meaning given in **clause 12.16**.

“**ISDA Master Agreement**” shall mean the Master Agreement (Multicurrency-Cross Border) published by the International Swap and Derivatives Association, Inc., as in effect from time to time.

“**Joint Provisional Liquidators**” has the meaning given in the definition of Cayman Proceedings.

“**KPMG Reports**” means those reports prepared by KPMG LLP provided to the Investment Agent on October 24, 2012.

“**LIBOR**” means for any Contract Period with respect to a Purchase Contract, the rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the rate appearing on Reuters Page LIBOR01 (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Investment Agent from time to time for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market) at approximately 11:00 a.m. (London time), two (2) Business Days prior to the commencement of such Contract Period, as the rate for Dollar deposits with a maturity comparable to such

Contract Period. In the event that such rate is not available at such time for any reason, then "LIBOR" with respect to such Purchase Contract for such Contract Period shall be determined by reference to such other comparable publicly available service for displaying LIBOR for such for such Contract Period as selected by an agreement between AIHL and the Investment Agent.

“**Lien**” means (a) any lien (statutory or other), mortgage, deed of trust, pledge, hypothecation, preference, participation interest, assignment, deposit arrangement, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing), and (c) in the case of Equity Interests, any purchase option, call or similar right of a third party with respect to such Equity Interests.

“**LT CayCo**” means each long term portfolio investment company that is a wholly-owned Subsidiary of AIHL at any time, including each of the companies listed on **Schedule 5A** (which AIHL represents is a complete list of all LT CayCos in existence on the Effective Date).

“**Lusail Obligations**” has the meaning given in **clause 12.13(b)(ii)**.

“**Mandatory Cost**” means the cost of compliance in respect of this Facility with:

- (a) for Participants with their Facility Office in the United Kingdom, the requirements of the Bank of England and/or the Financial Services Authority;
- (b) for Participants with their Facility Office in other countries of the European Union, the requirements of the European Central Bank; and
- (c) for Participants with their Facility Office in any other country, the equivalent requirements of that jurisdiction.

“**Material Adverse Effect**” means a material adverse effect on or a material adverse change in:

- (a) the condition (financial or otherwise), business, operations, assets or liabilities of AIHL and its Subsidiaries, taken as a whole, other than as customarily result from the continuation of a bankruptcy case; or
- (b) the ability of an Obligor to perform its obligations under the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Lien granted or purported to be granted to the Security Agent pursuant to, any Order or any of the Finance Documents or the material rights or remedies of any Finance Party under any of the Finance Documents.

“**Maturity Date**” means ► [June __, 2013], as such date may be extended pursuant to **clause 2.3**; *provided* that if such date is not a Business Day, the Maturity Date shall be the immediately preceding Business Day.

“**Maturity Date Extension**” has the meaning given in **clause 2.3(a)**.

“**Net Cash Proceeds**” means, with respect to any Prepayment Event, the proceeds of any refund of Taxes, conveyance, lease, sublease, assignment, transfer, disposition, dividend, distribution, issuance, sale, initial public offering, insurance proceeds or condemnation award (or other covered transaction), as the case may be, received in the form of cash and cash equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received), net of discounts, commissions, costs, awards, attorneys’ fees, accountants’ fees, investment banking fees and other customary fees and expenses actually incurred in connection therewith (other than fees paid to an Affiliate) and, in connection with any disposition of assets, amounts required to be applied to the repayment of (a) the Existing \$US Facilities solely to the extent required by the SCB Order and (b) Financial Indebtedness secured by a Lien expressly permitted hereunder (and not junior to the Liens granted on such assets under the Financing Documents or pursuant to the Orders) on any assets so disposed of (other than any Lien securing the Obligations) and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements).

“**Netting Letter**” means the letter agreement between the Investment Agent, AIHL, DD&Co Ltd and Condor Trade Limited dated on or about the date of this Agreement.

“**Nominee Declarations**” means a nominee declaration held by any Person in the Equity Interests of any Investment Company held for the beneficial use and ownership of any LT CayCo or any other Investment Company.

“**Obligations**” means all liabilities and obligations of every kind and description (whether or not evidenced by any instrument and whether or not for the payment of money), direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising, in each case of any Obligor from time to time owed to the Investment Agent, any other Finance Party, or any of them under any Finance Document, whether for the Deferred Sale Price, Cost Price, Profit Amount (including Profit Amount which, but for the filing of a petition in bankruptcy with respect to such Obligor, would have accrued on any Obligation, whether or not a claim is allowed against such Obligor for such Profit Amount in the related bankruptcy proceeding), costs, fees, charges, expenses, attorneys’ fees, accountants’ fees, consultants’ fees, indemnification or otherwise.

“**Obligors**” means AIHL and the Guarantors.

“**OFAC**” means the Office of Foreign Assets Control of the US Department of the Treasury.

“**Offer Letter**” means an offer in writing from the Investment Agent to AIHL (offering to enter into a Purchase Contract) substantially in the form set out in **Schedule 3**.

“**Orders**” means the collective reference to the Interim Order and the Final Order.

“**Original Financial Statements**” means:

- (a) in respect of AIHL , the audited consolidated financial statements of Arcapita Bank for the year ending December 31, 2011; and
- (b) in respect of Arcapita Bank, its audited consolidated financial statements for the year ending December 31, 2011.

“**Participants**” means those banks, financial institutions and other Persons listed in Schedule 1 to the Investment Agency Agreement or any assignee or transferee which has become a Participant in accordance with clause 11 of the Investment Agency Agreement.

“**Participation**” has the meaning given in the Investment Agency Agreement.

“**Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001 (Title III of Pub. L. 107-56), as the same may be amended from time to time, and corresponding provisions of future laws.

“**Permitted Liens**” means:

- (a) any Lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with generally acceptable accounting principles;
- (b) any statutory Lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent;
- (c) any Lien created by operation of law, such as materialmen's liens, mechanics' liens and other similar Liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings;
- (d) Liens (A) upon or in any equipment acquired or held by the Obligors or any of their subsidiaries to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition or lease of such equipment, or (B) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment;
- (e) easements, rights-of-way, municipal and zoning and building ordinances and similar charges, encumbrances, title defects or other irregularities, restrictions of Governmental Authorities on the use of property or conduct of business, and

Liens in favor of Governmental Authorities and public utilities, that do not materially interfere with the ordinary course of business of the Obligors and their subsidiaries, taken as a whole;

- (f) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Obligors or any of their subsidiaries in the ordinary course of business of the Obligors or any of their subsidiaries;
- (g) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in **clauses (a) through (f)** above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Liens and the principal amount of the indebtedness being extended, renewed or refinanced does not increase;
- (h) leases or subleases and licenses and sublicenses granted to others in the ordinary course of the Obligors' business, not interfering in any material respect with the business of the Obligors and their subsidiaries taken as a whole;
- (i) Liens in favor of the Finance Parties securing the Obligations under the Facility Documents; and
- (j) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of custom duties in connection with the importation of goods.

“Permitted Representation Exceptions” means (a) with respect to representations and warranties contained in **clause 11.9(a)**, changes resulting solely from transactions permitted by **clauses 12.15, 12.16, 12.22 or 12.27**), and (b) with respect to representations and warranties contained in **clause 11.19**, changes resulting solely from actions taken by (i) holders of Equity Interests of Syndication Companies or PVs (that are not, in each case, Affiliates (excluding Affiliates under **clause (a)** of the second sentence of the definition thereof) or employees of any Obligor) pursuant to shareholder agreements, proxies, administration agreements, management agreements or similar agreements in effect on the Effective Date or (ii) authorized officers of any Syndication Company or PV, solely to the extent that such actions are taken at the direction of the Person described in **clause (i)** above that directly holds Equity Interests in such Syndication Company or PV.

“Person” means and includes any natural person, corporation, limited partnership, general partnership, limited liability company, limited liability partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

“Petition Date” means March 19, 2012.

“Prepayment Event” means:

(a) any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any sale and leaseback transaction) of any property (including the Equity Interests by the holder thereof) by any Obligor, or any other member of the Group to any Person other than (i) any Obligor and (ii) in the case of any member of the Group that is not an Obligor, to any other member of the Group that is not an Obligor, excluding any such conveyance, sale, lease, sublease, assignment, transfer or other disposition permitted in accordance with **clause 12.15(b)**;

(b) any dividend, distributions or other amounts paid by any Syndication Company, Investment Company, any non-wholly owned Subsidiary or any other Person to any Obligor or any other member of the Group, other than received from Falcon constituting distributions under the Falcon Escrow Agreement and customary management fees paid in accordance with past practice;

(c) any issuance or sale by any Obligor or any other member of the Group of its Equity Interests to any Person other than (i) to any Obligor, (ii) in the case of any member of the Group that is not an Obligor, to any other member of the Group that is not an Obligor and (iii) Equity Interests issued or sold in connection with a Reorganization Plan;

(d) any incurrence, issuance or sale by any Obligor or any other member of the Group of any Financial Indebtedness after the Effective Date other than (i) as permitted by **clause 12.13** and (ii) securities issued in connection with a Reorganization Plan;

(e) any refund of Taxes received by any Obligor or any other member of the Group;

(f) unless the Investment Agent otherwise agrees in its sole discretion, any initial public offering (other than the Eurolog IPO) of the Equity Interests of any Obligor or any member of the Group; and

(g) any event that gives rise to the receipt by any Obligor or any other member of the Group of any insurance proceeds or condemnation awards in respect of any assets or properties.

“**Prepetition Payment**” means a payment (by way of adequate protection or otherwise) of principal, interest, profit, fees or otherwise on account of any prepetition indebtedness, trade payables (including, without limitation, in respect of reclamation claims) or other prepetition claims against any Debtor.

“**Profit Amount**” means:

$$(\text{Cost Price} * \text{Profit Rate} * (\text{N}/360)) + (\text{AA} * 5\% * (\text{N}/360))$$

where:

AA is the arithmetic average of the difference between (x) Facility Limit minus (y) Cost Price for all outstanding Purchase Contracts, determined in each case for each day during the term of such Purchase Contract.

N is the number of days to elapse from, and including, the proposed Transaction Date to, but excluding, the Deferred Payment Date.

“Profit Rate” means the sum of (a) the greater of (i) LIBOR determined, with respect to any Purchase Contract, on the Transaction Date by the Investment Agent and (ii) 2% per annum plus (b) 10% per annum.

“Proposed Additional Cost Price” has the meaning given in **clause 4.1(b)**.

“Purchase Contract” means the agreement for the sale by the Investment Agent of Commodities and the purchase of those Commodities by AIHL pursuant to **clause 5** and shall include each Subsequent Purchase Contract.

“PVs” means the investment vehicles organized in the Cayman Islands and owned by a group of 50 third party investors (including insiders of the Debtors), each of whom invest in each U.S.-based AIHL portfolio investment, including each of the companies listed on **Schedule 5D** (which AIHL represents is a complete list of all PVs in existence on the Effective Date).

“RailInvest” means RailInvest Holdings Limited an exempted company incorporated with limited liability under the laws of the Cayman Islands with company number 211119, and a debtor and a debtor-in-possession in the Cases.

“Recipient” has the meaning given in **clause 8.4(b)**.

“Regulation T” means Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation U” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Rejection Date” means the date, if any, prior to December 31, 2012, that AIHL provides written notice to the Investment Agent that AIHL is no longer interested in the Investment Agent providing the Conditional Amount on behalf of the Participants (at which time the Investment Agent shall be relieved of any obligation to continue its confirmatory due diligence with respect to, or to seek to provide, the Conditional Amount).

“Relevant Party” has the meaning given in **clause 8.4(b)**.

“Remedies Notice Period” has the meaning given in **clause 14.20(c)**.

“**Reorganization Plan**” means a plan of reorganization or plan of liquidation in the Cases of the Debtors.

“**Reportable Investment Assets**” means each investment asset of AIHL, the value of which has been reduced by 30% or more from the KPMG LLP mid-point current valuations for such investment asset as set forth in the Waterfalls delivered to the Investment Agent prior to the Effective Date, but only to the extent that such investment asset was valued in excess of \$10,000,000 in such Waterfall.

“**Requested Extension Date**” has the meaning given in **clause 2.3(a)**.

“**Responsible Officer**” means the Chief Executive Officer and each Executive Director of AIHL.

“**Sanctioned Country**” has the meaning given in the definition of “Embargoed Person”.

“**SCB**” means Standard Chartered Bank.

“**SCB Order**” means the Order pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing and Approving the Settlement with Standard Chartered Bank [Docket No. 587] (including the settlement term sheet annexed thereto), as the same is in effect on the date hereof.

“**Security Agent**” means Fortress Credit Corp., as security agent for the Participants.

“**Security Documents**” means:

- (a) the U.S. Security Agreement;
- (b) the Cayman Charge;
- (c) the Cayman Debentures;
- (d) each Investment Company Murabaha Facility Assignment; and
- (e) any other document creating, evidencing or acknowledging Liens in favor of the Security Agent (as agent for the Participants) in respect of the obligations of AIHL or any other Obligor under any of the Finance Documents.

“**Security Period**” means the period starting on the date of this Agreement and ending on the date all the liabilities of each Obligor under or in connection with each Finance Document are irrevocably discharged in full and no Finance Party has any commitment or liability, whether present or future, actual or contingent, in relation to the Facility.

“**Seller**” means DD&Co Limited.

“**SDN List**” means the Office of Foreign Assets Control list of specifically designated nationals and blocked Persons as published by the US Department of the Treasury as updated from time to time or such other list as might replace it.

“**SOFA Schedules**” means SOFA Schedules D, F and G filed on June 8, 2012, as provided to the Investment Agent on October 24, 2012.

“**Specified Non-Guarantor Subsidiaries**” means Arcapita Limited (England), Arcapita Pte. Limited (Singapore), and Arcapita Hong Kong Limited.

“**Specified Reduction**” has the meaning given in **clause 9.1.2(c)**.

“**Spot Rate of Exchange**” means in respect of a Finance Party, that Finance Party’s spot rate of exchange for the purchase of the relevant currency in the London foreign exchange market at or about 11:00 a.m. (London time) on a particular day.

“**Structure Chart**” means the structure charts provided to Investment Agent on October 24, 2012.

“**Subsequent Purchase Contract**” means any Purchase Contract (i) that has a Transaction Date that is the same date as the Deferred Payment Date of another Purchase Contract (such other Purchase Contract, the “**Existing Purchase Contract**”) and (ii) with a Cost Price equal to or less than the Cost Price component of the Deferred Sale Price of the Existing Purchase Contract (provided that there may be only one Subsequent Purchase Contract with respect to any Existing Purchase Contract).

“**Subsidiary**” means an entity of which a Person (a) has direct or indirect control or (b) owns directly or indirectly more than 50 percent of the voting capital or similar right of ownership; “control” for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise, including, for the avoidance of doubt, the Nominee Declaration; *provided* that no Syndication Company or Investment Company shall be deemed to be a Subsidiary solely by virtue of **clause (a)** above.

“**Superpriority Claim**” means a claim against any Debtor in any of the Cases which is an administrative expense claim having priority over any and all administrative expenses, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 331, 365, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code.

“**Supplier**” has the meaning given in **clause 8.4(b)**.

“**Syndication Companies**” means each of the companies organized in the Cayman Islands that are co-owned by AIHL, on the one hand, and third party investors, on the other hand, for the purpose of funding AIHL’s portfolio investments through the sale of Syndication Companies’ Equity Interests to third party investors, including each of the companies listed on **Schedule 5E**, which schedule shall designate whether such company is wholly-owned or majority-owned by any Obligor on the Effective Date, and which AIHL represents is a complete list of all of the Syndication Companies and its direct and indirect ownership interests therein in existence on the Effective Date.

“**Tax**” means any direct or indirect present or future tax, zakat, impost, charge, duty, levy or any similar assessment whatsoever, including any stamp tax, documentary tax, value added tax, sales tax and duty and withholding tax (including any penalty or expense payable in connection with any failure to pay or delay in paying the same) and Taxation shall be construed accordingly.

“**Tax Credit**” means a credit against, relief or remission for, or repayment of any Tax.

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

“**Tax Payment**” means a payment made by AIHL to a Finance Party in any way relating to a Tax Deduction or under any indemnity given by AIHL in respect of Tax under any Finance Document.

“**Termination Date**” means the earliest of (i) the Maturity Date, (ii) 30 days (or such later date as the Investment Agent may agree in its sole discretion) after entry of the Interim Order if the Final Order has not been entered prior thereto, (iii) any date on which the Facility Limit or, prior to the Final Order Entry Date, the Interim Facility Limit, are reduced to zero or otherwise terminated pursuant to the terms hereof, (iv) any date on which the sale of all or substantially all of the Obligors’ assets is consummated, (v) the date of termination of this agreement pursuant to the terms hereof, (vi) the effective date of a Reorganization Plan and (vii) the date of the conversion of any of the Cases to a liquidation proceeding under Chapter 7 of the Bankruptcy Code or the dismissal of any of the Cases by the Bankruptcy Court.

“**Third Party**” means any party other than a Finance Party or member of the Group but which shall include Investment Companies.

“**Transaction Date**” means the date on which a Purchase Contract is, or is proposed to be, made, being the same date as the Offer Letter.

“**Transaction Holdcos**” means the parent holding companies of AIHL portfolio companies, the equity of which is wholly owned by the combination of the applicable Syndication Company, the applicable LT CayCo, and Arcapita Incentive Plan Limited, a Cayman Islands company and, in some cases, certain third-party investors, including each of the companies listed on **Schedule 5B**, which schedule shall designate whether such company is wholly-owned by any Obligor on the Effective Date, and which AIHL represents is a complete list of all of the Transaction Holdcos in existence on the Effective Date.

“**Transaction Request**” means a request from AIHL to the Investment Agent to make a Purchase Contract, substantially in the form set out in **Schedule 2**.

“**U.S. Security Agreement**” means the Pledge and Security Agreement, dated as of the Effective Date, between Arcapita Inc., a Delaware corporation, each other Obligor from time to time party thereto, and the Security Agent, as amended, restated, supplemented or otherwise modified from time to time.

“VAT” has the meaning given to it in **clause 8.4(a)**.

“Voluntary Prepayment Amount” has the meaning given to it in **clause 9.1.4(a)**.

“Waterfalls” means the analysis performed by AIHL and/or its Affiliates detailing the distribution of proceeds upon disposition of each of the AIHL investments provided to the Investment Agent on October 27, 2012.

“WCFs” means the companies organized in the Cayman Islands that are subsidiaries of AIHL (subject to syndication of the Equity Interests in such companies to third party investors in certain cases), formed to enter into working capital facilities with Transaction Holdcos or subsidiaries of Transaction Holdcos, including each of the companies listed on **Schedule 5C**, which schedule shall designate whether such company is wholly-owned by any Obligor on the Effective Date, and which AIHL represents is a complete list of all of the WCFs and its direct or indirect ownership interest therein in existence on the Effective Date.

“WTHL” means WindTurbine Holdings Limited a company with limited liability incorporated in the Cayman Islands under commercial registration number 211910, and a debtor and a debtor-in-possession in the Cases.

1.2 Construction

Unless the context otherwise requires, in this Agreement:

- (a) words denoting the singular shall include the plural and vice versa, words denoting a gender shall include every gender;
- (b) references herein to any Person shall be construed to include such Person’s permitted successors and assigns;
- (c) references to a “party” means a party to this Agreement, including that party’s successors in title and assigns or transferees permitted in accordance with this Agreement;
- (d) the use herein of the word "include" or "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not no limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter;
- (e) references to Recitals, clauses and Schedules are to those contained in this Agreement and all Schedules are an integral part of this Agreement;

- (f) any reference in this Agreement to any law, decree, regulation, rule, statute or statutory provision shall include interpretations of, and be construed as a reference to, such law, decree, regulation, rule, statute or statutory provision as same may have been or may from time to time be amended, modified, extended, consolidated, supplemented, re-enacted or replaced;
- (g) references to this Agreement or to any other agreement and document shall be construed as a reference to such agreement or document as amended, amended and restated, modified, supplemented, novated or replaced from time to time, to the extent such amendment, amendment and restatement, modification, supplement, novation or replacement is permitted hereunder or under any other Finance Document;
- (h) any references in this Agreement to “Articles,” “Sections” and/or “Titles” which make reference to any particular piece of legislation or statute, including without limitation, the Bankruptcy Code, shall for greater certainty mean the equivalent section in the applicable piece of legislation to the extent that the context implies reference to such other similar or equivalent legislation as is in effect from time to time in any other applicable jurisdiction, as applicable; furthermore, where any such reference is meant to apply to such other similar or equivalent legislation where such other similar or equivalent legislation has parallel or like concepts, then such references shall import such parallel or like concepts from such other similar or equivalent legislation, as applicable;
- (i) the “winding-up” or “dissolution” of a company includes any equivalent or analogous proceeding under the law of the jurisdiction in which that company is incorporated or carries on business;
- (j) “know your customer requirements” are the checks that a Participant or the Investment Agent requests in order to meet its obligations under applicable money laundering regulations to identify a Person who is (or is to become) its customer;
- (k) references to “assets” includes present and future properties, revenues and rights of every description;
- (l) unless the contrary intention appears, a reference to a “month” or “months” is a reference to a period starting on one day in a calendar month (determined in accordance with the Gregorian calendar) and ending on the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that:
 - (i) if the numerically corresponding day is not a Business Day, the period will end on the next Business Day in that month (if there is one) or the preceding Business Day (if there is not);
 - (ii) if there is no numerically corresponding day in that month, that period will end on the last Business Day in that month; and

- (m) notwithstanding **paragraph (l)(i)** above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate; and
- (n) a Default (including an Event of Default) is “continuing” if it has not been remedied or waived.

1.3 Rights of Third Parties

Except for the Participants or unless expressly provided to the contrary in this Agreement, a Person who is not a party to this Agreement may not enforce any of its terms.

1.4 Headings

The headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.

2. MURABAHA FACILITY

2.1 Facility

Subject to the terms and conditions of the Finance Documents, in order to finance the purchase of Commodities from the Seller in accordance with the terms of this Agreement, the Investment Agent agrees to make available to AIHL during the Availability Period and on behalf of the Participants a senior secured Dollar-denominated multiple-draw term murabaha facility (the “**Facility**”) in an aggregate amount outstanding at any time not to exceed the Facility Limit at such time and, prior to the Final Order Entry Date, the Interim Facility Limit at such time. No Finance Party is bound to monitor or verify the application of any amount purchased, raised or guaranteed by any Obligor pursuant to this Agreement. Other than with respect to an Existing Purchase Contract that is replaced by a Subsequent Purchase Contract in accordance with the terms hereof, the Facility Limit shall be reduced by the amount of any Cost Price from time to time paid, prepaid, reduced or cancelled under this Agreement, and the amount by which the Facility Limit is so reduced shall no longer be available and shall not be reinstated or reused by AIHL at any time.

2.2 Purchase Contracts

Subject to the terms and conditions of the Finance Documents (including, but not limited to, the limitations set forth in **clauses 2.1** and **4.1** hereof and the satisfaction of each applicable condition precedent set forth in **clause 3**), the Investment Agent will, on behalf of the Participants, purchase Commodities from the Seller at Cost Price and sell those Commodities to AIHL at the Deferred Sale Price on deferred payment terms pursuant to a Purchase Contract. The obligations of AIHL to purchase and pay for the Commodities

pursuant to the preceding sentence shall at all times constitute an allowed Superpriority Claim in the Cases, subject to the Carve-Out.¹

2.3 Maturity Date Extension

- (a) Following the Extension Availability Date, and in any event no later than the date that is thirty days prior to the Termination Date, AIHL may, by written notice to the Investment Agent, request that the Investment Agent extend the Maturity Date for an additional period not to exceed six months from the initial Maturity Date (such extension (if granted), the “**Maturity Date Extension**,” the last date of such additional period, the “**Extended Maturity Date**”); *provided* that there shall be no more than one Maturity Date Extension. Such notice shall state (i) that AIHL is requesting that the Maturity Date be extended, (ii) the Extended Maturity Date, which shall be a Business Day, and (iii) the date on which such extension is requested to become effective (the “**Requested Extension Date**”).
- (b) The effectiveness of the Maturity Date Extension shall be subject to the satisfaction of the following conditions precedent (the date (if any) such conditions precedent are satisfied, the “**Extension Effective Date**”), (i) on or prior to the Requested Extension Date, the Investment Agent shall have notified AIHL that it approves the Maturity Date Extension, which approval shall be given or withheld in the Investment Agent’s sole discretion, and (ii) on the Requested Extension Date, the conditions precedent set forth in **clause 3.2** shall have been satisfied as of such date, both immediately before and immediately after giving effect to the Maturity Date Extension (with all references in such clause to the purchase of Commodities being deemed references to such Maturity Date Extension) and AIHL shall have delivered to the Investment Agent a certificate in form and substance satisfactory to the Investment Agent, signed by an authorized officer of AIHL, certifying that such conditions precedent have been satisfied.
- (c) On the Extension Effective Date, the Maturity Date shall be extended to the Extended Maturity Date.

3. CONDITIONS PRECEDENT

3.1 Initial Conditions Precedent

AIHL may not deliver the initial Transaction Request or request the Investment Agent to enter into a Purchase Contract unless the Investment Agent has confirmed to AIHL and the Participants that all of the conditions precedent listed in **Schedule 1** have been satisfied, in form and substance, satisfactory to the Investment Agent, at which time, subject to the satisfaction of the conditions precedent contained in **clause 3.2** the Investment Agent will be obligated to purchase the Commodities on behalf of the Participants pursuant to **clause 2.2**.

¹ Commodity purchase and sale mechanics are subject to continued review and revisions.

3.2 Conditions Precedent to each Purchase

The Investment Agent's obligations to purchase Commodities pursuant to **clause 2.2** at any time, the effectiveness of the Maturity Date Extension pursuant to **clause 2.3**, and the effectiveness of the Conditional Increase pursuant to **clause 9.4**, shall also be subject to the satisfaction, or waiver in accordance with the terms hereof, of the following conditions precedent; *provided* that the satisfaction of the conditions precedent contained in **clauses (e), (g) and (i)** shall not be required in connection with any Subsequent Purchase Contract (except that the condition precedent in **clause (e)** shall be required in connection with any Purchase Contract effected on a Bringdown Date):

- (a) Entry by the Bankruptcy Court of the Interim Order, on or prior to December 10, 2012, and no order modifying, reversing, staying or vacating the Interim Order shall have been entered.
- (b) For Commodity purchases made on or after January 10, 2013, entry by the Bankruptcy Court of the Final Order, and no order modifying, reversing, staying or vacating the Final Order shall have been entered, or any motion for reconsideration or appeal of the Final Order shall have been timely filed.
- (c) For Commodity purchases made on and after the Final Order Entry Date (or such later date as the Investment Agent may agree in its sole discretion), AIHL shall have delivered to the Investment Agent a certified copy of the special resolution of each LT CayCo amending the liens and restrictions on the transfer of shares in each LT CayCo in form and substance satisfactory to the Investment Agent.
- (d) After giving effect to such Commodities purchase, (i) the Proposed Additional Cost Price, when aggregated with (ii) the aggregate amount of the then-outstanding Cost Price amounts under all other Purchase Contracts in existence at such time (which shall exclude any Purchase Contract in existence at such time to the extent the Deferred Sale Price of such Purchase Contract is to be paid in full contemporaneously with AIHL and the Investment Agent entering into the new Purchase Contract) (the "**Aggregate Cost Price**"), shall not exceed (x) prior to the Final Order Entry Date, the Interim Facility Limit at such time and (y) thereafter, the Facility Limit at such time.
- (e) After giving effect to such Commodities purchase, all representations and warranties contained in this Agreement and the other Finance Documents (subject to, after the Effective Date, any Permitted Representation Exceptions), shall be true and correct in all material respects, except for representations qualified by materiality or Material Adverse Effect, in which case such representation and warranty shall be true and correct in all respects, as of the date of such purchase (or such earlier date as may be expressly referenced in any such representation and warranty).
- (f) Before and after giving effect to such Commodities purchase, no Default shall have occurred and be continuing.

- (g) No Material Adverse Effect shall have occurred since November 1, 2012.
- (h) the Debtors shall have utilized any proceeds of the Eurolog IPO in accordance with the SCB Order prior to such Transaction Date.
- (i) No Purchase Contract (other than any Subsequent Purchase Contract) shall be entered into following the date that is 75 days after the Effective Date.

4. PURCHASE CONTRACT LIMITATIONS

4.1 Limitations

AIHL may only issue a Transaction Request if the following limitations, which apply to each Transaction Request and Purchase Contract, are complied with:

- (a) the Transaction Date for each Purchase Contract must be a Business Day falling within the Availability Period;
- (b) the Cost Price payable in respect of such Purchase Contract (the “**Proposed Additional Cost Price**”) must be a minimum amount of \$25,000,000 and an integral multiple of \$5,000,000 in excess thereof;
- (c) the applicable conditions precedent set forth in **clauses 3.2** shall be satisfied on the date of the Transaction Request;
- (d) a Purchase Contract will not be entered into if it would be illegal or unlawful for AIHL or the Investment Agent to do so, or if it would be illegal or unlawful for a Participant to participate in the funding of the Purchase Contract;
- (e) there shall be no more than three Purchase Contracts outstanding at any time during the Availability Period (including during any extension thereof); and
- (f) No Transaction Request (other than a Transaction Request for any Subsequent Purchase Contract) shall be delivered for a Transaction Date that is 75 days after the Effective Date.

4.2 Expiration

The Facility shall expire and be terminated, and the Facility Limit and, prior to the Final Order Entry Date, the Interim Facility Limit, as the case may be, shall be reduced to zero, on the Termination Date.

5. PROCEDURES

5.1 Transaction Request

- (a) When AIHL wants to utilize the Facility, it shall give to the Investment Agent a duly completed Transaction Request by no later than 12:00 noon (London time)

three Business Days before the proposed Transaction Date (or such other time and date as may be agreed between AIHL and the Investment Agent).

- (b) Once given, a Transaction Request will be irrevocable.

5.2 Offer

Following the Investment Agent's receipt of a duly completed Transaction Request, after the Investment Agent has purchased the requested Commodities from the Seller on the Transaction Date, the Investment Agent shall by no later than 11.00 a.m. ► [(London time)] on the Transaction Date (or such other time as may be agreed between AIHL and the Investment Agent) offer to sell to AIHL the same Commodities and send the terms of a Purchase Contract by facsimile or other electronic transmission via e-mailed pdf or other similar format in an Offer Letter specifying:

- (a) the Transaction Date;
- (b) the Deferred Payment Date;
- (c) the quantity and type of Commodities to be sold;
- (d) the Cost Price of those Commodities; and
- (e) the Deferred Sale Price, which shall be the aggregate of:
 - (i) the Cost Price; plus
 - (ii) the Profit Amount; plus
 - (iii) the Mandatory Cost (if any); plus
 - (iv) the Increased Costs (if any); plus
 - (v) VAT (if any).

5.3 Acceptance

AIHL shall communicate its acceptance of the Offer Letter by facsimile or other electronic transmission via e-mailed pdf or other similar format (by no later than 12:00 noon ► [(London time)]) on the date of the Offer Letter (or such other time as may be agreed between AIHL and the Investment Agent), with the original acceptance to be delivered to the Investment Agent by courier. Non-receipt (for whatever reason) of such original acceptance shall not in any way affect any Purchase Contract.

Upon AIHL communicating acceptance of the Offer Letter:

- (a) a Purchase Contract shall be created between the Investment Agent and AIHL incorporating all of the terms and conditions of this Agreement, the relevant Offer Letter and the communication from AIHL accepting the Offer Letter;

- (b) ownership of, and title to, the relevant Commodities shall immediately pass to and be vested in AIHL, together with all rights and obligations relating thereto; and
- (c) risk in all Commodities purchased by AIHL from the Investment Agent pursuant to the relevant Purchase Contract will pass to AIHL once title to such Commodities passes to AIHL.

5.4 Investment Agent Warranties

- (a) The Investment Agent represents and warrants to AIHL that any Commodities sold by the Investment Agent to AIHL in connection with a Purchase Contract will not be subject to any Lien created by it. All commodities sold by Investment Agent to AIHL will be sold with the benefit of the warranties related to the condition or title to the Commodities (if any) granted by the Seller to the Investment Agent under the DD&Co Ltd Agreements.
- (b) Save as provided in the first sentence of **clause 5.4(a)**, the Investment Agent shall not be deemed to give any warranty or representation (express or implied) whatsoever in respect of any Purchase Contract, whether arising by law, by statute or otherwise and, without prejudice to the generality of the foregoing, any such warranty or representation is hereby expressly excluded to the full extent permitted by applicable law. AIHL shall be considered to have accepted the Commodities unconditionally and without reservation and shall have no remedy against the Investment Agent in respect of quality, condition, quantity, description or otherwise in respect of any Commodities other than for breach of the Investment Agent's representation contained in the first sentence of **clause 5.4(a)**.

5.5 Audit

The Investment Agent shall, upon request of AIHL, promptly supply to AIHL copies of any documentation, provided by the Seller to the Investment Agent, evidencing the Commodities that are the subject of a Purchase Contract.

5.6 [Reserved]

5.7 No Cancellation

Once a Purchase Contract is created, by the Investment Agent executing the Offer Letter and AIHL's acceptance of the Offer Letter, it shall be irrevocable.

5.8 On-Sale

Provided that a Purchase Contract has been created in accordance with **clause 5.3**, AIHL will sell to Condor Trade Limited, on the same day, the Commodities it has purchased under that Purchase Contract.

6. DEFERRED SALE PRICE AND PAYMENTS

6.1 Deferred Sale Price

- (a) Subject to the terms of the Netting Letter, AIHL shall:
- (i) if included as part of the Deferred Sale Price, pay the Increased Costs Amount component of the Deferred Sale Price within 5 Business Days of the Transaction Date for the account of the Participants that have provided a certificate pursuant to **clause 16.5(d)** on or prior to such fifth Business Day; and
 - (ii) pay the Deferred Sale Price less any Increased Costs Amount paid under **paragraph (i) of this clause 6.1(a)** on its Deferred Payment Date for the account of the Participants,

in each case in immediately available funds to the account the Investment Agent notifies in writing to AIHL for this purpose.

- (b) AIHL shall be absolutely and irrevocably required to pay the Deferred Sale Price and all other Obligations and amounts from time to time payable by it under any Finance Document in accordance with the terms hereof and thereof.

6.2 Currency of Account; General Provisions Regarding Payments

- (a) All payments by AIHL relating to Cost Price, Deferred Sale Price, costs, losses, expenses, Taxes and all other Obligations and amounts from time to time payable by it under any Finance Document shall be made in the currency in which the relative Cost Price, Deferred Sale Price, costs, losses, expenses, Taxes, other Obligations or amounts were incurred. Any other amount must be paid in Dollars. All such payments shall be made in immediately available funds and delivered to the Investment Agent not later than ► [12:00 noon (London time)] on the date due at the office or account designated by the Investment Agent for the account of the Participants. For the purpose of computing Profit Amount and fees, funds received by the Investment Agent after that time on such due date shall be deemed to have been paid by AIHL on the next succeeding Business Day.
- (b) Unless otherwise specified herein, all payments in respect of the Cost Price of any Purchase Contract shall be accompanied by payment of accrued and unpaid Profit Amount, Mandatory Cost (if any), Increased Costs (if any) and VAT (if any), in each case in respect of the Cost Price for such Purchase Contract being repaid or prepaid.
- (c) Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made (i) on the next preceding Business Day, or (ii) if such day would fall after the Termination Date, the Termination Date.

6.3 Accounts as Evidence

The Investment Agent shall maintain in accordance with its usual practice an account which shall, as between the parties, in the absence of manifest error, be conclusive evidence of the amounts from time to time owing to and paid to the Investment Agent and Participants under the Finance Documents.

6.4 Set-Off

▶ [Unless expressly provided otherwise in the Netting Letter], all payments (including the Deferred Sale Price) by AIHL under any Finance Document shall be made in full without any set-off or counterclaim.

6.5 Late Payment

- (a) If any sum (including, without limitation, any late payment charge) which is due and payable by AIHL under or in connection with this Agreement is not paid in full on the due date in accordance with this Agreement (an “**unpaid amount**”), AIHL undertakes to pay late payment charges (calculated in accordance with **clause 6.5(b)**) to the Investment Agent on demand for each day that an unpaid amount remains outstanding. The Investment Agent shall pay the amount of any late payment charges received by it:
- (i) to each Participant to compensate it for any actual costs (not to include any opportunity costs or funding costs) certified to the Investment Agent by that Participant, provided that any such amount shall not exceed such Participant’s pro rata share of the late payment amount; and
 - (ii) the balance, on behalf of AIHL, to such charitable foundations as may be selected by AIHL and approved by the Investment Agent.
- (b) The late payment charge in respect of an unpaid amount will accrue on a daily basis on the basis of a year of 360 days and shall be calculated in accordance with the following formula:

$$(\text{UPA} \times (\text{Profit Rate} + 6.0\%)) / 360$$

where:

UPA is the unpaid amount.

7. PRIORITY AND LIENS; ETC.

7.1 Priority and Liens

AIHL hereby covenants, represents and warrants that, upon entry of the Interim Order (and the Final Order, as applicable), the Obligations of each of the Debtors hereunder and under the other Finance Documents:

(i) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute allowed Superpriority Claims, *provided* that so long as the Existing US\$ Facilities obligations are outstanding, the guarantees of and superpriority claims against WTHL, AEID II, and RailInvest shall be subordinated to the existing guarantees in favor of SCB, and SCB shall have a prior superpriority administrative claim in all proceeds of the EuroLog IPO to the extent provided under the SCB Order,

(ii) pursuant to Section 364(c)(2) of the Bankruptcy Code, shall be secured by a perfected first-priority Lien on all now owned or after acquired assets of Arcapita Bank, AIHL and AIHL Sub, in each case, that are not otherwise subject to the Existing Security (such first-priority Lien to include (a) AIHL's interests in the WCFs and AIHL's voting right with respect thereto, (b) AIHL Sub's interests in the unencumbered LT Caycos (i.e., all LT Caycos other than WTHL, AEID II, and RailInvest, but only for so long as the Existing US\$ Facilities guaranteed by such entities remains unpaid)) and AIHL's non-syndicated interests in the Syndication Companies; and

(iii) pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected junior lien on all now owned or after acquired assets of the Debtors 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 (but not granted) subsequent to the Petition Date pursuant to section 546(b) of the Bankruptcy Code or otherwise comes into existence or is acquired after the Petition Date (including, in each case and for so long as the obligations under the Existing US\$ Facilities remain unpaid, the Existing Security),

subject and subordinate in each case with respect to **subclauses (i) through (iii)** above, to the Carve-Out.

Notwithstanding the foregoing, the Liens described above shall not attach to (a) actions for preferences, fraudulent conveyances, and other avoidance power claims under sections 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code or the proceeds thereof or (b) AIHL's Equity Interests in PointPark Properties s.r.o.

The Obligations will also be secured by the Collateral owned by the non-Debtor Obligor as provided in the Security Documents.

7.2 Perfection

Each Debtor acknowledges that, pursuant to the Orders, the Liens granted in favor of the Investment Agent and the Participants in all of the Collateral of such Debtor shall be perfected without the recordation of any financing statements, notices of Lien or other instruments of mortgage, charge or assignment. Each Debtor further agrees that (a) the Investment Agent shall have the rights and remedies set forth in **clause 14.20**, the Security Documents and the Orders in respect of the Collateral of the Debtors and (b) if requested by the Investment Agent, the Debtors shall enter into separate security agreements, pledge agreements, charges and mortgages with respect to such Collateral on terms reasonably satisfactory to the Investment Agent.

