

## **Annex 3**

Form of Asset Transfer Agreement between Arcapita and AIM

## ASSET TRANSFER AGREEMENT<sup>1</sup>

THIS ASSET TRANSFER AGREEMENT (this "Agreement"), dated [●] (the "Effective Date"), is entered into by and between [●] ("Assignor") and [●] ("Assignee"). Assignee and Assignor may be referred to in this Agreement individually as a "Party" and collectively as the "Parties". **[NOTE: Once finalized, the intent is for this Agreement to be duplicated for each Arcapita/AIM entity that is transferring/assuming title to assets.]**

WHEREAS, Arcapita Bank B.S.C.(c), Arcapita Investment Holdings Limited, Arcapita LT Holdings Limited, WindTurbine Holdings Limited, AEID II Holdings Limited, RailInvest Holdings Limited and Falcon Gas Storage Company, Inc. (collectively, the "Debtors") filed voluntary cases under chapter 11 of title 11 of the United States Code on March 19, 2012 and, in the case of Falcon Gas Storage Company, Inc., on April 30, 2012, in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, on June 11, 2013, the Bankruptcy Court confirmed the Second Amended Joint Chapter 11 Plan of Reorganization for the Debtors (the "Plan");

WHEREAS, in connection with the Plan, Assignor agreed to retain Assignee, and Assignee has agreed to be retained, to provide certain services to Assignor;

WHEREAS, the Parties (or an affiliate of each of the Parties) entered into the Management Services Agreement, dated of equal date herewith, setting forth the terms and conditions under which Assignee will provide such services to Assignor;

WHEREAS, Assignor desires to transfer to Assignee, and Assignee agrees to assume, certain assets in order to assist Assignee in providing such services to Assignor; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions under which Assignor transfers to Assignee such assets.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements and understandings set forth herein and for other good and valuable consideration the receipt and sufficiency of which the Parties hereby acknowledge, the Parties, intending to be legally bound, hereby agree as follows:

### ARTICLE I DEFINITIONS AND INTERPRETATION

1.1 Definitions. Capitalized terms used in this Agreement are defined where used and have the meanings there indicated.

1.2 Interpretation. When a reference is made in this Agreement to an Article, Section or Exhibit, such reference shall be to an Article, Section or Exhibit of this Agreement unless otherwise indicated. The headings contained in this Agreement or in any Exhibit are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require.

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<sup>1</sup> NOTE: Subject to any comments from local counsel in the applicable jurisdictions.

Any capitalized terms used in any Exhibit, but not otherwise defined therein, shall have the meaning as defined in this Agreement. All Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. The word "including" and words of similar import when used in this Agreement shall mean "including, without limitation," unless otherwise specified. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision in this Agreement. The term "or" is not exclusive. The word "will" shall be construed to have the same meaning and effect as the word "shall". References to days mean calendar days unless otherwise specified.

ARTICLE II  
GENERAL ASSIGNMENT AND ASSUMPTION

2.1 Assignment and Assumption. Assignor hereby assigns to Assignee (1) the assets set forth in Exhibit 1, including all data (if any) contained therein and (2) the trademarks set forth in Exhibit 2, including all goodwill associated therewith and symbolized thereby (the "Trademarks" and, together with the assets set forth in Exhibit 1, the "Transferred Assets") and all rights, causes of action, remedies, liabilities and obligations of Assignor thereunder arising on or after the Effective Date and Assignee hereby accepts the assignment of the Transferred Assets and all rights, causes of action and remedies thereunder, and assumes all liabilities and obligations with respect thereto arising on or after the Effective Date. As soon as reasonably practical after the Effective Date, but in any event no later than 180 days after the Effective Date, Assignor shall, and shall cause its affiliates to, remove or cover the Trademarks from all signs, buildings, labels, packaging, letterheads, advertisements, promotional materials, business cards, web sites, domain names, inventory and other documents and materials and shall cease using such Trademarks (or any trademarks confusingly similar to the Trademarks) and transfer to the Assignee any rights with respect to any domain names incorporating the Trademarks.