7.3 Payment of Obligations

Upon the maturity (whether by acceleration or otherwise) of any of the Obligations, the Participants shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court.

7.4 No Discharge; Survival of Claims

Each Debtor agrees that to the extent its Obligations hereunder are not satisfied in full, (a) its Obligations arising hereunder shall not be discharged by the entry of a Confirmation Order (and each Debtor, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (b) the Superpriority Claim granted to the Investment Agent and the Participants pursuant to the Orders and the Liens granted to the Investment Agent pursuant to the Orders, in each case and described in **clause 7.1** shall not be affected in any manner by the entry of a Confirmation Order.

7.5 Conflicts

To the extent of any conflict between the provisions of the Finance Documents and provisions contained in either Order, the provisions of the applicable Order shall govern.

8. TAX

8.1 No Deductions and Grossing-Up

- (a) All payments under the Finance Documents from AIHL or any other Obligor to the Investment Agent or any Participant shall be made without deduction and free from any present or future Tax (other than Taxes imposed by a jurisdiction in which the Investment Agent or the applicable Participant is organized) unless AIHL or such other Obligor is compelled by law to make any such deduction or withholding. In such event, AIHL or such other Obligor shall pay to the appropriate authorities the amount required to be deducted or withheld and shall pay to the Investment Agent or such Participant, as the case may be, such further amounts, as may be necessary, in order that the net amounts received and retained by the Finance Parties, after such deduction or withholding, shall equal the amount which would have been received and retained by the Finance Parties in the absence of such deduction or withholding.
- (b) Within 30 days of any Obligor making either a Tax Deduction or any payment required in connection with that Tax Deduction, AIHL shall deliver to the Investment Agent, for the Finance Party entitled to the payment, evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

8.2 Tax Credit

If AIHL or any other Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to that Tax Payment; and
- (b) that Finance Party has obtained, utilized and retained that Tax Credit,

the Finance Party must, if no Event of Default shall have occurred and be continuing, promptly upon making such determination, pay an amount to AIHL or such other Obligor which that Finance Party determines will leave it (after that payment and taking into account any out-of-pocket expenses incurred by the Finance Party in connection with obtaining such Tax Credit or making such payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by AIHL; *provided* that AIHL, upon the request of the Finance Party, agrees to repay the amount paid over to AIHL (plus any penalties, interest or other charges imposed by the relevant taxing authority) to the Finance Party in the event the Finance Party is required to repay such Tax Credit to the relevant taxing authority.

8.3 Indemnity

(a) If a Finance Party is required to make any payment on account of Tax or otherwise on or in relation to any sum received or receivable under or pursuant to any Finance Document by the Finance Party (including, without limitation, any sum received or receivable under this **clause 8**) or any loss, liability or cost in respect of any such payment is asserted, imposed, levied or assessed directly or indirectly against the Finance Party, AIHL shall, upon demand of the Finance Party, promptly indemnify the Finance Party against such payment or liability, together with any actual penalties and expenses payable or incurred in connection therewith.

(b) **Paragraph (a)** above shall not apply:

(i) with respect to any Tax assessed:

- (1) under the law of the jurisdiction in which the Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Finance Party is treated as resident for tax purposes; or
- (2) under the law of the jurisdiction in which the Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Finance Party; or

(ii) to the extent a loss, liability or cost is compensated for by an increased payment under **clause 8.1**.

8.4 Value Added Tax

- (a) All amounts set out, or expressed to be payable under a Finance Document by any party to a Finance Party which (in whole or in part) constitute the consideration for value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature (“**VAT**”) shall be deemed to be exclusive of any VAT which is chargeable on such supply, and accordingly, subject to **clause 8.4(c)**, if VAT is chargeable on any supply made by any Finance Party to any party under a Finance Document, that party shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT (and such Finance Party shall promptly provide an appropriate VAT invoice to such party).
- (b) If VAT is chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any party (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for such supply to the Supplier (rather than being required to reimburse the Recipient in respect of that consideration), such Party shall also pay to the Supplier (in addition to and at the same time as paying such amount) an amount equal to the amount of such VAT. The Recipient will promptly pay to the Relevant Party an amount equal to any credit or repayment from the relevant tax authority which it reasonably determines relates to the VAT chargeable on that supply; *provided* that the Relevant Party, upon the request of the Recipient, agrees to repay the amount paid over to the Relevant Party (plus any penalties, interest or other charges imposed by the relevant taxing authority) to the Recipient in the event the Recipient is required to repay such credit to the relevant taxing authority.
- (c) Where a Finance Document requires any party to reimburse a Finance Party for any costs or expenses, that party shall also at the same time pay and indemnify the Finance Party against all VAT incurred by the Finance Party in respect of the costs or expenses to the extent that the Finance Party reasonably determines that neither it nor any other member of the group of which it is a member for VAT purposes is entitled to credit or repayment from the relevant tax authority in respect of the VAT.

8.5 Determinations and Tax Affairs

- (a) In this **clause 8** a reference to “determines” or “determined” means a determination made in the discretion (acting reasonably) of the relevant Finance Party making the determination.
- (b) Subject to **clause 10**, no provision of this Agreement will:
 - (i) interfere with the right of any Finance Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;

- (ii) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (iii) oblige any Finance Party to disclose its Tax returns or any information relating in respect of Taxes.

9. PREPAYMENTS; FACILITY LIMIT REDUCTION; INCREASE IN FACILITY LIMIT

9.1 Mandatory Prepayments and Facility Limit Reduction

9.1.1 Illegality. If at any time following the execution of the Finance Documents it becomes unlawful in any applicable jurisdiction for a Participant to perform any of its obligations as contemplated by the Finance Documents or any of the obligations of a Participant under a Finance Document cease to be legal, valid and binding, that Participant shall, pursuant to the Investment Agency Agreement, promptly notify the Investment Agent upon becoming aware of that event, the Investment Agent shall in turn notify AIHL accordingly, and:

- (i) the Facility Commitment of each such Participant under the Investment Agency Agreement will be immediately cancelled;
- (ii) AIHL shall pay to the Investment Agent on behalf of each such Participant the aggregate amount of such Participant's Contributions and its entitlement to any other outstanding amounts in respect of the Deferred Sale Price on the earlier of (x) the next occurring Deferred Payment Date and (y) the date specified by such Participant in the notice delivered to the Investment Agent as the date by which such Participant is no longer permitted to maintain such Contributions under applicable law (being no earlier than the last day of any applicable grace period permitted by law); and
- (iii) on the payment date determined in accordance with **clause 9.1.1(ii)**, after giving effect to such payment, the Facility Limit and, prior to the Final Order Entry Date, the Interim Facility Limit, in each case shall be reduced by an amount equal to the Contributions so cancelled.

9.1.2 Special Reductions.

- (a) In the event of (i) a cancellation or termination of the Facility, (ii) the acceleration of the Obligations, or (iii) the reduction of the Facility Limit (or, prior to the Final Order Entry Date, the Interim Facility Limit) to zero, AIHL shall, on the date of such cancellation, termination, acceleration or reduction, immediately repay or prepay to the Investment Agent the aggregate amount of the then outstanding Deferred Sale Price in relation to all Purchase Contracts.

- (b) In the event that (i) the Aggregate Cost Price exceeds (ii) the Facility Limit (or, prior to the Final Order Entry Date, the Interim Facility Limit), AIHL shall immediately pay any outstanding amounts in respect of the Cost Price component of the aggregate then outstanding Deferred Sale Price in an amount equal to such excess (which payment shall be applied pro rata to the Cost Price of each Purchase Contract then outstanding).
- (c) On the date that is 120 days after the Effective Date, AIHL shall immediately pay any outstanding amounts in respect of the Cost Price component of the aggregate then outstanding Deferred Sale Price in an aggregate amount equal to the difference (if a positive number) between (i) \$25,000,000 and (ii) the aggregate amount by which the Facility Limit has been reduced during such 120-day period pursuant to **clauses 9.1.3, 9.1.4, 9.1.5 and 9.2** (such amount, the “**Specified Reduction**”) (which payment shall be applied pro rata to the Cost Price of each Purchase Contract then outstanding). On such date, after giving effect to such payment, the Facility Limit shall be reduced by an amount equal to the Specified Reduction.
- 9.1.3 Eurolog IPO. The proceeds of the Eurolog IPO shall be applied to pay any outstanding amounts in respect of the Cost Price component of the aggregate then outstanding Deferred Sale Price in relation to all Purchase Contracts in accordance with, and in an aggregate amount equal to the amount required to be applied to the Obligations under, the SCB Order (which payment shall be applied pro rata to the Cost Price of each Purchase Contract then outstanding). On the payment date required under the SCB Order, after giving effect to such payment, the Facility Limit and, prior to the Final Order Entry Date, the Interim Facility Limit, in each case shall be reduced by an amount equal to the amount of such payment.
- 9.1.4 Prepayment Events. After receipt by AIHL or any member of the Group of the Net Cash Proceeds of any Prepayment Event, AIHL shall apply an amount equal to 100% of the Attributable Amount of such Net Cash Proceeds to pay any outstanding amounts in respect of the then outstanding Deferred Sale Price on the next occurring Deferred Payment Date. On such Deferred Payment Date, after giving effect to such payment, the Facility Limit (and, prior to the Final Order Entry Date, the Interim Facility Limit) shall, in each case, be reduced by an amount equal to the Attributable Amount of such Net Cash Proceeds payable on such date hereunder. Notwithstanding the foregoing, so long as no Default shall then exist or would arise therefrom, AIHL shall not be required to make any payments under this **clause 9.1.4** with respect to a Prepayment Event under **clause (g)** of the definition thereof to the extent that AIHL shall have delivered to the Investment Agent a certificate signed by an authorized officer of AIHL on or prior to the date which is three Business Days after the receipt of insurance proceeds or a condemnation award giving rise to such Prepayment Event certifying that such proceeds shall be used to repair or replace the assets so damaged, lost, destroyed or taken no later than 365 days following the date of the receipt of such insurance proceeds or condemnation award (which certificate shall

set forth the estimates of the proceeds to be so expended); *provided* that if all or any portion of such proceeds not required to be applied to the payment of the Deferred Sale Price under this sentence shall not be utilized to repair or replace the assets so damaged, lost, destroyed or taken within such 365-day period, the Attributable Amount of such unused portion of such Net Cash Proceeds shall be applied on the last day of such period as a mandatory payment as provided in the first sentence of this **clause 9.1.4**.

- 9.1.5 WCFs. After receipt by any WCF of any payment or prepayment of any Financial Indebtedness owing to such WCF, AIHL shall apply an amount equal to 100% of the Attributable Amount of such payment or prepayment amount to pay any outstanding amounts in respect of the then outstanding Deferred Sale Price on the next occurring Deferred Payment Date. On such Deferred Payment Date, after giving effect to such payment, the Facility Limit (and, prior to the Final Order Entry Date, the Interim Facility Limit) shall, in each case, be reduced by an amount equal to the Attributable Amount of such payment or prepayment amount payable on such date hereunder.

In connection with any payment under **clauses 9.1.4** or **9.1.5**, a senior officer of AIHL shall deliver a certificate to the Investment Agent setting forth the Net Cash Proceeds and the Attributable Amount of the Net Cash Proceeds attributable to such payment and the calculation thereof.

In the case of this **clause 9.1** (other than **clause 9.1.2(a)**), after giving effect to any payment made prior to such date, the remaining portion of the Deferred Sale Price will remain due and payable on the next Deferred Payment Date in accordance with the terms of this Agreement and the applicable Purchase Contracts. Any payment made pursuant to this **clause 9.1** shall be paid as specified in **clause 6.2** and applied in accordance with the terms of the Investment Agency Agreement, and (other than prepayments made pursuant to **clause 9.1.1**) the Cost Price component of such payment shall reduce the Facility Commitments of the Participants ratably.

9.2 Voluntary Prepayment and Facility Limit Reduction

- (a) AIHL may, if it gives the Investment Agent not less than 3 Business Days' prior written notice by no later than ► [12:00 noon (London time)] on the date required, prepay all or part (being a minimum amount of \$10,000,000 and an integral multiple of \$1,000,000) of the then outstanding Deferred Sale Price (each such payment being a "**Voluntary Prepayment Amount**"). Upon the giving of any such notice, the Voluntary Prepayment Amount specified in such notice shall become irrevocably due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be paid as specified in **clause 6.2**.
- (b) On the prepayment date specified in such notice, after giving effect to such prepayment, the Facility Limit and, prior to the Final Order Entry Date, the Interim Facility Limit, in each case shall be reduced by an amount equal to the Voluntary Prepayment Amount.

- (c) After giving effect to each prepayment made pursuant to this **clause 9.2**, the remaining portion of the Deferred Sale Price will remain due and payable on the next Deferred Payment Date in accordance with the terms of this Agreement and the applicable Purchase Contracts. Any prepayment made pursuant to this **clause 9.2** shall reduce the Facility Commitments of the Participants ratably.

9.3 Prepayment Notice Requirements and Restrictions

- (a) Any notice of cancellation or prepayment given by any party under this **clause 9** shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) AIHL shall not prepay the Deferred Sale Price or reduce or cancel all or part of the Facility Limit or, prior to the Final Order Entry Date, the Interim Facility Limit, except at the times and in the manner expressly provided for in this Agreement.

9.4 Increase in Facility Limit

- (a) Following the Increase Availability Date, and in any event no later than the date that is 30 days prior to the Maturity Date, AIHL may, by written notice to the Investment Agent, request a one-time increase to the Facility Limit of \$25,000,000 (such amount, the “**Conditional Amount**,” and such increase, the “**Conditional Increase**”). Such notice shall state (i) that the Increase Availability Date has occurred, (ii) that AIHL is requesting that the Facility Limit be increased by \$25,000,000 and (iii) the date on which such increase is to become effective (the “**Requested Increase Date**”).
- (b) The effectiveness of the Conditional Increase shall be subject to the satisfaction of the following conditions precedent (the date (if any) such condition precedent is satisfied, the “**Increase Effective Date**”), on the Requested Increase Date, the conditions precedent set forth in **clause 3.2** shall have been satisfied as of such date, both immediately before and immediately after giving effect to the Conditional Increase (with all references in such clause to the purchase of Commodities being deemed references to such Conditional Increase) and AIHL shall have delivered to the Investment Agent a certificate in form and substance satisfactory to the Investment Agent, signed by an authorized officer of AIHL, certifying that such conditions precedent have been satisfied.
- (c) On the Increase Effective Date, the Facility Limit shall be increased by the Conditional Amount.

10. MITIGATION

10.1 Duty to Mitigate

Each Finance Party shall, in consultation with AIHL, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to any of **clauses 8.1, 8.3, 9.1.1** (to the extent **clause 9.1.1** relates to illegality) and **clause 16.5(a)** including (but not limited to) transferring its rights and obligations under the Finance Documents to another affiliate or Facility Office. This **clause 10** does not in any way limit the obligations of AIHL under the Finance Documents.

10.2 Indemnity

AIHL shall indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under **clause 10.1**.

10.3 No Prejudice

A Finance Party is not obliged to take any steps under **clause 10.1** if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

11. REPRESENTATIONS AND WARRANTIES

AIHL makes the representations and warranties set out in this **clause 11** to the Investment Agent.

11.1 Status and Authority

Each Obligor:

- (a) is duly organized and validly existing and, except for AIHL (as a result of the Cayman Proceedings), is in good standing under the laws of the jurisdiction of its organization and each other jurisdiction where it is required to be qualified and in good standing and, in the case of the Debtors, subject to Bankruptcy Court approval (which has been obtained), and in the case of AIHL, subject to approval by the Joint Provisional Liquidators in the Cayman Proceedings (which has been obtained), has the power and authority to own its property and assets and to transact the business in which it is engaged;
- (b) subject to (in the case of the Debtors) the entry of the Orders and (in the case of AIHL) approval by the Joint Provisional Liquidators in the Cayman Proceedings, has the power and authority to execute, deliver and carry out the terms and provisions of the Finance Documents to which it is a party;
- (c) subject to (in the case of the Debtors) the entry of the Orders and (in the case of AIHL) approval by the Joint Provisional Liquidators in the Cayman Proceedings, has taken all necessary corporate or other organizational action to authorize the

execution, delivery and performance of the Finance Documents to which it is a party; and

- (d) has duly executed and delivered each Finance Document to which it is a party, and, subject to (in the case of the Debtors) the entry of the Orders and (in the case of AIHL) approval by the Joint Provisional Liquidators in the Cayman Proceedings, and (with respect to non-Debtor Obligor) to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered to the Investment Agent, each such Finance Document constitutes the legal, valid and binding obligation of each Obligor party thereto, enforceable against each such Obligor in accordance with its terms.

11.2 Approvals

Other than the Orders, the Cayman Validation Order and those approvals identified in the Finance Documents, no Governmental Authorization or contractual or other consent or approval is required:

- (a) for the execution, delivery or performance by any Obligor of the Finance Documents to which it is a party or any of the transactions contemplated under the Facility (including the granting and enforcement of the security interests contemplated herein and therein), or, subject to any qualifications set out in any legal opinion in relation to the law of the Cayman Islands to be delivered in connection with the Facility, the enforcement of the Investment Agent's or any Participant's rights thereunder; or
- (b) to make the Finance Documents admissible in evidence in its jurisdiction of organization, other than those which have been obtained or effected and are in full force and effect.

11.3 Non-Conflict

Upon entry of the Orders and the Cayman Validation Order (in each case, with respect to the Debtors), the execution, delivery and performance by each Obligor of the Finance Documents to which it is a party and the performance by each such Obligor of its obligations thereunder shall not:

- (a) violate, breach or cause a default under any agreement to which it is a party or to which it or its assets are bound (other than, in the case of Obligor that are Debtors, agreements entered into prior to the commencement of the Cases if the enforcement of such agreement by the counterparty thereto is stayed);
- (b) violate any law, rule, regulation, order, consent or judgment binding on such Obligor; or
- (c) conflict with its Organizational Documents.

11.4 Liens

No Liens exist on the assets of any Obligor except for Existing Security and Permitted Liens.

11.5 Applicable Laws

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

11.6 Material Adverse Effect

No event having a Material Adverse Effect has occurred and is continuing.

11.7 Litigation

Other than the Cases and the Cayman Proceedings, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Obligor, threatened (i) relating to the Facility or Finance Documents or (ii) against such Obligor which could reasonably be expected to have a Material Adverse Effect.

11.8 Insurance

Insurance maintained by the Obligors is sufficient and in such amounts as are commercially reasonable and customarily carried by similar companies engaged in similar business. All premiums in respect of such insurance, to the extent due, have been paid. The insurance maintained by the Obligors is in full force and effect in accordance with its terms and complies with the requirements set forth in **clause 12.18**.

11.9 Structure and Organization

- (a) The Structure Charts set forth the equity percentage ownership owned directly or indirectly by each Obligor in its Subsidiaries and their respective Investment Companies (provided that the Structure Charts do not reflect (i) certain non-material changes in shareholdings in such Subsidiaries and Investment Companies occurring since September 30, 2012 and (ii) certain of the Immaterial Subsidiaries that are dormant).
- (b) Except for Permitted Liens, Existing Security and, except with respect to **subclause (ii)** below, as set forth in the Structure Charts and the Disclosure Schedule, all equity securities of AIHL and its wholly-owned Subsidiaries, and all equity securities directly owned by AIHL and its wholly-owned Subsidiaries in their respective Subsidiaries or Investment Companies, are free and clear of (i) Liens and (ii) shareholder, management or other agreements affecting the voting of such shares or the exercise of other rights with respect thereto, and there are no put/calls, subscriptions, options, warrants, rights or other agreements or commitments with respect to such equity securities, or securities exchangeable or

convertible into, such equity securities and there are no other classes of capital (including preferred shares) outstanding or authorized for such companies.

- (c) Subject to the Information Exception (with respect to the information delivered to the Investment Agent prior to the date of the Commitment Letter), the KPMG Reports, SOFA Schedules and the Waterfalls (as of the respective dates they were provided to the Investment Agent) together identify, except for Financial Indebtedness owed to the WCFs and intercompany Financial Indebtedness owed by Investment Companies to their direct or indirect equity holders and except as set forth in the Disclosure Schedule, all indebtedness for borrowed money and (x) all guarantees of AIHL (and all intermediate holding companies between AIHL and the Transaction Holdcos), and (y) (excluding guarantees) of AIHL's other Subsidiaries and their respective Investment Companies, in each case as of the Effective Date.

11.10 Collateral

Subject (in the case of the Debtors) to the Orders and the Cayman Validation Order, each of the Finance Documents will be effective to create in favor of the Investment Agent, for the benefit of the Participants, a legal, valid and enforceable security interest in the Collateral described therein and upon the filing of any UCC financing statements and the taking of any other actions or making of filings required for perfection under the laws of the relevant jurisdictions and specified in such Finance Documents, such security interest will constitute perfected and continuing Liens on such Collateral, securing the applicable obligations described in such Finance Documents, subject to any qualifications set out in any legal opinion in relation to the law of the Cayman Islands to be delivered in connection with the Facility, enforceable against the applicable Obligor and all third parties, and having priority over all other Liens on such Collateral to the extent provided (in the case of the Debtors) in the Orders, except Existing Security and Permitted Liens. Other than (in the case of the Debtors) the Orders and the Cayman Validation Order, and subject to any qualifications set out in any legal opinion in relation to the law of the Cayman Islands to be delivered in connection with the Facility, no consent, notice to or filing with any Governmental Authority, corporate or organizational board, director or management or with any other Person or entity is required or advisable in connection with the foreclosure or sale of any Collateral by the Investment Agent.

11.11 Investment Company

No Obligor is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940. No Obligor nor any of its subsidiaries is engaged principally, as one or more of its important activities, in the business of extending credit for the purpose of purchasing any "margin stock" as defined in Regulation U. Neither the transactions contemplated in this Agreement nor the use of the proceeds of any Purchase Contracts will violate the provisions of Regulation T, U or X of the Board.

11.12 Orders

- (a) The Debtors are in compliance in all respects with the Orders and any order entered in connection with the Cayman Proceedings.
- (b) The Orders and each order authorizing the Facility entered in connection with the Cayman Proceedings are in full force and effect and be in full force and effect and have not been stayed, reversed, vacated, rescinded, modified or amended in any respect.
- (c) No trustee or examiner has been appointed with respect to the Obligors or their respective properties.

11.13 Tax Returns

Except as permitted not to be filed or paid under the Bankruptcy Code or the Cayman Proceedings, each Obligor has filed all income tax returns and all other material tax returns, domestic and foreign, required to be filed by any of them and have paid all income and other material taxes payable by them that have become due, other than (i) those not yet delinquent, (ii) those contested in good faith as to which adequate reserves have been provided in accordance with generally accepted accounting principles or (iii) those which could not reasonably be expected to have a Material Adverse Effect.

11.14 Enforceability

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

11.15 Filings

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

11.16 No Defaults

No Default is continuing or might reasonably be expected to result from the consummation of any of the transactions contemplated by the Finance Documents.

11.17 Waiver of Immunity

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

11.18 Shari'ah Compliance

No Obligor has relied on any representation by or any written declaration, fatwa, opinion or other documents prepared by, on behalf of, or at the request of, the Investment Agent or any other Finance Party as to the Shari'ah compliance of the transactions contemplated by this Agreement or any other Finance Document and the Obligors have independently made their own assessment as to whether such transactions are compliant with the Shari'ah and no Obligor will claim any dispute on the grounds of Shari'ah compliance of the Finance Documents.

11.19 Proxies

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

11.20 Information

All written information prepared by any Obligor, or by the advisors of any Obligor on such Obligor's behalf (the "**Information**") other than financial projections, forecasts, budgets and other forward-looking statements and other information of a general economic or industry nature, which has been or is hereafter made available to Investment Agent or any Participant by any Obligor or on such Obligor's behalf by any of such Obligor's authorized representatives with respect to such Obligor and its Subsidiaries in connection with the Facility or provided to any of them in connection with their consideration of providing the Facility, as and when furnished, taken as a whole, is and will be correct in all material respects and does not and will not contain any untrue statement of a fact or omit to state a fact necessary to make the statements contained therein not misleading in light of the circumstances under which such statements are made; *provided* that this representation, as it relates to Information delivered to the Investment Agent prior to the date of the Commitment Letter, shall be subject to the Information Exception.

11.21 DIP Budget

The Debtors represent and affirm that each DIP Budget was prepared in good faith based on assumptions believed to be reasonable at the time such DIP Budget was delivered to the Investment Agent.

11.22 Anti-Terrorism Laws; Foreign Corrupt Practices Act

- (a) Each Obligor, each of its Subsidiaries, and each of the respective employees, officers, directors, brokers or agents of such Obligor or such Subsidiary, is in compliance with, and does not engage in or conspire to engage in any transaction that (x) evades or avoids, (y) has the purpose of evading or avoiding, or (z) attempts to violate, in each case, the (a) Trading with the Enemy Act (50 U.S.C. § 1 et seq., as amended), and each of the foreign assets control regulations of the United States Department of the Treasury (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) the Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act”, 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959, as amended), (c) the Patriot Act and (d) Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (clauses (a) through (d) collectively, the “**Anti-Terrorism Laws**”).
- (b) No Obligor, none of its Subsidiaries, and none of their respective employees, officers, directors, brokers or agents acting or benefiting in any capacity in connection with the selling of Commodities under the Facility or any other transaction under the Finance Documents, is an Embargoed Person or conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Embargoed Person.
- (c) No part of the proceeds generated from selling Commodities under the Facility will be used, directly or indirectly, for any payments to any official or employee of any Governmental Authority, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (the “**FCPA**”).

12. UNDERTAKINGS

12.1 Duration

The undertakings in this **clause 12** and **clause 13** remain in force from the date of this Agreement for so long as any amount is or may be outstanding under a Finance Document.

12.2 Financial Statements

- (a) Commencing on June 30, 2013, AIHL shall supply to the Investment Agent in sufficient copies for all the Participants:
- (i) as soon as the same are available (and in any event within 120 days of the end of each of its financial years), its Consolidated Financial Statements;
 - (ii) as soon as the same are available (and in any event within 90 days of the end of the first half-year of each of its financial years), its unaudited consolidated interim balance sheet and the related statement of income for that half-year;
 - (iii) as soon as the same are available (and in any event within 45 days of the end of each quarter of each of its financial years), its unaudited consolidated interim balance sheet and the related statement of income for that quarter;
 - (iv) as soon as the same are available (and in any event within 30 days of the end of each month of each of its financial years), its unaudited consolidated interim balance sheet and the related statement of income for that month;
 - (v) as soon as the same are available (and in any event within one Business Day of filing such document with the Bankruptcy Court), its operating report for that month, and any other financial statements or operating summaries, in each case that are filed with the Bankruptcy Court;
 - (vi) if the Maturity Date is extended pursuant to **clause 2.3**, AIHL shall deliver (x) a report in connection with such extension and (y) after such extension, a quarterly report (to be delivered at the same time as the financial statements in **clause (iii)** above) in each case identifying the Reportable Investment Assets, in each case in line with AIHL's revaluation policy as outlined in the relevant Original Financial Statements; and
 - (vii) if during the period covered by the financial statements delivered under **clause (i)** through **(iii)** above there has been a dilutive change in AIHL's ownership of any Investment Company in excess of 5% from the ownership reflected in the Waterfalls delivered to the Investment Agent prior to the Effective Date (as the same may be updated by any waterfall provided pursuant to this **clause 12.2(a)(vii)**), an updated waterfall for such Investment Company reflecting changes made from the Waterfalls delivered to the Investment Agent prior to the Effective Date or from the last waterfall provided pursuant to this **clause 12.2(a)(vii)** after giving effect to such change in ownership interest.
- (b) AIHL shall procure that Arcapita Bank shall supply to the Investment Agent in sufficient copies for all the Participants:

- (i) as soon as the same are available (and in any event within 120 days of the end of each of its financial years) Arcapita Bank's audited balance sheet and the related statement of income;
- (ii) as soon as the same are available (and in any event within 90 days of the end of the first half-year of each of its financial years) Arcapita Bank's unaudited interim balance sheet and the related statement of income for that half year; and
- (iii) as soon as the same are available (and in any event within 45 days of the end of each quarter of each of its financial years), Arcapita Bank's unaudited interim balance sheet and the related statement of income for that quarter;

provided that, if such statements are not available, that Arcapita Bank will provide its management accounts for its financial year end, half year end and quarter year end.

12.3 Financial Statement Audit Rights

AIHL shall cause the Obligors to permit the Investment Agent and its advisers reasonable access to their books and records, during normal office hours, for the purposes of verifying compliance with the terms of this Agreement.

12.4 Investment Statements

Promptly upon the Investment Agent's request, AIHL shall supply to the Investment Agent such information or evidence in relation to each Investment Company in which AIHL Sub has a direct or indirect Equity Interest as the Investment Agent may reasonably require for the purposes of conducting periodic credit reviews.

12.5 [Reserved]

12.6 [Reserved]

12.7 Requirements as to Financial Statements

AIHL shall ensure that:

- (a) unless the Central Bank of Bahrain otherwise requires in respect of Arcapita Bank (in which case AIHL shall promptly notify those requirements to the Investment Agent) each set of its financial statements delivered by it pursuant to **clause 12.2** are prepared in accordance with IFRS;
- (b) each set of Consolidated Financial Statements and Financial Statements delivered is prepared on the same basis as was used in the preparation of the relevant Original Financial Statements unless, in relation to any set of financial statements it notifies the Investment Agent that there has been a change (A) in IFRS or the

requirements of the Central Bank of Bahrain in respect of Arcapita Bank (as contemplated in **clause 12.7(a)** above), (B) in the accounting practices or (C) in reference periods and its auditor delivers to the Investment Agent;

- (i) a description of any change necessary for those financial statements to reflect IFRS, accounting practices and reference periods upon which the relevant Original Financial Statements were prepared; and
- (ii) sufficient information, in form and substance as may be reasonably required by the Investment Agent, to enable the Finance Parties to determine whether **clause 13** has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the relevant Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the relevant Original Financial Statements were prepared; and

- (c) each set of financial statements delivered by it is certified by a duly authorized officer as giving a true and fair view of its financial condition as at the end of the period to which those financial statements relate and of the results of its operations during such period.

12.8 Information - Miscellaneous

AIHL shall supply to the Investment Agent (in sufficient copies for all the Participants if the Investment Agent so requests):

- (a) promptly upon a Responsible Officer becoming aware of them, except with respect to the Cases, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group or any Investment Company, and which might reasonably be expected to have a Material Adverse Effect;
- (b) promptly, such further information regarding the financial condition, business and operations of any member of the Group or any Investment Company which the Investment Agent may reasonably request;
- (c) prompt written notice of any contemplated initial public offering of the Equity Interests of any Obligor or any of their respective Subsidiaries, together with such further information regarding such initial public offering which the Investment Agent may reasonably request;
- (d) promptly, upon a Responsible Officer becoming aware of them, written notice of the occurrence of any event of default under (however described, and the steps being taken to remedy it, if any), or any material amendment to, (i) any Financial Indebtedness of or owing to any Investment Company or any WCF and (ii) any

joint venture agreement to which any member of the Group or any Investment Company is a party;

- (e) prompt written notice of any action by any Person to (a) amend, cancel, modify, withdraw, rescind, revoke or change any proxy or any administration agreement, management agreement or similar agreement described in **clauses 11.19(a)** and **(c)**, or (b) alter the composition of any board of directors of any Syndication Company or PV such that AIHL employees do not constitute 100% of the board of directors of such Syndication Company or PV;
- (f) (i) at least 2 days prior to such filing of the same with the Bankruptcy Court in the Cases or in the Cayman Proceedings, or distribution, copies of all motions, applications, pleadings relating to the disposition of any Collateral or that would impair any Finance Party's rights or remedies under any Finance Document (in each case which must be in form and substance reasonably satisfactory to the Investment Agent) (other than (x) pleadings, motions applications or other filings which would reasonably expected to be immaterial to the Investment Agent and the Participants or (y) emergency pleadings, motions or other filings where, despite such Debtors' best efforts, such 2-day notice is impracticable) and (ii) at the time of such distribution by or on behalf of Arcapita Bank or any of its Subsidiaries to any Committee, the United States Trustee in the Cases or the Joint Provisional Liquidators, a copy of the Reorganization Plan and/or any disclosure statement related to such plan; and
- (g) at any time following a Default, such further information as the Investment Agent may require regarding the financial condition, business and operations of any Investment Company.

The Obligors shall permit the Investment Agent reasonable access to the Obligors' representatives and books and records during regular business hours to monitor financial performance, DIP Budget compliance and the Collateral.

12.9 Notification of Default

AIHL shall notify the Investment Agent of the occurrence of any Default (and the steps being taken to remedy it if any) promptly upon becoming aware of the occurrence and, promptly upon receipt of a written request to that effect from the Investment Agent, AIHL shall confirm to the Investment Agent that no Default is continuing (or if a Default is continuing specifying the Default and steps, if any, being taken to remedy it).

12.10 Authorizations

AIHL shall, and shall cause each Obligor to, obtain, comply with the terms of and do all that is necessary to maintain in full force and effect the Orders, the Cayman Validation Order and all authorizations, approvals, registrations, licenses and consents required in or by the laws and regulations of its jurisdiction of incorporation to enable it lawfully to enter into and perform its obligations under the Finance Documents to which it is a party

or to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of such Finance Documents.

12.11 Pari-Passu Ranking

AIHL shall, and shall cause each Obligor to, procure that the obligations of each non-Debtor Obligor under the Finance Documents do and will rank at least pari passu with all its other present and future unsecured and unsubordinated Financial Indebtedness, except for liabilities to creditors whose claims are given preference by the laws of the jurisdiction of its incorporation.

12.12 Use of Proceeds Generated from Selling Commodities

- (a) No part of the proceeds generated from selling the Commodities shall:
 - (i) (x) be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended or (y) be paid to (A) any Embargoed Person, (B) any agency of the government of any Sanctioned Country, (C) any organization controlled by a Sanctioned Country or (D) any Person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by U.S. Department of the Treasury's Office of Foreign Assets Control; or
 - (ii) be used in any manner that would will violate the provisions of Regulation T, U or X of the Board of Governors of the United States Federal Reserve System.
- (b) Subject to **paragraph (a)** above, AIHL shall apply all proceeds generated from selling Commodities under the Facility as follows:
 - (i) first, in payment of fees, costs and expenses incurred by the Investment Agent in the negotiation, preparation and administration of the Finance Documents;
 - (ii) secondly, to satisfy any payment obligations in respect of all profits, fees and other expenses due and payable to the Investment Agent or the Participants under the Facility Documents; and
 - (iii) thereafter, for expenses and working capital, capital expenditures and other general corporate purposes consistent with the DIP Budget, subject to any variance permitted under **clause 13**.
- (c) No portion of the proceeds generated from selling Commodities shall be used (x) to make any Prepetition Payment, except as provided in the SCB Order or

otherwise consented to in writing by the Investment Agent or (y) for any act which has the effect of adversely modifying or compromising the rights and remedies of the Investment Agent or any Participant as set forth herein and in the other Facility Documents, or which results in the occurrence of a Default.

12.13 Financial Indebtedness

- (a) Subject to **clause 12.13(b)**, AIHL shall not, and shall not permit any member of the Group to incur or suffer or permit to exist any Financial Indebtedness (other than the Obligations) or any other liabilities or contingent liabilities other than as existing on the Effective Date and identified on the SOFA Schedules or the Disclosure Schedules; *provided* that the foregoing prohibition shall not apply to any obligations, costs or expenses arising under sections 327, 328, 330, 503 and 1103 of the Bankruptcy Code, including in connection with professional costs and expenses in the Cases, that are permitted under this Agreement and the Orders and payable in accordance with the DIP Budget.
- (b) **Clause 12.13(a)** shall not apply to:
 - (i) ordinary course Inter-Obligor Indebtedness incurred after the Effective Date; *provided* that the intercompany Investments giving rise to such Financial Indebtedness are permitted by, and in compliance with, the DIP Budget, subject to any variance permitted under **clause 13**;
 - (ii) intercompany Financial Indebtedness incurred in connection with Arcapita Bank's obligation to fund payments in connection with a sale-leaseback transaction involving Lusail Golf Development LLC, a Qatari limited liability company (the "**Lusail Obligations**"); *provided* that the obligation of Arcapita Bank to make such payments exists on the date hereof and such payments are in compliance with, the DIP Budget, subject to any variance permitted under **clause 13**; and
 - (iii) Financial Indebtedness in an aggregate principal amount not to exceed \$5,000,000 owing by any non-Obligor member of the Group to any Obligor; *provided* that the intercompany Investments giving rise to such Financial Indebtedness are permitted by, and in compliance with, the DIP Budget, subject to any variance permitted under **clause 13**.

12.14 Negative Pledge

AIHL will not (and AIHL shall ensure that no member of the Group will) without the prior consent of the Investment Agent permit any Liens to subsist, arise or be created or extended over all or any part of its present or future undertakings, assets, rights or revenues to secure or prefer any present or future Financial Indebtedness of AIHL or any other Person other than Liens arising pursuant to the SCB Order and the Existing Security and Permitted Liens.

12.15 Disposals

- (a) AIHL shall not (and AIHL shall ensure that each member of the Group shall not) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset, unless an amount equal to the Attributable Amount of the Net Cash Proceeds from such sale, lease, transfer or disposal shall be paid to the Investment Agent on behalf of the Participants (or deposited in escrow) to the extent required under **clause 9.1.4**. AIHL agrees that it shall use its commercially reasonable efforts (consistent with its and its Affiliates' fiduciary duties) to ensure that no assets constituting all or substantially all of the assets of, or Equity Interests in, any Investment Company shall be sold, leased, transferred or otherwise disposed of in a transaction (or series of related transactions) without the prior written consent of the Investment Agent if the Net Cash Proceeds received from such sale, lease transfer or disposal would be less than 70% of the KPMG LLP mid-point current valuations for such assets delivered to the Investment Agent prior to the Effective Date.
- (b) **Clause 12.15(a)** above does not apply to:
- (i) the Eurolog IPO;
 - (ii) distributions received from the Falcon Escrow Agreement; or
 - (iii) any sale, issuance or distribution of assets secured by the Existing Security, *provided* that the proceeds of such sale, issuance or distribution of assets described in this subsection (vii) are (x) applied to the payment of the Existing US\$ Facilities no later than the effective date of a Reorganization Plan, if then outstanding and (y) pending such application are held in escrow or other arrangements satisfactory to the Investment Agent which ensure that such proceeds are only utilized for the payment of the Existing US\$ Facilities and, after the Existing US\$ Facilities are paid in full, the Obligations in accordance with **clause 9.1.4**.

12.16 No Investments

AIHL will not (and shall ensure that no member of the Group shall) make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Equity Interests, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or make any other investment in, any Person (all of the foregoing, "**Investments**") other than Investments made in the ordinary course of its business and on arm's length terms consistent with past practice; *provided* that the following Investments shall be permitted: (a) Investments made by any member of the Group in any other member of the Group or in Investment Companies; *provided*, in each such case, such Investments are consistent with the DIP Budget, subject to any variance permitted under **clause 13** and (b) Investments made in any Exit Plan Subsidiary to meet the minimum capitalization requirements of the jurisdiction of organization of such Exit Plan Subsidiary.

12.17 Know Your Customer Requirements

If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) any change in the status of AIHL or the Guarantors after the date of this Agreement; or
- (c) a proposed assignment or transfer by a Participant of any of its rights and obligations under any Finance Document to a party that is not a Participant prior to such assignment or transfer,

obliges the Investment Agent or any Participant (or, in the case of **paragraph (c)** above, any prospective new Participant) to comply with know your customer requirements, anti-money laundering rules and regulations or similar identification procedures, AIHL shall and shall procure that the Guarantors shall promptly upon the request of the Investment Agent or any Participant supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Investment Agent (for itself or on behalf of any Participant) or any Participant (for itself or, in the case of **paragraph (c)** above, on behalf of any prospective new Participant) in order for the Investment Agent, such Participant or, in the case of **paragraph (c)** above, any prospective new Participant to carry out and be satisfied it has complied with all necessary know your customer requirements, anti-money laundering rules and regulations or other similar checks under all applicable laws and regulations pursuant to this Agreement.

12.18 Insurance

AIHL shall (and AIHL shall ensure that each member of the Group (other than any Specified Non-Guarantor Subsidiary that is subject to bankruptcy or any liquidation proceedings) shall) effect and maintain insurance at its own expense on and in relation to its business and assets of an insurable nature with financially sound and reputable underwriters or insurance companies against those risks and to the extent as is usual and prudent for Shari'ah compliant Persons owning or possessing similar assets and/or carrying on the same or substantially the same business as AIHL and each member of the Group, in each case in such amounts, with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons.

12.19 Taxes

Except as permitted not to be filed or paid under the Bankruptcy Code or the Cayman Proceedings, AIHL shall (and AIHL shall ensure that each member of the Group (other than any Specified Non-Guarantor Subsidiary that is subject to bankruptcy or any liquidation proceedings) shall) pay and discharge all Taxes and governmental charges payable by or assessed upon such Person prior to the date on which the same becomes overdue unless, and only to the extent that, (i) such Taxes and charges are not yet delinquent, (ii) such Taxes and charges shall be contested in good faith by appropriate

proceedings, pending determination of which payment may lawfully be withheld, and there shall be set aside adequate reserves with respect to any such Taxes or charges so contested in accordance with IFRS or (iii) such Taxes and charges could not reasonably be expected to have a Material Adverse Effect.

12.20 [Reserved]

12.21 Compliance with Laws

AIHL shall and shall procure that each member of the Group shall comply in all material respects with all laws, rules and regulations including (without limitation) applicable environmental laws and regulations, in each case applicable to or binding upon such Person or any of its assets or to which such Person or any of its assets are subject.

12.22 Change of Business or Group Structure

- (a) AIHL shall ensure that no substantial change is made to (i) the general nature of the business of AIHL or the Group, so that it continues to operate predominantly in the investment and investment management business, and (ii) the corporate structure of the Group and the Investment Companies (other than (x) the formation of any Exit Plan Subsidiaries and (y) as permitted in accordance with **clauses 12.15 and 12.16**), in each case from that carried on at the date of this Agreement.
- (b) AIHL shall ensure that no company other than a Guarantor owns (whether wholly or otherwise) any of AIHL's equity ownership interests in the Investment Companies.
- (c) AIHL shall not (and shall procure that no member of the Group shall) enter into any amalgamation, demerger, merger or corporate reconstruction without the prior written approval of the Investment Agent.
- (d) AIHL shall ensure that each long-term equity ownership interest owned by AIHL in an Investment Company is owned indirectly by AIHL Sub through its ownership of an LT Cayco.
- (e) AIHL shall ensure that:
 - (i) each Guarantor (other than Arcapita Bank) shall remain a wholly-owned Subsidiary of Arcapita Bank;
 - (ii) AIHL Sub will remain a wholly-owned Subsidiary of AIHL;
 - (iii) each LT CayCo will remain a wholly-owned Subsidiary of AIHL Sub;
- (f) AIHL shall not, and shall ensure that each Guarantor does not, without the prior consent of the Investment Agent, permit any Lien to subsist, arise or be created or extended over all or any part of the Collateral, including the relevant company's

present or future shares, undertakings, assets, rights or revenues other than Existing Security and Permitted Liens.

- (g) Notwithstanding any other provision of this Agreement, AIHL shall ensure that there is no change in the ownership of any Obligor, any Transaction Holdco or any other Investment Company (other than (x) changes of ownership in Transaction Holdcos and other Investment Companies resulting from transfers of Equity Interests by Persons other than an Obligor, an LT CayCo or a wholly-owned Syndication Company or (y) as permitted in accordance with **clauses 12.15 and 12.16**), in each case without the prior consent of the Investment Agent.
- (h) AIHL will procure that no proxies are granted to it or any other Guarantor or any of their respective Subsidiaries by any LT CayCo (other than pursuant to a Finance Document and (to the extent the same relates to the Existing Security) the Existing US\$ Facilities) in relation to the shares such LT CayCo owns in any Holding Company of an Investment Company or by AIHL Sub in in relation to an LT Cayco.
- (i) AIHL will procure that no Obligor or (except for agreements described in items 6 and 7 of the Disclosure Schedule) Transaction Holdco is or will be bound by any agreement with Arcapita Bank (or any of its Subsidiaries) or any Third Party which permits Arcapita Bank (or any of its Subsidiaries (other than AIML) or Third Party) any management or administrative role in the business of any Obligor or any Transaction Holdco.
- (j) AIHL will procure that no agreement is entered into which would affect the validity or enforceability of all or any part of any istisna agreements, Nominee Declarations or Call Options upon the enforcement of any Lien created under or pursuant to the Finance Documents. AIHL will not enter into any agreement (other than in connection with the Existing Security) under which it is granted rights under any istisna agreement, Nominee Declaration or Call Option which would not pass to the Security Agent on the enforcement of the Cayman Charges.

12.23 Deposits

No member of the Group shall open a deposit account for, or accept any deposits from, any Person (other than another member of the Group) if by reason of opening such account or making such deposit, such Person's claim will by law have priority over that member of the Group's unsecured and unsubordinated creditors, including, for the avoidance of doubt, the Finance Parties; provided that, notwithstanding the foregoing, any member of the Group may open a retainer account with a professional or service provider.

12.24 Dividends

Neither AIHL nor any other Guarantor (other than AIHL Sub, the WCFs and the LT Caycos) will declare or make any dividend payment or other distribution of assets or

properties on account of any shares of any class of their respective Equity Interests or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Equity Interests of AIHL or any other Obligor; *provided* that, any such payment or distribution may be made (a) by Subsidiaries of AIHL to AIHL and its Subsidiaries, and (b) by AIHL or by any other Guarantor to Arcapita Bank, so long as no Default has occurred and is continuing and the proceeds thereof are promptly used by Arcapita Bank to pay its operating expenses and any other corporate overhead costs and expenses (including payroll and legal and accounting expenses), in each case in the ordinary course of business and only to the extent permitted by, and in compliance with, the DIP Budget (subject to any variances permitted under **clause 13**).

12.25 Further Assurances

- (a) AIHL shall, and shall cause each other Obligor to, promptly upon request by the Investment Agent (i) correct any material defect or error that may be discovered in any Finance Document or in the execution, acknowledgment, filing or recordation thereof, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, documents, deeds, conveyances, assignments, approvals, transfers, certificates, assurances and other instruments as the Investment Agent may reasonably require from time to time in order to (x) facilitate a disposal of the Collateral or any Investment Company if an Event of Default is continuing, (y) carry out more effectively the purposes of the Finance Documents, and (z) perfect and maintain the validity, effectiveness and priority of any Liens intended to be created hereunder, under any other Finance Document or under the Orders.
- (b) With respect to any assets otherwise constituting “Collateral” acquired after the Effective Date by any Obligor (other than any property described in **paragraph (c)** below) as to which the Security Agent does not have a perfected Lien, AIHL shall, or shall cause such Obligor to, promptly (and in any event within thirty days of the acquisition thereof) (i) execute and deliver to the Security Agent such amendments to the applicable Security Documents or such other documents as the Security Agent reasonably deems necessary or advisable to grant to the Security Agent a security interest in such assets and (ii) take all actions reasonably necessary or advisable to grant to the Security Agent a perfected first priority (subject to the Existing Security and Permitted Liens) Lien in such assets, including the filing of Uniform Commercial Code financing statements (or, to the extent they exist, similar documents in foreign jurisdictions) in such jurisdictions as may be required by any Security Document or by law or as may be reasonably requested by the Security Agent.
- (c) With respect to each new direct or indirect wholly-owned Subsidiary of any Obligor created or acquired after the Effective Date that is not an Exit Plan Subsidiary (including, but not limited to, each new LT CayCo and WCF (each, an “**Additional Guarantor**”), AIHL shall cause such Additional Guarantor to promptly (and in any event within thirty days of the creation or acquisition

thereof) (i) become an Obligor by executing and delivering a joinder to the Guarantee (or, at the Investment Agent's election, an Additional Guarantee in substantially the same form as the Guarantee), and each such Person shall thereupon become a Guarantor hereunder and thereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Finance Documents, (ii) execute and deliver to the Investment Agent all of the documents and other instruments listed on **Schedule 7**, in form and substance satisfactory to the Investment Agent and the Security Agent, as applicable, (iii) execute and deliver to the Security Agent such amendments to the applicable Security Documents as the Security Agent reasonably deems necessary or advisable to grant to the Security Agent a perfected first-priority Lien in the Equity Interests of such Additional Guarantor that is owned by any Obligor, (iv) deliver to the Security Agent the certificates representing such Equity Interests, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Obligor, (v) cause such Additional Guarantor (A) to become a party to or enter into the applicable Security Documents and (B) to take such actions reasonably necessary or advisable to grant to the Security Agent a perfected first-priority Lien in the Collateral described in the applicable Security Documents with respect to such Additional Grantor, including the filing of Uniform Commercial Code financing statements (or, to the extent they exist, similar documents in foreign jurisdictions) in such jurisdictions as may be required by the applicable Security Documents or by law or as may be requested by the Security Agent.

- (d) The foregoing **paragraphs (a) through (c)** shall be subject to any applicable limitations set forth in the Security Documents. Notwithstanding anything to the contrary in this Agreement, if the Security Agent shall reasonably determine that the cost of obtaining a Lien in any assets otherwise required to be subject to a Lien hereunder or under the applicable Security Document is excessive in relation to the value of the Lien afforded thereby, neither the Obligors nor any Additional Guarantor shall have any obligations under **clause 12.25(b)** or **clauses 12.25(c)(iii)** through **(v)** solely with respect to such asset.
- (e) Everything any Obligor and any Additional Guarantor is required to do under this **clause 12.25** shall be at such Obligor or such Additional Guarantor's expense. Each Obligor and each Additional Guarantor agrees to pay or reimburse the costs (including in connection with advisers) of the Finance Parties in connection with anything any Obligor or any Additional Guarantor is required to do under this **clause 12.25**.

12.26 Transactions with Affiliates

AIHL shall not, and will not permit any Obligor or any of their respective Subsidiaries, to enter into or permit to exist any transaction, including any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than another Obligor) unless such transaction is (a) otherwise permitted under this Agreement and (b) in the ordinary

course of business and upon fair and reasonable terms no less favorable to the relevant Group member than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate.

12.27 Exit Plan Subsidiaries

Without the prior written consent of the Investment Agent, which consent shall be given or withheld in the Investment Agent's sole discretion, no Exit Plan Subsidiary shall engage in any business or shall own any assets (other than assets contributed to such Exit Plan Subsidiary to meet any minimum capitalization requirements of its jurisdiction of organization and other than transactions occurring on the effective date of a Reorganization Plan).

12.28 Chapter 11 Claims

AIHL shall not, and will not permit any Debtor to incur, create, assume, suffer to exist or permit any other Superpriority Claim or Lien on any Collateral which is pari passu with or senior to the claims of the Investment Agent and the Participants granted pursuant to this Agreement, the Finance Documents and/or the Interim Order (or the Final Order, as applicable), except in each case for (i) the Carve-Out, (ii) the Superpriority Claims of SCB to the extent set forth in the SCB Order and (iii) Existing Security.

12.29 Cancellation of Indebtedness

No Obligor shall, or shall permit any of its Subsidiaries to, cancel any claim or debt owing to it, except for reasonable consideration negotiated on an arm's length basis and in the ordinary course of its business consistent with past practices.

12.30 No Impairment of Intercompany Transfers

No Obligor shall, or shall permit any of its Subsidiaries to, directly or indirectly enter into or become bound by any effective agreement, instrument, indenture or other obligation (other than this Agreement, the other Finance Documents and the SCB Order) that could directly or indirectly restrict, prohibit or require the consent of any Person with respect to the payment of dividends or distributions or the making or repayment of intercompany loans by a Subsidiary of any Obligor to any Obligor or between Obligors.

12.31 No Speculative Transactions

No Obligor shall engage in any transaction involving commodity options, futures contracts or similar transactions, except solely to hedge against fluctuations in the prices of commodities owned or purchased by it provided any such transaction is consistent with such Obligors' hedging policies existing as of the date hereof.

12.32 Changes Relating to Other Indebtedness and Material Contracts

No Obligor shall change, modify, amend, waive or consent to variation of the terms of (a) any document or agreement relating to any prepetition Financial Indebtedness (other

than amendments to the Existing US\$ Facilities, solely to the extent such amendments are made to conform the Existing US\$ Facilities to the terms of the SCB Order), (b) any shareholder or other related documents or agreement relating to the relationship described in items 6 and 7 of the Disclosure Schedule or relating to any similar co-investment arrangements, (c) any administration agreement, management agreement or similar agreement to which AIML is a party, (d) any credit, loan, finance or other funding agreement to which a WCF is a party (other than amendments, changes or modifications that only renew or extend the maturity date of such agreements), in the case of **clauses (b) through (d)** above, if the effect of such change, modification, amendment, waiver or consent could be adverse to the interests of any Finance Party, without in each case obtaining the prior written consent of the Investment Agent. Without limiting the foregoing, no Obligor shall cause or permit any change, modification, amendment, supplement to, or waiver of, any of its rights under any organizational or constitutional document of any Obligor, any Syndication Company or any Transaction Holdco, without in each case obtaining the prior written consent of the Investment Agent.

12.33 Repayment of Indebtedness

Except pursuant to (a) a confirmed Reorganization Plan or (b) as expressly required under the SCB Order, no Debtor shall, without the express prior written consent of the Investment Agent, make any payment or transfer with respect to any Lien or Financial Indebtedness incurred or arising prior to the Petition Date, whether by way of “adequate protection” under the Bankruptcy Code or otherwise, without the prior written consent of the Investment Agent.

12.34 Post-Closing Matters

No later than 30 days following the Effective Date (or such longer period as the Investment Agent may agree in its sole discretion), for each deposit account and securities account owned by any Obligor, such Obligor shall execute and deliver to the Investment Agent a control agreement in form and substance reasonably satisfactory to the Investment Agent, pursuant to which (a) the depository bank or securities intermediary, as applicable, shall acknowledge the Lien of the Security Agent granted under the applicable Security Documents and (b) the depository bank or securities intermediary, as applicable, shall agree to comply with instructions from the Investment Agent directing the disposition of funds from time to time credited to such deposit account, or entitlement orders directing transfer or redemption of financial assets carried in such securities account, without further consent of the Obligors.

13. BUDGET COVENANT

13.1 Subject to the proviso below, no Obligor shall allow that the actual (a) “Deal Funding & Expenses” and (b) “Net Disbursements” (each as defined below) (collectively, the “**Tested Budget Items**”) for the four-week period ending on January 5, 2013 and for any successive four-week period thereafter (in each case calculated in a manner consistent with the DIP Budget) to exceed the budgeted

amounts for “Deal Funding & Expenses” and “Net Disbursements”, respectively, during such four-week period set forth in the DIP Budget, by an amount in excess of 10%; *provided* that:

(x) in the case of “Net Disbursements”, amounts not utilized during any four-week period may be carried forward to the next four-week period on a last-out basis (and to the extent not utilized in the subsequent four-week period, such carried forward amount shall expire); and

(y) in the case of the “Deal Funding & Expenses” line-item, the amount of such line-item contained in the DIP Budget for such four-week period and not utilized during such period may be carried forward to subsequent periods.

As used herein, (a) “Deal Funding & Expenses” means expenses calculated in a manner consistent with the “Total Deal Funding & Expenses” line-item in the DIP Budget and (b) “Net Disbursements” means the difference between (i) total expenses calculated in a manner consistent with the “Total Disbursements” line-item in the DIP Budget and (ii) Deal Funding & Expenses. Any reference to a DIP Budget line-item contained in this **clause 13** shall be a reference to the line-item as set forth in the consolidated tab of the DIP Budget.

13.2 No later than five Business Days after the last day of the four-week budget period ending on January 5, 2013 and each successive four-week period thereafter (and at such other times as the Investment Agent may reasonably request), AIHL shall deliver to the Investment Agent a variance report, reasonably satisfactory to the Investment Agent, showing on a line-item basis the percentage and dollar variance of actual cash disbursements and cash receipts for each Tested Budget Item (and its components) for the prior four-week period and for the period from December 9, 2012 to the last day of such four-week period from the amounts set forth for each such period in the DIP Budget, and a narrative analysis of each material variance for the prior four-week period.

14. DEFAULT AND REMEDIES

Each of the events set out in **clauses 14.1** through **14.16** is an Event of Default.

14.1 Non-Payment

AIHL or any of the Guarantors fails to pay when due, whether at scheduled maturity, by mandatory prepayment, by notice of voluntary prepayment, by acceleration, demand or otherwise, any amount, whether principal of or premium or profit on or any other amount payable in respect of the Obligations owing under the Finance Documents at the time, in the currency and in the manner specified in this Agreement unless (in the case of payments other than for the Deferred Purchase Price) payment is made within five Business Days after its due date.

14.2 Breach of Other Obligations

- (a) AIHL fails to perform or comply with any term, covenant, agreement or condition contained in **clauses 9, 12.2, 12.7, 12.9 through 12.17, 12.21 through 12.24 (inclusive), 12.25(b) through (e) (inclusive), 12.26 through 12.34 (inclusive), 13 and 18.6**.
- (b) AIHL or any of the Guarantors fail to perform or comply with any term, covenant, agreement or condition contained herein or in any other Finance Document (other than those referred to in **clauses 14.1 and 14.2(a)**), and such failure shall not have been remedied or waived in accordance with the terms hereof within ten days after such failure.

14.3 Misrepresentation

Any representation, warranty, certification or other statement made or deemed to be made by any Obligor in any Finance Document or in any notice or other document, certificate or statement at any time delivered by any Obligor or any of its Subsidiaries pursuant hereto or thereto or in connection herewith or therewith is or proves to have been false, incorrect or misleading in any material respect when made or deemed to be made, except for representations qualified by materiality or Material Adverse Effect, in which case such representation, warranty, certification or other statement is or proves to have been false, incorrect or misleading in any respect when made or deemed to be made.

14.4 Cross-Default

- (a) Any Financial Indebtedness (other than the Obligations) (or, in the case of clause (iii) below, any commitment in respect of Financial Indebtedness) of any member of the Group (other than Financial Indebtedness of Specified Non-Guarantor Subsidiaries and, with respect to the Debtors, pre-petition Financial Indebtedness, the payment of which is subject to an effective stay in the Cases) or the Lusail Obligations:
 - (i) is not paid when due nor within any originally applicable grace period;
 - (ii) is or can be declared to be, or otherwise becomes, due and payable prior to its specified maturity as a result of an event of default (however described), early amortization event, termination event or other similar event; or
 - (iii) is accelerated, cancelled, suspended or terminated by a creditor of any member of the Group as a result of a default or an event of default (however described), early amortization event, termination event or other similar event;

provided that it shall not constitute an Event of Default under this **clause 14.4(a)** if the aggregate amount (or its equivalent in Dollars) of such Financial Indebtedness (or in the case of (iii) above, any commitment in respect of Financial Indebtedness) is less than \$10,000,000 or its equivalent in any other currencies.

- (b) Any creditor of AIHL or any other member of the Group that is not a Specified Non-Guarantor Subsidiary (other than, with respect to the Debtors, any creditor under pre-petition Financial Indebtedness, the payment of which is subject to an effective stay in the Cases) becomes entitled to declare any Financial Indebtedness (including the Lusail Obligations) of any member of the Group due and payable prior to its specified maturity as a result of a default or an event of default (however described), early amortization event, termination event or other similar event; *provided* that it shall not constitute an Event of Default under this **clause 14.4(b)** if the aggregate amount (or its equivalent in Dollars) of such Financial Indebtedness is less than \$10,000,000 or its equivalent in any other currencies.
- (c) Any Debtor shall default on any of its obligations under the SCB Order, or, except with respect to matters not constituting an Event of Default under **clause 14.10** hereunder, SCB shall be permitted to enforce any of its rights under either Existing US\$ Facilities other than with respect to the adequate protection granted to SCB under the SCB Order.

14.5 Insolvency

- (a) Any member of the Group (other than a Debtor or any Immaterial Subsidiary) is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) A moratorium is declared in respect of any indebtedness of any member of the Group (other than a Debtor or any Immaterial Subsidiary).

14.6 Insolvency Proceedings

Any corporate or other organizational action, legal proceedings or other procedure, action or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, bankruptcy, insolvency, adjustment, dissolution, administration, reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise), composition or other relief with respect to indebtedness, in each case of any member of the Group, other than any legal proceedings which are frivolous or vexatious or are discharged, stayed or dismissed within 30 days of commencement of such legal proceedings;
- (b) a composition, assignment or arrangement with or for the benefit of any creditor of any member of the Group;
- (c) the appointment of a liquidator, receiver, administrator, administrative receiver, trustee, custodian, conservator, compulsory manager or other similar officer or official in respect of any member of the Group or for all or any of its assets;

- (d) the issuance of a warrant of attachment, execution, distraint or similar process or action, or the enforcement of any Lien (other than a Lien granted pursuant to a Security Document), in each case against, over or in respect of any assets of any member of the Group;
- (e) a winding up order in respect of AIHL is made by the Courts of the Cayman Islands pursuant to Part V of the Companies Law (2012 revision) of the Cayman Islands or any subsequent revision or enactment thereof;
- (f) the Courts of the Cayman Islands shall grant leave for the commencement or continuance of any suit, action or other proceeding against AIHL, including any criminal proceedings,

or any analogous procedure or step is taken in any jurisdiction; *provided* that, (i) except with respect to **clauses (e) and (f)** above, this **clause 14.6** shall not apply to any Debtor solely with respect to the Cases and the Cayman Proceedings, in each case commenced prior to the Effective Date and (ii) this **clause 14.6** shall not apply to any Immaterial Subsidiary.

14.7 Creditors' Process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of any member of the Group (other than a Debtor or an Immaterial Subsidiary).

14.8 Dismissal or Conversion

(i) Any of the Cases of the Debtors shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code, (ii) any Debtor shall file a motion or other pleading seeking (x) the dismissal of any Case of any Debtor under Section 1112 of the Bankruptcy Code or otherwise or (y) the conversion of any Case of any Debtor to a case under Chapter 7 of the Bankruptcy Code, or (iii) a trustee (or comparable Person) under Chapter 7 or Chapter 11 of the Bankruptcy Code or a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases of the Debtors.

14.9 Superpriority Claims

An order of the Bankruptcy Court shall be entered granting any Superpriority Claim or other claim or administrative expense (other than the Carve-Out and the Superpriority Claims of SCB granted in the SCB Order) in any of the Cases of the Debtors that is *pari passu* with or senior to the claims or Liens of the Investment Agent and the Participants against AIHL or any other Obligor hereunder or under any of the other Finance Documents, or any Debtor takes any action seeking or supporting the grant of any such claim or Lien, except as expressly permitted hereunder; or

14.10 Relief from the Automatic Stay

The Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any Lien to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any of the Debtors which have a value in excess of \$100,000,000 in the aggregate.

14.11 The Orders

- (a) The Interim Order Entry Date shall not have occurred by the date that is 2 days following the hearing of the Bankruptcy Court relating to the Bankruptcy Court's approval of this Agreement.
- (b) The Final Order Entry Date shall not have occurred by the earlier of (i) the date of the expiration of the Interim Order and (ii) the date that is 30 days following entry of the Interim Order.
- (c) Any Order shall cease to be in full force and effect or an order of the Bankruptcy Court shall be entered reversing, staying, vacating or (except as otherwise agreed to in writing by the Investment Agent in its sole discretion) otherwise amending, supplementing or modifying the Interim Order, the Final Order or any of the Finance Documents.
- (d) Any Debtor shall violate or fail to comply with any material term, provision or condition contained in (i) the Orders or the Cayman Validation Order or (ii) the SCB Order or any other order of the Bankruptcy Court relating to the Existing US\$ Facilities.

14.12 Government Intervention

By or under any Governmental Authorization:

- (a) the management of AIHL or any member of the Group (other than any Specified Non-Guarantor Subsidiary) is wholly or partially displaced or the authority of AIHL or any member of the Group (other than any Specified Non-Guarantor Subsidiary) in the conduct of its business is wholly or partially curtailed; or
- (b) any of the issued shares of AIHL or any member of the Group (other than any Specified Non-Guarantor Subsidiary) or all or a substantial part of their respective revenues or assets is seized, nationalized, expropriated or compulsorily acquired or an order is made to that effect.

14.13 Finance Documents; Repudiation

- (a) Any Finance Document shall cease, for any reason, to be in full force and effect or any material provision thereof ceases to be legal, valid, binding or enforceable in accordance with its terms against any Obligor that is a party thereto.

- (b) Any Lien purported to be created by the Orders or any Security Documents shall cease to be, or shall be asserted by any Obligor not to be, a valid and perfected Lien on any material portion of the Collateral, enforceable and of the same effect and of at least the priority purported to be created thereby other than by reason of the release thereof in accordance with the terms hereof or thereof.
- (c) Any Obligor denies that it has any or further liability or obligation under any Finance Document, or asserts, purports, does or causes to be done any act or thing evidencing an intention to repudiate, revoke, terminate or rescind any provision of any Finance Document, any guarantee contained in any Guarantee, or any Lien granted under the Security Documents or the Orders.

14.14 Illegality

At any time it is or becomes unlawful for any Obligor to perform or comply with any or all of such Obligor's material obligations under, or any term, covenant, agreement or condition contained in, any Finance Document, or any of such Obligor's material obligations under any Finance Document are not or cease to be, legal, valid and binding under the laws of any Governmental Authority.

14.15 Other Bankruptcy Items

The occurrence of any of the following in the Cases:

- (a) The entry of an order in any Case avoiding or requiring repayment of any portion of the payments made on account of the Obligations owing under this Agreement or the other Finance Documents;
- (b) (i) the filing of any Reorganization Plan or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by a Debtor or any other Person or (ii) the entry of an order in any of the Chapter 11 Cases confirming a Reorganization Plan, in each case that either (x) is not acceptable to the Investment Agent in its sole discretion or (y) unless the Facility is converted to an exit facility in accordance with and pursuant to the terms and conditions set forth in the Commitment Letter, does not contain a provision for termination of all obligations of the Investment Agent and the Participants to provide the Facility and repayment in full in cash of all of the Obligations under this Agreement and the other Finance Documents on or before the effective date of such Reorganization Plan;
- (c) the sale without the Investment Agent's written consent of all or substantially all of the assets of the Debtors either through a sale under section 363 of the Bankruptcy Code, through a confirmed Reorganization Plan or otherwise that does not provide for payment in full in cash of the Obligations and the termination of all obligations of the Investment Agent and the Participants to provide the Facility; or

- (d) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against the Investment Agent, any Participant or any of the Collateral.

14.16 Material Adverse Effect

Any event or series of events occur, individually or in the aggregate, which may have or be reasonably likely to have a Material Adverse Effect.

14.17 Change of Control

A Change of Control shall occur.

14.18 Cessation and Change of Business

A substantial change shall occur or be made to the general nature of the business of AIHL and each member of the Group, individually and in the aggregate, from that carried on as of the Effective Date which may have or be reasonably likely to have a Material Adverse Effect.

14.19 Judgments; Etc.

- (a) Any judgment or judgments (other than, with respect to the Debtors, pre-petition judgments that are subject to an effective stay of enforcement) for the payment of money in excess of \$10,000,000 in the aggregate at any time are outstanding against one or more of the Obligor (which judgments are not covered by insurance policies as to which liability has been accepted by the insurance carrier), and the same are not, within thirty days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay.
- (b) Any assets of any Obligor with a fair market value of \$10,000,000 or more are attached, seized, levied upon or subjected to a writ or distress warrant, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors of any Obligor and such condition continues for thirty days or more.

14.20 Remedies

If an Event of Default has occurred and is continuing, the Investment Agent may, without further order of or application, motion or notice to, or hearing before or order from the Bankruptcy Court, and notwithstanding the provisions of Section 362 of the Bankruptcy Code:

- (a) cancel the Facility, whereupon the Facility Limit shall be reduced to zero; and/or
- (b) require AIHL immediately to pay the Deferred Sale Price in respect of each Purchase Contract and all Obligations and other amounts payable under any Finance Document, whereupon they shall become immediately due and payable.

- (c) Upon seven days' prior written notice given to AIHL, counsel to AIHL, counsel to the Committee and the United States Trustee after the occurrence of an Event of Default, and if an Event of Default has occurred and is continuing (such seven day period herein referred to as the "**Remedies Notice Period**"), the Investment Agent may, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without application, motion or notice to, hearing before, or order from, the Bankruptcy Court, take any or all of the following actions, at the same or different times, but subject to the restrictions set forth in the Interim Order (or Final Order, when applicable): (i) require that any or all of the Obligors sell or otherwise dispose of any or all of the Collateral on terms and conditions acceptable to the Investment Agent pursuant to Sections 363, 365 and other applicable provisions of the Bankruptcy Code and with respect to designation rights for assumption and rejection of leases and executor contracts, direct any Obligor to assume and assign any lease or executory contract included in the Collateral to Investment Agent's designees in accordance with and subject to Section 365 of the Bankruptcy Code), (ii) enter onto the premises of any Obligor in connection with an orderly liquidation or other disposition of the Collateral, or (iii) exercise any rights and remedies provided to the Investment Agent or any Participant under the Finance Documents or at law or equity, including all remedies provided under the Bankruptcy Code; *provided, however*, that during the Remedies Notice Period, the Obligors and the Committee shall be entitled to an emergency hearing before the Bankruptcy Court for the sole purpose of contesting the occurrence and/or continuance of an Event of Default. Unless the Bankruptcy Court determines during the Remedies Notice Period that an Event of Default has not occurred and/or is not continuing, pursuant to the Interim Order (or the Final Order, when applicable) the automatic stay of Section 362 of the Bankruptcy Code shall be modified and vacated to permit the Investment Agent and the Participants to exercise their remedies under this Agreement and the other Facility Documents, without further notice, application or motion to, hearing before, or order from, the Bankruptcy Court. Subject to the Carve-Out, during the Remedies Notice Period, the Obligors shall not use cash collateral (other than to pay payroll and other expenses critical to keep the business of the Obligors operating in accordance with the DIP Budget). Upon the occurrence of an Event of Default and the exercise by the Investment Agent or the Participants of their rights and remedies under this Agreement and the other Facility Documents, each of the Obligors shall assist the Investment Agent and the Participants in effecting a sale or other disposition of the Collateral upon such terms as are acceptable to the Investment Agent.

15. FEES AND EXPENSES

15.1 Fees and Expenses

- (a) AIHL shall promptly on demand pay the Investment Agent and the Arranger the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution and syndication of:

- (i) this Agreement and any other documents referred to in this Agreement;
and
 - (ii) any other Finance Documents executed after the date of this Agreement.
- (b) If an Obligor requests an amendment, waiver or consent AIHL shall, within three Business Days of demand, reimburse the Investment Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Investment Agent in responding to, evaluating, negotiating or complying with that request or requirement.
- (c) AIHL shall, within three Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

15.2 Fee Letter

AIHL shall pay the fees in the amounts and at the times agreed in each Fee Letter.

16. INDEMNITIES

16.1 Indemnity

- (a) AIHL shall indemnify each Finance Party and their respective directors, officers, employees and agents (each, an “**Indemnified Party**”) on demand against any actual costs, loss, liability or expense which the Indemnified Party has sustained or incurred as a consequence of:
- (i) the failure of AIHL to make payment on the due date of any sum due to the Investment Agent under any Finance Document;
 - (ii) the failure of AIHL to accept the Investment Agent’s offer to sell the Commodities on the date offered, whether or not such acceptance is required under **clause 5.3** or sell the Commodities pursuant to **clause 5.8** of this Agreement;
 - (iii) the occurrence of any Event of Default;
 - (iv) any actions, claims, proceedings, liabilities, losses, damages, penalties, judgments, suits, costs and expenses that may be imposed on, incurred by, asserted of or claimed by any Person and howsoever arising out of this Agreement, any of the other Finance Documents or any action taken or omitted by any of them (including, but not limited to, the sale, delivery, non-delivery, handling, storage, use, possession, seizure, forfeiture of, or in relation to, the Commodities), other than, solely with respect to this **clause 16.1(a)(iv)**, any actions, claims, proceedings, liabilities, losses,

damages, penalties, judgments, suits, costs and expenses arising from the ownership of the Commodities by any of the Indemnified Parties; or

- (v) any prepayment not being made in accordance with **clause 9**;

provided that such indemnity shall not, as to any Indemnified Party, be available to the extent that such losses, damages, penalties, costs and expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Indemnified Party. Subject to **clause 6.5**, AIHL shall make payment of any indemnity in favor of an Indemnified Party provided for in this **clause 16.1(a)** within 10 days of demand by such Indemnified Party.

- (b) AIHL shall promptly indemnify the Investment Agent against any reasonable cost, loss or liability incurred by the Investment Agent as a result of:
- (i) investigating any event which it reasonably believes is a Default; or
- (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorized;

provided that such indemnity shall not, as to any Indemnified Party, be available to the extent that such costs, losses or liabilities are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Indemnified Party.

16.2 Documentary Taxes Indemnity

All stamp, documentary, registration or other like duties or Taxes, including any penalties, additions, fines, surcharges or late payment charges relating to those duties and Taxes, which are imposed or chargeable on or in connection with any Finance Document shall be paid by AIHL. The Investment Agent shall be entitled but not obliged to pay any such duties or Taxes (whether or not they are its primary responsibility). AIHL shall on demand indemnify the Finance Parties from and against those duties and Taxes and against any costs and expenses incurred by the Finance Parties in discharging them.

16.3 Currency Indemnity

- (a) Any payment made to or for the account of or received by the Finance Parties in respect of any moneys or liabilities due, arising or incurred by AIHL to a Finance Party in a currency (the “**Currency of Payment**”) other than the currency in which the payment should have been made (the “**Currency of Obligation**”) in whatever circumstances (including as a result of a judgment against AIHL) and for whatever reason shall constitute a discharge by AIHL only to the extent of the Currency of Obligation amount which the Finance Party is able on the date of receipt of such payment (or if such date of receipt is not a Business Day, on the next succeeding Business Day) to purchase with the Currency of Payment amount at its Spot Rate of Exchange (as conclusively determined by the Investment

Agent). If the amount of the Currency of Obligation which the Finance Party is so able to purchase falls short of the amount originally due to the Investment Agent, then AIHL shall immediately on demand indemnify the Finance Party against any loss or cost arising as a result of that shortfall by paying to the Finance Party that amount in the Currency of Obligation certified by the Finance Party as necessary so to indemnify it.

- (b) AIHL waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency other than that in which it is expressed to be payable.

16.4 Communications Indemnity

- (a) AIHL shall promptly indemnify the Investment Agent against any cost, loss or liability incurred by the Investment Agent (acting in good faith) as a result of acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorized; *provided* that such indemnity shall not be available to the extent that such costs, losses or liabilities are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of the Investment Agent.
- (b) AIHL verifies that each Person AIHL has identified to the Investment Agent as authorized representatives are duly authorized to give or send instructions and other communications by telephone, facsimile transmission or letter.

16.5 Increased Costs

- (a) Subject to **clause 16.5(e)**, AIHL shall, within 3 Business Days of a demand by the Investment Agent, at any time after the Transaction Date, pay for the account of a Finance Party the amount of any Increased Costs incurred after the Transaction Date by that Finance Party or any of its affiliates.
- (b) In this Agreement “**Increased Costs**” means:
 - (i) a reduction in the rate of return from the Facility or on a Finance Party’s (or its affiliate’s) overall capital;
 - (ii) an additional or increased cost or
 - (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement to the extent that it is attributable to that Finance Party having entered into this Agreement, the Investment Agency Agreement or funding or performing its obligations under any Finance Document;

provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be an introduction of, or change in, a law or regulation for the purposes hereof, regardless of the date enacted, adopted or issued.

- (c) A Finance Party intending to make a claim for Increased Costs pursuant to **clause 16.5(a)** shall notify the Investment Agent of the event giving rise to the claim, following which the Investment Agent shall promptly notify AIHL.
- (d) Each Finance Party shall, as soon as practicable, provide a certificate confirming the amount of its Increased Costs.
- (e) **Clause 16.5(a)** does not apply to the extent any Increased Cost is:
 - (i) compensated for by the payment of Mandatory Cost;
 - (ii) compensated for by **clause 8.3** (or would have been compensated for under **clause 8.3** but was not so compensated solely because any of the exclusions in **paragraph (b)** of **clause 8.3** applied); or
 - (iii) attributable to the willful breach by the relevant Finance Party or its affiliates of any law or regulation.

16.6 General

The certificate of the Finance Party or other Indemnitee as to the amount of any loss or damage sustained or incurred by it shall be conclusive and binding on AIHL except for any manifest error.

17. WAIVERS, REMEDIES CUMULATIVE

The rights of the Finance Parties under the Finance Documents:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any such right is not a waiver of that right.

18. MISCELLANEOUS

18.1 Severance

If any provision of any Finance Document is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- (i) the legality, validity or enforceability in that jurisdiction of any other provision of the Finance Document; or
- (ii) the legality, validity or enforceability in any other jurisdiction of that or any other provision of the Finance Document.

18.2 Counterparts

This Agreement may be executed in any number of counterparts and this shall have the same effect as if the signatures on the counterparts were on a single copy of this Agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or electronic transmission via e-mailed pdf or other similar format shall be effective as delivery of a manually executed counterpart of this Agreement.

18.3 Documentation in English

Each Finance Document and each other agreement, certificate, document and instrument delivered or required to be delivered with respect to this Agreement or any other Finance Document shall be in the English language.

18.4 Amendments

Subject always to **clause 8.4** of the Investment Agency Agreement, this Agreement, each other Finance Document, and any of the terms hereof or thereof, may not be amended, changed, waived, discharged, modified, supplemented or terminated unless such amendment, change, waiver, discharge, modification, supplement or termination is in a writing signed by each of the parties to such Finance Document. No amendment to this Agreement or any other Finance Document to which a Debtor is a party shall be effective without the express approval of the Bankruptcy Court and, insofar as it relates to a disposition of AIHL's property, transfer of AIHL's shares or alterations in the status of AIHL's members, without a prior validation order obtained from the Grand Court of the Cayman Islands.