2.2 Sale Price. In exchange for the assignment and assumption set forth in Section 2.1, Assignee agrees to pay Assignor a non-refundable, one-time fee in an amount equal to [●] no later than [●] business days after the Effective Date by wire transfer to the following bank account:

Bank	[●]
Bank Address	[●]
Location	[●]
ABA No.	[●]
For the Account of	[●]
Account No.	[●]
Tax ID	[●]

2.3 Taxes. Each Party shall bear all taxes, duties, levies, or similar charges, including interest and penalties thereon, however designated, imposed as a result of the operation or existence of this Agreement on the Party on which it is imposed.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES

3.1 Mutual Representations. Each Party represents and warrants to the other Party that as of the Effective Date:

(a) it is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed;

(b) it has all requisite power and authority to execute, deliver and perform its obligations under this Agreement;

(c) the execution, delivery and performance of this Agreement has been duly authorized by it and shall not conflict with, result in a breach of or constitute a default under any other agreement to which it is a party or by which it is a party or by which it is bound and shall not violate any law applicable to it;

(d) it is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it, except where the failure to be so licensed, authorized or qualified would not have a material adverse effect on its ability to fulfill its obligations under this Agreement;

(e) it is in compliance with all laws applicable to it and has obtained all applicable governmental permits and licenses required of it in connection with its obligations under this Agreement; and

(f) there is no outstanding litigation, arbitrated matter or other dispute as of the Effective Date to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a material adverse effect on its ability to fulfill its obligations under this Agreement.

3.2 DISCLAIMER. NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OTHER THAN AS SET FORTH IN THIS ARTICLE. EACH PARTY EXPLICITLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES.

ARTICLE IV  
MISCELLANEOUS PROVISIONS

4.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or if by facsimile or e-mail, upon written confirmation of receipt by facsimile, e-mail or otherwise, (b) on the third day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the seventh day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

if to Assignor, addressed to:

[•]  
Attn: [•]  
[•]  
[•]  
[•]

if to Assignee, addressed to:

[•]  
Attn: [•]  
[•]  
[•]  
[•]

4.2 Governing Law; Jurisdiction. This Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of the State of New York, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of New York (other than Section 5-1401 of the New York General Obligations Law). Each Party hereby

irrevocably and unconditionally submits to the exclusive jurisdiction of any court of the state of New York located in New York County, New York and the United States District Court for the Southern District of New York with respect to any action, suit or proceeding relating to this Agreement and the transactions contemplated hereby, and agrees that any such action, suit or proceeding shall be brought only in such court (and waives any objection or defense that it may have based on improper venue or *forum non conveniens* to the conduct of any such action, suit or proceeding in any such court).

4.3 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

4.4 Further Assurances. Assignor agrees that, upon Assignee's request and at Assignee's expense, Assignor shall provide further documentation and perform other further acts as reasonably requested by Assignee (*e.g.*, executing one or more short form trademark assignment agreements for recordation purposes at the applicable registrar) to confirm and perfect title in and to the Transferred Assets in Assignee, its successors and assigns.

4.5 Facsimile or .pdf Signature. This Agreement may be executed by facsimile or .pdf signature and a facsimile or .pdf signature shall constitute an original for all purposes.

4.6 Covenant of Further Assurances. Each of the Parties agrees to execute and deliver such additional documents and take such additional actions as shall be reasonable and necessary to effectuate the terms of this Agreement.

*Remainder of page intentionally left blank; signature page follows.*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

ASSIGNOR:

[•]

By: \_\_\_\_\_

Name: [•]

Title: [•]

ASSIGNEE:

[•]

By: \_\_\_\_\_

Name: [•]

Title: [•]

EXHIBIT 1  
TRANSFERRED ASSETS

**[NOTE: Insert list of transferred assets.]**

EXHIBIT 2  
TRANSFERRED TRADEMARKS

**[NOTE: Insert list of transferred trademarks.]**