18.5 Patriot Act Notice

Each Participant that is subject to the Patriot Act and the Investment Agent (for itself and not on behalf of any Participant) hereby notifies AIHL that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies AIHL and the other Obligors, which information includes the name, address and tax identification number of AIHL and the other Obligors and other information regarding AIHL and the other Obligors that will allow such Participant or the Investment Agent, as applicable, to identify AIHL and the other Obligors in accordance with the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act and is effective as to the Participants and the Investment Agent.

18.6 Compliance with Anti-Terrorism Laws and FCPA; Embargoed Persons

- (a) Each Obligor and each of its Subsidiaries will comply with the Anti-Terrorism Laws and all applicable requirements of Governmental Authorities having jurisdiction over such Person and its assets, including those relating to money laundering and terrorism. The Investment Agent shall have the right to audit each Obligor's compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over each Obligor and its assets, including those relating to money laundering and terrorism. In the event that any Obligor fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then the Investment Agent may, at its option, exercise any remedies provided for or permissible under applicable law including, if permitted, causing such Obligor to comply therewith, and any and all costs and expenses incurred by the Investment Agent in connection therewith shall be immediately due and payable by AIHL.
- (b) AIHL covenants and agrees with the Investment Agent that, so long as this Agreement remains in effect and until the Obligations have been paid in full, no Obligor shall, nor shall it cause or permit any Subsidiary to:
- (i) directly or indirectly, (x) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described or referenced in **clauses 11.22 and 12.12(a)**, (y) knowingly deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to any Anti-Terrorism Law, or (z) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Obligors shall deliver to the Participants and the Investment Agent any certification or other evidence requested from time to time by any Participant or the Investment Agent, in its sole discretion, confirming the Obligors' compliance with this **clause 18.6**;
 - (ii) cause or permit any funds or proceeds of the Obligors generated from selling Commodities under the Facility or that are used to repay the Obligations to be derived from any unlawful activity with the result that the sale of Commodities under the Facility would be in violation of the FCPA or any other requirement of any Governmental Authority; or
 - (iii) cause or permit (x) any of the funds, proceeds or assets of the Obligors generated from selling Commodities under the Facility or that are used to repay the Obligations to constitute assets of, or be beneficially owned directly or indirectly by, any (1) Embargoed Person, or (2) by any Anti-Terrorism Law, any related enabling legislation or (y) any Embargoed Person to have any direct or indirect interest, of any nature whatsoever in the Obligors, with the result that the investment in the Obligors (whether directly or indirectly) is prohibited by a requirement of any Governmental

Authority or the Obligations or the other transactions contemplated by the Finance Documents are in violation of a requirement of any Governmental Authority.

18.7 No Investment Agent Exclusivity

Arcapita Bank and AIHL's respective boards of directors (or its equivalent) may seek and receive proposals for debtor-in-possession financing or similar transactions during the pendency of the Cases from any third party and negotiate such proposals with any third party and provide due diligence information regarding the Obligors and their Affiliates to such third party; *provided* that nothing contained herein shall be deemed to permit any Financial Indebtedness otherwise prohibited hereunder or to affect AIHL's obligation to pay any fees payable to Fortress Credit Corp. or any of its affiliates pursuant to the Fee Letter or the Commitment Letter relating to this Facility.

18.8 Reinstatement

This Agreement shall remain in full force and effect and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof; is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

18.9 No Strict Construction

The parties hereto have participated jointly in the negotiation and drafting of this Agreement and the other Finance Documents. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

19. NOTICES

19.1 Giving of Notices

All notices or other communications under or in connection with this Agreement shall be given by letter, facsimile or other electronic transmission via e-mailed pdf or other similar format and shall be in English. Any such notice will be deemed to be given as follows:

- (a) if by way of letter, when it has been left at the relevant address, provided such delivery was by way of a reputable courier company which returns proof of delivery; and

- (b) if by facsimile or other electronic transmission via e-mailed pdf or other similar format, when received in legible form.

However, a notice given in accordance with the above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

19.2 Addresses for Notices

- (a) The address and facsimile number of AIHL for all notices under or in connection with this Agreement are:

Address: Arcapita Investment Holdings Limited
c/o Arcapita Bank, B.S.C.(c)
Arcapita Building
Road 4612
Area 346
Bahrain Bay,
Manama,
Kingdom of Bahrain

Attention: General Counsel and Simon Dudley
Fax: []

or such other as AIHL may notify in writing to the Investment Agent by not less than 5 Business Days' prior notice.

- (b) The address and facsimile number of the Investment Agent are:

Address: 1345 Avenue of the Americas
46th Floor
New York, NY 10105
United States of America

Attention: Dean Dakolias
Fax number: +1.212.798.6099

or such other as the Investment Agent may notify in writing to AIHL by not less than 5 Business Days' prior notice.

19.3 Electronic Communication

- (a) Any communication to be made between the Investment Agent and AIHL under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Investment Agent and AIHL:

- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Investment Agent and AIHL will be effective only when actually received in readable form and in the case of any electronic communication made by AIHL to the Investment Agent only if it is addressed in such a manner as the Investment Agent shall specify for this purpose.

20. ASSIGNMENTS AND TRANSFERS

20.1 Benefit of Agreement

This Agreement, the other Finance Documents, and all Liens and other rights and privileges created hereby or pursuant hereto or to any other Finance Document shall be binding upon AIHL, the estate of AIHL, and any trustee, other estate representative or any successor in interest of AIHL in any Case or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Agreement shall be binding upon, and inure to the benefit of, the successors of the Investment Agent and its permitted assigns, transferees and endorsees. The Liens created by this Agreement and the other Finance Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of any Case or any other bankruptcy case of any Debtor to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of any Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Investment Agent file financing statements or otherwise perfect its Liens under applicable law. AIHL may not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Finance Documents without the prior express written consent of the Investment Agent and each Participant. Any such purported assignment, transfer, hypothecation or other conveyance by AIHL without the prior express written consent of the Investment Agent and each Participant shall be void. The terms and provisions of this Agreement and the other Finance Documents are for the purpose of defining the relative rights and obligations of each Obligor, the Investment Agent and each Participant with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Finance Documents. This Agreement shall be binding upon and inure to the benefit of each party and its permitted successors and assigns.

20.2 Assignments and Transfers by AIHL

AIHL shall not be entitled to assign or transfer any of its rights or obligations under any Finance Document without the prior express written consent of the Investment Agent and each Participant.

20.3 Assignments and Transfers by Investment Agent

The Investment Agent shall only be permitted to assign or transfer any of its rights and benefits under any Finance Document to another bank or other financial institution with the prior approval of AIHL (such approval not to be unreasonably withheld, delayed or conditioned) and further in accordance with the Investment Agency Agreement; *provided* that AIHL shall be deemed to have consented to any such assignment or transfer unless it shall object thereto by written notice to the Investment Agent within 10 Business Days after having received notice of such proposed assignment or transfer. No such approval of AIHL shall be required in respect of an assignment or transfer (i) when an Event of Default has occurred and is continuing, or (ii) to any then-existing Participant or their affiliates.

21. GOVERNING LAW & DISPUTE RESOLUTION

21.1 Governing Law

This Agreement and all obligations and rights arising out of or in connection with this Agreement shall be governed by and construed in accordance with the law of the State of New York, United States of America.

21.2 Jurisdiction

AIHL, THE INVESTMENT AGENT AND EACH OTHER PARTICIPANT IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF 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 AGREEMENT OR ANY OTHER FINANCE DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO 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. NOTHING IN THIS AGREEMENT OR IN ANY OTHER FINANCE DOCUMENT SHALL AFFECT ANY RIGHT TO BRING ANY ACTION

OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER FINANCE DOCUMENT AGAINST AIHL OR ANY OTHER OBLIGOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION, INCLUDING THE RIGHT OF THE INVESTMENT AGENT TO BRING SUIT OR TAKE OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF INVESTMENT AGENT. AIHL EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND AIHL HEREBY WAIVES ANY OBJECTION THAT SUCH OBLIGOR MAY HAVE BASED UPON IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

21.3 Waiver of Jury Trial

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER FINANCE DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS CLAUSE.

21.4 Conflict of Terms

Except as otherwise provided in this Agreement, in clauses 3.5 and 3.7 of the Investment Agency Agreement, or in any of the other Finance Documents by specific reference to the applicable provisions of this Agreement, if any provision contained in this Agreement conflicts with any provision in any of the other Finance Documents, the provision contained in this Agreement shall govern and control.

21.5 Service of Process

Without prejudice to any other mode of service allowed under any relevant law AIHL agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered to Corporation Service Company 1180 Avenue of the Americas, Suite 210 New York, New York 10036, and hereby appoints Corporation Service Company as its agent for such service of process. Each party hereto irrevocably consents to service of process in the manner provided for notices in **clause 19.2**. Nothing in this agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

21.6 Immunity

To the extent that AIHL may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), AIHL hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

THIS AGREEMENT is entered into by the parties on the date stated at the beginning of this Agreement.

SCHEDULE 1
CONDITION PRECEDENT DOCUMENTS²

The documents and other evidence referred to in **clause 3.1 (Conditions Precedent)** are as follows, in each case in a form satisfactory to the Investment Agent:

1. AIHL AND GUARANTORS

- 1.1 A certified copy of the constitutional documents of each Obligor.
- 1.2 (a) A certified copy of the minutes of the meeting of the board of directors of each Obligor containing resolutions approving the terms of and the transactions contemplated by the Finance Documents to which that Obligor is a party and authorizing a specified Person or Persons to sign the Finance Documents to which it is party on its behalf, and (b) in respect of AIHL, written evidence of the approval by its Joint Provisional Liquidators (in accordance with the Protocol made between them and AIHL's directors) of the terms of, the transactions contemplated by and the execution by AIHL of the Finance Documents.
- 1.3 A certified specimen of the signature of the authorized signatory of each Obligor who will sign the Finance Documents on that Obligor's behalf.
- 1.4 A certificate of a director of each Guarantor:
 - (a) confirming that the guaranteeing of the Facility and the granting of the Liens pursuant to the Security Documents to which it is a party would not cause any guarantee or security limit binding on such Guarantor to be exceeded; and
 - (b) that (except for AIHL Sub, AEID II, RailInvest and WTHL), is not a Debtor, certifying, in form and substance reasonably satisfactory to the Investment Agent, that such Guarantor is solvent.
- 1.5 To the extent such approval is necessary or advisable for the enforceability of any Finance Document against any Obligor, a certified copy of resolutions of the shareholder(s) of such Obligor approving the entry by that Obligor into the Finance Documents to which it is a party.

2. LEGAL OPINIONS

- 2.1 A legal opinion of Gibson, Dunn & Crutcher LLP, legal advisers to AIHL and each Guarantor in New York.
- 2.2 A legal opinion of Haya Al Khalifa, legal adviser to Arcapita Bank in the Kingdom of Bahrain.

² Subject to continuing review.

2.3 A legal opinion of Mourant Ozannes, legal advisers to AIHL and each Guarantor in the Cayman Islands.

3. FEES, COSTS AND EXPENSES

Evidence that the fees, costs and expenses then due from AIHL pursuant to this Agreement and under the Commitment Letter and the Fee Letter have been paid or will be paid by on the Transaction Date.

4. FINANCE DOCUMENTS

Each of the Finance Documents duly executed by each of the parties to them and all documents and other instruments to be delivered to the Investment Agent in accordance with the Finance Documents, including, but not limited to, the following, each in form and substance satisfactory to the Investment Agent:

- i. this Agreement, duly executed and delivered by AIHL and the Investment Agent;
- ii. the Guarantee, dated as of the Effective Date, duly executed and delivered by each Guarantor and the Investment Agent;
- iii. the U.S. Security Agreement, duly executed and delivered by , Arcapita Inc., the other Debtors (defined therein) party thereto and the Security Agent;
- iv. the Cayman Charge, duly executed and delivered by Arcapita Bank and the Security Agent; and
- v. the Cayman Debenture, duly executed and delivered by Companies (defined therein) party thereto and the Security Agent.

5. PROCESS AGENT

Evidence of the appointment of process agent for each Obligor.

6. OTHER DOCUMENTS AND EVIDENCE

6.1 Evidence of the approval of the Executive Committee of each Obligor's Shari'ah Advisory Board of the execution of the Finance Documents and the issuance of a "Fatwa" that the Finance Documents and the transactions contemplated therein are in compliance with Shari'ah principles.

6.2 The initial DIP Budget.

6.3 The Investment Agent shall have received (a) satisfactory evidence that the Obligors shall have obtained all required consents and approvals of all Persons including all requisite Governmental Authorities, in connection with the filing of the Cases and to the execution, delivery and performance of this Agreement and the other Finance Documents, the consummation of the transactions contemplated hereby and thereby, the

validity and perfection of the Liens of the Security Agent in the Collateral with the priority contemplated in the Finance Documents, and the exercise by the Finance Parties of the rights and remedies with respect thereto or (b) a certificate from a director of AIHL in form and substance reasonably satisfactory to the Investment Agent affirming that no such consents or approvals are required.

- 6.4 The Investment Agent shall have received a certified copy of a validation order granted in the Cayman Proceedings, pursuant to section 99 of the Companies Law (2012 revision) of the Cayman Islands, in respect of (a) any disposition of AIHL's property made under, in connection with or resulting from the transactions contemplated by the Finance Documents and (b) any transfer of AIHL's shares made by virtue of, or by way of perfection or enforcement of, the Lien over AIHL's shares to be created under the Security Documents.
- 6.5 The Investment Agent shall have received a certificate, dated the Effective Date and signed by an authorized officer of AIHL, certifying compliance with each of the conditions precedent set forth in **clause 3.2** have been satisfied.
- 6.6 The Security Agent shall have received (a) originals of all certificates (if any) representing the pledged Equity Interests constituting Collateral, together with undated stock powers executed in blank and instruments constituting Collateral indorsed in blank, and (b) for all Equity Interests constituting Collateral, a copy of the share register of each Person the Equity Interests of which constitute Collateral, notating the Lien granted to the Security Agent by the Obligor owning such Equity Interests, in the case of **clauses (a)** and **(b)**, in accordance with the terms of the applicable Security Documents.

**SCHEDULE 2
FORM OF TRANSACTION REQUEST**

From: Arcapita Investment Holdings Limited

To: Fortress Credit Corp., as Investment Agent

Date: []

**SUPERPRIORITY DEBTOR-IN-POSSESSION MASTER MURABAHA AGREEMENT
DATED DECEMBER __, 2012 AS AMENDED FROM TIME TO TIME (THE
“AGREEMENT”)**

Terms defined in the Agreement have the same meaning when used in this document. This is a Transaction Request.

We wish to enter into a Purchase Contract as follows:

- (a) Transaction Date: []
- (b) Commodity: []
- (c) Cost Price: []

The proposed Purchase Contract to be entered into pursuant to this Transaction Request [will be][will not be] a Subsequent Purchase Contract

[FOR PURCHASE CONTRACTS (OTHER THAN SUBSEQUENT PURCHASE CONTRACTS), INCLUDE THE FOLLOWING:] [We confirm that each of the representations and warranties contained in this Agreement and the other Finance Documents (subject to, after the Effective Date, any Permitted Representation Exceptions), is true and correct in all material respects, except for representations qualified by materiality or Material Adverse Effect, in which case such representation and warranty are true and correct in all respects, on the date of this Transaction Request (or such earlier date as may be expressly referenced in any such representation and warranty). We further confirm that each of the conditions precedent set forth in **clause 3.2** of the Agreement have been satisfied on the date of this Transaction Request and will be satisfied on the proposed Transaction Date.]

[FOR SUBSEQUENT PURCHASE CONTRACTS ENTERED INTO ON A BRINGDOWN DATE INCLUDE THE FOLLOWING:] [We confirm that each of the representations and warranties contained in this Agreement and the other Finance Documents (subject to, after the Effective Date, any Permitted Representation Exceptions), is true and correct in all material respects, except for representations qualified by materiality or Material Adverse Effect, in which case such representation and warranty are true and correct in all respects, on the date of this Transaction Request (or such earlier date as may be expressly referenced in any such representation and warranty). We confirm that each of the conditions

precedent set forth in **clause 3.2** of the Agreement (other than **clauses (e), (g) and (i)**) have been satisfied on the date of this Transaction Request and will be satisfied on the proposed Transaction Date.]

[FOR SUBSEQUENT PURCHASE CONTRACTS NOT ENTERED INTO ON A BRINGDOWN DATE INCLUDE THE FOLLOWING:] [We confirm that each of the conditions precedent set forth in **clause 3.2** of the Agreement (other than **clauses (g) and (i)**) have been satisfied on the date of this Transaction Request and will be satisfied on the proposed Transaction Date.]

.....
authorized signatory
Arcapita Investment Holdings Limited

**SCHEDULE 3
FORM OF OFFER LETTER AND ACCEPTANCE**

From: Fortress Credit Corp., as Investment Agent

To: Arcapita Investment Holdings Limited Date:

**SUPERPRIORITY DEBTOR-IN-POSSESSION MASTER MURABAHA AGREEMENT
DATED DECEMBER __, 2012 AS AMENDED FROM TIME TO TIME (THE
“AGREEMENT”)**

Terms defined in the Agreement have the same meaning when used in this document. This is an Offer Letter.

We offer to sell you the following Commodities on the following terms:

- A. Transaction Date: []
- B. Quantity and type of Commodities: []
- C. Cost Price (per unit Commodity): []
- D. Cost Price: []
- E. Increased Costs Amount: []
- F. Deferred Sale Price: []
- G. Expressly without prejudice to **clause 8.4(a)** of the Agreement,
Value Added Tax: []
- H. Deferred Payment Date []

The above offer is subject to the terms of the Agreement, including, without limitation, **clauses 18 and 21** of the Agreement, which shall (mutatis mutandis) be deemed to be incorporated into the Purchase Contract to be made between us pursuant to your acceptance of this Offer Letter.

.....
Fortress Credit Corp.,
as Investment Agent

.....
Acceptance
We accept the offer in the above Offer Letter.

.....
authorized signatory
Arcapita Investment Holdings Limited

Date: []

**SCHEDULE 4
DISCLOSURE SCHEDULE**

1. Arcapita Bank B.S.C.(c) is the borrower under two facilities made available by Standard Chartered Bank: (i) a \$50 million facility dated May 30, 2011 (as the same may be amended, the “**SCB May 2011 Facility**”); and (ii) a \$50 million facility dated December 22, 2011 (as the same may be amended, the “**SCB December 2011 Facility**” and, together with the SCB May 2011 Facility).
2. The SCB May 2011 Facility is guaranteed by each of Arcapita Investment Holdings Limited (“**AIHL**”), Arcapita LT Holdings Limited (“**AIHL Sub**”) and WindTurbine Holdings Limited (“**WTHL**”). These guarantees are secured by: (i) a first priority pledge of AIHL’s shares in AIHL Sub; (ii) a first priority pledge of AIHL Sub’s shares in WTHL; and (iii) a second priority pledge of AIHL Sub’s shares in AEID II Holdings Limited (“**AEID II**”) and RailInvest Holdings Limited (“**RailInvest**”).
3. 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.
4. Arcapita Industrial Management Sarl and its subsidiaries are party to certain agreements entered into in connection with the pending EuroLog IPO.
5. Administration Agreements are referred to in lists as provided to the Investment Agent on October 24, 2012 and October 30, 2012.
6. HarborVest Agreements as provided to the Investment Agent on October 24, 2012 and separate disclosure as provided on November 1, 2012.
7. Share Purchase Agreements by Middle East institutional investor in connection with its confidential investments in (i) J. Jill Group, (ii) Viridian Group Holding Limited, (iii) CEPL Group, and (iv) Freightliner Group Limited. A Separate disclosure regarding the foregoing was provided to the Investment Agent on November 1, 2012.
8. \$1.1 Billion Master Murabaha Agreement (as amended and restated by an Amendment and Restatement Agreement dated April 11, 2007) dated March 28, 2007 between Arcapita Bank B.S.C.(c) and WestLB AG, London Branch, as Investment Agent.
9. Arcapita Bank has obligations to fund payments in connection with a sale-leaseback transaction involving Lusail Golf Development LLC, a Qatari limited liability company, to the extent such obligations exist on the Effective Date.

**SCHEDULE 5
LIST OF ENTITIES**

A. LT Caycos

B. Transaction Holdcos

C. WCFs

D. PVs

E. Syndication Companies

F. Excluded Businesses

G. Immaterial Subsidiaries

**SCHEDULE 6
FORM OF ACCESSION LETTER**

To: Fortress Credit Corp., as Investment Agent

From: [Subsidiary] and Arcapita Investment Holdings Limited

Dated: [] 201[]

Dear Sirs

**ARCAPITA INVESTMENT HOLDINGS LIMITED — SUPERPRIORITY DEBTOR-IN-
POSSESSION MASTER MURABAHA AGREEMENT DATED DECEMBER __, 2012
(THE "AGREEMENT")**

1. We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [Subsidiary] agrees to become an Additional Guarantor and to be bound by the terms of the Guarantee (or, at the election of the Investment Agent, an Additional Guarantee) as an Additional Guarantor pursuant to **clause 12.25(c)** of the Agreement.
3. [Subsidiary] agrees to be bound by the terms of the applicable Security Documents (or, at the election of the Investment Agent, enter into a new Security Document) pursuant to **clause 12.25(c)** of the Agreement.
4. [Subsidiary] agrees to be bound by those terms of the Investment Agency Agreement which are applicable to a Guarantor as if references therein to a Guarantor were also references to such Subsidiary, as an Additional Guarantor.
5. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction].
6. [Subsidiary's] administrative details are as follows:

Address:

Fax No:
Attention:
7. This Accession Letter shall be governed by and construed in accordance with the law of the State of New York, United States of America.

[SUBSIDIARY]

Signed by)
duly authorized for and)
on behalf of)
[Subsidiary])
)

SCHEDULE 7
CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED BY EACH
ADDITIONAL GUARANTOR

1. An Accession Letter, duly executed by AIHL and the Additional Guarantor.
2. A certified copy of the constitutional documents of the Additional Guarantor, certified in accordance with paragraph 6.
3. A certified specimen of the signature of the authorized signatory of the Additional Guarantor who will sign the Finance Documents to which such Additional Guarantor is party on such Additional Guarantor's behalf.
4. A certified copy of the minutes of the meeting of the board of directors of the Additional Guarantor containing resolutions approving the terms of and the transactions contemplated by the Finance Documents to which such Additional Guarantor is a party and authorizing a specified Person or Persons to sign the Finance Documents to which such Additional Guarantor is party on such Additional Guarantor's behalf. The minutes and resolutions shall set out in detail the factors considered by the directors in determining the corporate benefit of the transactions for their respective companies.
5. A certificate of a director of the Additional Guarantor:
 - a. confirming that the guaranteeing of the Facility and the granting of the Liens pursuant to the Security Documents to which such Additional Guarantor is a party would not cause any guarantee or security limit binding on such Additional Guarantor to be exceeded; and
 - b. that is not a Debtor, certifying, in form and substance reasonably satisfactory to the Investment Agent, that such Additional Guarantor is solvent.
6. A certificate of the Additional Guarantor (signed by its authorized signatory) certifying that each document relating to it specified in this Schedule 7 is correct, complete and in full force and effect as at a date no earlier than the date of the Additional Guarantee.
7. A certificate of the Additional Guarantor (signed by authorized signatory) certifying that the Additional Guarantor is in compliance with all material regulatory or governmental requirements.
8. The latest audited financial statements of the Additional Guarantor.
9. A legal opinion of Gibson, Dunn & Crutcher LLP, legal advisers to the Investment Agent and the Additional Guarantor in New York.
10. A legal opinion of the legal advisers to the Investment Agent in the jurisdiction in which the Additional Guarantor is incorporated.

11. If the Additional Guarantor is incorporated in a jurisdiction other than New York, a letter to the Investment Agent from the process agent referred to in **clause 5** accepting its appointment by the Additional Guarantor.
12. Such documentation and other evidence as is reasonably requested by the Investment Agent (for itself or on behalf of a Participant), including as required pursuant to **clause 12.17**, in order for the Investment Agent (or that Participant) to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations.
13. The Investment Agent shall have received (a) satisfactory evidence that the Additional Guarantor shall have obtained all required consents and approvals of all Persons including all requisite Governmental Authorities, in connection with the filing of the Cases, if applicable, and to the execution, delivery and performance of this Agreement and the other Finance Documents, the consummation of the transactions contemplated hereby and thereby, the validity and perfection of the Liens of the Security Agent in the Collateral with the priority contemplated in the Finance Documents, and the exercise by the Finance Parties of the rights and remedies with respect thereto or (b) a certificate from a director of such Additional Guarantor in form and substance reasonably satisfactory to the Investment Agent affirming that no such consents or approvals are required.
14. Any other agreements, documents and evidence as the Investment Agent considers necessary (if it has notified the Additional Guarantor accordingly) in connection with the entry into and performance of the transactions contemplated by this Agreement and the other Finance Documents to which the Additional Guarantor is party or the validity and enforceability of this Agreement and the other Finance Documents to which the Additional Guarantor is party.

**EXECUTION PAGE OF SUPERPRIORITY DEBTOR-IN-POSSESSION
MASTER MURABAHA AGREEMENT**

AIHL

Signed by)
duly authorized for and)
on behalf of)
Arcapita Investment)
Holdings Limited)
)

INVESTMENT AGENT

Signed by)
duly authorized for and)
on behalf of)
Fortress Credit Corp,)
as Investment Agent)

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- (iii) give directions with respect to the operating and financial policies of that Person which the directors or other equivalent officers of that Person are obliged to comply with; or
- (b) the holding of more than one-half of the issued voting share capital of the Person.

“**Cost Price**” means the amount (in 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 a Purchase Contract.

“**Currency of Obligations**” has the meaning given in **clause 16.3(a)**.

“**Currency of Payment**” has the meaning given in **clause 16.3(a)**.

▶ “**DD&Co Ltd Agreements**” means:

- (a) the Letter of Understanding dated on or about the date of this Agreement and made between the Seller and the Investment Agent▶[]; and
- (b) the letter from the Seller to the Investment Agent dated on or about the date of this Agreement relating to such Letter of Understanding.]

“**Debtors**” means Arcapita Bank, AIHL, AIHL Sub, WTHL, AEID II and RailInvest, all in their capacities as debtors and as debtors-in-possession in the Cases (and, for the avoidance of doubt, not including Falcon).

“**Default**” means an Event of Default or any event or circumstance specified in **clause 14** which, with the giving of any notice, the lapse of time, determination of materiality, or fulfillment of any other applicable condition (or any combination of the foregoing), would constitute an Event of Default.

“**Deferred Payment Date**” means, in respect of a Deferred Sale Price, the date set out in the Offer Letter applicable to that Deferred Sale Price and which shall be the date falling on the last day of the 1 month period following the Transaction Date selected in the applicable Transaction Request, but if:

- (a) there is no numerically corresponding day in the succeeding calendar month, such date shall be the last Business Day of such succeeding calendar month;
- (b) such date is not a Business Day, then the next Business Day in the same calendar month if there is one, or the preceding Business Day if there is not; or
- (c) such date otherwise would fall after the Termination Date, the Termination Date.

“**Deferred Sale Price**” means, in relation to a Purchase Contract, the amount (in Dollars) payable by AIHL to the Investment Agent for the purchase of Commodities, calculated in accordance with **clause 5.2(e)**, excluding any Tax, if applicable.

“**DIP Budget**” means the budget to be prepared by AIHL and agreed with the Investment Agent prior to the date hereof, as such initial budget may be modified or supplemented from time to time by additional budgets (covering any time period covered by a prior budget or covering additional time periods), with the written consent of the Investment Agent to be given in its sole discretion.

“**Disclosure Schedule**” means **Schedule 4**.

“**Dollars**” and “**\$**” means lawful money of the United States of America.

“**Effective Date**” means the date on which the conditions precedent specified in **clauses 3.1** and **3.2** (other than **clause 3.2(b)**) are satisfied or waived in accordance with the terms hereof and the initial Purchase Contract is entered into pursuant hereto.

“**Embargoed Person**” means any Person that (a) is publicly identified on the most current list of “Specially Designated Nationals and Blocked Persons” published by OFAC or resides, is organized or chartered, or has a place of business in a country or territory subject to OFAC sanctions or embargo programs (a “**Sanctioned Country**”) or (b) is publicly identified as prohibited from doing business with the United States under the International Emergency Economic Powers Act, the Trading With the Enemy Act, or any other requirement of any Governmental Authority.

“**Equity Interest**” shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or non-voting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership, whether outstanding on the Effective Date or issued thereafter, but excluding debt securities convertible or exchangeable into such equity.

“**Eurolog IPO**” shall have the meaning set forth in the SCB Order.

“**Event of Default**” means any event specified as such in **clause 14**.

“**Excluded Businesses**” means those businesses identified on **Schedule 5F** hereof, and all Subsidiaries of AIHL comprising a part of such businesses.

“**Existing Security**” means:

- (a) the first ranking charge over the shares of AIHL Sub dated May 30, 2011 granted by AIHL in favor of Standard Chartered Bank;

- (b) the second ranking equitable mortgage over the shares of AIHL Sub dated December 22, 2011 granted by AIHL in favor of Standard Chartered Bank;
- (c) the first ranking charge over the shares of WTHL dated May 30, 2011 granted by AIHL Sub in favor of Standard Chartered Bank;
- (d) the second ranking equitable mortgage over the shares of WTHL dated December 22, 2011 granted by AIHL Sub in favor of Standard Chartered Bank;
- (e) the first ranking equitable mortgage over the shares of AEID II dated December 22, 2011 granted by AIHL Sub in favor of Standard Chartered Bank;
- (f) the second ranking equitable mortgage ~~and charge~~ over the shares of AEID II dated December 28, 2011 granted by AIHL Sub in favor of Standard Chartered Bank;
- (g) the first ranking equitable mortgage over the shares of RailInvest dated December 22, 2011 granted by AIHL Sub in favor of Standard Chartered Bank; and
- (h) the second ranking equitable mortgage and charge over the shares of RailInvest dated December 28, 2011 granted by AIHL Sub in favor of Standard Chartered Bank.

“Existing US\$ Facilities” means

- (a) the \$50 million master murabaha agreement dated May 30, 2011 as amended on October 2, 2011, November 2, 2011, November 29, 2011, December 28, 2011, January 30, 2012, February 13, 2012, February 28, 2012, March 14, 2012, and as amended pursuant to the SCB Order, between Arcapita Bank and Standard Chartered Bank, and, solely to the extent permitted in accordance with **clause 12.32**, as amended, supplemented or otherwise modified from time to time after the Effective Date; and
- (b) the \$50 million master murabaha agreement dated December 22, 2011 as amended on January 30, 2012, February 13, 2012, February 28, 2012, March 14, 2012 and as amended pursuant to the SCB Order, between Arcapita Bank and Standard Chartered Bank, and, solely to the extent permitted in accordance with **clause 12.32**, as amended, supplemented or otherwise modified from time to time after the Effective Date.

“Exit Plan Subsidiary” means any Subsidiary of Arcapita Bank designated in writing to the Investment Agent by AIHL as an “Exit Plan Subsidiary,” that (a) is formed in accordance with, and solely for the purpose of, implementing a Reorganization Plan and (b) prior to the effective date of a Reorganization Plan, has no operations and no

“**Governmental Authorization**” means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

“**Group**” means Arcapita Bank and AIHL and their respective Subsidiaries from time to time, other than a Subsidiary which is an Investment Company.

“**Guarantee**” means each joint and several guarantee by the Guarantors in favor of the Security Agent dated on or about the date of this Agreement, and each Additional Guarantee.

“**Guarantor**” means each of Arcapita Bank, AEID II, AIHL Sub, RailInvest, WTHL, AIML, Arcapita Inc., Arcapita Structured Finance Ltd., Arcapita Investment Funding Limited, Arcapita Industrial Management I Ltd, Arcapita (US) Limited, Arcapita (Europe) Limited, Arcapita (Singapore) Limited, each other LT CayCo, each WCF and each Syndication Company, in each case that is wholly-owned by AIHL, and each Additional Guarantor that becomes a Guarantor pursuant to **clause 12.25(c)**, other than (x) those Persons identified on **Schedule 5FG** hereto (which schedule shall include the Specified Non-Guarantor Subsidiaries) and (y) each Exit Plan Subsidiary.

“**Hedging Agreement**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of ISDA Master Agreement, including any such obligations or liabilities under any ISDA Master Agreement.

“**Holding Company**” means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

“**IFRS**” means International Financial Reporting Standards from time to time, published by the International Accounting Standards Board.

“**Immaterial Subsidiary**” means (x) the Specified Non-Guarantor Subsidiaries~~and any~~, (y) Subsidiaries comprising parts of the Excluded Businesses and (z) any other Subsidiary of Arcapita Bank (other than an Obligor) designated in writing to the Investment Agent by AIHL as an “Immaterial Subsidiary” (which designation may be withdrawn by AIHL in a writing delivered to the Investment Agent), that, individually as of the relevant date of determination has total assets as of such date of less than

\$2,000,000, as determined in accordance with IFRS; *provided* that at no time shall all Immaterial Subsidiaries identified as Immaterial Subsidiaries under this clause (z) (and not withdrawn) shall have in the aggregate total assets in excess of \$5,000,000, as determined in accordance with IFRS. The Immaterial Subsidiaries on the Effective Date are listed on **Schedule 5G**.

“**Increase Availability Date**” means, if the Rejection Date has not occurred, the later to occur of (a) December 31, 2012 and (b) the date that the Investment Agent provides written notice to AIHL that the Investment Agent has completed additional confirmatory due diligence the results of which are reasonably satisfactory to the Investment Agent.

“**Increase Effective Date**” has the meaning given in **clause 9.4(b)**.

“**Increased Costs**” has the meaning given in **clause 16.5(b)**.

“**Increased Costs Amount**” means Increased Costs incurred by a Finance Party.

“**Indemnified Party**” has the meaning given in **clause 16.1(a)**.

“**Information Exception**” means misstatements or omissions which would not be reasonably expected to decrease the aggregate value to Arcapita of its assets and Investment Companies based on the low-point valuations contained in the KPMG Reports and Waterfalls delivered to the Investment Agent prior to the Effective Date by more than \$70,000,000 (calculated as of the date in question and with such adjusted valuation for a given asset or Investment Company calculated pursuant to the methodology similar to the methodology utilized in the low-point valuations in the KPMG Reports and the Waterfalls).

“**Inter-Obligor Indebtedness**” means any Financial Indebtedness owing by any Obligor to any other Obligor.

“**Interim Facility Limit**” means \$25,000,000, as such amount may be reduced, increased or terminated pursuant to **clause 9** or **clause 14.13**; *provided*, however, that such amount may never be greater than that which is authorized under the Interim Order.

“**Interim Order**” means an order of the Bankruptcy Court entered in the Cases granting interim approval of the transactions involving the Debtors contemplated by this Agreement and the other Finance Documents and granting the Liens on the Collateral and the Superpriority Claims in favor of the Investment Agent and the Participants, substantially in the form of **Exhibit A** hereto, with such changes thereto as may be in form and substance satisfactory to the Investment Agent in its sole discretion, as the same may be amended, modified or supplemented from time to time with the consent of the Investment Agent (such consent to be given or withheld in the sole discretion of the Investment Agent).

“**Maturity Date Extension**” has the meaning given in **clause 2.3(a)**.

“**Net Cash Proceeds**” means, with respect to any Prepayment Event, the proceeds of any refund of Taxes, conveyance, lease, sublease, assignment, transfer, disposition, dividend, distribution, issuance, sale, initial public offering, insurance proceeds or condemnation award (or other covered transaction), as the case may be, received in the form of cash and cash equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received), net of discounts, commissions, costs, awards, attorneys’ fees, accountants’ fees, investment banking fees and other customary fees and expenses actually incurred in connection therewith (other than fees paid to an Affiliate) and, in connection with any disposition of assets, amounts required to be applied to the repayment of (a) the Existing \$US Facilities solely to the extent required by the SCB Order and (b) Financial Indebtedness secured by a Lien expressly permitted hereunder (and not junior to the Liens granted on such assets under the Financing Documents or pursuant to the Orders) on any assets so disposed of (other than any Lien securing the Obligations) and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements).

“**Netting Letter**” means the letter agreement between the Investment Agent, AIHL, ~~DD&Co Ltd and Condor Trade Limited~~ dated on or about the date of this Agreement.

“**Nominee Declarations**” means a nominee declaration held by any Person in the Equity Interests of any Investment Company held for the beneficial use and ownership of any LT CayCo or any other Investment Company.

“**Obligations**” means all liabilities and obligations of every kind and description (whether or not evidenced by any instrument and whether or not for the payment of money), direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising, in each case of any Obligor from time to time owed to the Investment Agent, any other Finance Party, or any of them under any Finance Document, whether for the Deferred Sale Price, Cost Price, Profit Amount (including Profit Amount which, but for the filing of a petition in bankruptcy with respect to such Obligor, would have accrued on any Obligation, whether or not a claim is allowed against such Obligor for such Profit Amount in the related bankruptcy proceeding), costs, fees, charges, expenses, attorneys’ fees, accountants’ fees, consultants’ fees, indemnification or otherwise.

“**Obligors**” means AIHL and the Guarantors.

“**OFAC**” means the Office of Foreign Assets Control of the US Department of the Treasury.

indebtedness, trade payables (including, without limitation, in respect of reclamation claims) or other prepetition claims against any Debtor.

“**Profit Amount**” means:

$$\underline{(\text{Cost Price} * \text{Profit Rate} * (\text{N}/360)) + (\text{AA} * 5\% * (\text{N}/360))}$$

where:

AA is the arithmetic average of the difference between (x) Facility Limit minus (y) Cost Price for all outstanding Purchase Contracts, determined in each case for each day during the term of such Purchase Contract.

N is the number of days to elapse from, and including, the proposed Transaction Date to, but excluding, the Deferred Payment Date.

“**Profit Rate**” means the sum of (a) the greater of (i) LIBOR determined, with respect to any Purchase Contract, on the Transaction Date by the Investment Agent and (ii) 2% per annum plus (b) 10% per annum.

“**Proposed Additional Cost Price**” has the meaning given in **clause 4.1(b)**.

“**Purchase Contract**” means the agreement for the sale by the Investment Agent of Commodities and the purchase of those Commodities by AIHL pursuant to **clause 5** and shall include each Subsequent Purchase Contract.

“**PVs**” means the investment vehicles organized in the Cayman Islands and owned by a group of 50 third party investors (including insiders of the Debtors), each of whom invest in each U.S.-based AIHL portfolio investment, including each of the companies listed on **Schedule 5D** (which AIHL represents is a complete list of all PVs in existence on the Effective Date).

“**RailInvest**” means RailInvest Holdings Limited an exempted company incorporated with limited liability under the laws of the Cayman Islands with company number 211119, and a debtor and a debtor-in-possession in the Cases.

“**Recipient**” has the meaning given in **clause 8.4(b)**.

“**Regulation T**” means Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation U**” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation X**” means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

(e) any other document creating, evidencing or acknowledging Liens in favor of the Security Agent (as agent for the Participants) in respect of the obligations of AIHL or any other Obligor under any of the Finance Documents.

“**Security Period**” means the period starting on the date of this Agreement and ending on the date all the liabilities of each Obligor under or in connection with each Finance Document are irrevocably discharged in full and no Finance Party has any commitment or liability, whether present or future, actual or contingent, in relation to the Facility.

“**Seller**” means ~~DD&Co Limited~~.

“**SDN List**” means the Office of Foreign Assets Control list of specifically designated nationals and blocked Persons as published by the US Department of the Treasury as updated from time to time or such other list as might replace it.

“**SOFA Schedules**” means SOFA Schedules D, F and G filed on June 8, 2012, as provided to the Investment Agent on October 24, 2012.

“**Specified Non-Guarantor Subsidiaries**” means Arcapita Limited (England), Arcapita Pte. Limited (Singapore), and Arcapita Hong Kong Limited.

“**Specified Reduction**” has the meaning given in **clause 9.1.2(c)**.

“**Spot Rate of Exchange**” means in respect of a Finance Party, that Finance Party’s spot rate of exchange for the purchase of the relevant currency in the London foreign exchange market at or about 11:00 a.m. (London time) on a particular day.

“**Structure Chart**” means the structure charts provided to Investment Agent on October 24, 2012.

“**Subsequent Purchase Contract**” means any Purchase Contract (i) that has a Transaction Date that is the same date as the Deferred Payment Date of another Purchase Contract (such other Purchase Contract, the “**Existing Purchase Contract**”) and (ii) with a Cost Price equal to or less than the Cost Price component of the Deferred Sale Price of the Existing Purchase Contract (provided that there may be only one Subsequent Purchase Contract with respect to any Existing Purchase Contract).

“**Subsidiary**” means an entity of which a Person (a) has direct or indirect control or (b) owns directly or indirectly more than 50 percent of the voting capital or similar right of ownership; “control” for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise, including, for the avoidance of doubt, the Nominee Declaration; *provided* that no Syndication Company or Investment Company shall be deemed to be a Subsidiary solely by virtue of **clause (a)** above.

“**Third Party**” means any party other than a Finance Party or member of the Group but which shall include Investment Companies.

“**Transaction Date**” means the date on which a Purchase Contract is, or is proposed to be, made, being the same date as the Offer Letter.

“**Transaction Holdcos**” means the parent holding companies of AIHL portfolio companies, the equity of which is wholly owned by the combination of the applicable Syndication Company, the applicable LT CayCo, and Arcapita Incentive Plan Limited, a Cayman Islands company and, in some cases, certain third-party investors, including each of the companies listed on **Schedule 5B**, which schedule shall designate whether such company is wholly-owned by any Obligor on the Effective Date, and which AIHL represents is a complete list of all of the Transaction Holdcos in existence on the Effective Date.

“**Transaction Request**” means a request from AIHL to the Investment Agent to make a Purchase Contract, substantially in the form set out in **Schedule 2**.

“**U.S. Security Agreement**” means the Pledge and Security Agreement, dated as of ~~December 27, 2012~~ the Effective Date, between Arcapita Inc., a Delaware corporation, each other Obligor from time to time party thereto, and the Security Agent, as amended, restated, supplemented or otherwise modified from time to time.

“**VAT**” has the meaning given to it in **clause 8.4(a)**.

“**Voluntary Prepayment Amount**” has the meaning given to it in **clause ~~9.29.1.4~~ 9.29.1.4(a)**.

“**Waterfalls**” means the analysis performed by AIHL and/or its Affiliates detailing the distribution of proceeds upon disposition of each of the AIHL investments provided to the Investment Agent on October 27, 2012.

“**WCFs**” means the companies organized in the Cayman Islands that are subsidiaries of AIHL (subject to syndication of the Equity Interests in such companies to third party investors in certain cases), formed to enter into working capital facilities with Transaction Holdcos or subsidiaries of Transaction Holdcos, including each of the companies listed on **Schedule 5C**, which schedule shall designate whether such company is wholly-owned by any Obligor on the Effective Date, and which AIHL represents is a complete list of all of the WCFs and its direct or indirect ownership interest therein in existence on the Effective Date.

“**WTHL**” means WindTurbine Holdings Limited a company with limited liability incorporated in the Cayman Islands under commercial registration number 211910, and a debtor and a debtor-in-possession in the Cases.

1.2 Construction

- (b) The effectiveness of the Maturity Date Extension shall be subject to the satisfaction of the following conditions precedent (the date (if any) such conditions precedent are satisfied, the “**Extension Effective Date**”), (i) on or prior to the Requested Extension Date, the Investment Agent shall have notified AIHL that it approves the Maturity Date Extension, which approval shall be given or withheld in the Investment Agent’s sole discretion, and (ii) on the Requested Extension Date, the conditions precedent set forth in **clause 3.2** shall have been satisfied as of such date, both immediately before and immediately after giving effect to the Maturity Date Extension (with all references in such clause to the purchase of Commodities being deemed references to such Maturity Date Extension) and AIHL shall have delivered to the Investment Agent a certificate in form and substance satisfactory to the Investment Agent, signed by an authorized officer of AIHL, certifying that such conditions precedent have been satisfied.
- (c) On the Extension Effective Date, the Maturity Date shall be extended to the Extended Maturity Date.

3. CONDITIONS PRECEDENT

3.1 Initial Conditions Precedent

AIHL may not deliver the initial Transaction Request or request the Investment Agent to enter into a Purchase Contract unless the Investment Agent has confirmed to AIHL and the Participants that all of the conditions precedent listed in **Schedule 1** have been satisfied, in form and substance, satisfactory to the Investment Agent, at which time, subject to the satisfaction of the conditions precedent contained in **clause 3.2** the Investment Agent will be obligated to purchase the Commodities on behalf of the Participants pursuant to **clause 2.2**.

3.2 Conditions Precedent to each Purchase

The Investment Agent’s obligations to purchase Commodities pursuant to **clause 2.2** at any time, the effectiveness of the Maturity Date Extension pursuant to **clause 2.3**, and the effectiveness of the Conditional Increase pursuant to **clause 9.4**, shall also be subject to the satisfaction, or waiver in accordance with the terms hereof, of the following conditions precedent; *provided* that the satisfaction of the conditions precedent contained in **clauses (e), (g) and (i)** shall not be required in connection with any Subsequent Purchase Contract (except that the condition precedent in **clause (e)** shall be required in connection with any Purchase Contract effected on a Bringdown Date):

- (a) Entry by the Bankruptcy Court of the Interim Order, on or prior to December 10, 2012, and no order modifying, reversing, staying or vacating the Interim Order shall have been entered.

- (b) For Commodity purchases made on or after January ~~10~~, 2013, entry by the Bankruptcy Court of the Final Order, and no order modifying, reversing, staying or vacating the Final Order shall have been entered, or any motion for reconsideration or appeal of the Final Order shall have been timely filed.
- (c) For Commodity purchases made on and after the Final Order Entry Date (or such later date as the Investment Agent may agree in its sole discretion), AIHL shall have delivered to the Investment Agent a certified copy of the special resolution of each LT CayCo amending the liens and restrictions on the transfer of shares in each LT CayCo in form and substance satisfactory to the Investment Agent.
- (d) After giving effect to such Commodities purchase, (i) the Proposed Additional Cost Price, when aggregated with (ii) the aggregate amount of the then-outstanding Cost Price amounts under all other Purchase Contracts in existence at such time (which shall exclude any Purchase Contract in existence at such time to the extent the Deferred Sale Price of such Purchase Contract is to be paid in full contemporaneously with AIHL and the Investment Agent entering into the new Purchase Contract) (the “**Aggregate Cost Price**”), shall not exceed (x) prior to the Final Order Entry Date, the Interim Facility Limit at such time and (y) thereafter, the Facility Limit at such time.
- (e) After giving effect to such Commodities purchase, all representations and warranties contained in this Agreement and the other Finance Documents (subject to, after the Effective Date, any Permitted Representation Exceptions), shall be true and correct in all material respects, except for representations qualified by materiality or Material Adverse Effect, in which case such representation and warranty shall be true and correct in all respects, as of the date of such purchase (or such earlier date as may be expressly referenced in any such representation and warranty).
- (f) Before and after giving effect to such Commodities purchase, no Default shall have occurred and be continuing.
- (g) No Material Adverse Effect shall have occurred since November 1, 2012.
- (h) the Debtors shall have utilized any proceeds of the Eurolog IPO in accordance with the SCB Order prior to such Transaction Date.
- (i) No Purchase Contract (other than any Subsequent Purchase Contract) shall be entered into following the date that is 75 days after the Effective Date.

4. PURCHASE CONTRACT LIMITATIONS

4.1 Limitations

AIHL may only issue a Transaction Request if the following limitations, which apply to each Transaction Request and Purchase Contract, are complied with:

- (a) the Transaction Date for each Purchase Contract must be a Business Day falling within the Availability Period;
- (b) the Cost Price payable in respect of such Purchase Contract (the “**Proposed Additional Cost Price**”) must be a minimum amount of \$25,000,000 and an integral multiple of ~~▶[\$~~5,000,000 in excess thereof;
- (c) the applicable conditions precedent set forth in **clauses 3.2** shall be satisfied on the date of the Transaction Request;
- (d) a Purchase Contract will not be entered into if it would be illegal or unlawful for AIHL or the Investment Agent to do so, or if it would be illegal or unlawful for a Participant to participate in the funding of the Purchase Contract;
- (e) there shall be no more than ~~two~~three Purchase Contracts outstanding at any time during the Availability Period (including during any extension thereof); and
- (f) No Transaction Request (other than a Transaction Request for any Subsequent Purchase Contract) shall be delivered for a Transaction Date that is 75 days after the Effective Date.

4.2 Expiration

The Facility shall expire and be terminated, and the Facility Limit and, prior to the Final Order Entry Date, the Interim Facility Limit, as the case may be, shall be reduced to zero, on the Termination Date.

5. PROCEDURES

5.1 Transaction Request

- (a) When AIHL wants to utilize the Facility, it shall give to the Investment Agent a duly completed Transaction Request by no later than 12:00 noon ~~▶(~~(London time)~~▶)~~ three Business Days before the proposed Transaction Date (or such other time and date as may be agreed between AIHL and the Investment Agent).
- (b) Once given, a Transaction Request will be irrevocable.

5.2 Offer

Following the Investment Agent’s receipt of a duly completed Transaction Request, after the Investment Agent has purchased the requested Commodities from the Seller

5.4 Investment Agent Warranties

- (a) The Investment Agent represents and warrants to AIHL that any Commodities sold by the Investment Agent to AIHL in connection with a Purchase Contract will not be subject to any Lien created by it. All commodities sold by Investment Agent to AIHL will be sold with the benefit of the warranties related to the condition or title to the Commodities (if any) granted by the Seller to the Investment Agent under the ~~▶[DD&Co Ltd]~~ Agreements.
- (b) Save as provided in the first sentence of **clause 5.4(a)**, the Investment Agent shall not be deemed to give any warranty or representation (express or implied) whatsoever in respect of any Purchase Contract, whether arising by law, by statute or otherwise and, without prejudice to the generality of the foregoing, any such warranty or representation is hereby expressly excluded to the full extent permitted by applicable law. AIHL shall be considered to have accepted the Commodities unconditionally and without reservation and shall have no remedy against the Investment Agent in respect of quality, condition, quantity, description or otherwise in respect of any Commodities other than for breach of the Investment Agent's representation contained in the first sentence of **clause 5.4(a)**.

5.5 Audit

The Investment Agent shall, upon request of AIHL, promptly supply to AIHL copies of any documentation, provided by the Seller to the Investment Agent, evidencing the Commodities that are the subject of a Purchase Contract.

5.6 [Reserved]

5.7 No Cancellation

Once a Purchase Contract is created, by the Investment Agent executing the Offer Letter and AIHL's acceptance of the Offer Letter, it shall be irrevocable.

5.8 On-Sale

Provided that a Purchase Contract has been created in accordance with **clause 5.3**, AIHL will sell to ~~▶[Condor Trade Limited]~~, on the same day, the Commodities it has purchased under that Purchase Contract.

6. DEFERRED SALE PRICE AND PAYMENTS

6.1 Deferred Sale Price

- (a) ~~▶[Subject to the terms of the Netting Letter]~~, AIHL shall:

- (i) if included as part of the Deferred Sale Price, pay the Increased Costs Amount component of the Deferred Sale Price within 5 Business Days of the Transaction Date for the account of the Participants that have provided a certificate pursuant to **clause 16.5(d)** on or prior to such fifth Business Day; and
- (ii) pay the Deferred Sale Price less any Increased Costs Amount paid under **paragraph (i) of this clause 6.1(a)** on its Deferred Payment Date for the account of the Participants,

in each case in immediately available funds to the account the Investment Agent notifies in writing to AIHL for this purpose.

- (b) AIHL shall be absolutely and irrevocably required to pay the Deferred Sale Price and all other Obligations and amounts from time to time payable by it under any Finance Document in accordance with the terms hereof and thereof.

6.2 Currency of Account; General Provisions Regarding Payments

- (a) All payments by AIHL relating to Cost Price, Deferred Sale Price, costs, losses, expenses, Taxes and all other Obligations and amounts from time to time payable by it under any Finance Document shall be ~~made~~ made in the currency in which the relative Cost Price, Deferred Sale Price, costs, losses, expenses, Taxes, other Obligations or amounts were incurred. Any other amount must be paid in Dollars. All such payments shall be made in immediately available funds and delivered to the Investment Agent not later than ~~12:00 noon~~ [12:00 noon (London time)] on the date due at the office or account designated by the Investment Agent for the account of the Participants. For the purpose of computing Profit Amount and fees, funds received by the Investment Agent after that time on such due date shall be deemed to have been paid by AIHL on the next succeeding Business Day.
- (b) Unless otherwise specified herein, all payments in respect of the Cost Price of any Purchase Contract shall be accompanied by payment of accrued and unpaid Profit Amount, Mandatory Cost (if any), Increased Costs (if any) and VAT (if any), in each case in respect of the Cost Price for such Purchase Contract being repaid or prepaid.
- (c) Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made (i) on the next preceding Business Day, or (ii) if such day would fall after the Termination Date, the Termination Date.

6.3 Accounts as Evidence

(b) if requested by the Investment Agent, the Debtors shall enter into separate security agreements, pledge agreements, charges and mortgages with respect to such Collateral on terms reasonably satisfactory to the Investment Agent.

7.3 Payment of Obligations

Upon the maturity (whether by acceleration or otherwise) of any of the Obligations, the Participants shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court.

7.4 No Discharge; Survival of Claims

Each Debtor agrees that to the extent its Obligations hereunder are not satisfied in full, (a) its Obligations arising hereunder shall not be discharged by the entry of a Confirmation Order (and each Debtor, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (b) the Superpriority Claim granted to the Investment Agent and the Participants pursuant to the Orders and the Liens granted to the Investment Agent pursuant to the Orders, in each case and described in **clause 7.1** shall not be affected in any manner by the entry of a Confirmation Order.

7.5 Conflicts

To the extent of any conflict between the provisions of the Finance Documents and provisions contained in either Order, the provisions of the applicable Order shall govern.

8. TAX

8.1 No Deductions and Grossing-Up

- (a) All payments under the Finance Documents from AIHL or any other Obligor to the Investment Agent or any Participant shall be made without deduction and free from any present or future Tax ([other than Taxes imposed by a jurisdiction in which the Investment Agent or the applicable Participant is organized](#)) unless AIHL or such other Obligor is compelled by law to make any such deduction or withholding. In such event, AIHL or such other Obligor shall pay to the appropriate authorities the amount required to be deducted or withheld and shall pay to the Investment Agent or such Participant, as the case may be, such further amounts, as may be necessary, in order that the net amounts received and retained by the Finance Parties, after such deduction or withholding, shall equal the amount which would have been received and retained by the Finance Parties in the absence of such deduction or withholding.
- (b) Within 30 days of any Obligor making either a Tax Deduction or any payment required in connection with that Tax Deduction, AIHL shall deliver to the Investment Agent, for the Finance Party entitled to the payment, evidence

8.5 Determinations and Tax Affairs

- (a) In this **clause 8** a reference to “determines” or “determined” means a determination made in the discretion (acting reasonably) of the relevant Finance Party making the determination.
- (b) Subject to **clause 10**, no provision of this Agreement will:
 - (i) interfere with the right of any Finance Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;
 - (ii) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
 - (iii) oblige any Finance Party to disclose its Tax returns or any information relating ~~to its affairs (Tax or otherwise) or any computations~~ in respect of ~~Tax~~Taxes.

9. PREPAYMENTS; FACILITY LIMIT REDUCTION; INCREASE IN FACILITY LIMIT

9.1 Mandatory Prepayments and Facility Limit Reduction

- 9.1.1 Illegality. If at any time following the execution of the Finance Documents it becomes unlawful in any applicable jurisdiction for a Participant to perform any of its obligations as contemplated by the Finance Documents or any of the obligations of a Participant under a Finance Document cease to be legal, valid and binding, that Participant shall, pursuant to the Investment Agency Agreement, promptly notify the Investment Agent upon becoming aware of that event, the Investment Agent shall in turn notify AIHL accordingly, and:
 - (i) the Facility Commitment of each such Participant under the Investment Agency Agreement will be immediately cancelled;
 - (ii) AIHL shall pay to the Investment Agent on behalf of each such Participant the aggregate amount of such Participant’s Contributions and its entitlement to any other outstanding amounts in respect of the Deferred Sale Price on the earlier of (x) the next occurring Deferred Payment Date and (y) the date specified by such Participant in the notice delivered to the Investment Agent as the date by which such Participant is no longer permitted to maintain such Contributions under applicable law (being no earlier than the last day of any applicable grace period permitted by law); and

similar business. All premiums in respect of such insurance, to the extent due, have been paid. The insurance maintained by the Obligor is in full force and effect in accordance with its terms and complies with the requirements set forth in **clause 12.18**.

11.9 Structure and Organization

- (a) The Structure Charts set forth the equity percentage ownership owned directly or indirectly by each Obligor in its Subsidiaries and their respective Investment Companies (provided that the Structure Charts do not reflect (i) certain non-material changes in shareholdings in such Subsidiaries and Investment Companies occurring since September 30, 2012 and (ii) certain of the Immaterial Subsidiaries that are dormant).
- (b) Except for Permitted Liens, Existing Security and, except with respect to **subclause (ii)** below, as set forth in the Structure Charts and the Disclosure Schedule, all equity securities of AIHL and its wholly-owned Subsidiaries, and all equity securities directly owned by AIHL and its wholly-owned Subsidiaries in their respective Subsidiaries or Investment Companies, are free and clear of (i) Liens and (ii) shareholder, management or other agreements affecting the voting of such shares or the exercise of other rights with respect thereto, and there are no put/calls, subscriptions, options, warrants, rights or other agreements or commitments with respect to such equity securities, or securities exchangeable or convertible into, such equity securities and there are no other classes of capital (including preferred shares) outstanding or authorized for such companies.
- (c) Subject to the Information Exception (with respect to the information delivered to the Investment Agent prior to the date of the Commitment Letter), the KPMG Reports, SOFA Schedules and the Waterfalls (as of the respective dates they were provided to the Investment Agent) together identify, except for Financial Indebtedness owed to the WCFs and intercompany Financial Indebtedness owed by Investment Companies to their direct or indirect equity holders and except as set forth in the Disclosure Schedule, all indebtedness for borrowed money and (x) all guarantees of AIHL (and all intermediate holding companies between AIHL and the Transaction Holdcos), and (y) (excluding guarantees) of AIHL's other Subsidiaries and their respective Investment Companies, in each case as of the Effective Date.

11.10 Collateral

Subject (in the case of the Debtors) to the Orders and the Cayman Validation Order, each of the Finance Documents will be effective to create in favor of the Investment Agent, for the benefit of the Participants, a legal, valid and enforceable security interest in the Collateral described therein and upon the filing of any UCC financing statements and the taking of any other actions or making of filings required for perfection under the laws of the relevant jurisdictions and specified in such Finance Documents, such

unaudited interim balance sheet and the related statement of income for that quarter;

provided that, if such statements are not available, that Arcapita Bank will provide its management accounts for its financial year end, half year end and quarter year end.

12.3 Financial Statement Audit Rights

AIHL shall cause the Obligors to permit the Investment Agent and its advisers reasonable access to their books and records, during normal office hours, for the purposes of verifying compliance with the terms of this Agreement.

12.4 Investment Statements

Promptly upon the Investment Agent's request, AIHL shall supply to the Investment Agent such information or evidence in relation to each Investment Company in which AIHL Sub has a direct or indirect Equity Interest as the Investment Agent may reasonably require for the purposes of conducting periodic credit reviews.

12.5 [Reserved]

12.6 [Reserved]

12.7 Requirements as to Financial Statements

AIHL shall ensure that:

- (a) unless the Central Bank of Bahrain otherwise requires in respect of Arcapita Bank (in which case AIHL shall promptly notify those requirements to the Investment Agent) each set of its financial statements delivered by it pursuant to **clause 12.2** are prepared in accordance with IFRS;
- (b) each set of Consolidated Financial Statements and Financial Statements delivered is prepared on the same basis as was used in the preparation of the relevant Original Financial Statements unless, in relation to any set of financial statements it notifies the Investment Agent that there has been a change (A) in IFRS or the requirements of the Central Bank of Bahrain in respect of Arcapita Bank (as contemplated in **clause 12.6**~~12.7~~**(a)** above), (B) in the accounting practices or (C) in reference periods and its auditor delivers to the Investment Agent;
 - (i) a description of any change necessary for those financial statements to reflect IFRS, accounting practices and reference periods upon which the relevant Original Financial Statements were prepared; and

remedies of the Investment Agent or any Participant as set forth herein and in the other Facility Documents, or which results in the occurrence of a Default.

12.13 Financial Indebtedness

- (a) Subject to **clause 12.13(b)**, AIHL shall not, and shall not permit any member of the Group to incur or suffer or permit to exist any Financial Indebtedness (other than the Obligations) or any other liabilities or contingent liabilities other than as existing on the Effective Date and identified on the SOFA Schedules or the Disclosure Schedules; *provided* that the foregoing prohibition shall not apply to any obligations, costs or expenses arising under sections 327, 328, 330, 503 and 1103 of the Bankruptcy Code, including in connection with professional costs and expenses in the Cases, that are permitted under this Agreement and the Orders and payable in accordance with the DIP Budget.
- (b) **Clause 12.13(a)** shall not apply to:
- (i) ordinary course Inter-Obligor Indebtedness incurred after the Effective Date; *provided* that the intercompany Investments giving rise to such Financial Indebtedness are permitted by, and in compliance with, the DIP Budget, subject to any variance permitted under **clause 13**;
 - (ii) intercompany Financial Indebtedness incurred in connection with Arcapita Bank's obligation to fund payments in connection with a sale-leaseback transaction ~~entered into with~~involving Lusail Golf Development LLC, a Qatari limited liability company (the "**Lusail Obligations**"); *provided* that the obligation of Arcapita Bank to make such payments exists on the date hereof and such payments are in compliance with, the DIP Budget, subject to any variance permitted under **clause 13**; and
 - (iii) Financial Indebtedness in an aggregate principal amount not to exceed \$5,000,000 owing by any non-Obligor member of the Group to any Obligor; *provided* that the intercompany Investments giving rise to such Financial Indebtedness are permitted by, and in compliance with, the DIP Budget, subject to any variance permitted under **clause 13**.

12.14 Negative Pledge

AIHL will not (and AIHL shall ensure that no member of the Group will) without the prior consent of the Investment Agent permit any Liens to subsist, arise or be created or extended over all or any part of its present or future undertakings, assets, rights or revenues to secure or prefer any present or future Financial Indebtedness of AIHL or any other Person other than Liens arising pursuant to the SCB Order and the Existing Security and Permitted Liens.

12.15 Disposals

account or making such deposit, such Person's claim will by law have priority over that member of the Group's unsecured and unsubordinated creditors, including, for the avoidance of doubt, the Finance Parties; provided that, notwithstanding the foregoing, any member of the Group may open a retainer account with a professional or service provider.

12.24 Dividends

Neither AIHL nor any other Guarantor (other than AIHL Sub, the WCFs and the LT Caycos) will declare or make any dividend payment or other distribution of assets or properties on account of any shares of any class of their respective Equity Interests or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Equity Interests of AIHL or any other Obligor; *provided* that, any such payment or distribution may be made (a) by Subsidiaries of AIHL to AIHL and its Subsidiaries, and (b) by AIHL or by any other Guarantor to Arcapita Bank, so long as no Default has occurred and is continuing and the proceeds thereof are promptly used by Arcapita Bank to pay its operating expenses and any other corporate overhead costs and expenses (including payroll and legal and accounting expenses), in each case in the ordinary course of business and only to the extent permitted by, and in compliance with, the DIP Budget (subject to any variances permitted under **clause 13**).

12.25 Further Assurances

- (a) AIHL shall, and shall cause each other Obligor to, promptly upon request by the Investment Agent (i) correct any material defect or error that may be discovered in any Finance Document or in the execution, acknowledgment, filing or recordation thereof, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, documents, deeds, conveyances, assignments, approvals, transfers, certificates, assurances and other instruments as the Investment Agent may reasonably require from time to time in order to (x) facilitate a disposal of the Collateral or any Investment Company if an Event of Default is continuing, (y) carry out more effectively the purposes of the Finance Documents, and (z) perfect and maintain the validity, effectiveness and priority of any Liens intended to be created hereunder, under any other Finance Document or under the Orders.
- (b) With respect to any assets otherwise constituting "Collateral" acquired after the Effective Date by any Obligor (other than any property described in **paragraph (c)** below) as to which the Security Agent does not have a perfected Lien, AIHL shall, or shall cause such Obligor to, promptly (and in any event within thirty days of the acquisition thereof) (i) execute and deliver to the Security Agent such amendments to the applicable Security Documents or such other documents as the Security Agent reasonably deems necessary or advisable to grant to the Security Agent a security interest in such assets and (ii) take all actions reasonably necessary or advisable to grant to the Security Agent a

perfected first priority (subject to the Existing Security and Permitted Liens) Lien in such assets, including the filing of Uniform Commercial Code financing statements (or, to the extent they exist, similar documents in foreign jurisdictions) in such jurisdictions as may be required by any Security Document or by law or as may be reasonably requested by the Security Agent.

- (c) With respect to each new direct or indirect wholly-owned Subsidiary of any Obligor created or acquired after the Effective Date that is not an Exit Plan Subsidiary (including, but not limited to, each new LT CayCo and WCF (each, an “**Additional Guarantor**”), AIHL shall cause such Additional Guarantor to promptly (and in any event within thirty days of the creation or acquisition thereof) (i) become an Obligor by executing and delivering a joinder to the Guarantee (or, at the Investment Agent’s election, an Additional Guarantee in substantially the same form as the Guarantee), and each such Person shall thereupon become a Guarantor hereunder and thereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Finance Documents, (ii) execute and deliver to the Investment Agent all of the documents and other instruments listed on **Schedule 7**, in form and substance satisfactory to the Investment Agent and the Security Agent, as applicable, (iii) execute and deliver to the Security Agent such amendments to the applicable Security Documents as the Security Agent reasonably deems necessary or advisable to grant to the Security Agent a perfected first-priority Lien in the Equity Interests of such Additional Guarantor that is owned by any Obligor, (iv) deliver to the Security Agent the certificates representing such Equity Interests, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Obligor, (v) cause such Additional Guarantor (A) to become a party to or enter into the applicable Security Documents and (B) to take such actions reasonably necessary or advisable to grant to the Security Agent a perfected first-priority Lien in the Collateral described in the applicable Security Documents with respect to such Additional Grantor, including the filing of Uniform Commercial Code financing statements (or, to the extent they exist, similar documents in foreign jurisdictions) in such jurisdictions as may be required by the applicable Security Documents or by law or as may be requested by the Security Agent.
- (d) The foregoing **paragraphs (a) through (c)** shall be subject to any applicable limitations set forth in the Security Documents. Notwithstanding anything to the contrary in this Agreement, if the Security Agent shall reasonably determine that the cost of obtaining a Lien in any assets otherwise required to be subject to a Lien hereunder or under the applicable Security Document is excessive in relation to the value of the Lien afforded thereby, neither the Obligors nor any Additional Guarantor shall have any obligations under **clause 12.25(b)** or **clauses 12.25(c)(iii) through (v)** solely with respect to such asset.
- (e) Everything any Obligor and any Additional Guarantor is required to do under this **clause 12.25** shall be at such Obligor or such Additional Guarantor’s

each such period in the DIP Budget, and a narrative analysis of each material variance for the prior four-week period.

14. DEFAULT AND REMEDIES

Each of the events set out in **clauses 14.1** through ~~14.19~~14.16 is an Event of Default.

14.1 Non-Payment

AIHL or any of the Guarantors fails to pay when due, whether at scheduled maturity, by mandatory prepayment, by notice of voluntary prepayment, by acceleration, demand or otherwise, any amount, whether principal of or premium or profit on or any other amount payable in respect of the Obligations owing under the Finance Documents at the time, in the currency and in the manner specified in this Agreement unless (in the case of payments other than for the Deferred Purchase Price) payment is made within five Business Days after its due date.

14.2 Breach of Other Obligations

- (a) AIHL fails to perform or comply with any term, covenant, agreement or condition contained in **clauses 9, 12.2, 12.7, 12.9 through 12.17, 12.21 through 12.24 (inclusive), 12.25(b) through (e) (inclusive), 12.26 through 12.34 (inclusive), 13 and 18.6**.
- (b) AIHL or any of the Guarantors fail to perform or comply with any term, covenant, agreement or condition contained herein or in any other Finance Document (other than those referred to in **clauses 14.1 and 14.2(a)**), and such failure shall not have been remedied or waived in accordance with the terms hereof within ten days after such failure.

14.3 Misrepresentation

Any representation, warranty, certification or other statement made or deemed to be made by any Obligor in any Finance Document or in any notice or other document, certificate or statement at any time delivered by any Obligor or any of its Subsidiaries pursuant hereto or thereto or in connection herewith or therewith is or proves to have been false, incorrect or misleading in any material respect when made or deemed to be made, except for representations qualified by materiality or Material Adverse Effect, in which case such representation, warranty, certification or other statement is or proves to have been false, incorrect or misleading in any respect when made or deemed to be made.

14.4 Cross-Default

- (a) Any Financial Indebtedness (other than the Obligations) (or, in the case of clause (iii) below, any commitment in respect of Financial Indebtedness) of any member of the Group (other than Financial Indebtedness of Specified Non-

19. NOTICES

19.1 Giving of Notices

All notices or other communications under or in connection with this Agreement shall be given by letter, facsimile or other electronic transmission via e-mailed pdf or other similar format and shall be in English. Any such notice will be deemed to be given as follows:

- (a) if by way of letter, when it has been left at the relevant address, provided such delivery was by way of a reputable courier company which returns proof of delivery; and
- (b) if by facsimile or other electronic transmission via e-mailed pdf or other similar format, when received in legible form.

However, a notice given in accordance with the above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

19.2 Addresses for Notices

- (a) The address and facsimile number of AIHL for all notices under or in connection with this Agreement are:

Address: Arcapita Investment Holdings Limited
[redacted] [c/o Arcapita
Bank, B.S.C.\(c\)
Arcapita Building
Road 4612
Area 346
Bahrain Bay,
Manama,
Kingdom of Bahrain](#)

Attention: [redacted] [General
Counsel and Simon Dudley](#)

Fax: [redacted]

or such other as AIHL may notify in writing to the Investment Agent by not less than 5 Business Days' prior notice.

- (b) The address and facsimile number of the Investment Agent are:

Address: 1345 Avenue of the Americas

SCHEDULE 1
CONDITION PRECEDENT DOCUMENTS²

The documents and other evidence referred to in **clause 3.1 (Conditions Precedent)** are as follows, in each case in a form satisfactory to the Investment Agent:

1. AIHL AND GUARANTORS

- 1.1 A certified copy of the constitutional documents of each Obligor.
- 1.2 (a) A certified copy of the minutes of the meeting of the board of directors of each Obligor containing resolutions approving the terms of and the transactions contemplated by the Finance Documents to which that Obligor is a party and authorizing a specified Person or Persons to sign the Finance Documents to which it is party on its behalf, and (b) in respect of AIHL, written evidence of the approval by its Joint Provisional Liquidators (in accordance with the Protocol made between them and AIHL's directors) of the terms of, the transactions contemplated by and the execution by AIHL of the Finance Documents.
- 1.3 A certified specimen of the signature of the authorized signatory of each Obligor who will sign the Finance Documents on that Obligor's behalf.
- 1.4 A certificate of a director of each Guarantor:
- (a) confirming that the guaranteeing of the Facility and the granting of the Liens pursuant to the Security Documents to which it is a party would not cause any guarantee or security limit binding on such Guarantor to be exceeded; and
 - (b) that (except for AIHL Sub, AEID II, RailInvest and WTHL), is not a Debtor, certifying, in form and substance reasonably satisfactory to the Investment Agent, that such Guarantor is solvent.
- 1.5 To the extent such approval is necessary or advisable for the enforceability of any Finance Document against any Obligor, a certified copy of resolutions of the shareholder(s) of such Obligor approving the entry by that Obligor into the Finance Documents to which it is a party.

2. LEGAL OPINIONS

- 2.1 A legal opinion of Gibson, Dunn & Crutcher LLP, legal advisers to AIHL and each Guarantor in New York.
- 2.2 A legal opinion of ~~{~~ Haya Al Khalifa, legal ~~advisers~~ adviser to Arcapita Bank in the Kingdom of Bahrain.

² Subject to continuing review.

2.3 A legal opinion of ~~_____~~ Mourant Ozannes, legal advisers to AIHL and each Guarantor in the Cayman Islands.

3. FEES, COSTS AND EXPENSES

Evidence that the fees, costs and expenses then due from AIHL pursuant to this Agreement and under the Commitment Letter and the Fee Letter have been paid or will be paid by on the Transaction Date.

4. FINANCE DOCUMENTS

Each of the Finance Documents duly executed by each of the parties to them and all documents and other instruments to be delivered to the Investment Agent in accordance with the Finance Documents, including, but not limited to, the following, each in form and substance satisfactory to the Investment Agent:

- i. this Agreement, duly executed and delivered by AIHL and the Investment Agent;
- ii. the Guarantee, dated as of ~~December __, 2012~~ the Effective Date, duly executed and delivered by ~~_____~~ each Guarantor and the Investment Agent;
- iii. the U.S. Security Agreement, duly executed and delivered by ~~_____~~, Arcapita Inc., the other Debtors (defined therein) party thereto and the Security Agent;
- iv. the Cayman Charge, duly executed and delivered by Arcapita Bank and the Security Agent; and
- v. the Cayman ~~Debentures~~ Debenture, duly executed and delivered by ~~_____~~ Companies (defined therein) party thereto and the Security Agent.

5. PROCESS AGENT

Evidence of the appointment of process agent for each Obligor.

6. OTHER DOCUMENTS AND EVIDENCE

6.1 Evidence of the approval of the Executive Committee of each Obligor's Shari'ah Advisory Board of the execution of the Finance Documents and the issuance of a "Fatwa" that the Finance Documents and the transactions contemplated therein are in compliance with Shari'ah principles.

6.2 The initial DIP Budget.

6.3 The Investment Agent shall have received (a) satisfactory evidence that the Obligors shall have obtained all required consents and approvals of all Persons including all

~~939139.04E-CHISR939139.05A-CHISR02A-~~

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Redline Comments to Murabaha Agreement-939139V4E and Comments to Murabaha Agreement-939139V5A 12/6/2012 9:48:43 PM

precedent set forth in **clause 3.2** of the Agreement (other than **clauses (e), (g) and (i)**) have been satisfied on the date of this Transaction Request and will be satisfied on the proposed Transaction Date.]

[FOR SUBSEQUENT PURCHASE CONTRACTS NOT ENTERED INTO ON A BRINGDOWN DATE INCLUDE THE FOLLOWING:] [We confirm that each of the conditions precedent set forth in **clause 3.2** of the Agreement (other than **clauses (g) and (i)**) have been satisfied on the date of this Transaction Request and will be satisfied on the proposed Transaction Date.]

.....
| ~~authorised~~authorized signatory
Arcapita Investment Holdings Limited

Date: []

.....
~~authorised~~authorized signatory
Arcapita Investment Holdings Limited

**SCHEDULE 4
DISCLOSURE SCHEDULE**

1. Arcapita Bank B.S.C.(c) is the borrower under two facilities made available by Standard Chartered Bank: (i) a \$50 million facility dated May 30, 2011 (as the same may be amended, the “**SCB May 2011 Facility**”); and (ii) a \$50 million facility dated December 22, 2011 (as the same may be amended, the “**SCB December 2011 Facility**” and, together with the SCB May 2011 Facility).
2. The SCB May 2011 Facility is guaranteed by each of Arcapita Investment Holdings Limited (“**AIHL**”), Arcapita LT Holdings Limited (“**AIHL Sub**”) and WindTurbine Holdings Limited (“**WTHL**”). These guarantees are secured by: (i) a first priority pledge of AIHL’s shares in AIHL Sub; (ii) a first priority pledge of AIHL Sub’s shares in WTHL; and (iii) a second priority pledge of AIHL Sub’s shares in AEID II Holdings Limited (“**AEID II**”) and RailInvest Holdings Limited (“**RailInvest**”).
3. 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.
4. Arcapita Industrial Management Sarl and its subsidiaries are party to certain agreements entered into in connection with the pending EuroLog IPO.
5. Administration Agreements are referred to in lists as provided to the Investment Agent on October 24, 2012 and October 30, 2012.
6. HarborVest Agreements as provided to the Investment Agent on October 24, 2012 and separate disclosure as provided on November 1, 2012.
7. Share Purchase Agreements by Middle East institutional investor in connection with its confidential investments in (i) J. Jill Group, (ii) Viridian Group Holding Limited, (iii) CEPL Group, and (iv) Freightliner Group Limited. A Separate disclosure regarding the foregoing was provided to the Investment Agent on November 1, 2012.
8. \$1.1 Billion Master Murabaha Agreement (as amended and restated by an Amendment and Restatement Agreement dated April 11, 2007) dated March 28, 2007 between Arcapita Bank B.S.C.(c) and WestLB AG, London Branch, as Investment Agent.
9. ~~Lusail~~
9. [Arcapita Bank has obligations to fund payments in connection with a sale-leaseback transaction involving Lusail Golf Development LLC, a Qatari limited liability company, to the extent such obligations exist on the Effective Date.](#)

**SCHEDULE 5
LIST OF ENTITIES**

A. LT Caycos

B. Transaction Holdcos

C. WCFs

D. PVs

E. Syndication Companies

F. ~~Non-Guarantor Subsidiaries~~ Excluded Businesses

G. Immaterial Subsidiaries

Summary Report:	
Litéra® Change-Pro 7.0.0.365 Document Comparison done on 12/6/2012 9:48:43 PM	
Style Name: Option 3a strikethrough double score no moves	
Original DMS: dm://CHISR02A/939139/4E	
Modified DMS: dm://CHISR02A/939139/5A	
Changes:	
Add	87
Delete	70
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	29
Total Changes:	186

DATED DECEMBER [], 2012

ARCAPITA INVESTMENT HOLDINGS LIMITED

- and -

FORTRESS CREDIT CORP.
as Investment Agent

- and -

FORTRESS CREDIT CORP.
as Security Agent

- and -

FORTRESS CREDIT CORP.
as Arranger

- and -

THE GUARANTORS AS SPECIFIED IN PART A OF SCHEDULE 1

- and -

THE PARTICIPANTS AS SPECIFIED IN PART B OF SCHEDULE 1

INVESTMENT AGENCY AGREEMENT

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THIS INVESTMENT AGENCY AGREEMENT is dated December [], 2012.

BETWEEN:

- (1) **Arcapita Investment Holdings Limited**, an exempted company incorporated with limited liability under the laws of the Cayman Islands with company number 78594, as debtor-in-possession under chapter 11 of title 11 of the United States code in a case in the Bankruptcy Court for the Southern District of New York (“**AIHL**”); and
- (2) **Fortress Credit Corp.** in its capacity as Investment Agent (the “**Investment Agent**”).
- (3) **The Guarantors** as specified below;
- (4) **The Participants** as defined below;
- (5) **Fortress Credit Corp.** as security agent for and on behalf of the Participants (the “**Security Agent**”); and
- (6) **Fortress Credit Corp.** in its capacity as arranger (the “**Arranger**”).

RECITALS

- A By a superpriority debtor-in-possession master murabaha agreement (the “**Master Murabaha Agreement**”) dated on or about the date of this Agreement, a US Dollar term murabaha facility has been made available to AIHL subject to the terms and conditions of the Finance Documents.
- B The Participants have agreed to appoint the Investment Agent as their agent in the provision of that facility in accordance with the following terms and conditions.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Terms defined in the Master Murabaha Agreement shall, unless otherwise defined in this Agreement or the context does not permit, have the same meanings when used in this Agreement and, in addition:

“**Agent Professionals**” has the meaning given in **clause 2.1(d)**.

“**Agents**” means the collective reference to the Investment Agent and the Security Agent.

“**Condor Agreements**” means:

- (a) the Letter of Understanding dated on or about the date of this Agreement and made between Condor Trading Limited and AIHL; and
- (b) the letter from Condor Trading Limited to AIHL dated on or about the date of this Agreement relating to such Letter of Understanding.

“**Contribution**” means in relation to a Participant, the contributions (in an aggregate amount outstanding at any time not to exceed the amount set forth opposite its name in **Part B of Schedule 1**) to be placed by a Participant with the Investment Agent pursuant to **clause 3.1** as the same may be increased or decreased by assignments or transfers in accordance with the provisions of **clause 11.2**.

“**Discharged Amount**” has the meaning given in **clause 7.4(a)(i)**.

“**Defaulting Participant**” any Participant that (a) has failed to (i) fund all or any portion of its Contribution within two Business Days of the date such Contribution was required to be funded hereunder unless such Participant notifies the Investment Agent and AIHL in writing that such failure is the result of such Participant’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Investment Agent any Participant any other amount required to be paid by it hereunder within two Business Days of the date when due or (b) has notified the AIHL or the Investment Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect.

“**Excess Amount**” has the meaning given in **clause 7.1**.

“**Facility Commitment**” means, with respect to any Participant at any time, such Participant’s Relevant Percentage of the Facility Limit at such time.

“**Guarantors**” means those entities listed in **Part A of Schedule 1**, and any Additional Guarantors from time to time party to a Guarantee.

“**Indemnified Costs**” has the meaning given in **clause 2.2(a)**.

“**Investment**” means, at any time, the aggregate of the Contributions of all Participants at such time (which shall not exceed the Facility Limit at any time).

“**Majority Participants**” means a group of Participants the aggregate of whose Participations exceed 50% of all Participations or in the event that no Contributions have been made a group of Participants the aggregate of whose Relevant Percentages exceed 50% of all Contributions to be made.

“**Non-Consenting Participant**” means any Participant that does not approve any consent, waiver or amendment that (i) requires the approval of all affected Participant in accordance with the terms of **clause 8.4** and (ii) has been approved by the Majority Participants.

“**Participants**” means those banks and financial institutions listed in **Part B of Schedule 1** or any assignee or transferee which has become a Participant in accordance with **clause 11.2**.

“**Participation**” means at any time, in relation to a Participant and save as otherwise provided in this Agreement, the aggregate amount of the Contributions actually made by it under this Agreement at such time, as the same may be increased or decreased by assignments or transfers in accordance with the provisions of **clause 11.2**.

“**Related Parties**” has the meaning given in **clause 2.1(d)**.

“**Relevant Payment**” has the meaning given in **clause 7.1**.

“**Relevant Percentage**” means in relation to a Participant, the percentage set opposite its name in **Part B of Schedule 1** as such percentage may change from time to time in order to reflect the actual percentage of its Participation to the aggregate amount of all Participations.

“**Relevant Receipt**” has the meaning given in **clause 7.1**.

“**Remittance**” means any payment made or owing under the Master Murabaha Agreement or any other Finance Document by AIHL or the Guarantors to the Investment Agent due and payable to, and for the account of, the Participants, excluding for the avoidance of doubt:

- (a) those payments referred to in **clause 10.1**; and
- (b) any other amounts received by the Investment Agent as reimbursement for its costs and expenses, save to the extent that the Investment Agent has been reimbursed for such costs and expenses by the Participants in accordance with **clause 10.2**.

“**Restructuring**” has the meaning given in **clause 7.3**.

“**Secured Parties**” has the mean given in **clause 2.1(a)**.

“**Sharing Participant**” has the meaning given in **clause 7.4(a)**.

“**Transfer Certificate**” has the meaning given in **clause 11.5(a)(i)**.

“**Transfer Date**” means the date set out in the Transfer Certificate.

1.2 Construction of Certain Terms

The rules of construction and interpretation set out in clause 1.2 of the Master Murabaha Agreement apply to this Agreement as though they were set out in full in this Agreement, except that references to the Master Murabaha Agreement are to be construed as references to this Agreement.

1.3 Third Party Rights

Unless expressly provided to the contrary in this Agreement, a person who is not a party to this Agreement may not enforce any of its terms and shall have no rights with respect to the undertakings of the parties hereunder.

1.4 Headings

The headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.

2. APPOINTMENT OF THE INVESTMENT AGENT AND SECURITY AGENT

2.1 Appointment; Etc.

- (a) Each Participant hereby irrevocably appoints and designates each of the Investment Agent and the Security Agent as its agent and authorizes each Agent to take such actions

on its behalf, including execution of the Finance Documents to which such Agent is a party and, in the case of the Security Agent, acting as agent for purposes of perfection, and to exercise such powers as are delegated to the such Agent by the terms of the Finance Documents, together with such actions and powers as are reasonably incidental thereto. Each Participant agrees that any action taken by either Agent or the Majority Participants in accordance with the provisions of the Finance Documents, and the exercise by either Agent or the Majority Participants of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all the Agents, the Participants (collectively, the “**Secured Parties**”). Without limiting the generality of the foregoing, (i) the Investment Agent shall have the sole and exclusive authority to act as the disbursing and collecting agent for the Participants with respect to all payments and collections arising in connection with the Finance Documents; (ii) the Security Agent shall have the sole and exclusive authority to (A) act as security agent for the Secured Parties for purposes of perfecting and administering Liens granted to the Security Agent under the Finance Documents, and for all other purposes stated therein, (B) manage, supervise or otherwise deal with the Collateral; and (C) take any enforcement action or otherwise exercise any rights or remedies with respect to any Collateral under the Finance Documents, applicable law or otherwise and subject to the terms of the Finance Documents.

- (b) Each Person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Participant as any other Participant and may exercise the same as though it were not an Agent hereunder, and such Person and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with any Obligor or any Affiliate thereof as if it were not an Agent hereunder.
- (c) No Agent shall have any duties or obligations except those expressly set forth in the Finance Documents. Without limiting the generality of the foregoing, (i) neither Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (ii) neither Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Finance Documents that such Agent is required to exercise in writing as directed by the Majority Participants (or such other number or percentage of the Participants as shall be necessary under the circumstances as provided in **clause 8**), and (iii) except as expressly set forth in the Finance Documents, neither Agent shall have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Obligor or any of their respective Subsidiaries that is communicated to or obtained by the Person serving as either such Agent or any of its Affiliates in any capacity. Neither Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Majority Participants (or such other number or percentage of the Participants as shall be necessary under the circumstances as provided in **clause 8**) or in the absence of its own gross negligence or willful misconduct as finally determined in a final, non-appealable judgment of a court of competent jurisdiction. No Agent shall be deemed to have knowledge of any Default unless and until written notice thereof is given to such Agent by an Obligor or a Participant, and no Agent shall be responsible for or have any duty to ascertain or inquire into (A) any statement, warranty or representation made in or in connection with any Finance Document, (B) the contents of any certificate, report or other document delivered hereunder or in connection with any Finance Document, (C) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Finance Document, (D) the validity, enforceability, effectiveness or genuineness of

any Finance Document or any other agreement, instrument or document, (E) the creation, perfection or priority of Liens on the Collateral or the existence of the Collateral, or (F) the satisfaction of any condition set forth in any Finance Document, other than to confirm receipt of items expressly required to be delivered to such Agent. If any Participant acquires knowledge of a Default or failure of such conditions, it shall promptly notify the Investment Agent and the other Participants thereof in writing. Each Participant agrees that, except as otherwise provided in any Finance Document or with the written consent of the Investment Agent and Majority Participants, it will not take any enforcement action with respect to the Collateral or exercise any right that it might otherwise have under applicable law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral or to assert any rights relating to any Collateral.

- (d) The rights and remedies conferred upon the Agents under the Finance Documents may be exercised without the necessity of joinder of any other party, unless required by applicable law. Either Agent may request instructions from Majority Participants or other Secured Parties with respect to any act (including the failure to act) in connection with any Finance Documents, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against all claims that could be incurred by such Agent in connection with any such act (or failure to act). Each Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and no Agent shall incur liability to any Person by reason of so refraining. Instructions of the Majority Participants shall be binding upon all Secured Parties, and no Participant shall have any right of action whatsoever against either Agent as a result of such Agent acting or refraining from acting in accordance with the instructions of the Majority Participants. Notwithstanding the foregoing, instructions by and consent of specific Persons shall be required to the extent provided in **clause 8**. In no event shall either Agent be required to take any action that, in its opinion, is contrary to applicable law or any Finance Document or could subject such Agent (or its Affiliates or the respective directors, officers, trustees, employees, agents, controlling persons, representatives, partners, members, sub-agents, and advisors of such Agent and Affiliates (collectively, “**Related Parties**”) to personal liability.
- (e) Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document, electronic transmission or other writing believed by it in good faith to be genuine and to have been signed or sent by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it in good faith to be made by the proper Person, and shall not incur any liability for relying thereon. Each Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Finance Document, and shall not be liable for any delay in acting.
- (f) Each Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents or nominees appointed by such Agent. Each Agent and any such sub-agent and nominee may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agents and nominees and to their respective Related Parties, and shall apply to their respective activities as an Agent hereunder. Each Agent may consult with and employ attorneys and other professionals and experts (collectively, “**Agent Professionals**”), and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given

by an any such Person. No Agent shall be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.

- (g) Subject to the appointment and acceptance of a successor Investment Agent or Security Agent, as the case may be, as provided in this paragraph (g), either Agent may resign at any time by notifying the Participants and AIHL. Upon any such resignation, the Majority Participants shall, with (if no Event of Default is then continuing) the consent of AIHL (not to be unreasonably withheld, delayed or conditioned), have the right to appoint a successor Investment Agent or Security Agent, as the case may be, which may be a Participant or an Affiliate of a Participant. Upon the acceptance by a successor Agent of an appointment as the Investment Agent or Security Agent hereunder, or upon appointment of the Majority Participants as such successor Agent, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. After such Agent's resignation hereunder, the provisions of this **clause 2** and **clause 8** shall continue in effect for the benefit of such retiring Agent, its sub-agents, their nominees and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as an Agent. Any successor to Fortress Credit Corp. by merger or acquisition of stock shall continue to be Investment Agent and Security Agent hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above.
- (h) Each Participant acknowledges that it has, independently and without reliance upon either Agent or any other Participant and based on such documents and information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement and to participate in the transactions under the Master Murabaha Agreement. Each Participant also acknowledges that it will, independently and without reliance upon either Agent or any other Participant and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Finance Document or related agreement or any document furnished hereunder or thereunder.
- (i) If either Agent believes that it may be limited in the exercise of any rights or remedies under the Finance Documents due to any applicable law, such Agent may appoint an additional Person who is not so limited, as a separate co-agent. If either Agent so appoints a co-agent, each right and remedy intended to be available to such Agent under the Finance Documents shall also be vested in such separate agent. The Secured Parties shall execute and deliver such documents as either Agent deems appropriate to vest any rights or remedies in such agent. If any co-agent shall die or dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of such agent, to the extent permitted by applicable law, shall vest in and be exercised by the relevant Agent until appointment of a new agent.

2.2 Indemnification by Participants

- (a) Each Participant severally agrees to indemnify each Agent (to the extent not promptly reimbursed by AIHL) from and against such Participant's ratable share (determined as provided below) of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against such Agent, arising solely in such Agent's capacity as an Agent hereunder and under the other Finance Documents, or any

action taken or omitted by such Agent solely in its capacity as an Agent hereunder or under the Finance Documents (collectively, the “**Indemnified Costs**”); provided, however, that no Participant shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from any Agent’s gross negligence or willful misconduct as determined in a final, non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Participant agrees to reimburse each Agent promptly upon demand for its ratable share of any costs and expenses (including, without limitation, fees and expenses of counsel) payable by any Obligor under any Finance Document, to the extent that such Agent, acting solely in its capacity as an Agent hereunder or under any other Finance Document, is not promptly reimbursed for such costs and expenses by Obligors. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this **clause 2.2** applies whether any such investigation, litigation or proceeding is brought by any Participant or any other Person.

- (b) For purposes of this **clause 2.2**, each Participant’s ratable share of any amount shall be determined, as at the incurrence of the relevant Indemnified Costs, according to its share of the aggregate amount of the Participations outstanding at such time. The failure of any Participant to reimburse any Agent promptly upon demand for its ratable share of any amount required to be paid by the Participants to such Agent as provided herein shall not relieve any other Participant of its obligation hereunder to reimburse such Agent for its ratable share of such amount, but no Participant shall be responsible for the failure of any other Participant to reimburse any Agent for such other Participant’s ratable share of such amount. Without prejudice to the survival of any other agreement of any Participant hereunder, the agreement and obligations of each Participant contained in this **clause 2.2** shall survive the payment in full of the Obligations.
- (c) Neither Agent shall be liable to any Secured Party for any action taken or omitted to be taken under the Finance Documents, except for losses directly and solely caused by such Agent’s gross negligence or willful misconduct as determined in a final, non-appealable judgment by a court of competent jurisdiction. Neither Agent assumes any responsibility for any failure or delay in performance or any breach by any Obligor, Participant or other Secured Party of any obligations under the Finance Documents. Neither Agent makes any express or implied representation, warranty or guarantee to the Secured Parties with respect to any Obligations, Collateral, Finance Documents or Obligors. No Agent nor any Related Party shall be responsible to the Secured Parties for any recitals, statements, information, representations or warranties contained in any Finance Documents; the execution, validity, genuineness, effectiveness or enforceability of any Finance Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligation; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor. No Agent nor any Related Party shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default.

2.3 No Third Party Beneficiaries

This **clause 2** is an agreement solely among the Participants and the Agents, and shall survive payment and satisfaction in full of the Obligations. Except solely to the extent of AIHL’s rights to consent pursuant to and subject to the conditions in **clause 2.1(g)**, this **clause 2** does not confer

any rights or benefits upon any Obligor or any other Person. As between the Obligors, on the one hand, and the Agents, on the other hand, any action that either Agent may take under any Finance Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by the Participants.

2.4 Partnership

None of this Agreement, the Contributions and the Participations shall, nor shall they be construed so as to, constitute a partnership between the Investment Agent and the Participants or an assignment (at law or in equity) of all or any part of the Remittances or of all or any of the Investment Agent's rights under the Finance Documents.

2.5 Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger does not have any obligations of any kind to any other party under or in connection with any Finance Document.

3. PARTICIPATION IN THE PURCHASE CONTRACT

3.1 Contribution Notification

Following receipt by the Investment Agent of a duly completed Transaction Request, the Investment Agent shall:

- (a) promptly provide a copy of such Transaction Request to each Participant; and
- (b) notify each Participant of that Participant's required participation in the Purchase Contract.

3.2 Contribution Payment

Each Participant shall make available to the Investment Agent its required participation in the Purchase Contract by making payment in Dollars in immediately available funds to the Investment Agent of an amount equal to its Relevant Percentage of the Cost Price specified in the Transaction Request on the Transaction Date in accordance with **clause 5.1**, provided that (i) all conditions to the funding of such Purchase Contract shall have been satisfied and (ii) after giving effect thereto, the aggregate outstanding contributions of such Participant shall not exceed such Participant's Facility Commitment.

3.3 Deferred Sale Price Entitlement

Upon payment of its Contribution as and when it is due, each Participant shall be entitled to receive, subject to the terms of the Netting Letter, its Relevant Percentage of the Deferred Sale Price due and payable to, and for the account of, the Participants in accordance with the Master Murabaha Agreement.

3.4 Unconditional Contribution

Each Participant's obligation to pay its Contribution is unconditional in circumstances where the Investment Agent is required to make the Cost Price payment pursuant to the Finance Documents.

3.5 Finance Parties' Rights and Obligations

The rights and obligations of each Finance Party under the Finance Documents are several. No Finance Party is responsible for the obligations of any other Participant, and a failure by a Finance Party to perform its rights or obligations under this Agreement (including without limitation a failure by a Participant to pay its Contribution to the Investment Agent in accordance with **clause 3.2**) shall not affect the rights or obligations of any other party.

3.6 Separate and Independent Obligations

Notwithstanding any other term of this Agreement, the interests of the Investment Agent and the Participants are several and each amount due to the Investment Agent and to each Participant is a separate and independent obligation.

3.7 Failure to Pay Contribution

In the event of a failure by a Participant to duly perform or comply with its obligation to pay its Contribution under this Agreement, AIHL and each Participant irrevocably and unconditionally agree that:

- (a) the Investment Agent shall no longer be obliged on the Transaction Date to pay or cause to be paid the full amount of the Cost Price, but it shall purchase a reduced amount of Commodities from the Seller for an amount equal to the portion of the Cost Price actually received from the Participants and shall accordingly only be obliged to pay or cause to be paid such reduced amount of the Cost Price;
- (b) AIHL shall have no recourse to the Investment Agent or to any non-Defaulting Participant for such failure by a Participant; and
- (c) AIHL shall have recourse only to the Defaulting Participant in respect of such failure.

4. PREPAYMENT AND INCREASED COSTS

4.1 Illegality and Change in Control

If:

- (a) it becomes unlawful in any applicable jurisdiction for a Participant to perform any of its obligations as contemplated by this Agreement or to fund or maintain its Participation or any obligation of a Participant under a Finance Document ceases to be legal, valid and binding on such Participant and that Participant promptly notifies the Investment Agent upon becoming aware of that event; or
- (b) following a Change of Control, any Participant notifies the Investment Agent that it no longer wishes to participate in the Facility,

the Investment Agent shall promptly notify AIHL pursuant to clause 9.1 of the Master Murabaha Agreement.

4.2 Increased Costs, Tax Credit and Mitigation

Each Participant shall comply with any obligation expressed to be assumed by it under clauses 8.2, 10 and 16.5 of the Master Murabaha Agreement.

4.3 Investment Agent's Distribution of Increased Costs; etc.

Any amount in respect of Increased Costs, Taxes or VAT received by the Investment Agent as part of the Deferred Sale Price or pursuant to **clause 8.3, 8.4 or 16.5** of the Master Murabaha Agreement shall be paid by the Investment Agent to the relevant Participant which has incurred such Increased Cost (and the Participants who have not incurred the Increased Cost, Taxes or VAT shall not be entitled to any Relevant Percentage of such Increased Cost).

5. PAYMENTS BY THE PARTICIPANTS

5.1 Payments

The Contributions and any other sums to be paid by the Participants to the Investment Agent pursuant to this Agreement shall be made available in Dollars in immediately available funds as notified by the Investment Agent on the Transaction Date to such account as the Investment Agent shall have notified to the Participants for this purpose.

5.2 No set-off or Counterclaim

All payments by the Participants to the Investment Agent under this Agreement shall be made without set-off or counterclaim.

6. PAYMENTS BY THE INVESTMENT AGENT

6.1 Payments to Participants

- (a) Subject to **clauses 6.1(b)6.1(b)** and **6.2**, the Investment Agent will pay the Participants amounts in respect of their Participations on the dates and otherwise on the terms set out in this **clause 6**.
- (b) The Investment Agent shall apply each repayment towards the obligations of AIHL under the Finance Documents in the following order:
 - (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Arranger, the Investment Agent and the Security Agent under the Finance Documents;
 - (ii) **secondly**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Participants under the Finance Documents;
 - (iii) **thirdly**, in or towards payment of any Profit Amount due but unpaid under the Finance Documents;

- (iv) **fourthly**, in or towards payment of any element of the Deferred Sale Price (other than the Profit Amount) due but unpaid under the Finance Documents; and
 - (v) **fifthly**, in or towards payment of any other costs due but unpaid under the Finance Documents.
- (c) Notwithstanding anything to the contrary contained in this Agreement, if any Participant becomes a Defaulting Participant, then, until such time as such Participant is no longer a Defaulting Participant, any payment of any amounts received by either Agent for the account of such Defaulting Participant shall be applied at such time or times as may be determined by the Investment Agent as follows: first, to the payment of any amounts owing by such Defaulting Participant to the Investment Agent hereunder; second, to the extent no Default has occurred and is continuing, to the funding of any Participation that such Defaulting Participant has failed to fund, as determined by the Investment Agent; third, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Participant potential future funding obligations with respect to Participations under this Agreement; fourth, to the payment of any amounts owing to any Participant as a result of any judgment of a court of competent jurisdiction obtained by any Participant against such Defaulting Participant as a result of such Defaulting Participant's breach of its obligations under this Agreement; fifth, so long as no Default has occurred and is continuing, to the payment of any amounts owing to AIHL as a result of any judgment of a court of competent jurisdiction obtained by AIHL against such Defaulting Participant as a result of such Defaulting Participant's breach of its obligations under this Agreement; and sixth, to such Defaulting Participant or as otherwise directed by a court of competent jurisdiction; provided that if such payment is a payment of Cost Price under any Purchase Contract in respect of which such Defaulting Participant has not fully funded its appropriate share, such payment shall be applied solely to pay the Cost Price components of all non-Defaulting Participant on a pro rata basis prior to being applied to the payment of any Cost Price component owed to a Defaulting Participant.

6.2 Limited Recourse

- (a) The obligation of the Investment Agent to pay the Participants the Relevant Percentage of the Deferred Sale Price and/or any other Remittance pursuant to this Agreement is conditional upon it having received the corresponding payment from an Obligor pursuant to the relevant Finance Document.
- (b) The Participants shall have no recourse to the Investment Agent in the event of any failure by any Obligor to make any such payments.
- (c) The Participants acknowledge and agree that the primary credit risk assumed by the Participants in relation to their Participations in the Investment (and their entry into this Agreement) is that of the Obligors. Each of the Participants also acknowledges and agrees that payment by any Obligor to the Investment Agent of the Deferred Sale Price (or any part thereof) in accordance with the relevant Finance Documents will irrevocably and unconditionally satisfy the relevant Obligor's obligations to pay the Deferred Sale Price (or such amount as is actually paid in accordance with the relevant Finance Documents).

6.3 Assumed Receipt

- (a) Where a sum is to be paid to the Investment Agent under the Finance Documents for another party to this Agreement, the Investment Agent may pay that sum to that other party, but the Investment Agent is not obliged to pay that sum to that other party until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Investment Agent pays an amount to another party to this Agreement and it proves to be the case that the Investment Agent had not actually received that amount, then the party to whom that amount was paid by the Investment Agent shall on demand refund the same to the Investment Agent.
- (c) Unless the Investment Agent shall have received notice from a Participant prior to the proposed Transaction Date that such Participant will not make available to the Investment Agent such Participant's Participation, the Investment Agent may assume that such Participant has made Participation available on such date in accordance with the terms of this Agreement and may, in reliance upon such assumption, make a corresponding amount available to AIHL. In such event, if a Participant has not in fact made its Participation available to the Investment Agent, then the applicable Participant and AIHL severally agree to pay to the Investment Agent forthwith on demand (without duplication) such corresponding amount with Profit thereon, for each day from and including the date such amount is made available to AIHL. If such Participant pays such amount to the Investment Agent, then such amount shall constitute such Participant's Participation included in such Purchase Contract. Nothing herein shall be deemed to relieve any Participant from its obligation to fulfill its obligations hereunder or to prejudice any rights which the Investment Agent or AIHL may have against any Participant as a result of any default by such Participant hereunder.

6.4 Distribution

Subject to **clauses 6.2** and **6.3**, whenever the Investment Agent is satisfied that firstly it has actually received a payment in respect of a Remittance and secondly it is entitled to apply the amount received in such manner, the Investment Agent shall promptly pay to each Participant its Relevant Percentage of such payment.

6.5 Application of Moneys

For the purposes of this **clause 6**, if the Investment Agent obtains a partial or total payment of any amount due from any Obligor in respect of any Remittance by virtue of its being entitled to a set-off, banker's lien, counterclaim or any security or other payment and actually applies the amount of such payment in or towards satisfaction of amounts due to the Investment Agent in respect of that Remittance, the amount of such partial or total payment so applied will be treated for the purposes of this **clause 6** as if an actual payment of such amount had been received from an Obligor, but without prejudice to **clause 7**. Any such sums received by the Investment Agent for application in accordance with this **clause 6.5** may be credited to a suspense account and held by the Investment Agent for the benefit of the Participants *pro rata* according to their interests hereunder but shall not be treated as having been received by the Investment Agent for the purposes of this **clause 6** unless and until such sums are appropriated by the Investment Agent in or towards payment in respect of that Remittance.

6.6 Reduction in Payments

Notwithstanding any provisions herein to the contrary, if an Obligor fails to pay any amount due to the Investment Agent pursuant to the relevant Finance Document in full on the due date, for any reason whatsoever (but without affecting the obligations of such Obligor to pay that amount), the obligation of the Investment Agent to make the payments referred to in this **clause 6** to the Participants shall be reduced *pro rata* by the shortfall in the payment received by the Investment Agent.

7. REFUND, SHARING AND FURTHER PAYMENTS

7.1 Refund of Payments

If at any time the Investment Agent:

- (a) becomes obliged by any law, rule or regulation to repay to any liquidator, trustee or other person all or part of an amount previously paid to the Investment Agent (the “**Relevant Receipt**”) by an Obligor; or
- (b) is required to indemnify any liquidator, trustee or other person in respect of a Relevant Receipt.

being in any such case an amount which the Investment Agent shall have paid, or, but for the provisions of this **clause 7.1** would become liable to pay, to the Participants (the “**Relevant Payment**”) pursuant to this Agreement, then:

- (i) the Investment Agent shall promptly notify each Participant of the relevant circumstances and of the amount to be repaid by the Investment Agent or, as the case may be, to be paid by way of indemnity by the Investment Agent (the “**Excess Amount**”);
- (ii) each Participant shall on demand pay to the Investment Agent an amount equal to its Relevant Percentage of the Excess Amount, together with an amount equal to its Relevant Percentage of any compensation, costs, charges or expenses which the Investment Agent shall have become liable to pay in respect of such Excess Amount. Any demand under this **paragraph (ii)** shall be accompanied by a certificate (such certificate being conclusive evidence of the liability incurred by the Investment Agent) addressed to such Participant and signed by the Investment Agent setting out the Excess Amount and any compensation, costs, charges or expenses claimed together with any accompanying documentation if available; and
- (iii) each Obligor shall jointly and severally indemnify each Participant, for the Relevant Percentage of the Excess Amount which it has paid to the Investment Agent.

7.2 Late Payment Charge

If a Participant fails for any reason to pay any amount to the Investment Agent on demand under **clause 3** or **clause 7.1** or otherwise pursuant to this Agreement it undertakes to pay a late payment charge to the Investment Agent on such amount in respect of each day from the date of

such demand until the date of actual payment to the Investment Agent (after as well as before judgment) at the rate per annum which the Investment Agent certifies to such Participant as being the reasonable and actual cost to the Investment Agent due to such delay from the date on which such payment was due to the date of actual receipt thereof by the Investment Agent. However, the Investment Agent shall only be entitled to retain such late payment charge as is equal to its actual out-of-pocket costs and expenses (not to include opportunity costs) incurred due to such failure by a Participant, and shall pay the balance on behalf of that Participant, as soon as fully and finally received, to such charitable foundations or Islamic scientific or medical institutions as it may select in its absolute discretion.

7.3 Insolvency

(a) If, in connection with any moratorium, rescheduling, refinancing, suspension of payments or other similar arrangement or circumstance (a “**Restructuring**”) affecting any Remittance:

- (i) the Remittance (or equivalent amount) is paid in whole or in part but the obligation of the Obligor in respect of the amount paid is substituted by any other payment obligation; and/or
- (ii) any sum is paid into a blocked account or in non-convertible currency in or towards discharge or purported discharge of the Remittance or any part thereof; and/or
- (iii) the Investment Agent is obliged to provide funds in addition to the amount of the Investment, whether to AIHL or any other person,

then, subject to **clause 7.3(b)**:

- (1) in the case of **paragraphs (i) and (ii) of clause 7.3(a)**, no such payment shall be deemed to have been received by the Investment Agent for the purposes of **clause 6**; and
- (2) in the case of **paragraph (iii) of clause 7.3(a)**, each Participant shall be obliged to pay to the Investment Agent on demand an amount equal to its Relevant Percentage of such additional funds by way of further deposits in accordance with the provisions, *mutatis mutandis*, of **clause 3** and **clause 5**.

(b) In relation to **clause 7.3(a)**:

- (i) any such payment obligation as is referred to in **paragraph (i) or paragraph (iii) of clause 7.3(a)** shall be treated as between the Participants and the Investment Agent in the same way as the relevant Remittance, as if such obligation had been originally contained in the relevant Finance Document for the purpose of ascertaining the right (if any) of the Participants to receive subsequent payments under **clause 6**; and
- (ii) the Investment Agent will (at the request and cost of a Participant) assign to the Participants the Relevant Percentage of the Investment Agent’s rights to any such

blocked account or non-convertible currency as is referred to in **paragraph (ii) of clause 7.3(a).1**

7.4 Sharing by Participants

- (a) If any amount owing by an Obligor under the Finance Documents to a Participant (the “**Sharing Participant**”) is discharged by voluntary or involuntary payment, set-off or any other manner other than through the Investment Agent (in accordance with this Agreement), then:
 - (i) the Sharing Participant shall within 3 Business Days notify the Investment Agent of the amount discharged (the “**Discharged Amount**”) and the manner of its receipt or recovery;
 - (ii) the Sharing Participant shall pay the Investment Agent an amount equal to the Discharged Amount within 1 Business Day of demand by the Investment Agent;
 - (iii) the Investment Agent shall distribute the Discharged Amount in accordance with this Investment Agency Agreement; and
 - (iv) the amount owed by AIHL under the Finance Documents shall be adjusted accordingly.
- (b) Reserved
- (c) If any Discharged Amount subsequently has to be wholly or partly refunded to the relevant Obligor by a Sharing Participant which has paid an amount equal to that Discharged Amount to the Investment Agent under **clause 7.4(a)**, each Participant to which any part of that amount was distributed pursuant to **clause 7.4(a)(iii)** shall on request from the Sharing Participant repay to the Sharing Participant that Participant’s proportionate share of the amount which has to be so refunded by the Sharing Participant. The Sharing Participant’s rights of subrogation under **clause 7.4(d)** in respect of the refunded amount shall be cancelled and the relevant Obligor will be liable to the refunding Finance Party for the amount to refunded.
- (d) On a distribution by the Investment Agent under **clause 7.4(a)(iii)** the Sharing Participant will be subrogated to the rights of the Finance Parties which have shared in the redistribution.
- (e) Reserved
- (f) Each Participant shall on request supply to the Investment Agent such information as the Investment Agent may from time to time request for the purpose of this **clause 7.4**.

7.5 Partial Payments

If the Investment Agent receives a payment that is insufficient to discharge all the amounts then due and payable by AIHL under the Finance Documents, the Investment Agent shall apply that

¹ Subject to Cayman counsel review.

payment towards the obligations of AIHL under the Finance Documents in the order set forth in **clause 6.1**.

8. AMENDMENTS; DEFAULTING PARTICIPANT

8.1 Reserved

8.2 Reserved

8.3 Approval of Majority Participants

Subject to **clause 8.4**, neither this Agreement nor any other Finance Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by AIHL and the Majority Participants (or the Investment Agent with the consent of the Majority Participants), or (ii) in the case of any other Finance Document (other than any such amendment to effectuate any modification thereto expressly contemplated by the terms of such other Finance Documents), pursuant to an agreement or agreements in writing entered into by the Investment Agent, with the consent of the Majority Participants, and the Obligors party thereto. The Investment Agent may not make any material amendments or modifications, or waive any material provisions, which (in any case) are prejudicial to the position of the Participants to the DD&Co Ltd Agreements, the Condor Agreements or the Netting Letter without, in each case, first obtaining the consent of the Majority Participants and, in the case of the Condor Agreements, AIHL; provided that, for the avoidance of doubt, the Investment Agent and the Obligors may agree to technical, ministerial and other immaterial amendments and modifications to this Agreement and the other Finance Documents, in each case which are not prejudicial to the position of the Participants, without the consent of any Participant.

8.4 Amendments requiring Consent of all Participants

- (a) Reserved.
- (b) The Investment Agent shall not amend, modify, supplement or waive any provisions of this Agreement or any of the Finance Documents without obtaining the unanimous written consent of all affected Participants (or, in the case of clauses (i), (iv), (v), (vi), (vii), (viii) or (x), the written consent of all Participants) if the effect thereof would be to:
 - (i) change the currency of payment hereunder or under any Finance Document;
 - (ii) extend or defer the required date of payment of any amount payable by an Obligor under any Finance Document;
 - (iii) in relation to any Participant, increase the amount of its Contributions and/or Participation;
 - (iv) release all or substantially all of the Collateral;
 - (v) release all or substantially all of the Guarantors from their respective under the Guarantees;
 - (vi) modify the definition of the Majority Participants;

- (vii) amend clauses ~~3.53.5~~ (*Finance Parties' Rights and Obligations*), ~~3.63.6~~ (*Separate and Independent Obligations*), or 8.4 (*Amendments requiring Consent of all Participants*) of this Agreement;
- (viii) change the amount of or the method of calculation of the Deferred Sale Price;
- (ix) reduce the Margin of the Facility or reduce the amount of any payment of principal, profit, fees or commission payable; or
- (x) amend any provision which expressly requires the consent of all Participants.

8.5 Defaulting Participants

- (a) Any Defaulting Participant shall not be included in any decision-making process for the purposes of clauses 4.1 (*Illegality and Change in Control*), 8.2 (*Discretion of the Investment Agent*), 8.3 (*Approval of Majority Participants*), 8.4 (*Amendments requiring Consent of all Participants*) and 11.9 (*Transfers by the Investment Agent*) whilst such failure is outstanding and until such time as such failure has been remedied by such Participant to the reasonable satisfaction of the Investment Agent.
- (b) In the circumstances envisaged under clause 8.5(a), the consent or non-approval of such Defaulting Participant shall not be necessary in determining whether a decision has been made by:
 - (i) the Majority Participants; or
 - (ii) all the Participants (as appropriate),

and any such decision shall be made as if such Defaulting Participant was not a Participant for the purposes of such decision-making process.

- (c) AIHL shall not assume any liability or responsibility to any Finance Party as a direct result of any Participant failing to fulfill its obligations under or in connection with the Finance Documents.

9. SECURITY AGENT

9.1 Reserved

9.2 Security Agent as Proprietor

Each other Finance Party confirms that it does not wish to be registered as a joint proprietor of any Lien created pursuant to any Security Document and accordingly:

- (a) authorizes the Security Agent to hold such Security in its sole name as trustee for the Finance Parties; and
- (b) requests any relevant registry to register the Security Agent as a sole proprietor of any such Lien.

9.3 Investments

Except to the extent that a Security Document otherwise requires, any moneys received by the Security Agent under or pursuant to a Security Document may be:

- (a) invested in investments which it may select and which are authorized by applicable law; or
- (b) placed on deposit at any bank or institution (including itself),

in each case in the name or under the control of the Security Agent, and those moneys, together with any accrued income (net of any applicable Tax) shall be held by the Security Agent to the order of the Investment Agent, and shall be payable to the Investment Agent on demand; provided to the extent such monies are being held as Collateral but not for impending distribution to the Participants, such monies shall be invested in Shari'ah compliant investments (in in deposits on Shari'ah compliant terms which the Investment Agent may select .

10. COMMISSIONS, COSTS AND EXPENSES

10.1 No Sharing

Subject to any written agreement between either Agent and the Participants, it is confirmed that the Participants shall not be entitled to, and neither Agent shall be obliged to account to the Participants for, all or any part of any arranging, structuring, retainer, management or agency fees paid to, and for the account of, such Agent under or in respect of the Finance Documents.

10.2 Reimbursement of Costs and Expenses

Each Participant shall reimburse each Agent within 3 Business Days of production of an appropriate statement of costs and expenses prepared by the Investment Agent an amount equal to its Relevant Percentage of all costs, expenses (including legal expenses) and disbursements which may be incurred or made by such Agent in connection with its obligations under the Finance Documents to the extent that such costs and expenses are not reimbursed by the Obligor.

10.3 Participants' Indemnity to the Investment Agent

Each Participant shall (in proportion to its Relevant Percentage) indemnify each Agent, within three Business Days of demand, against any actual loss or liability (including, without limitation, stamp duty, documentary, or like Taxes) incurred by such Agent (otherwise than by reason of such Agent's gross negligence or willful misconduct as determined in a final, non-appealable judgment of a court of competent jurisdiction) in acting as Investment Agent or Security Agent (as the case may be) under the Finance Documents, unless such Agent has been reimbursed by an Obligor pursuant to a Finance Document.

11. ASSIGNMENT

11.1 Benefit and Burden

This Agreement shall be binding upon, and inure for the benefit of, the Participants, the Investment Agent and the Security Agent and their respective successors.

11.2 Assignment by the Participants

- (a) Subject to **clause 11.5**, each Participant may at any time assign, transfer or otherwise dispose of, or offer or grant any interest in, the whole or any part of its rights and obligations under this Agreement together with the whole or any part of its rights and obligations under the Guarantee and the other Finance Documents, in each case with the consent of the Investment Agent and, so long as no Event of Default has occurred and is continuing, AIHL (which consent shall not be unreasonably withheld, delayed or conditioned, provided that AIHL shall be deemed to have consented to such assignment, transfer or disposition unless it shall have objected thereto in writing to the Investment Agent within 10 Business Days after receiving notice of such proposed assignment, transfer or other disposition). Any assignment by a Participant of less than all of its interests in the Purchased Contracts shall be deemed an as assignment of an equal proportion of each Purchase Contract then outstanding.
- (b) The Participant may disclose to any of its Affiliates and any other person:
 - (i) to (or through) whom the Participant assigns or transfers (or may potentially assign or transfer) in accordance with **clause 11.2(a)**;
 - (ii) with (or through) whom the Participant enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to this Agreement or AIHL;
 - (iii) with (or through) whom the Participant enters into (or may potentially enter into) any securitization (or similar transaction of broadly equivalent economic effect) of that Participant's rights or obligations under the Finance Documents; or
 - (iv) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,

any information about any of AIHL or any other member of the Group and the Finance Documents as the Participant shall consider appropriate, provided such person shall have agreed to be bound by the duty of confidentiality set out in **clause 14**.

11.3 Amended Schedule

Following any assignment or transfer pursuant to this **clause 11**, the Investment Agent will issue to the Participants and AIHL a new schedule to replace **Part B of Schedule 1** setting out the revised Contributions and Percentages of the Participants.

11.4 Conditions of Assignment or Transfer

An assignment and/or transfer by a Participant will only be effective if the procedure set out in **clause 11.5** and, if required, **clause 11.7**, is complied with.

11.5 Procedure for Transfer

- (a) An assignment or transfer is effected in accordance with **sub clause (b)** below when:
- (i) the Investment Agent receives from the Existing Participant (as defined below) and the new Participant (the “**New Participant**”), four copies of a duly completed transfer certificate substantially in the form set out in **Schedule 2** (a “**Transfer Certificate**”),
 - (ii) the Investment Agent executes the Transfer Certificate and confirms the Transfer Date, and
 - (iii) the Investment Agent delivers one copy to the Existing Participant, one copy to the New Participant and one copy to AIHL.

Subject to the foregoing, the Investment Agent shall, if it consents to such assignment, execute those Transfer Certificates, confirm the Transfer Date and deliver one copy to the Existing Participant, one copy to the New Participant and one copy to AIHL.

- (b) Subject to such consent and recording thereof on the Register pursuant to **clause (d)**, from and after the Transfer Date specified in the relevant Transfer Certificate, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Transfer Certificate, have the rights and obligations of a Participant under this Agreement, and the assigning Participant thereunder shall, to the extent of the interest assigned by such Transfer Certificate, be released from its obligations under this Agreement (and, in the case of a Transfer Certificate covering all of the assigning Participant’s rights and obligations under this Agreement, such Participant shall cease to be a party hereto but shall continue to be entitled to the benefits of expense reimbursement and indemnification provisions contained herein and in the other Finance Documents with respect to facts and circumstances occurring on or prior to the effective date of such assignment).
- (c) Investment Agent, acting for this purpose as a non-fiduciary agent of AIHL, shall maintain at its offices in the city of New York a copy of each Transfer Certificate delivered to it and a register for the recordation of the names and addresses of the Participants, the Facility Commitment of each Participant and Facility Contributions owing to each Participant pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive and AIHL, each Agent and the Participants shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Participant hereunder for all purposes of this Agreement and the other Finance Documents, in the absence of manifest error. Upon Investment Agent’s consent to a duly completed Transfer Request, Investment Agent shall record the information contained therein in the Register. Notwithstanding anything to the contrary contained in this Agreement, any assignment of any Participation or any Facility Commitment shall be effective only upon appropriate entries with respect thereto being made in the Register. The Register shall be available for inspection by AIHL, any Agent

and any Participation (solely with respect to its Participations), at any reasonable time and from time to time upon reasonable prior notice.

11.6 Limitation of Responsibility of Existing Participants

- (a) Unless expressly agreed to the contrary, an Existing Participant makes no representation or warranty and assumes no responsibility to a New Participant for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,
- and any representations or warranties implied by law are excluded.
- (b) Each New Participant confirms to the Investment Agent, the Existing Participant and the Remaining Participants that it:
- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Participants or the Investment Agent in connection with any Finance Document;
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Contribution is outstanding and the New Participant shall replace the Existing Participant to the extent that the Existing Participant has transferred its rights and obligations to them under this Agreement;
 - (iii) has not relied on any representation by the Investment Agent as to the Shari'ah compliance of such agreements; and
 - (iv) confirms that AIHL will not be liable for any costs or expenses associated solely with the transfer.
- (c) Nothing in this Agreement or in any Finance Document obliges an Existing Participant to:
- (i) accept a re-transfer from a New Participant of any of the rights and obligations assigned or transferred under this **clause 11**; or

- (ii) support any losses directly or indirectly incurred by the New Participant by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

11.7 Reserved

11.8 Assignment or Transfer Fee

The New Participant shall, on the date upon which an assignment or transfer takes effect, pay to the Investment Agent (for its own account) a fee of \$5,000.

11.9 Reserved

11.10 Replacement of Participants

If any Participant requests compensation under **clauses 8.1 or 8.3** of the Master Murabaha Agreement, or if it becomes unlawful any Participant to perform any of its obligations under the Finance Documents or any Finance Document ceases to be binding on any Participant (and such Participant has notified the Investment Agent of such circumstances under **clause 9.1.1** of the Master Murabaha Agreement, or if any Participant is a Defaulting Participant or a Non-Consenting Participant, then AIHL may, at its sole expense and effort, upon notice to such Participant and the Investment Agent, require such Participant to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **clause 11**), all of its interests, rights (other than its existing rights to payments pursuant to **clause 8** or **clause 16.5** of the Master Murabaha Agreement) and obligations under this Agreement, Master Murabaha Agreement and the related Finance Documents that shall assume such obligations (which assignee may be another Participant, if a Participant accepts such assignment); provided that:

- (i) AIHL shall have paid to the Investment Agent the assignment fee (if any) specified in **clause 11.8**;

- (ii) such Participant shall have received payment of an amount equal to such Participant's share of the Deferred Payment Amounts accrued fees and all other amounts payable to it hereunder and under the other Finance Document from the assignee or the AIHL;

- (iii) in the case of any such assignment resulting from a claim for compensation or payments required to be made under **clause 8** or **clause 16.5**, such assignment will result in a reduction in such compensation or payments thereafter;

- (iv) such assignment does not conflict with applicable law; and

- (v) in the case of any assignment resulting from a Participant becoming a Non-Consenting Participant, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Participant shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Participant or otherwise, the circumstances entitling AIHL to require such assignment and delegation cease to apply.

11.11 Assignment by Obligors

No Obligor shall be entitled to assign or transfer any of its rights and obligations under this Agreement.

12. GENERAL

12.1 Payments Falling on Non-Business Days

If any payment under this Agreement is due on a day that is not a Business Day it shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

12.2 Certifications and Determinations

Any certificate or determination issued or made by the Investment Agent as to any rate or amount payable pursuant to this Agreement or any other Finance Document shall, in the absence of manifest error, be conclusive and binding on the parties.

12.3 Communications

- (a) All correspondence in connection with this Agreement must be solely between the Investment Agent and the Participants and the Participants shall not communicate directly with AIHL in connection with the arrangements constituted by this Agreement or the existence of such arrangements.
- (b) The Investment Agent shall not be held liable for losses, costs or damage resulting from:
 - (i) cable, telephone, facsimile or transmission errors or mutilation; (ii) equipment failure; or for (iii) delays, misrouting or losses by post offices, railroads or air carriers.

12.4 Know Your Customer

Each Participant shall promptly upon the request of the Investment Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Investment Agent (for itself) in order for the Investment Agent to carry out and be satisfied it has complied with all necessary know your customer requirements or other similar checks under all applicable laws and regulations pursuant to this Agreement as far as permitted by applicable law.

12.5 No Waiver

No failure or delay on the part of any party in exercising any right hereunder shall operate as a waiver of, or impair, any such right. No single or partial exercise of any such right shall preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right shall be effective unless given in writing. No waiver of any such right shall be deemed a waiver of any other right hereunder,

12.6 Partial Invalidity

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction.

12.7 Counterparts

This Agreement may be executed in any number of counterparts, and all the counterparts taken together shall be deemed to constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or electronic transmission via e-mailed pdf or other similar format shall be effective as delivery of a manually executed counterpart of this Agreement.

12.8 Documents to be in English

Each document to be delivered with respect to this Agreement shall be in the English language or shall be accompanied by an English translation thereof certified by the concerned party to be complete and correct.

12.9 Indemnity

Each Obligor jointly and severally agrees to indemnify each Finance Party and their Related Parties against, and hold each Finance Party and their Related Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including the fees, charges and disbursements of any counsel for any Finance Party or Related Party, incurred by or asserted against any Finance Party or Related Party arising out of, in connection with, or as a result of (i) the execution or delivery of the Finance Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the or any other transactions contemplated hereby, (ii) any purchase or sale of Commodities by AIHL or the use of the proceeds therefrom, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Finance Party or Related Party is a party thereto and whether or not such proceeding is instituted or brought on behalf of a third party or by any Obligor or any of its respective Affiliates; provided that such indemnity shall not, as to any Finance Party or Related Party, be available to the extent that such liabilities, obligations, losses, damages, penalties, costs, expenses or disbursements are determined, in a final, non-appealable judgment of or a court of competent jurisdiction, to have resulted solely from the gross negligence or willful misconduct of such Finance Party or Related Party.

13. NOTICES

13.1 Notices

Subject to **clause 13.2** the notice provisions set out in clause 19 of the Master Murabaha Agreement apply, *mutatis mutandis*, to this Agreement and for this purpose:

- (a) the administrative details of each Participant are those notified in writing to the Investment Agent prior to the date on which it becomes a party or, as applicable, as

provided pursuant to **clause 11** or as a Participant may notify to the Investment Agent by not less than five Business Days' notice; and

- (b) the administrative details for the Security Agent shall be the same as for the Investment Agent.

13.2 Notices through the Investment Agent

All notices from a Participant to AIHL shall be sent through the Investment Agent. All payments pursuant to a notice delivered by the Investment Agent for the account of a Participant shall be received by that Participant through the Investment Agent.

13.3 Electronic Communication

- (a) Any communication to be made between the parties under or in connection with this Agreement may be made by electronic mail or other electronic means, if the parties:
 - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the parties will be effective only when actually received in readable form and in the case of any electronic communication made by the any other party to the Investment Agent only if it is addressed in such a manner as the Investment Agent shall specify for this purpose.

14. CONFIDENTIALITY

14.1 Duty of Confidentiality

Subject to **clause 14.2 (Disclosure of Information)** the Participants agree to treat this Agreement and any information supplied by the Investment Agent or any Obligor in connection herewith as being strictly confidential.

14.2 Disclosure of Information

Any Finance Party and its officers and agents may disclose information about AIHL, the Guarantors and the Finance Documents to:

- (a) the head office of that Finance Party, any of its subsidiaries or subsidiaries of its holding company, Affiliates, representative and branch offices in any jurisdiction (together with that Finance Party, the "**Permitted Parties**");
- (b) professional advisers and service providers of the Permitted Parties who are under a duty of confidentiality to the Permitted Parties and have been informed of the confidential

nature of the information (defined below) and are instructed to keep such information confidential;

- (c) any actual or potential assignee, novatee, transferee, participant or sub-participant in relation to any of that Finance Party's rights and/or obligations under any Finance Document (or any agent or adviser of any of the foregoing);
- (d) any rating agency, insurer or insurance broker of, or direct or indirect provider of credit protection to any Permitted Party;
- (e) any court or tribunal or regulatory, supervisory, governmental or quasi-governmental authority with jurisdiction over the Permitted Parties;
- (f) any other person if and to the extent required by applicable law or regulation;
- (g) to any other party to this Agreement; or
- (h) in connection with the exercise of remedies hereunder or any action or proceeding relating to any Finance Document or the enforcement of rights hereunder;

(other than information that becomes publicly available other than through a breach of this Agreement and other than information that becomes available to such Finance Party from a source other than an Obligor) that an Obligor has clearly identified as confidential to such Obligor at the time of delivery thereof ("**Information**").

14.3 Survival of Obligation

The obligation of confidentiality in **clause 14.1** shall survive the termination of the Agreement until the later of (i) a period of 24 months after the termination of this Agreement, and (ii) the final conclusion of any dispute, suit, action, or proceeding arising from the Finance Documents and involving any Finance Party, unless any of the relevant confidential information enters the public domain through no fault of the relevant party or its agents.

15. GOVERNING LAW

This Agreement and all non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with the law of the State of New York, United States of America.

16. DISPUTE RESOLUTION

16.1 Jurisdiction

EACH OF THE FINANCE PARTIES IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF 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 AGREEMENT OR ANY OTHER FINANCE DOCUMENT, OR FOR

RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO 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. NOTHING IN THIS AGREEMENT OR IN ANY OTHER FINANCE DOCUMENT SHALL AFFECT ANY RIGHT TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER FINANCE DOCUMENT AGAINST AIHL OR ANY OTHER OBLIGOR OR ITS PROPERTIES IN THE COURTS OF ANY OTHER JURISDICTION, AND AIHL AND EACH GUARANTOR EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND AIHL AND EACH GUARANTOR HEREBY WAIVES ANY OBJECTION THAT SUCH OBLIGOR MAY HAVE BASED UPON IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER FINANCE DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS CLAUSE.

16.2 Service of Process

Without prejudice to any other mode of service allowed under any relevant law AIHL agrees that the process by which any suit, action or proceeding is begun may be served on it by being delivered in connection with any suit, action or proceeding in New York to Corporation Service Company.

16.3 Immunity

To the extent that AIHL may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), AIHL hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

THIS AGREEMENT is entered into by the parties on the date stated at the beginning of this Agreement.

SCHEDULE 1

THE PARTICIPANTS AND GUARANTORS

A. The Guarantors

B. The Participants

Participant	Facility Contribution (US\$)	Relevant Percentage (%)
Total		

SCHEDULE 2

FORM OF TRANSFER CERTIFICATE

To: Fortress Credit Corp. as Investment Agent

From: [*The Existing Participant*] (the “**Existing Participant**”) and [*The New Participant*] (the “**New Participant**”)

Dated:

INVESTMENT AGENCY AGREEMENT BETWEEN, AMONGST OTHERS, FORTRESS CAPITAL CORP. AS INVESTMENT AGENT AND ARCAPITA INVESTMENT HOLDINGS LIMITED DATED [] 2012 (THE “AGREEMENT”)

- 1 We refer to the Agreement. Terms defined in the Agreement have the same meaning herein unless given a different meaning herein.
- 2 This is a Transfer Certificate.
- 3 We refer to **clause 11.5** of the Agreement:
 - (a) The Existing Participant and the New Participant agree to the Existing Participant transferring to the New Participant [all] / []% of the Existing Participant’s Facility Commitment and existing Contributions and those rights and obligations referred to in the Schedule in accordance with **clause 11.5**.
 - (b) The proposed Transfer Date is [].
 - (c) The address, telefax number and attention details for notices of the New Participant for the purposes of **clause 13** of the Agreement are set out in the Schedule.
- 4 The New Participant expressly appoints and authorizes (a) the Investment Agent to act for and on its behalf under the Finance Documents (other than the Security Documents) and (b) the Security Agent to act for and on its behalf under the Security Documents.
- 5 The New Participant expressly acknowledges the limitations on the Existing Participant’s obligations set out in **clause 11.6** of the Agreement.
- 6 This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- 7 This Transfer Certificate is governed by the law of the State of New York, United States of America.
- 8 This Transfer Certificate may be executed in any number of counterparts, and all the counterparts taken together shall be deemed to constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Transfer Certificate by facsimile or electronic transmission via e-mailed pdf or other similar format shall be effective as delivery of a manually

executed counterpart of this Agreement.

Schedule

Contribution and rights and obligations to be transferred

Amount of Facility Commitment transferred: \$ _____

Amount of existing Contribution transferred: \$ _____²

Notice details of the New Participant:

Address:

Telefax Number:

For the attention of:

Account details of the New Participant:

Signatories

[Existing Participant]

[New Participant]

By:

By:

Title:

Title:

The Investment Agent confirms that the Transfer Date is [].

Fortress Credit Corp.

.....

By:

Title:

² Details of related Purchase Contract are set forth on the Annex hereto.

ANNEX

Purchase Contract	Existing Participant's Contribution (prior to transfer)	Contribution to be transferred to New Participant	Remaining Contribution of Existing Participant	Deferred Payment Date
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EXECUTION PAGE OF INVESTMENT AGENCY AGREEMENT

AIHL

Signed by)
duly authorized for and)
on behalf of)
Arcapita Investment)
Holding Limited)

INVESTMENT AGENT

Signed by)
duly authorized for and)
on behalf of)
Fortress Credit Corp.)

SECURITY AGENT

Signed by)
duly authorized for and)
on behalf of)
Fortress Credit Corp.)

ARRANGER

Signed by)
duly authorized for and)
on behalf of)
Fortress Credit Corp.)

[SASM&F DRAFT - - DECEMBER 46, 2012]

DATED DECEMBER [__], 2012

ARCAPITA INVESTMENT HOLDINGS LIMITED

- and -

FORTRESS CREDIT CORP.

as Investment Agent

- and -

FORTRESS CREDIT CORP.

as Security Agent

- and -

FORTRESS CREDIT CORP.

as Arranger

- and -

THE GUARANTORS AS SPECIFIED IN PART A OF SCHEDULE 1

- and -

THE PARTICIPANTS AS SPECIFIED IN PART B OF SCHEDULE 1

INVESTMENT AGENCY AGREEMENT

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THIS INVESTMENT AGENCY AGREEMENT is dated December [], 2012.

BETWEEN:

- (1) **Arcapita Investment Holdings Limited**, an exempted company incorporated with limited liability under the laws of the Cayman Islands with company number 78594, as debtor-in-possession under chapter 11 of title 11 of the United States code in a case in the Bankruptcy Court for the Southern District of New York (“**AIHL**”); and
- (2) **Fortress Credit Corp.** in its capacity as Investment Agent (the “**Investment Agent**”).
- (3) **The Guarantors** as specified below;
- (4) **The Participants** as defined below;
- (5) **Fortress Credit Corp.** as security agent for and on behalf of the Participants (the “**Security Agent**”); and
- (6) **Fortress Credit Corp.** in its capacity as arranger (the “**Arranger**”).

RECITALS

- A By a superpriority debtor-in-possession master murabaha agreement (the “**Master Murabaha Agreement**”) dated on or about the date of this Agreement, a US Dollar term murabaha facility has been made available to AIHL subject to the terms and conditions of the Finance Documents.
- B The Participants have agreed to appoint the Investment Agent as their agent in the provision of that facility in accordance with the following terms and conditions.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Terms defined in the Master Murabaha Agreement shall, unless otherwise defined in this Agreement or the context does not permit, have the same meanings when used in this Agreement and, in addition:

“**Agent Professionals**” has the meaning given in **clause 2.1(d)**.

“**Agents**” means the collective reference to the Investment Agent and the Security Agent.

“**Condor Agreements**” means:

- (a) the Letter of Understanding dated on or about the date of this Agreement and made between Condor Trading Limited and AIHL; and

(b) the letter from Condor Trading Limited to AIHL dated on or about the date of this Agreement relating to such Letter of Understanding.

“**Contribution**” means in relation to a Participant, the contributions (in an aggregate amount outstanding at any time not to exceed the amount set forth opposite its name in **Part B of Schedule 1**) to be placed by a Participant with the Investment Agent pursuant to **clause 3.1** as the same may be increased or decreased by assignments or transfers in accordance with the provisions of **clause 11.2**.

“**Discharged Amount**” has the meaning given in **clause 7.4(a)(i)**.

“**Defaulting Participant**” any Participant that (a) has failed to (i) fund all or any portion of its Contribution within two Business Days of the date such Contribution was required to be funded hereunder unless such Participant notifies the Investment Agent and AIHL in writing that such failure is the result of such Participant’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Investment Agent any Participant any other amount required to be paid by it hereunder within two Business Days of the date when due or (b) has notified the AIHL or the Investment Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect.

“**Excess Amount**” has the meaning given in **clause 7.1**.

“**Facility Commitment**” means, with respect to any Participant at any time, such Participant’s Relevant Percentage of the Facility Limit at such time.

“**Guarantors**” means those entities listed in **Part A of Schedule 1**, and any Additional Guarantors from time to time party to a Guarantee.

“**Indemnified Costs**” has the meaning given in **clause 2.2(a)**.

“**Investment**” means, at any time, the aggregate of the Contributions of all Participants at such time (which shall not exceed the Facility Limit at any time).

“**Majority Participants**” means a group of Participants the aggregate of whose Participations exceed 50% of all Participations or in the event that no Contributions have been made a group of Participants the aggregate of whose Relevant Percentages exceed 50% of all Contributions to be made.

“**Non-Consenting Participant**” means any Participant that does not approve any consent, waiver or amendment that (i) requires the approval of all affected Participant in accordance with the terms of **clause 8.4** and (ii) has been approved by the Majority Participants.

“**Participants**” means those banks and financial institutions listed in **Part B of Schedule 1** or any assignee or transferee which has become a Participant in accordance with **clause 11.2**.

“**Participation**” means at any time, in relation to a Participant and save as otherwise provided in this Agreement, the aggregate amount of the Contributions actually made by it under this

(i) all conditions to the funding of such Purchase Contract shall have been satisfied and (ii) after giving effect thereto, the aggregate outstanding contributions of such Participant shall not exceed such Participant's Facility Commitment.

3.3 Deferred Sale Price Entitlement

Upon payment of its Contribution as and when it is due, each Participant shall be entitled to receive, subject to the terms of the Netting Letter, its Relevant Percentage of the Deferred Sale Price due and payable to, and for the account of, the Participants in accordance with the Master Murabaha Agreement.

3.4 Unconditional Contribution

Each Participant's obligation to pay its Contribution is unconditional in circumstances where the Investment Agent is required to make the Cost Price payment pursuant to the Finance Documents.

3.5 Finance Parties' Rights and Obligations

The rights and obligations of each Finance Party under the Finance Documents are several. No Finance Party is responsible for the obligations of any other Participant, and a failure by a Finance Party to perform its rights or obligations under this Agreement (including without limitation a failure by a Participant to pay its Contribution to the Investment Agent in accordance with **clause 3.2**) shall not affect the rights or obligations of any other party.

3.6 Separate and Independent Obligations

Notwithstanding any other term of this Agreement, the interests of the Investment Agent and the Participants are several and each amount due to the Investment Agent and to each Participant is a separate and independent obligation.

3.7 Failure to Pay Contribution

In the event of a failure by a Participant to duly perform or comply with its obligation to pay its Contribution under this Agreement, AIHL and each Participant irrevocably and unconditionally agree that:

- (a) the Investment Agent shall no longer be obliged on the Transaction Date to pay or cause to be paid the full amount of the Cost Price, but it shall purchase a reduced amount of Commodities from the Seller for an amount equal to the portion of the Cost Price actually received from the Participants and shall accordingly only be obliged to pay or cause to be paid such reduced amount of the Cost Price;
- (b) AIHL shall have no recourse to the Investment Agent or to any ~~non-defaulting~~non-Defaulting Participant for such failure by a Participant; and
- (c) AIHL shall have recourse only to the ~~defaulting~~Defaulting Participant in respect of such failure.

components of all ~~non-defaulting~~non-Defaulting Participant on a pro rata basis prior to being applied to the payment of any Cost Price component owed to a Defaulting Participant.

6.2 Limited Recourse

- (a) The obligation of the Investment Agent to pay the Participants the Relevant Percentage of the Deferred Sale Price and/or any other Remittance pursuant to this Agreement is conditional upon it having received the corresponding payment from an Obligor pursuant to the relevant Finance Document.
- (b) The Participants shall have no recourse to the Investment Agent in the event of any failure by any Obligor to make any such payments.
- (c) The Participants acknowledge and agree that the primary credit risk assumed by the Participants in relation to their Participations in the Investment (and their entry into this Agreement) is that of the Obligors. Each of the Participants also acknowledges and agrees that payment by any Obligor to the Investment Agent of the Deferred Sale Price (or any part thereof) in accordance with the relevant Finance Documents will irrevocably and unconditionally satisfy the relevant Obligor's obligations to pay the Deferred Sale Price (or such amount as is actually paid in accordance with the relevant Finance Documents).

6.3 Assumed Receipt

- (a) Where a sum is to be paid to the Investment Agent under the Finance Documents for another party to this Agreement, the Investment Agent may pay that sum to that other party, but the Investment Agent is not obliged to pay that sum to that other party until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Investment Agent pays an amount to another party to this Agreement and it proves to be the case that the Investment Agent had not actually received that amount, then the party to whom that amount was paid by the Investment Agent shall on demand refund the same to the Investment Agent.
- (c) Unless the Investment Agent shall have received notice from a Participant prior to the proposed Transaction Date that such Participant will not make available to the Investment Agent such Participant's Participation, the Investment Agent may assume that such Participant has made Participation available on such date in accordance with the terms of this Agreement and may, in reliance upon such assumption, make a corresponding amount available to AIHL. In such event, if a Participant has not in fact made its Participation available to the Investment Agent, then the applicable Participant and AIHL severally agree to pay to the Investment Agent forthwith on demand (without duplication) such corresponding amount with Profit thereon, for each day from and including the date such amount is made available to AIHL. If such Participant pays such amount to the Investment Agent, then such amount shall constitute such Participant's Participation included in such Purchase Contract. Nothing herein shall be deemed to relieve any Participant from its obligation to fulfill its obligations hereunder or to prejudice any rights which the Investment Agent or AIHL may have against any Participant as a result of any default by such Participant hereunder.

- (b) Reserved
- (c) If any Discharged Amount subsequently has to be wholly or partly refunded to the relevant Obligor by a Sharing Participant which has paid an amount equal to that Discharged Amount to the Investment Agent under **clause 7.4(a)**, each Participant to which any part of that amount was distributed pursuant to **clause 7.4(a)(iii)** shall on request from the Sharing Participant repay to the Sharing Participant that Participant's proportionate share of the amount which has to be so refunded by the Sharing Participant. The Sharing Participant's rights of subrogation under **clause 7.4(d)** in respect of the refunded amount shall be cancelled and the relevant Obligor will be liable to the refunding Finance Party for the amount to refunded.
- (d) On a distribution by the Investment Agent under **clause 7.4(a)(iii)** the Sharing Participant will be subrogated to the rights of the Finance Parties which have shared in the redistribution.
- (e) Reserved
- (f) Each Participant shall on request supply to the Investment Agent such information as the Investment Agent may from time to time request for the purpose of this **clause 7.4**.

7.5 Partial Payments

If the Investment Agent receives a payment that is insufficient to discharge all the amounts then due and payable by AIHL under the Finance Documents, the Investment Agent shall apply that payment towards the obligations of AIHL under the Finance Documents in the order set forth in **clause 6.1**.

8. AMENDMENTS; DEFAULTING PARTICIPANT

8.1 Reserved

8.2 Reserved

8.3 Approval of Majority Participants

Subject to **clause 8.4**, neither this Agreement nor any other Finance Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by AIHL and the Majority Participants (or the Investment Agent with the consent of the Majority Participants), or (ii) in the case of any other Finance Document (other than any such amendment to effectuate any modification thereto expressly contemplated by the terms of such other Finance Documents), pursuant to an agreement or agreements in writing entered into by the Investment Agent, with the consent of the Majority Participants, and the Obligors party thereto. The Investment Agent may not make any material amendments or modifications, or waive any material provisions, which (in any case) are prejudicial to the position of the Participants to the ~~DD&Co Ltd~~ DD&Co Ltd Agreements, the Condor Agreements or the Netting Letter~~†~~ without, in each case, first obtaining the consent of the Majority Participants and, in the case of the Condor Agreements, AIHL; provided that, for the avoidance of doubt, the Investment Agent and the Obligors may agree to technical, ministerial and other immaterial amendments and

modifications to this Agreement and the other Finance Documents, in each case which are not prejudicial to the position of the Participants, without the consent of any Participant.

8.4 Amendments requiring Consent of all Participants

- (a) Reserved.
- (b) The Investment Agent shall not amend, modify, supplement or waive any provisions of this Agreement or any of the Finance Documents without obtaining the unanimous written consent of all affected Participants (or, in the case of clauses (i), (iv), (v), (vi), (vii), (viii) or (x), the written consent of all Participants) if the effect thereof would be to:
 - (i) change the currency of payment hereunder or under any Finance Document;
 - (ii) extend or defer the required date of payment of any amount payable by an Obligor under any Finance Document;
 - (iii) in relation to any Participant, increase the amount of its Contributions and/or Participation;
 - (iv) release all or substantially all of the Collateral;
 - (v) release all or substantially all of the Guarantors from their respective under the Guarantees;
 - (vi) modify the definition of the Majority Participants;
 - (vii) amend clauses **3.5 (Finance Parties' Rights and Obligations)**, **3.6 (Separate and Independent Obligations)**, or **8.4 (Amendments requiring Consent of all Participants)** of this Agreement;
 - (viii) change the amount of or the method of calculation of the Deferred Sale Price;
 - (ix) reduce the Margin of the Facility or reduce the amount of any payment of principal, profit, fees or commission payable; or
 - (x) amend any provision which expressly requires the consent of all Participants.

8.5 Defaulting Participants

- (a) Any **Defaulting** Participant ~~who has failed to duly perform or comply with its obligations under this Agreement~~ shall not be included in any decision-making process for the purposes of **clauses 4.1 (Illegality and Change in Control)**, **8.2 (Discretion of the Investment Agent)**, **8.3 (Approval of Majority Participants)**, **8.4 (Amendments requiring Consent of all Participants)** and **11.9 (Transfers by the Investment Agent)** whilst such failure is outstanding and until such time as such failure has been remedied by such Participant to the reasonable satisfaction of the Investment Agent.

(b) In the circumstances envisaged under **clause 8.5(a)**, the consent or non-approval of such ~~defaulting~~Defaulting Participant shall not be necessary in determining whether a decision has been made by:

- (i) the Majority Participants; or
- (ii) all the Participants (as appropriate),

and any such decision shall be made as if such ~~defaulting~~Defaulting Participant was not a Participant for the purposes of such decision-making process.

(c) AIHL shall not assume any liability or responsibility to any Finance Party as a direct result of any Participant failing to fulfill its obligations under or in connection with the Finance Documents.

9. SECURITY AGENT

9.1 Reserved

9.2 Security Agent as Proprietor

Each other Finance Party confirms that it does not wish to be registered as a joint proprietor of any Lien created pursuant to any Security Document and accordingly:

- (a) authorizes the Security Agent to hold such Security in its sole name as trustee for the Finance Parties; and
- (b) requests any relevant registry to register the Security Agent as a sole proprietor of any such Lien.

9.3 Investments

Except to the extent that a Security Document otherwise requires, any moneys received by the Security Agent under or pursuant to a Security Document may be:

- (a) invested in investments which it may select and which are authorized by applicable law; or
- (b) placed on deposit at any bank or institution (including itself),

in each case in the name or under the control of the Security Agent, and those moneys, together with any accrued income (net of any applicable Tax) shall be held by the Security Agent to the order of the Investment Agent, and shall be payable to the Investment Agent on demand; provided to the extent such monies are being held as Collateral but not for impending distribution to the Participants, such monies shall be invested in Shari'ah compliant investments (in in deposits on Shari'ah compliant terms which the Investment Agent may select .

- (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document, and any representations or warranties implied by law are excluded.
- (b) Each New Participant confirms to the Investment Agent, the Existing Participant and the Remaining Participants that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Participants or the Investment Agent in connection with any Finance Document;
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Contribution is outstanding and the New Participant shall replace the Existing Participant to the extent that the Existing Participant has transferred its rights and obligations to them under this Agreement;
 - (iii) has not relied on any representation by the Investment Agent as to the Shari'ah compliance of such agreements; and
 - (iv) confirms that AIHL will not be liable for any costs or expenses associated solely with the transfer.
- (c) Nothing in this Agreement or in any Finance Document obliges an Existing Participant to:
 - (i) accept a re-transfer from a New Participant of any of the rights and obligations assigned or transferred under this **clause 11**; or
 - (ii) support any losses directly or indirectly incurred by the New Participant by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

11.7 Reserved

11.8 Assignment or Transfer Fee

The New Participant shall, on the date upon which an assignment or transfer takes effect, pay to the Investment Agent (for its own account) a fee of \$5,000.

11.9 Reserved

11.10 ~~Reserved~~ Replacement of Participants

If any Participant requests compensation under **clauses 8.1 or 8.3** of the Master Murabaha Agreement, or if it becomes unlawful any Participant to perform any of its obligations under the Finance Documents or any Finance Document ceases to be binding on any Participant (and such Participant has notified the Investment Agent of such circumstances under **clause 9.1.1** of the Master Murabaha Agreement, or if any Participant is a Defaulting Participant or a Non-Consenting Participant, then AIHL may, at its sole expense and effort, upon notice to such Participant and the Investment Agent, require such Participant to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **clause 11**), all of its interests, rights (other than its existing rights to payments pursuant to **clause 8** or **clause 16.5** of the Master Murabaha Agreement) and obligations under this Agreement, Master Murabaha Agreement and the related Finance Documents that shall assume such obligations (which assignee may be another Participant, if a Participant accepts such assignment); provided that:

(i) AIHL shall have paid to the Investment Agent the assignment fee (if any) specified in **clause 11.8**;

(ii) such Participant shall have received payment of an amount equal to such Participant's share of the Deferred Payment Amounts accrued fees and all other amounts payable to it hereunder and under the other Finance Document from the assignee or the AIHL;

(iii) in the case of any such assignment resulting from a claim for compensation or payments required to be made under **clause 8 or clause 16.5**, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable law; and

(v) in the case of any assignment resulting from a Participant becoming a Non-Consenting Participant, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Participant shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Participant or otherwise, the circumstances entitling AIHL to require such assignment and delegation cease to apply.

11.11 Assignment by Obligors

No Obligor shall be entitled to assign or transfer any of its rights and obligations under this Agreement.

Summary Report:	
Litéra® Change-Pro 7.0.0.365 Document Comparison done on 12/6/2012	
5:26:14 PM	
Style Name: Option 3a strikethrough double score no moves	
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Modified DMS: dm://CHISR02A/939700/4	
Changes:	
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Delete	30
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	19
Total Changes:	92

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

-----X
: **Chapter 11**
: **Case No. 12-11076 (SHL)**
: **Jointly Administered**
-----X

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

Upon the motion (the “**Motion**”), dated December 4, 2012, of Arcapita Bank B.S.C.(c) (“**Arcapita**”) and its affiliated debtors, each as debtor and debtor-in-possession (collectively, the “**Debtors**”), in the above-captioned chapter 11 cases (the “**Cases**”) pursuant to sections 105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001 2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of New York (the “**Local Rules**”), requesting, among other things:

- (1) authorization for Arcapita Investment Holdings Limited (the “**Purchaser**”) to obtain a senior secured superpriority debtor-in-possession multiple-draw term Murabaha facility, in an aggregate principal amount up to \$150,000,000 (the “**DIP Facility**”) (the availability of which shall be subject to the terms and conditions set forth in the Finance Documents (as defined in the

DIP Agreement (as defined below) and including any exhibits thereto)), to be provided by Fortress Credit Corp. (“**Fortress**”), acting as agent (in such capacity, the “**Investment Agent**”) for institutions participating in the DIP Facility (together with Fortress, the “**Participants**”), to be arranged by Fortress (in such capacity, the “**Arranger**”), and for all of the other Debtors except for Falcon Gas Storage Company, Inc. (“**Falcon**”) (collectively, the “**Debtor Guarantors**”) to guaranty all of the Purchaser’s obligations under such DIP Facility;

(2) authorization for the Purchaser to enter into and perform under a senior secured Superpriority Debtor-in-Possession Master Murabaha Agreement substantially in the form filed as Exhibit B to the Motion (as the same may be hereafter amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with terms thereof or hereof, the “**DIP Agreement**”), and the other Finance Documents and to perform such other and further acts as may be reasonably required or appropriate in connection with the Finance Documents;

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

(4) the grant of superpriority administrative expense claims to the Investment Agent pursuant to section 364(c)(1) of the Bankruptcy Code over any and all administrative expenses of any kind or nature, subject only to the Carve

Out (as defined below), the Prior SCB Claims (as defined below) and as set forth herein and in the Finance Documents;

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

(6) the grant of valid, enforceable, non-avoidable and fully perfected junior liens pursuant to section 364(c)(3) on and security interests in all of the property, assets, and other interests in property and assets of the Debtors (except for Falcon) that are subject to valid, perfected, and non-avoidable liens in existence on the Petition Date (or that are perfected after the Petition Date pursuant to 546(b)), whether such property is presently owned or after-acquired, and all other “property of the estate” (within the meaning of the Bankruptcy Code)

of such Debtors, of any kind or nature whatsoever, real or personal, tangible, intangible or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date, excluding Avoidance Actions and the proceeds thereof, subject only to the Carve Out on the terms and conditions set forth herein and in the Finance Documents;

(7) subject only to, and effective upon entry of, a final order granting such relief and such other relief as provided herein and in such final order (the “**Final Order**”), the waiver of the Debtors’ and their estates’ rights to surcharge the Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code;

(8) pursuant to Bankruptcy Rule 4001, that an interim hearing (the “**Interim Hearing**”) on the Motion be held before this Court to consider entry of the proposed interim order annexed to the Motion (the “**Interim Order**”) (a) authorizing the Debtors on an interim basis, to borrow under the DIP Agreement in an aggregate amount of \$25 million and (b) granting the other relief described in the Finance Documents and this Interim Order; and

(9) that this Court schedule a final hearing (the “**Final Hearing**”) to consider entry of the Final Order approving the Motion and approving the Debtors’ notice with respect thereto;

and due and appropriate notice of the Motion, the relief requested therein and the Interim Hearing having been served by the Debtors on the Investment Agent (for itself and the Participants); Standard Chartered Bank (“**SCB**”), as agent under the prepetition secured Murabaha facilities dated May 30, 2011, and December 22, 2011 (the “**SCB Facilities**”); the

Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.) (the “**U.S. Trustee**”); Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq., Abhilash M. Raval, Esq., and Evan R. Fleck, Esq.), counsel for the official committee of unsecured creditors in the Cases (the “**Committee**”); the Joint Provisional Liquidators (as defined in the DIP Agreement), Sidley Austin LLP, Woolgate Exchange, 25 Basinghall Street London, EC2V 5HA (Attn: Patrick Corr and Benjamin Klinger); and all parties listed on the Master Service List established in the Cases (collectively, the “**Notice Parties**”), and upon the record of the Interim Hearing held by this Court on December 7, 2012; and upon the arguments of counsel at the Interim Hearing; and the Court having considered any objections to the relief sought herein; and after due deliberation and consideration and sufficient cause appearing therefor,

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

1. *Motion.* The Motion is hereby granted on an interim basis, to the extent set forth herein.
2. *Jurisdiction.* This Court has core jurisdiction over the Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. *Notice.* Notice of the Motion, the relief requested therein and the Interim Hearing was served by the Debtors on the Notice Parties. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing. Under the circumstances, the request for the interim relief granted herein and the notice given by the Debtors of the Motion and the Interim Hearing constitutes due and sufficient notice

thereof and complies with Bankruptcy Rule 4001(b) and (c), and Local Rule 4001-2, and no further notice of the relief sought at the Interim Hearing is necessary or required.

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

5. *Findings Regarding the Commodities Transactions.*

(a) The purchases and sales of the Commodities are essential to the DIP Agreement and the DIP Facility, and thus provide a basis for the Debtors to access liquidity essential to operate their businesses and preserve and enhance their enterprise value for the benefit of their stakeholders, and are necessary for the Debtors' overall restructuring.

(b) The purchases and sales of the Commodities shall be entitled to the protections of section 363(m) of the Bankruptcy Code.

6. *Findings Regarding the DIP Facility.*

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

(b) The Debtors have an immediate need to obtain the credit available under the DIP Facility in order to permit, among other things, the orderly continuation of the operation of their businesses, including to fund general corporate and working capital requirements; to fund administrative costs of the Cases; and to pay such other amounts in accordance with the Finance Documents. The Debtors' access to sufficient working

capital and liquidity by obtaining new credit under the DIP Facility is vital to the preservation and maintenance of the going concern values of the Debtors and necessary to avoid immediate and irreparable harm to the Debtors' estates.

(c) The Debtors are unable to obtain sufficient credit on more favorable terms from sources other than the Investment Agent and the Participants under the Finance Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code on better terms without the Debtors granting liens or claims similar to the DIP Lien (as defined below) and the Superpriority Claims (as defined below) granted to Fortress, as Security Agent under the DIP Facility (in such capacity, the "**Security Agent**") for the benefit of the Finance Parties (as defined in the DIP Agreement) upon the terms and conditions set forth in this Interim Order and in the Finance Documents.

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

(e) The DIP Facility has been negotiated in good faith and at arm's length among the Debtors and the Investment Agent, among others, and the terms of the DIP Facility are fair and reasonable under the circumstances and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties. Further, all of the Debtors' obligations arising under, in respect of or in connection with the DIP

Agreement or any of the other Finance Documents (collectively, the “**DIP Obligations**”), shall be deemed to have been extended by the Investment Agent and the Participants and their affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the Investment Agent and the Participants shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(f) The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). The authorization granted herein on an interim basis to enter into the Finance Documents and to purchase and sell Commodities up to an aggregate purchase price of \$25 million is necessary to avoid immediate and irreparable harm to the Debtors and their estates. Consummation of the DIP Facility in accordance with this Interim Order and the Finance Documents is therefore in the best interest of the Debtors’ estates as its consummation will, among other things, allow the Debtors to facilitate their chapter 11 goals and maximize the value of their estates.

7. *Authorization of the Commodities Transactions.*

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

The transactions described in this subparagraph (a) shall be referred to collectively as the “**Commodities Transactions.**”

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

8. *Authorization of the Finance Documents.*

(a) The Debtors are hereby authorized to execute, issue, deliver, and enter into the Finance Documents and the Finance Documents are hereby approved. The Purchaser is hereby authorized to enter into the DIP Agreement, and the Debtor Guarantors are hereby authorized to unconditionally guaranty (on a joint and several basis and except that the guarantees of AEID II Holdings Limited (“**AEID II**”), RailInvest Holdings Limited (“**RailInvest**”), and WindTurbine Holdings Limited (“**WTHL**”) shall be expressly subordinated to the Prior SCB Claims) the Purchaser’s obligations under the Finance Documents up to an aggregate principal or face amount of \$25,000,000 (plus profits, fees, costs and other expenses and amounts provided for in the Finance Documents) on an interim basis, in accordance with the terms of this Interim Order and the Finance Documents, the proceeds of which shall be used for all purposes permitted under the Finance Documents, including, without limitation, to provide working capital for the Purchaser and the Debtor Guarantors; to fund general corporate purposes; and to pay profits, fees and expenses, in each case in accordance with this Interim Order, the Finance

Documents and the DIP Budget (as defined in the DIP Agreement) (subject to the variances set forth in Clause 13 of the DIP Agreement).

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

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

(ii) the execution, delivery and performance of one or more amendments, waivers, consents, or other modifications to and under the Finance Documents including, among other things, to at any time, add additional institutions as Participants or reallocate the commitments under the Finance Documents among Participants, in each case in such form as Arcapita, the Purchaser, the Investment Agent, and the Participants (to the extent required under the DIP Agreement) may reasonably agree, it being understood that no further approval of the Court shall be required for amendments, waivers, consents, or other modifications to and under the Finance Documents or the DIP Obligations that do not (A) shorten the maturity of the extensions of credit thereunder, (B) increase the commitments or the rate of profit or fees payable thereunder, (C) materially impair SCB's rights under the SCB Order, or (D) are otherwise not materially burdensome

to the Debtors' estates; provided that, notwithstanding the foregoing, the Debtors shall provide 3 days' notice to and consult with counsel to the Committee, SCB, and the Joint Provisional Liquidators prior to entering into any amendment or other modification to the Finance Documents or the DIP Obligations;

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

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

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

(d) The Debtors shall promptly (but within three Business Days) provide to Committee counsel a copy of any duly completed Transaction Request (as defined in the DIP Agreement) made to the Investment Agent pursuant to section 5.2 of the

DIP Agreement. The Debtors shall further promptly (but within three Business Days) provide to Committee counsel a copy of the acceptance of an Offer Letter (as defined in the DIP Agreement) made pursuant to section 5.3 of the DIP Agreement.

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

10. *Superpriority Claims.*

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

Finance Documents, this Interim Order, or the Motion, so long as the obligations under the SCB Facilities remain outstanding, (i) the DIP Obligations and the Superpriority Claims shall be junior to the SCB Superpriority Claims (as defined in the Settlement Term Sheet attached as Exhibit 1 to the SCB Order¹) to the extent that the SCB Superpriority Claims relate to funds transferred by, or other disposition of, AEID II, RailInvest, or WTHL; (ii) the DIP Obligations and the Superpriority Claims against AEID II, RailInvest, and WTHL shall be subordinated to the existing guarantees in favor of SCB against AEID II, RailInvest; and WTHL; and (iii) SCB shall have a prior superpriority claim in all proceeds of the EuroLog IPO (as defined in the SCB Order) to the extent provided under the SCB Order (the claims in favor of SCB as described in (i) through (iii), and the Listco Pledge (as defined in the SCB Order) in connection with the EuroLog IPO, in each case to the extent allowed, referred to collectively as, the “**Prior SCB Claims**”).

(b) For purposes hereof, the “**Carve Out**” shall mean (i) any unpaid fees required to be paid to the Clerk of the United States Bankruptcy Court for the Southern District of New York and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code and interest thereon, (ii) the reasonable fees and expenses approved by the Bankruptcy Court incurred by a trustee under sections 726(b) or 1104 of the Bankruptcy Code in an aggregate amount not to exceed \$25,000, (iii) the reasonable and documented expenses of members of the Committee (excluding fees and expenses of professional persons employed by the Committee and/or such Committee member individually) in an amount not to exceed \$200,000; (iv) to the extent allowed at any time,

¹ The “**SCB Order**” means the Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing and Approving the Settlement with Standard Chartered Bank (Docket No. 587), entered October 19, 2012.

all unpaid fees and expenses allowed by the Bankruptcy Court of professionals or professional firms retained pursuant to sections 327, 328, 330, 363, or 1103 of the Bankruptcy Code by the Debtors or the Committee (the “**Professional Persons**”) and the reasonable fees and expenses of the Joint Provisional Liquidators, in each case, that were accrued or incurred, as applicable through the date upon which the Purchaser and the Committee receives from the Investment Agent a written notice of the occurrence of an Event of Default (as defined in the DIP Agreement) and the Investment Agent’s intention to involve the Carve Out (the “**Carve Out Notice**”); and (v) to the extent allowed at any time, all fees and expenses of Professional Persons and the Joint Provisional Liquidators incurred after the date upon which the Purchaser receives the Carve Out Notice, in the aggregate amount not to exceed \$15,000,000 (the “**Carve Out Cap**”), provided that (a) the Carve Out Cap shall not be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred by or paid to any Professional Person or the Joint Provisional Liquidators prior to the Purchaser’s receipt of the Carve Out Notice or by any fees, expenses, indemnities, or other amounts paid to the Investment Agent, Participants, or their respective attorneys or agents under the DIP Facility or otherwise and (b) to the extent that the Carve Out Cap is reduced by an amount as a result of payment of fees and expenses during the continuation of an Event of Default and after delivery of the Carve Out Notice, and such Event of Default is subsequently cured or waived and the Carve Out Notice is rescinded in writing, such dollar limitation shall be increased by an amount equal to the amount by which it has been so reduced.

(c) Notwithstanding anything herein, without the prior written consent of the Investment Agent or the Security Agent, as applicable, the Carve Out shall not

include, apply to, or be available for any fees or expenses incurred by any party in connection with (1) any challenge to the validity, perfection, priority, extent or enforceability of the DIP Obligations or other transactions under the DIP Facility, or the DIP Liens on any Collateral or security interests securing the DIP Obligations; (2) any investigation or assertion of any other claims, adversary proceedings, causes of action, or other litigation, including any action or obligation with respect to the Superpriority Claims or DIP Liens, against any Participant, the Investment Agent or any other holder of any DIP Obligations in such capacity; (3) to object to, contest, delay, prevent or interfere in any way with the exercise of rights or remedies by the Security Agent under the Finance Documents (except that the Debtors may dispute whether an Event of Default has occurred under paragraph 14(b) hereof and the Debtors shall be entitled to any notice provisions provided in this Interim Order); or (4) during the continuation of an Event of Default and after delivery of the Carve Out Notice, any separate or additional act or series of acts which would constitute an Event of Default, provided that deviations from the DIP Budget for purposes of making payments to Professional Persons that would constitute an Event of Default but that are otherwise permitted under the Carve Out shall not be subject to this clause (4). Nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation of any Professional Person. The Carve Out must be used in full and exhausted prior to the Debtors' use of the \$1,000,000 carve out for professional fees provided for in the SCB Order.

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

12. *DIP Liens.* As security for the DIP Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution, recordation or filings of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Security Agent of, or over, any Collateral, the following security interests and liens are hereby granted to the Security Agent for the benefit of the Investment Agent and the Finance Parties (all tangible and intangible property, whether real or personal, identified in clauses (a) and (b) below being collectively referred to as the “**Collateral**”); all such liens and security interests granted to the Security Agent for the benefit of the Finance Parties pursuant to this Interim Order, the “**DIP Liens**”, subject and subordinate only to the payment of the Carve Out and the Prior SCB Claims and, in the case of the collateral identified in clause (b) below, any claim secured by a senior lien therein; *provided, however,* that the Collateral shall not include (i) the Debtors’ claims and causes of action under sections 544, 545, 547, 548 and 550 (but not to the extent of any recoveries under section 549 of the Bankruptcy Code) of the Bankruptcy Code (the “**Avoidance Actions**”) or the proceeds thereof, (ii) Arcapita Investment Funding Limited’s interests in PointPark Properties s.r.o., or (iii) the assets of AEID II, RailInvest, or WTHL (except to the extent such assets constitute collateral under the SCB Facilities, in which case the Security Agent’s liens shall be junior to liens granted to SCB); *provided further, however,* that the Collateral shall not include any property to the extent that the Investment Agent reasonably determines, and notifies the Purchaser in writing, that the costs of obtaining liens or security interests with respect to such property are excessive in relation to the value of the security interest afforded thereby:

(a) *First Lien Unencumbered Property.* Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first

priority senior security interest in and lien upon all property of Arcapita, the Purchaser, and ALTHL, whether existing on the Petition Date or thereafter arising, coming into existence or acquired, whether tangible or intangible, whether real or personal, that (1) is not subject to valid, perfected and non-avoidable liens or security interests as of the Petition Date or (2) becomes unencumbered and is no longer subject to any lien or security interest, including, without limitation, the Purchaser's interests in the WCFs (as defined in the DIP Agreement) and the Purchaser's voting rights with respect thereto, ALTHL's interests in LT CayCos (as defined in the DIP Agreement) that are unencumbered or become unencumbered, the Purchaser's non-syndicated interests in the Syndication Companies (as defined in the DIP Agreement), cash, general intangibles, accounts, equipment, goods, inventory, fixtures, documents, instruments, chattel paper, letters of credit and letters of credit rights, investment property, commercial tort claims, money, deposit accounts, supporting obligations (each of foregoing terms as defined in the Uniform Commercial Code as in effect from time to time in the State of New York (the "UCC")), all books and records relating to the foregoing, and all other personal and real property, whether tangible or intangible, and all proceeds (as defined in the UCC) and products of each of the foregoing (the "**First Lien Collateral**").

(b) *Liens Junior to Certain Other Liens.* Pursuant to sections 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest in and junior lien upon all property of the Debtors (except for Falcon) that are subject to (i) any valid, perfected and non-avoidable lien in existence on the Petition Date or (ii) any valid lien in existence on the Petition Date that is perfected subsequent to the Petition Date pursuant to section 546(b) of the Bankruptcy Code or otherwise comes into

existence or is acquired after the Petition Date, whether tangible or intangible, whether real or personal, together with all proceeds and products thereof, including, in each case and for so long as the obligations under the SCB Facilities remain unpaid, the liens on the collateral securing the obligations under the SCB Facilities.

(c) For so long as any of the DIP Obligations remain outstanding, the Collateral shall be free and clear of all senior liens, claims and encumbrances, other than the DIP Liens granted to the Security Agent for the benefit of the Finance Parties and except for those liens, claims, and encumbrances expressly permitted under the Finance Documents or this Interim Order. Any liens and claims granted as adequate protection to any secured party (other than those granted to SCB in connection with the SCB Facilities and the SCB Order) are junior and subordinate to the DIP Liens in the Collateral granted to the Security Agent, for the benefit of the Finance Parties pursuant to this Interim Order.

13. *Proceeds of Collateral.* All proceeds of the First Lien Collateral of any kind which are now or shall hereafter come into the possession or control of Purchaser, Arcapita or ALTHL, or to which any such Debtor is now or shall become entitled under the Finance Documents, shall be promptly deposited into deposit accounts maintained by the Purchaser or Arcapita upon which the Security Agent shall have first priority liens pursuant to this Interim Order, and such collections and proceeds shall remain subject to the DIP Liens and shall be treated in accordance with this Interim Order and the Finance Documents. Subject to the provisions of this Interim Order, upon the occurrence and continuation of an Event of Default under the Finance Documents, all financial institutions in which any deposit accounts, lockboxes, blocked accounts, or other accounts of any of the Debtors (except Falcon) holding the proceeds of any of the First Lien Collateral are located are hereby authorized and directed to comply with

any request of the Security Agent to turn over to the Security Agent all funds therein without setoff, recoupment, or deduction of any kind.

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

(a) To permit the Investment Agent and/or Security Agent to exercise, upon the occurrence and continuation of any Event of Default under the Finance Documents or the Maturity Date (as defined in the DIP Agreement), all rights and remedies under the Finance Documents, and, to the extent provided for in the Finance Documents, to take any or all of the following actions without further order of or application to this Court: (i) cease to make any extensions of credit or advances to the Debtors and declare the Participants' commitments under the DIP Facility terminated; (ii) declare all DIP Obligations to be immediately due and payable without presentment, demand, protest or notice; (iii) set off and apply immediately any and all amounts in accounts maintained by Arcapita, the Purchaser, and ALTHL with the Investment Agent, Security Agent or any Participant against the DIP Obligations to the extent permitted under the Finance Documents or applicable law; (iv) exercise all rights and remedies against the Collateral to the extent provided for in any Finance Document; and (v) take any other actions or exercise any other rights or remedies permitted under this Interim Order, the Finance Documents, or applicable law to realize upon the Collateral and/or effect the repayment and satisfaction of the DIP Obligations, subject to SCB's rights under paragraph 14(b) and the Investment Agent and/or the Security Agent providing seven (7) days written notice (by facsimile, telecopy, electronic mail or otherwise) to the Debtors, counsel to the

Debtors, the U.S. Trustee, the Joint Provisional Liquidators, counsel to the Committee, and counsel to SCB, prior to exercising any enforcement rights or remedies under (iii) through (v) above (but not any of the rights described in clauses (i) and (ii) above).

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

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

15. *Limitation on Charging Expenses Against Collateral.* Subject only to, and effective only upon entry of, the Final Order and only to the extent provided for therein, except to the extent of the Carve Out, no expenses of administration of the Cases or any future

proceeding that may result therefrom, including a chapter 7 liquidation in bankruptcy and the cost of preservation or disposition of the Collateral, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the Investment Agent, and no such consent shall be implied from any other action, inaction, or acquiescence by the Investment Agent, the Security Agent or the Participants. Subject to entry of a Final Order which provides for a waiver of such claims, the Debtors (for themselves and their estates) hereby irrevocably waive and relinquish any rights they may have under section 506(c) of the Bankruptcy Code with respect to the Collateral.

16. *Perfection of DIP Liens.*

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

in paragraphs 12(a) and 12(b) in all bank accounts in which any cash constituting the Collateral is deposited, without any need for entering into any control agreement.

(b) A certified copy of this Interim Order may, in the discretion of the Investment Agent or the Security Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording. For the avoidance of doubt, the automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the Investment Agent, the Security Agent, and the Finance Parties to take all actions, as applicable, referenced in this paragraph 16.

17. *Preservation of Rights Granted Under this Interim Order.*

(a) Except as otherwise provided for herein or in the SCB Order, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to the Security Agent (for the benefit of the Participants) and/or the Investment Agent shall be granted or allowed while any portion of the DIP Facility (or any refinancing thereof) or the commitments thereunder or the DIP Obligations remain outstanding, and the DIP Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise other than the Carve Out and the SCB Prior Claims as set forth herein, and as expressly provided in this Interim Order.

(b) Unless all DIP Obligations shall have been indefeasibly paid in full, the Debtors shall not seek (i) any modification or extension of this Interim Order without the prior written consent of the Investment Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the Investment Agent, or (ii) an order converting or dismissing any of the Cases of the Debtors (excluding Falcon). If an order dismissing any of such Cases under section 305 or 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (i) the Superpriority Claims and DIP Liens granted to the Investment Agent and the Security Agent (for the benefit of the Participants) pursuant to this Interim Order shall continue in full force and effect, shall maintain their priorities as provided in this Interim Order and shall, notwithstanding such dismissal, remain binding on all parties in interest until all DIP Obligations shall have been indefeasibly paid in full in cash and the commitments under the DIP Facility have been terminated in accordance with the Finance Documents and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the Superpriority Claims and DIP Liens.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect (i) the validity of any DIP Obligations incurred prior to the actual receipt by the Investment Agent of written notice of the effective date of such reversal, stay, modification or vacation or (ii) the validity or enforceability of the DIP Liens and Superpriority Claims authorized or created hereby or pursuant to the Finance Documents with respect to any DIP Obligations. Notwithstanding any such reversal, stay, modification or vacation, the DIP

Obligations incurred by the Debtors pursuant to the Finance Documents, prior to the actual receipt by the Investment Agent of written notice of the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this Interim Order, and the Investment Agent, the Participants, and the other Finance Parties, shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order and pursuant to the Finance Documents.

(d) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect the validity of any purchases or sales of Commodities pursuant to the Purchase Contracts or other Finance Documents, if such purchases and obligations were effected or incurred, as applicable, prior to the actual receipt by the Investment Agent of written notice of the effective date of such reversal, stay, modification or vacation. Notwithstanding any such reversal, stay, modification or vacation, purchases or sales of Commodities pursuant to the Purchase Contracts or other Finance Documents, if such purchases and obligations were effected or incurred, as applicable, prior to the actual receipt by the Investment Agent of written notice of the effective date of such reversal, stay, modification or vacation, shall be governed in all respects by the original provisions of this Interim Order, and the purchases and sales of Commodities shall be entitled to all the privileges, benefits, and protections granted in section 363(m) of the Bankruptcy Code, this Interim Order and pursuant to the applicable Finance Documents.

(e) Except as expressly provided in this Interim Order or in the Finance Documents, no order providing for the sale of any First Lien Collateral under section 363 or any other provision of the Bankruptcy Code shall be entered by this Court unless in

connection with and concurrently with the consummation of such sale, the proceeds of such sale are distributed in accordance with the terms of the Finance Documents.

(f) Except as expressly provided in this Interim Order or in the Finance Documents, the DIP Liens, the Superpriority Claims and all other rights and remedies of the Investment Agent granted by the provisions of this Interim Order and the Finance Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases of the Debtors to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Cases of the Debtors, terminating the joint administration of these Cases of the Debtors or by any other act or omission, (ii) the entry of an order approving the sale of any Collateral pursuant to section 363(b) of the Bankruptcy Code or (iii) the entry of an order confirming a plan of reorganization in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Interim Order and the Finance Documents shall continue in these Cases, in any successor cases if these Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims and all other rights and remedies of the Investment Agent granted by the provisions of this Interim Order and the Finance Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full.

18. *Limitation on Use of Financing Proceeds and Collateral.* Notwithstanding anything herein or in any other order by this Court to the contrary, no portion of the proceeds under the DIP Facility, shall be used (i) in connection with the investigation, initiation or prosecution of any claims against the Investment Agent or any Participant or other holder of DIP

Obligations under the Finance Documents, provided that, with respect to Participants and holders other than Fortress and its subsidiaries and affiliates, the foregoing shall apply solely to claims against such parties in their capacities as Participants and holders under the DIP Facility; (ii) to make any payment on account of any claims or indebtedness arising or incurred prior to the Petition Date except as permitted under the Finance Documents, and then only in accordance with the DIP Budget (subject to applicable variances under the DIP Agreement); (iii) for any act which has the effect of materially or adversely modifying or compromising the rights and remedies of the Investment Agent, the Security Agent, or any Participant as set forth herein and in the other Finance Documents, or which results in the occurrence of an Event of Default (except as permitted under the Carve Out); (iv) directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended; (v) be paid to (A) any Embargoed Person (as defined in the DIP Agreement), (B) any agency of the government of any Sanctioned Country (as defined in the DIP Agreement), (C) any organization controlled by a Sanctioned Country or (D) any person residing in a Sanctioned Country, to the extent subject to a sanctions program administered by U.S. Department of the Treasury's Office of Foreign Assets Control; or (vi) in any manner that violates Regulations T, U, or X of the Board of Governors of the Federal Reserve System of the United States or any other regulation thereof or to violate the Securities Exchange Act of 1934. Except as provided in the Finance Documents or in this Interim Order, no portion of the proceeds of any Collateral, including cash collateral, shall be used for any purpose other than as provided

for in the DIP Budget (subject to the variances set forth in Clause 13 of the DIP Agreement and except as permitted under the Carve Out).

19. *Order Governs.* In the event of any inconsistency between the provisions of this Interim Order and the Finance Documents, the provisions of this Interim Order shall govern.

20. *Binding Effect; Successors and Assigns.* Except as expressly provided herein, the Finance Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in the Cases, including, without limitation, the Investment Agent, the Security Agent, the Participants, the Committee, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors) and shall inure to the benefit of the Financing Parties and the Debtors and their respective successors and assigns; *provided, however,* that the Investment Agent and the Participants shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to enter into any Commodities transaction, make any loan under the DIP Agreement or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the Finance Documents, the Investment Agent and the Participants shall not be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors, so long as the Participants’ actions do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by a Debtor, or cause the status of responsible person or managing agent to exist under applicable law (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as

amended, or any similar federal or state statute). Nothing in this Interim Order or the Finance Documents shall permit the Debtors to violate 28 U.S.C. § 959(b). Further, nothing in this Interim Order providing for the release of non-Debtors or injunction of actions against non-Debtors shall apply to (a) any claims, debts, obligations, rights, suits, damages, actions, causes of action, remedies and liabilities of the United States and any agency thereof, (b) any claims, debts, obligations, rights, suits, damages, actions, causes of action, remedies, and liabilities of any State or any agency of any State, under state or federal environmental laws, or (c) any criminal liability under the laws of the United States.

21. *Final Hearing.* The Final Hearing is scheduled for December 18, 2012, at 11:00 a.m. (prevailing Eastern time) before this Court. The Debtors shall promptly mail copies of this Interim Order (which shall constitute adequate notice of the Final Hearing, including without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under section 506(c) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court and to counsel to the Committee. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections; which objections shall be served upon (a) counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Michael A. Rosenthal, Esq., Matthew J. Williams, Esq., Matthew K. Kelsey, Esq., and Joshua P. Weisser, Esq.); (b) counsel for Fortress Credit Corp., as Investment Agent, Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York 10036 (Attn: Kenneth S. Ziman); (c) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); (d) the Official Committee of Unsecured Creditors, Milbank, Tweed, Hadley & McCloy

LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq.,
Abhilash M. Raval, Esq., and Evan R. Fleck, Esq.); (e) counsel to SCB, Dechert LLP, 1095
Avenue of the Americas, New York, New York 10036 (Attn: Brian E. Greer, Esq. and Nicole
Herther-Spiro, Esq.); and (f) the Joint Provisional Liquidators, Sidley Austin LLP, Woolgate
Exchange, 25 Basinghall Street London, EC2V 5HA (Attn: Patrick Corr and Benjamin Klinger),
in each case to allow actual receipt by the foregoing no later than [_____], 2012 at 4:00
p.m. (prevailing Eastern time), with any replies filed by [_____], 2012 at 1:00 p.m.
(prevailing Eastern time).

Dated: _____, 2012
New York, New York

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

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

Upon the motion (the “**Motion**”), dated ~~31~~⁴ December 2012, of Arcapita Bank B.S.C.(c) (“**Arcapita**”) and its affiliated debtors, each as debtor and debtor-in-possession (collectively, the “**Debtors**”), in the above-captioned chapter 11 cases (the “**Cases**”) pursuant to sections 105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001 2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of New York (the “**Local Rules**”), requesting, among other things:

- (1) authorization for Arcapita Investment Holdings Limited (the “**Purchaser**”) to obtain a senior secured superpriority debtor-in-possession multiple-draw term Murabaha facility, in an aggregate principal amount up to \$150,000,000 (the “**DIP Facility**”) (the availability of which shall be subject to the terms and conditions set forth in the Finance Documents (as defined in the DIP

New York 10004 (Attn: Richard Morrissey, Esq.) (the “**U.S. Trustee**”); Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq., Abhilash M. Raval, Esq., and Evan R. Fleck, Esq.), counsel for the official committee of unsecured creditors in the Cases (the “**Committee**”); the Joint Provisional Liquidators (as defined in the DIP Agreement), Sidley Austin LLP, Woolgate Exchange, 25 Basinghall Street London, EC2V 5HA (Attn: Patrick Corr and Benjamin Klinger); and all parties listed on the Master Service List established in the Cases (collectively, the “**Notice Parties**”), and upon the record of the Interim Hearing held by this Court on December 4, 7, 2012; and upon the arguments of counsel at the Interim Hearing; and the Court having considered any objections to the relief sought herein; and after due deliberation and consideration and sufficient cause appearing therefor,

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

1. *Motion.* The Motion is hereby granted on an interim basis, to the extent set forth herein.
2. *Jurisdiction.* This Court has core jurisdiction over the Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. *Notice.* Notice of the Motion, the relief requested therein and the Interim Hearing was served by the Debtors on the Notice Parties. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing. Under the circumstances, the request for the interim relief granted herein and the notice given by the Debtors of the Motion and the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rule 4001(b) and (c), and Local Rule 4001-2, and no further notice of the relief sought at the Interim Hearing is necessary or required.

(c) The Debtors are unable to obtain sufficient credit on more favorable terms from sources other than the Investment Agent and the Participants under the Finance Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code on better terms without the Debtors granting liens or claims similar to the DIP Lien (as defined below) and the Superpriority Claims (as defined below) granted to Fortress, as Security Agent under the DIP Facility (in such capacity, the “Security Agent”) for the benefit of the Finance Parties (as defined in the DIP Agreement), ~~the DIP Liens (as defined below) and the Superpriority Claims (as defined below)~~ upon the terms and conditions set forth in this Interim Order and in the Finance Documents.

(d) The terms of the DIP Facility are fair and reasonable, reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties and constitute “reasonably equivalent value” and “fair consideration” within the meaning of such terms under section 548 of the Bankruptcy Code and under applicable non-bankruptcy law.

(e) The DIP Facility has been negotiated in good faith and at arm’s length among the Debtors and the Investment Agent, among others, and the terms of the DIP Facility are fair and reasonable under the circumstances and reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties. Further, all of the Debtors’ obligations arising under, in respect of or in connection with the DIP Agreement or any of the other Finance Documents (collectively, the “**DIP Obligations**”), shall be deemed to have been extended by the Investment Agent and the Participants and their affiliates in good

faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the Investment Agent and the Participants shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(f) The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). The authorization granted herein on an interim basis to enter into the Finance Documents and to purchase and sell Commodities up to an aggregate purchase price of \$25 million is necessary to avoid immediate and irreparable harm to the Debtors and their estates. Consummation of the DIP Facility in accordance with this Interim Order and the Finance Documents is therefore in the best interest of the Debtors' estates as its consummation will, among other things, allow the Debtors to facilitate their ~~Chapter~~[chapter](#) 11 goals and maximize the value of their estates.

7. *Authorization of the Commodities Transactions.*

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

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

8. *Authorization of the Finance Documents.*

(a) The Debtors are hereby authorized to execute, issue, deliver, and enter into the Finance Documents and the Finance Documents are hereby approved. The Purchaser is hereby authorized to enter into the DIP Agreement, and the Debtor Guarantors are hereby authorized to unconditionally guaranty (on a joint and several basis and except that the guarantees of AEID II Holdings Limited (“**AEID II**”), RailInvest Holdings Limited (“**RailInvest**”), and WindTurbine Holdings Limited (“**WTHL**”) shall be expressly subordinated to the Prior SCB Claims) the Purchaser’s obligations under the Finance Documents up to an aggregate principal or face amount of \$25,000,000 (plus profits, fees, costs and other expenses and amounts provided for in the Finance Documents) on an interim basis, in accordance with the terms of this Interim Order and the Finance Documents, the proceeds of which shall be used for all purposes permitted under the Finance Documents, including, without limitation, to provide working capital for the Purchaser and the Debtor Guarantors; to fund general corporate purposes; and to pay profits, fees and expenses, in each case in accordance with this Interim Order, the Finance Documents and the DIP Budget (as defined in the DIP Agreement) (subject to the variances set forth in Clause ~~13~~ of the DIP Agreement).

prior to entering into any amendment or other modification to the Finance Documents or the DIP Obligations;

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

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

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

(d) The Debtors shall promptly (but within three Business Days) provide to Committee counsel a copy of any duly completed Transaction Request (as defined in the DIP Agreement) made to the Investment Agent pursuant to section 5.2 of the DIP Agreement. The Debtors shall further promptly (but within three Business Days) provide to

Committee counsel a copy of the acceptance of an Offer Letter (as defined in the DIP Agreement) made pursuant to section 5.3 of the DIP Agreement.

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

10. *Superpriority Claims.*

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations, including without limitation any obligations arising from the Commodities Transactions, shall constitute allowed administrative expenses against each of the Debtors (excluding Falcon) with priority over any and all administrative expenses, and all other claims against such Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under section 105, 326, 328, 330, 331, 365, 503(b), 506(c) (upon entry of the Final Order, to the extent therein approved), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, including, without limitation, any superpriority claims granted as adequate protection in favor of secured parties in the Cases, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from and have recourse to all pre- and post-petition property of the Debtors (excluding Falcon) and all proceeds thereof (the “**Superpriority Claims**”), subject only to the payment of the Carve Out to the extent specifically provided for herein, and excluding Avoidance Actions and the proceeds thereof. Notwithstanding anything to the contrary contained in the DIP Agreement, Finance Documents, this Interim Order, or the Motion, so long as the obligations under the SCB

obligations under the SCB Facilities remain unpaid, the liens on the collateral securing the obligations under the SCB Facilities.

(c) For so long as any of the DIP Obligations remain outstanding, the Collateral shall be free and clear of all senior liens, claims and encumbrances, other than the DIP Liens granted to the Security Agent for the benefit of the Finance Parties and except for those liens, claims, and encumbrances expressly permitted under the Finance Documents or this Interim Order. Any liens and claims granted as adequate protection to any secured party (other than those granted to SCB in connection with the SCB Facilities and the SCB Order) are junior and subordinate to the DIP Liens in the Collateral granted to the Security Agent, for the benefit of the Finance Parties pursuant to this Interim Order.

13. *Proceeds of Collateral.* All proceeds of the First Lien Collateral of any kind which are now or shall hereafter come into the possession or control of Purchaser, Arcapita or ALTHL, or to which any such Debtor is now or shall become entitled under the Finance Documents, shall be promptly deposited into deposit accounts maintained by the Purchaser or Arcapita upon which the Security Agent shall have first priority liens pursuant to this Interim Order, and such collections and proceeds shall remain subject to the DIP Liens and shall be treated in accordance with this Interim Order and the Finance Documents. Subject to the provisions of this Interim Order, upon the occurrence and continuation of an Event of Default under the Finance Documents, all financial institutions in which any deposit accounts, lockboxes, blocked accounts, or other accounts of any of the Debtors (except Falcon) holding the proceeds of any of the First Lien Collateral are located are hereby authorized and directed to comply with any request of the Security Agent to turn over to the Security Agent all funds therein without setoff, recoupment, or deduction of any kind.

prior written consent of the Investment Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the Investment Agent, or (ii) an order converting or dismissing any of the Cases of the Debtors (excluding Falcon). If an order dismissing any of ~~the~~such Cases under section 305 or 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (i) the Superpriority Claims and DIP Liens granted to the Investment Agent and the Security Agent (for the benefit of the Participants) pursuant to this Interim Order shall continue in full force and effect, shall maintain their priorities as provided in this Interim Order and shall, notwithstanding such dismissal, remain binding on all parties in interest until all DIP Obligations shall have been indefeasibly paid in full in cash and the commitments under the DIP Facility have been terminated in accordance with the Finance Documents and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the Superpriority Claims and DIP Liens.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect (i) the validity of any DIP Obligations incurred prior to the actual receipt by the Investment Agent of written notice of the effective date of such reversal, stay, modification or vacation or (ii) the validity or enforceability of the DIP Liens and Superpriority Claims authorized or created hereby or pursuant to the Finance Documents with respect to any DIP Obligations. Notwithstanding any such reversal, stay, modification or vacation, the DIP Obligations incurred by the Debtors pursuant to the Finance Documents, prior to the actual receipt by the Investment Agent of written notice of the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this

parties in their capacities as Participants and holders under the DIP Facility; (ii) to make any payment on account of any claims or indebtedness arising or incurred prior to the Petition Date except as permitted under the Finance Documents, and then only in accordance with the DIP Budget (subject to applicable variances under the DIP Agreement); (iii) for any act which has the effect of materially or adversely modifying or compromising the rights and remedies of the Investment Agent, the Security Agent, or any Participant as set forth herein and in the other Finance Documents, or which results in the occurrence of an Event of Default (except as permitted under the Carve Out); (iv) directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended; (v) be paid to (A) any Embargoed Person (as defined in the DIP Agreement), (B) any agency of the government of any Sanctioned Country (as defined in the DIP Agreement), (C) any organization controlled by a Sanctioned Country or (D) any person ~~resident~~residing in a Sanctioned Country, to the extent subject to a sanctions program administered by U.S. Department of the Treasury's Office of Foreign Assets Control; or (vi) in any manner that violates Regulations T, U, or X of the Board of Governors of the Federal Reserve System of the United States or any other regulation thereof or to violate the Securities Exchange Act of 1934. Except as provided in the Finance Documents or in this Interim Order, no portion of the proceeds of any Collateral, including cash collateral, shall be used for any purpose other than as provided for in the DIP Budget (subject to the variances set forth in Clause 13 of the DIP Agreement and except as permitted under the Carve Out).

release of non-Debtors or injunction of actions against non-Debtors shall apply to (a) any claims, debts, obligations, rights, suits, damages, actions, causes of action, remedies and liabilities of the United States and any agency thereof, (b) any claims, debts, obligations, rights, suits, damages, actions, causes of action, remedies, and liabilities of any State or any agency of any State, under state or federal environmental laws, or (c) any criminal liability under the laws of the United States.

21. *Final Hearing.* The Final Hearing is scheduled for ~~December 18, 2012~~2012, at 11:00 a.m. (prevailing Eastern time) before this Court. The Debtors shall promptly mail copies of this Interim Order (which shall constitute adequate notice of the Final Hearing, including without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under section 506(c) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court and to counsel to the Committee. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections; which objections shall be served upon (a) counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Michael A. Rosenthal, Esq., Matthew J. Williams, Esq., Matthew K. Kelsey, Esq., and Joshua P. Weisser, Esq.); (b) counsel for Fortress Credit Corp., as Investment Agent, Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York 10036 (Attn: Kenneth S. Ziman); (c) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); (d) the Official Committee of Unsecured Creditors, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq., Abhilash M. Raval, Esq., and Evan R. Fleck, Esq.); (e) counsel to SCB, Dechert LLP, 1095 Avenue of the Americas, New York,

DIP FEE LETTER

Private and confidential

To: **Arcapita Investment Holdings Limited**

From: **Fortress Credit Corp. (the "Arranger")**

Date: December [●], 2012

Dear Sirs

Re: Superpriority Debtor-in-Possession Master murabaha agreement dated on or about the date of this DIP Fee Letter (the "Master Murabaha Agreement") and made between Fortress Credit Corp. and Arcapita Investment Holdings Limited ("Arcapita")

We refer to the Master Murabaha Agreement. This DIP Fee Letter (the "DIP Fee Letter") is the Fee Letter referenced in the Master Murabaha Agreement and constitutes a Finance Document.

Terms defined in the Master Murabaha Agreement and not defined below shall have the same meaning in this DIP Fee Letter, unless the context otherwise requires.

- 1 In consideration of us entering into the commitments under the Master Murabaha Agreement and as further detailed in a commitment letter dated November 1, 2012 between Fortress Credit Corp. and Arcapita (the "**Commitment Letter**"), you agree to pay to us on the Effective Date a structuring fee of \$2,500,000 (Two Million Five Hundred Thousand Dollars) (the "**Structuring Fee**"). The Structuring Fee shall be deemed to be the Commitment Fee as defined in the Commitment Letter.
- 2 In further consideration of us entering into the Master Murabaha Agreement you agree to pay us an upfront arrangement fee (the "**Upfront Arrangement Fees**):
 - (a) on the Effective Date, of \$3,750,000 (Three Million Seven Hundred Fifty Thousand Dollars). The Upfront Fee payable pursuant to this Clause 2(a) shall be reduced by the amount of any Structuring Fee paid prior to the Effective Date; and
 - (b) on the Increase Effective Date, of \$750,000 (Seven Hundred Fifty Thousand Dollars) .
- 3 In the event that the Facility is extended, you agree to pay us an extension arrangement fee (the "**Extension Arrangement Fee**") of 1.5% of the Facility Limit on the Extension Effective Date.
- 4 The Structuring Fee, Upfront Arrangement Fees, and Extension Arrangement Fee (the "**Fees**") are fully earned when due.

5 The Fees set forth in this DIP Fee Letter shall be nonrefundable for any reason and are in addition to any other fee, cost or expense payable in connection with the Master Murabaha Agreement. These Fees constitute compensation for services rendered and do not constitute interest or a charge for the use of money. The Fees shall be paid:

- (a) In United States Dollars;
- (b) in full, without set off, defense, counterclaim or any deduction and exclusive of any Taxes which shall be paid by you; and
- (c) by you crediting the following account in favor of Fortress Credit Corp.,

To: [] ([])

For the account of: [] (Swift [])

Account No: []

Reference: Arcapita Investment Holdings Limited Fee

We reserve the right, in our sole discretion, to allocate to our affiliates and/or Participants fees that are payable to us hereunder in whole or in part. Clauses 16 (*Indemnities*), 19 (*Notices*), 20 (*Assignments and Transfers*) and 21 (*Governing Law & Dispute Resolution*) inclusive of the Master Murabaha Agreement apply, mutatis mutandis, to this DIP Fee Letter.

Please confirm your agreement to this DIP Fee Letter by signing, dating and returning to us the attached copy of this Fee Letter.

Yours faithfully

.....
Fortress Credit Corp.
(the "Arranger")

We accept and agree the terms of the DIP Fee Letter set out above:

.....
authorized signatory

Arcapita Investment Holdings Limited

Date: