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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

SECOND SUPPLEMENT TO DEBTORS' MOTION FOR ORDER PURSUANT TO 11 U.S.C. §§ 105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(e) AND 552 AND BANKRUPTCY RULES 4001 AND 6004 AUTHORIZING DEBTORS TO OBTAIN REPLACEMENT POSTPETITION FINANCING TO REPAY EXISTING POSTPETITION FINANCING

Arcapita Bank B.S.C.(c) ("***Arcapita***"), 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***") hereby file this second supplement (the "***Second Supplement***") in connection with the *Debtors' Motion for Order Pursuant to 11 U.S.C. §§ 105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(e) and 552 and Bankruptcy Rules 4001 and 6004 Authorizing Debtors to Obtain Replacement Postpetition Financing to Repay Existing Postpetition Financing* (Dkt. No. 1157) (the "***Motion***") dated May 27, 2013, which was previously supplemented by the *Supplement to Debtors' Motion for Order Pursuant to 11 U.S.C. §§ 105, 362, 363(b)(1), 363(m),*

364(c)(1), 364(c)(2), 364(c)(3), 364(e) and 552 and Bankruptcy Rules 4001 and 6004 Authorizing Debtors to Obtain Replacement Postpetition Financing to Repay Existing Postpetition Financing (Dkt. No. 1216) (the "***First Supplement***") dated June 6, 2013.[1] In support of the Motion, the Debtors represent as follows:

STATEMENT

1. At the time of the filing of the Motion, the Debtors and Goldman Sachs had not yet reached agreement on the definitive forms of the DIP Agreement. In the Motion, the Debtors represented to the Court that the definitive form of the DIP Agreement would be filed on the docket in the Chapter 11 Cases prior to the hearing on the Motion. *See* Motion, at p. 6, n. 3.

2. The Debtors and Goldman Sachs subsequently agreed upon a form of the DIP Agreement, in the form annexed hereto as ***Exhibit A***. The Debtors hereby submit the DIP Agreement for the consideration of the Court and other parties in interest.

3. The Debtors respectfully note that no objection was filed against the entry of an order approving the Motion. The Debtors submit that the Motion, as supplemented by the First Supplement and this Second Supplement, should therefore be approved.

NOTICE

No trustee or examiner has been appointed in the Chapter 11 Cases. The Debtors have provided notice of filing of this Second Supplement by electronic mail, facsimile and/or overnight mail to: (a) 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.); (b) 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.),

[1] Capitalized terms not otherwise defined in this Supplement shall have the meanings ascribed to them in the Motion, as supplemented by the First Supplement and the DIP Budget annexed to the First Supplement.

counsel for the Committee; (c) Latham & Watkins LLP, 885 3rd Avenue, New York, New York 10022 (Attn: Mitchell Seider, Esq. and Adam Goldberg, Esq.) , counsel for Goldman Sachs International, as Investment Agent; (d) 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, (e) Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606 (Attn: David Kolin, Esq. and Brandon Duncomb, Esq.), counsel to Fortress and (f) 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
June 6, 2013

/s/ Michael A. Rosenthal

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Craig H. Millet (admitted pro hac vice)
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ATTORNEYS FOR THE DEBTORS
AND DEBTORS IN POSSESSION

Exhibit A
DIP Agreement

DATED , 2013

ARCAPITA INVESTMENT HOLDINGS LIMITED,
as the DIP Purchaser

– and –

GOLDMAN SACHS INTERNATIONAL,
as Investment Agent, as agent for the Participants.

SUPERPRIORITY DEBTOR-IN-POSSESSION AND EXIT FACILITY

MASTER MURABAHA AGREEMENT

LATHAM & WATKINS

DIFC, Building 1, Level 3
PO Box 506698
Dubai

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THIS SUPERPRIORITY DEBTOR-IN-POSSESSION AND EXIT FACILITY MASTER MURABAHA AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement") IS DATED [●], 2013.

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 (the "**DIP Purchaser**");

(2) **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 ("**Arcapita Bank**") and **THE ENTITIES** listed in SCHEDULE 5 Part 1 (*Debtor AIHL Subsidiaries*), Schedule 1 Part 11 (*Miscellaneous Guarantor Subsidiaries*) and 0 (*LT CayCos*), SCHEDULE 5 Part 5 (wholly owned WCF*s*) (together with Arcapita Bank, the "**Original Guarantors**"); and

(3) **GOLDMAN SACHS INTERNATIONAL**, in its capacity as investment agent for the Participants (in such capacity, the "**Investment Agent**").

RECITALS

(A) On the Petition Date, Arcapita Investment Holdings Limited ("**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, the Purchaser, 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 DIP Facility and Exit Facility.

(C) The Purchaser has requested that the Investment Agent, as agent for the Participants pursuant to the Investment Agency Agreement, provide the DIP Facility and Exit 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 Security and superpriority administrative expense claims pursuant to Chapter 11 of the Bankruptcy Code, as more fully described herein and in the Final DIP Order.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"**Acceptable Bank**" means:

(a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency; or

(b) any other bank or financial institution approved by the Investment Agent.

"**Accession and Novation Deed**" has the meaning given in the Investment Agency Agreement.

"**Accession Letter**" means a document substantially in the form set out in SCHEDULE 6 Part 1 (*Form of Accession Letter*).

"**Accounting Principles**" means [IFRS].

"**Additional Guarantor**" means a company which becomes an Additional Guarantor in accordance with Clause 22.4 (*Additional Guarantors*).

"**Additional Profit**" means:

(a) in relation to the Initial DIP Purchase Contract, an amount equal to one per cent (1%) of the Cost Price of that Purchase Contract; and

(b) in relation to the Initial Exit Purchase Contract, an amount equal to one per cent (1%) of:

(i) if the Exit Conversion Date coincides with a Deferred Payment Date, the difference between the Cost Price of the Initial Exit Purchase Contract and the Cost Price element of that Deferred Sale Price; or

(ii) if the Exit Conversion Date does not coincide with a Deferred Payment Date, the Cost Price of the Purchase Contract entered into on the Exit Conversion Date,

and, for the avoidance of doubt, no Additional Profit shall be applicable to any other Purchase Contracts.

"**Administration Fee**" means any administration fee payable by the Purchaser pursuant to Clause 9.8 (*Reduction of Facility Limit and administration fee*).

"**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.

"**Affiliate**" 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.

"**AIBPD II**" means NavIndia Holding Company Limited, an exempted company incorporated in the Cayman Islands with limited liability, and the direct and indirect Subsidiaries thereof.

"**AIHL**" has the meaning given in the Recitals.

"**AIHL Sub**" means Arcapita LT Holdings Limited, an exempted company incorporated with limited liability under the laws of 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 12.30 (*Anti-Terrorism Laws, Foreign Corrupt Practices Act*).

"**Appointment of Agency Letter**" means a letter substantially in the form set out Schedule 11 (*Appointment of Agency Letter*).

"**Appraised Minor Investment**" has the meaning given in Clause 14.1 (*Financial definitions*).

"**Arcapita Hong Kong Indebtedness**" means the intercompany Financial Indebtedness incurred prior to the Effective Date owing by Arcapita Hong Kong Limited to Arcapita Bank.

"**Arranger**" means Goldman Sachs International.

"**Auditors**" means Ernst & Young, Deloitte or PricewaterhouseCoopers or any other firm approved in advance by the Investment Agent (such approval not to be unreasonably withheld or delayed).

"**Authorisation**" means an authorisation, consent, approval, resolution, license, exemption, filing, notarisation, registration, plan, directive or consent order of or from any person (including, but not limited to, Governmental Authorities).

"**Availability Period**" means:

(a) prior to the Exit Conversion Date, the period from and including the Effective Date to and including the date that is one month prior to the DIP Termination Date (the "**One Month Date**") or, if the One Month Date is not a Deferred Payment Date, the first Deferred Payment Date falling after the One Month Date; and

(b) on and following the Exit Conversion Date, the period from and including the Exit Conversion Date to and including the date that is three months prior to the Exit Termination Date (the "**Three Month Date**") or, if the Three Month Date is not a Deferred Payment Date, the first Deferred Payment Date falling after the Three Month 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).

"**Broker Disruption Event**" means the Investment Agent being unable, after using commercially reasonable efforts:

(a) to enter into or maintain the DD&Co Ltd Agreements with the Seller (or any similar agreements with a replacement seller acceptable to the Investment Agent, acting reasonably); or

(b) to source Commodities for the purpose of a Purchase Contract.

"**Budget**" means, prior to the Exit Conversion Date, the DIP Budget and, on and after the Exit Conversion Date, the Exit Budget.

"**Budget Variance Report**" means, prior to the Exit Conversion Date, any DIP Budget Variance Report and, after the Exit Conversion Date, any Exit Budget Variance Report.

"**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 an Event of Default and after delivery of a Carve-Out Notice, and such Event of Default is subsequently cured or waived and the Carve-Out Notice 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).

"**Cash**" means, at any time, cash denominated in Dollars, Euro or Sterling in hand or at bank and (in the latter case) credited to an account in the name of an Obligor with an Acceptable Bank and to which an Obligor is alone (or together with other Obligors) beneficially entitled and for so long as:

(a) that cash is repayable on demand;

(b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person whatsoever or on the satisfaction of any other condition (other than the giving of notice);

(c) there is no Security over that cash except for Transaction Security, or any Permitted Security arising under paragraph (c) of the definition thereof; and

(d) the cash is freely and immediately available to be applied in repayment or prepayment of the Facilities.

"**Cash Equivalent Investments**" means at any time:

(a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;

(b) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the United Kingdom, Germany or Switzerland or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;

(c) commercial paper not convertible or exchangeable to any other security:

(i) for which a recognised trading market exists;

(ii) issued by an issuer incorporated in the United States of America, the United Kingdom, Germany or Switzerland;

(iii) which matures within one year after the relevant date of calculation; and

(iv) which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;

(d) any investment in money market funds which (i) have a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited, (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (c) above and (iii) can be turned into cash on not more than 30 days' notice; or

(e) any other debt security approved by the Investment Agent,

in each case, denominated in Dollars, Euro or Sterling and to which any Obligor is alone (or together with other Obligors beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Security Documents or any Permitted Security arising under paragraph (c) of the definition thereof).

"**Cayman Charge**" means the equitable share mortgage entered into by Arcapita Bank in favour of the Security Agent pursuant to which the Security Agent has been granted Security over the Equity Interests Arcapita Bank owns in its direct Cayman Islands Subsidiaries which share mortgage will terminate upon resignation by Arcapita Bank as Guarantor in accordance with Clause 22.5 (*Resignation of a Guarantor*).

"**Cayman Debentures**" means any Debenture entered into between one or more Obligors and the Security Agent pursuant to which the Security Agent has been granted Security on any of the Charged Property.

"**Cayman Proceedings**" means the provisional liquidation of the Purchaser being performed in the Cayman Islands in relation to which Simon Appell and Gordon MacRae were appointed as the joint provisional liquidators (the "**Joint Provisional Liquidators**") on March 20, 2012.

"**Cayman Validation Order**" means the validation order referred to in Clause 8.5 of SCHEDULE 1 Part 1 (*Initial Condition Precedent Documents*).

"**Change of Control**" means:

(a) prior to the Exit Conversion Date and other than as contemplated by the Implementation Memorandum, any person or group of persons acting in concert gains Control of Arcapita Bank;

(b) prior to the Exit Conversion Date and other than in accordance with the Implementation Memorandum, any Obligor ceases to be a direct or indirect wholly-owned Subsidiary of Arcapita Bank;

(c) on or after the Exit Conversion Date, New Holdco 1 ceases to be owned, directly or indirectly, [99.99]% by New Topco ;

(d) on or after the Exit Conversion Date, any Obligor (excluding, for the avoidance of doubt, the DIP Purchaser and any Guarantor released from its guarantee pursuant to clause 22.5 (*Resignation of a Guarantor*)) ceases to be a wholly-owned Subsidiary of New Holdco 1;

(e) on or after the Exit Conversion Date, any "person" or "group" other than the shareholders of New Topco as at the Exit Conversion Date, acting in concert shall have acquired more than 50% of the beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934) of any class of shares of New Topco which at the time has authority to elect members of the board of New Topco; or

(f) on or after the Exit Conversion Date, the majority of the seats (other than vacant seats) on the board of directors (or similar governing body) of New Topco cease to be occupied by Persons who either (a) were members of the board of directors of New Topco on the Exit

Conversion Date or (b) were appointed by the applicable directors of New Topco, a majority of whom were directors on the Exit Conversion Date or whose appointment was previously approved by a majority of such directors.

"**Charged Property**" means all of the assets of the Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

"**Code**" means the US Internal Revenue Code of 1986, as amended.

"**Commitment Letter**" means the commitment letter, dated May 2, 2013, as amended by the amendment agreement dated 17 May 2013, between Arcapita Bank and the Investment Agent.

"**Commitment Order**" means the Order authorizing the Debtors to (a) enter into a financing commitment letter and related fee letter to obtain (i) replacement DIP financing and (ii) exit financing, (b) incur and pay associated fees and expenses, and (c) provide related indemnities [Docket no. 1113] (including the exhibits annexed thereto), as the same is in effect on the date hereof.

"**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 the Purchaser and the Investment Agent and, in any event, will only include allocated commodities physically located outside of the United Kingdom.

"**Commodity Tax**" means any Tax payable in connection with the purchase or sale of the Commodities by the Investment Agent or the Purchaser, including any VAT, sales tax, goods and service tax, import or excise tax or any other similar tax or duty.

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 8 (*Form and contents of Compliance Certificate*).

"**Compulsory Acquisition**" has the meaning given in Clause 9.4 (*Proceeds*).

"**Confirmation Order**" means a final order of the Bankruptcy Court, in form and substance reasonably satisfactory to Investment Agent, confirming the Plan of Reorganization and approving the Plan of Reorganization-related solicitation procedures, including without limitation a release and exculpation of the Investment Agent, Security Agent, Arranger and Participants (in their capacities as Participants) (a) including the substantive terms as set forth in Clause 2.5 (*Release*) and (b) otherwise in form and substance acceptable to the Investment Agent.

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

"**Contractual Obligation**" means, as applied to any person, any provision of any security issued by that person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"**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 50% 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 50% of the issued voting share capital of the person.

"**Cooperation Settlement Document**" means the Cooperation Settlement Term Sheet and any document entered into or amended in order to implement the provisions of the Cooperation Settlement Term Sheet (including, but not limited to, any organisational document of any relevant Person).

"**Cooperation Settlement Term Sheet**" means the Initial Cooperation Settlement Term Sheet and any amendment or supplement to such document made, or any document entered into which replaces such document, in each case on or before the Exit Conversion Date in accordance with the terms of the Finance Documents.

"**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 the Purchaser under a Purchase Contract.

"**Currency of Obligations**" has the meaning given in Clause 18.3(a) (*Currency Indemnity*).

"**Currency of Payment**" has the meaning given in Clause 18.3(a) (*Currency Indemnity*).

"**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 16 (*Events of Default*) which, with the giving of any notice, the expiry of a grace period, determination of

materiality, or fulfilment 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 (prior to the Exit Conversion Date) the 1 month period (or such shorter period (not to be less than two weeks) which the Investment Agent may require to assist with syndication) or (after the Exit Conversion Date) the 3 month period, in each case following the Transaction Date selected in the applicable Transaction Request, but if:

(a) there is no numerically corresponding day in the relevant calendar month, such date shall be the last Business Day of such relevant 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;

(c) in relation to any Purchase Contract entered into prior to the Exit Conversion Date, such date otherwise would fall after the DIP Termination Date, such date shall be the DIP Termination Date;

(d) in relation to any Purchase Contract entered into on or after the Exit Conversion Date, such date otherwise would fall after the Exit Termination Date, such date shall be the Exit Termination Date; or

(e) the Initial Exit Purchase Contract does not have a Transaction Date that corresponds to a Deferred Payment Date, such date shall be the Deferred Payment Date of the then current Purchase Contract.

"**Deferred Sale Price**" means, in relation to a Purchase Contract, the amount (in Dollars) payable by the Purchaser to the Investment Agent for the purchase of Commodities, calculated in accordance with Clause 5.3(e) (*Offer*).

"**DIP Budget**" means the rolling thirteen-week cash budget for the Group delivered by the Purchaser to the Investment Agent pursuant to Clause 3.1 (*Initial conditions precedent*) (as modified or supplemented from time to time with the prior written consent of the Investment Agent in its discretion (or reasonable discretion with respect to any such modifications or supplements covering additional time periods delivered pursuant to Clause 13.4(a) (*Budget*)), initially for the thirteen-week period beginning on the Effective Date, setting forth, on a line-item basis, (x) projected cash receipts (including asset sales), (y) projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses, capital expenditures, deal fundings, management fees, fees and expenses of the Investment Agent and the Participants (including counsel therefor) and any other fees and expenses relating to the Facilities) and (z) total liquidity.

"**DIP Budget Variance Report**" means any DIP Budget variance report /reconciliation delivered by AIHL to the Investment Agent pursuant to Clause 13.4(a) (*Budget*).

"**DIP Facility**" means, prior to the Exit Conversion Date, the *murabaha* facility described in Clause 2.1.

"**DIP Facility Proceeds**" has the meaning given thereto in 5.9(a) (*Use of on-sale proceeds in relation to Initial DIP Purchase Contract*).

"**DIP Termination Date**" means July 31, 2013, as such date may be extended pursuant to Clause 2.3 (*DIP Termination Date Extension*); *provided* that if such date is not a Business Day, the DIP Termination Date shall be the immediately preceding Business Day.

"**Disclosure Schedule**" means Schedule 4.

"**Disclosure Statement**" means the Second Amended Disclosure Statement in Support of the Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code filed on April 25, 2013 (Docket No. 1038), together with all exhibits, schedules, annexes, supplements and other attachments thereto, in each case, as may be amended, modified or supplemented in form and substance reasonably satisfactory to the Investment Agent.

"**Disposal**" has the meaning given thereto in Clause 9.4 (*Proceeds*).

"**Disposition Committee**" means any Disposition Committee (as defined in the Initial Cooperation Term Sheet) or any other committee or other body which, pursuant to any amendment to the Cooperation Settlement Term Sheet or any other Cooperation Settlement Document, is given any of the functions of such a Disposition Committee.

"**Disposition Expenses**" means all expenses relating to (i) the conduct of each Disposition Committee (which shall include the reasonable out-of-pocket expenses incurred by the members thereof, but shall not include any compensation paid to any member for serving on a Disposition Committee, the obligation for which shall be the sole responsibility of the entity that designated such member to serve on the Disposition Committee), (ii) maintaining the existence of New Topco and Syndication Company structures relevant for the Major Investments and Minor Investments and liquidating or winding up existing legal entities in such structures or for investments sold prior to the Exit Conversion Date, as appropriate (which shall include filing fees, corporate secretary fees, legal fees, registered office fees and expenses, and similar items), in each case consistent with the past practices of AIML and its affiliates and without duplication of any costs or expenses to be borne by AIM Group Limited (or its Subsidiaries) under any management services agreement, but only until the sale, disposition or other liquidation or winding up of the applicable Major Investment or Minor Investment, (iii) the marketing, sale or other disposition of each Investment, including the fees and expenses of the investment banks, and (iv) any expenses incurred for similar purposes or reasonably related thereto, in each case incurred and paid in accordance with the Cooperation Settlement Documents.

"**Disruption Event**" means either or both of:

(a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

(b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:

(i) from performing its payment obligations under the Finance Documents; or

(ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"**Dollars**" and "**$**" means the lawful currency of the United States of America.

"**Effective Date**" means the date on which the conditions precedent specified in Clauses 3.1 (*Initial Conditions Precedent*) and 3.2 (*Conditions Precedent to each Purchase*) are satisfied or waived in accordance with the terms hereof.

"**Embargoed Person**" means any person that (a) is publicly identified on the most current version of any Sanctions List or (b) resides, is organized or chartered, or has a place of business in (or is owned or controlled (directly or indirectly) by, or is acting on behalf of, any person who resides, is organized or chartered, or has a place of business in) a country or territory subject to any Sanctions (a "**Sanctioned Country**") or (c) 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; or (c) is otherwise the target of Sanctions ("target of Sanctions" signifying a national of a Sanctions Authority with which it would be prohibited or restricted by law to engage in trade, business or other activities).

"**Environment**" means natural resources, including, animals, plants and all other living organisms and the ecological systems of which they form part and the following media:

(a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);

(b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and

(c) land (including, without limitation, land under water).

"**Environmental Claim**" means any claim, proceeding or formal notice by any person that alleges a violation of or liability under any Environmental Law.

"**Environmental Law**" means any applicable law or regulation which relates to:

(a) the pollution or protection of the Environment;

(b) the conditions of the workplace with respect to hazardous or toxic substances; or

(c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

"**Environmental Permits**" means any permit and other Authorisation required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group.

"**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.

"**Euro**" means the single currency of the Participating Member States.

"**Event of Default**" means any event specified as such in Clause 16 (*Events of Default*).

"**Excluded Businesses**" means those businesses identified on SCHEDULE 5 Part 7 (*List of Entities - Excluded Businesses*) hereof, and all Subsidiaries of the Purchaser comprising a part of such businesses.

"**Exempted Voluntary Prepayment**" means any voluntary prepayment made pursuant to Clause 9.2(a)(*Voluntary Prepayment and Facility Limit Reduction*) using Disposal Proceeds resulting from a Disposal of all or part of Oman Logistics, AIBPD II or Saadiyat Island (which, pursuant to Clause 9.4(b)(*Proceeds*) do not need to be applied in mandatory prepayment) provided that such Disposal Proceeds have been applied in voluntary prepayment (or, at the election of the Purchaser, deposited in a Mandatory Prepayment Account pending their application in a voluntary prepayment which has been notified to the Investment Agent to occur on the next Deferred Payment Date) within 5 Business Days of receipt.

"**Existing DIP Facility**" means the debtor-in-possession *murabaha* facility granted to AIHL pursuant to a master *murabaha* agreement dated 14 December 2012 and made between AIHL and CF ARC LL.

"**Existing Security**" means:

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

(b) the second ranking equitable mortgage over the shares of AIHL Sub dated December 22, 2011 granted by AIHL in favour of Standard Chartered Bank;

(c) the first ranking charge over the shares of WTHL dated May 30, 2011 granted by AIHL Sub in favour of Standard Chartered Bank;

(d) the second ranking equitable mortgage over the shares of WTHL dated December 22, 2011 granted by AIHL Sub in favour 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 favour 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 favour of Standard Chartered Bank;

(g) the first ranking equitable mortgage over the shares of RailInvest dated December 22, 2011 granted by AIHL Sub in favour 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 favour 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 15.32 (*Changes Relating to Other Indebtedness and Material Contracts*), 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 15.32 (*Changes Relating to Other Indebtedness and Material Contracts*), as amended, supplemented or otherwise modified from time to time after the Effective Date.

"**Exit Budget**" means the rolling quarterly four-quarter cash budget for the Group delivered by the Purchaser to the Investment Agent pursuant to Clause 2.4 (*Exit Facility Option*) (as modified or supplemented from time to time with the written notice to the Investment Agent, including any such modifications or supplements covering additional time periods delivered pursuant to Clause 13.4(b) (*Budget*), initially for the four-quarter period beginning on the Conversion Date, setting forth, on a line-item basis, (x) projected cash receipts (including asset sales), (y) projected disbursements (including ordinary course operating expenses, bankruptcy expenses, capital expenditures, deal fundings, management fees, fees and expenses of the Investment Agent and the Participants (including counsel therefor) and any other fees and expenses relating to the Facilities) and (z) total liquidity.

"**Exit Budget Variance Report**" means any Exit Budget variance report /reconciliation delivered by AIHL to the Investment Agent pursuant to Clause 13.4(b) (*Budget*).

"**Exit Conversion Date**" means the first date on which the Exit Facility Option has been exercised and the conditions to the occurrence of the Exit Conversion Date as set forth in Clause 2.4 (*Exit Facility Option*) are satisfied.

"**Exit Facility**" means, on or after the Exit Conversion Date, the *murabaha* facility described in Clause 2.1 (*Facility*).

"**Exit Facility Option**" as defined in Clause 2.4 (*Exit Facility Option*).

"**Exit Facility Proceeds**" has the meaning give thereto in Clause 5.10 (a) (*Use of on-sale proceeds in relation to Initial Exit Purchase Contract*).

"**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 the Plan of Reorganization and (b) prior to the effective date of the Plan of Reorganization, 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.

"**Exit Purchaser**" means a company, incorporated or to be incorporated in the State of Delaware, United States of America, to which substantially all the assets of the DIP Purchaser are to be transferred pursuant to the Plan of Reorganization.

"**Exit Termination Date**" means the date falling on the third anniversary of the Exit Conversion Date; *provided* that if such date is not a Business Day, the Termination Date shall be the immediately preceding Business Day.

"**Facility**" means the DIP Facility or the Exit Facility, as applicable.

"**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 the terms of the Finance Documents; *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 $175,000,000, as such amount may be reduced, increased or terminated pursuant to the terms of the Finance Documents.

"**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.

"**FATCA**" means:

(a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;

(b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or

(c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"**FATCA Application Date**" means:

(a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 January 2014;

(b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest and dividends from sources within the US), 1 January 2017; or

(c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2017 (or if different, the date on which withholding obligations in connection with "passthru payments" become operative pursuant to final regulations issued defining the scope of such payments),

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

"**FATCA Deduction**" means a deduction or withholding from a payment under a Finance Document required by FATCA.

"**FATCA Exempt Party**" means a Party that is entitled to receive payments free from any FATCA Deduction.

"**FATCA Protected Participant**" means any Participant designated as a "FATCA Protected Participant" by the Purchaser by notice to that Participant and the Investment Agent at least six months prior to the earliest FATCA Application Date for a payment by a Party to that Participant (or to the Investment Agent for the account of that Participant).

"**FCPA**" has the meaning given in Clause 12.30 (*Anti-Terrorism Laws, Foreign Corrupt Practices Act*).

"**Fee Letter**" means the fee letter dated May 2, 2013, as amended by the amendment agreements dated 17 May 2013 and [●] June 2013 between the Arranger and Arcapita Bank.

"**Final DIP Order**" means a Final Order of the Bankruptcy Court approving the DIP Facility entered in the Cases in form and substance reasonably satisfactory to the Investment Agent, as the same may be amended, modified or supplemented from time to time with the consent of the Investment Agent, including without limitation a release and exculpation of the Investment Agent, Security Agent and Participants and (in their capacities as such) as set forth in Clause 2.5 hereof.

"**Final Order**" means an order of the Bankruptcy Court as to which no stay has been entered and which has not been reversed, vacated or overturned, and which has not been amended, supplemented or otherwise modified in any respect adverse to the Participants without the prior written consent of Investment Agent and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal or motion to reconsider has been dismissed or denied unless Investment Agent waives such requirement in writing.

"**Final Purchase Contract**" means the final Purchase Contract entered into prior to the Exit Termination Date, or, prior thereto, any other Purchase Contract if, after giving effect to the payment thereof, no other Purchase Contracts are then outstanding.

"**Finance Documents**" means:

(a) this Agreement;

(b) the Investment Agency Agreement;

(c) the Fee Letter;

(d) the Security Documents;

(e) when entered into, each Purchase Contract;

(f) the Netting Letter;

(g) each Accession Letter and each Resignation Letter;

(h) the Accession and Novation Deed;

(i) the Orders; and

(j) such other documents at any time designated as such by the Investment Agent and the Purchaser.

"**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 Treasury Transactions (for purposes of determining Financial Indebtedness under this Clause (g), the "principal amount" of the obligations of any member of the Group in respect of any Treasury Transactions at any time shall be the maximum aggregate amount (giving effect to any netting arrangements) that such member of the Group would be required to pay if such Treasury Transactions were terminated at such time);

(h) the supply of any goods or services which is more than 90 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 Security 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 or the Cayman Proceedings shall not constitute or comprise Financial Indebtedness hereunder.

"**Financial Quarter**" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"**Financial Year**" has the meaning given to that term in Clause 14.1 (*Financial definitions*).

"**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.

"**Group**" means:

(a) prior to the Exit Conversion Date, Arcapita Bank and its Subsidiaries from time to time; and

(b) on and after the Exit Conversion Date, New Holdco 1 and its Subsidiaries from time to time;

provided in each case that Transaction Holdcos, Syndication Companies and Investment Companies shall not be members of the Group.

"**Guarantor**" means each Original Guarantor and each Additional Guarantor in each case, to the extent that such Guarantor has not resigned in accordance with Clause 22.5 (*Resignation of a Guarantor*).

"**HMT**" has the meaning given in the definition of Sanctions.

"**Holding Account**" means a profit-bearing account:

(a) held in London by the Purchaser with the Investment Agent or other bank or financial institution acceptable to the Investment Agent;

(b) identified in a letter between the Purchaser and the Investment Agent as a Holding Account;

(c) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Investment Agent and Security Agent; and

(d) subject to control agreements in favour of and satisfactory to the Investment Agent (acting reasonably) so that no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

(as the same may be redesignated, substituted or replaced from time to time).

"**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 accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"**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 the Purchaser as an "Immaterial Subsidiary" (which designation may be withdrawn by the Purchaser 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 5 Part 8 (*List of Entities - Immaterial Subsidiaries*).

"**Implementation Memorandum**" means the implementation memorandum entitled "[●]" and dated [●] describing the steps to be implemented pursuant to the Plan of Reorganization and delivered to the Investment Agent pursuant to Clause 3.1 (*Initial Conditions Precedent*) as amended as permitted under this Agreement.

"**Increased Costs**" means:

(a) a reduction in a Finance Party's profit in relation to a Purchase Contract or in the rate of return on a Finance Party's (or its Affiliate's) overall capital;

(b) an additional or increased cost; or

(c) 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 to the extent that it is attributable to that Finance Party funding or performing its obligations under any Finance Document.

"**Indemnified Party**" has the meaning given in Clause 18.1(a) (*Indemnity*).

"**Initial Cooperation Settlement Term Sheet**" means the syndication companies and reorganized Arcapita settlement term sheet attached hereto as Schedule 12 (*Initial Cooperation Settlement Term Sheet*).

"**Initial DIP Purchase Contract**" means the first Purchase Contract entered into on or after the Effective Date.

"**Initial Exit Purchase Contract**" means the first Purchase Contract entered into on or after the Exit Conversion Date.

"**Initial New Topco Mudaraba Documents**" means the documents related to the proposed *sukuk al mudarabaha* to be issued by a Subsidiary of New Topco pursuant to the Plan of Reorganization, in the most recent form provided to the Investment Agent prior to the date of this Agreement.

"**Intellectual Property**" means:

(a) any patents, trade-marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and

(b) the benefit of all applications and rights to use such assets of each member of the Group (which may now or in the future subsist).

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

"**Interpolated Screen Rate**" means, in relation to LIBOR for any Contract Period, the rate which results from interpolating on a linear basis between:

(a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than that Contract Period or Late Payment Calculation Period; and

(b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds that Contract Period or Late Payment Calculation Period,

each as of 11am London time on the Quotation Day for the relevant Purchase Contract or Late Payment Calculation Period.

"**Investment**" has the meaning given thereto in Clause 15.8 (*No Investments*).

"**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 the Purchaser or any of its Subsidiaries (as assignor) and the Security Agent, in a form acceptable to the Security Agent.

"**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.

"**Late Payment Calculation Period**" as defined in Clause 6.3 (*Late Payment*).

"**Legal Reservations**" means:

(a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

(b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim; and

(c) similar principles, rights and defences under the laws of any Relevant Jurisdiction.

"**LIBOR**" means, in relation to any Contract Period or Late Payment Calculation Period:

(a) the applicable Screen Rate;

(b) (if no Screen Rate is available for that Contract Period (or Late Payment Calculation Period, as applicable) the Interpolated Screen Rate for that Contract Period or Late Payment Calculation Period; or

(c) if:

(i) no Screen Rate is available for the currency of the relevant Deferred Sale Price or Unpaid Amount; or

(ii) no Screen Rate is available for that Contract Period (or Late Payment Calculation Period, as applicable) and it is not possible to calculate an Interpolated Screen Rate for that Contract Period or Late Payment Calculation Period,

the Reference Bank Rate,

as of, in the case of paragraphs (a) and (b) above, 11am London time on the Quotation Day for the relevant Purchase Contract (or Late Payment Calculation Period, as applicable) and for a period equal in length to the relevant Contract Period or Late Payment Calculation Period.

"**Limitation Acts**" means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

"**LT CayCo**" means each long term portfolio investment company that is a wholly-owned direct or indirect Subsidiary of the Purchaser at any time and which holds the Equity Interests in Transaction Holdcos which are not held by Syndication Companies or Arcapita Bank's equity incentive plan, including each of the companies listed on SCHEDULE 5 Part 4 (*List of Entities - LT CayCos*) (which the Purchaser represents is a complete list of all LT CayCos in existence on the Effective Date)

"**Lusail Obligations**" has the meaning given in paragraph (e) of the definition of "Permitted Financial Indebtedness."

"**Major Investment**" has the meaning given in Clause 14.1 (*Financial definitions*).

"**Majority Investor**" means (i) Majority Investor (as defined in the Initial Cooperation Settlement Term Sheet) or (ii) such other phrase or concept as may replace, replicate or implement such defined term in the Cooperation Settlement Documents.

"**Majority Participants**" has the meaning given in the Investment Agency Agreement.

"**Mandatory Cost**" means, in relation to a Purchase Contract and a Participant, the cost to that Participant of compliance in respect of its Contribution in respect of that Purchase Contract 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;

provided that such cost is notified by the relevant Participant to the Investment Agent by 5pm London time on the Quotation Day.

"**Mandatory Prepayment Account**" means a profit-bearing account:

(d) held in London by the Purchaser with the Investment Agent or other bank or financial institution acceptable to the Investment Agent;

(e) identified in a letter between the Purchaser and the Investment Agent as a Mandatory Prepayment Account;

(f) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Investment Agent and Security Agent; and

(g) subject to control agreements in favour of and satisfactory to the Investment Agent (acting reasonably) so that no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

(as the same may be redesignated, substituted or replaced from time to time).

"**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 the Purchaser and its Subsidiaries, taken as a whole other than (prior to the Exit Conversion Date) as customarily result from the filing or continuation of the bankruptcy proceedings in the Bankruptcy Court or the courts of the Cayman Islands; or

(b) the ability of an Obligor to perform its payment or other material obligations under the Finance Documents; or

(c) the validity or enforceability of, or the effectiveness or ranking of any Security 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.

"**Minor Investment**" has the meaning given in Clause 14.1 (*Financial definitions*).

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

"**New Exit Guarantor**" means [●].

"**New Holdco 1**" means a company, incorporated or to be incorporated in the Cayman Islands, which, pursuant to the Plan of Reorganization and in accordance with the Implementation Memorandum, will own directly 100% of the Equity Interests in the Exit Purchaser.

"New Holdco 3" means a company, incorporated or to be incorporated in the Cayman Islands, which, pursuant to the Plan of Reorganization and in accordance with the Implementation Memorandum, will be 100% owned by the Exit Purchaser.

"**New Topco**" means a company, incorporated or to be incorporated in the Cayman Islands, which, pursuant to the Plan of Reorganization and in accordance with the Implementation Memorandum, will own, indirectly, [99.99]% of the Equity Interests in New Holdco 1 and which is referred to in the Initial Cooperation Settlement Term Sheet as "Reorganized Arcapita."

"**New Topco Mudaraba Document**" means any document entered into or amended in order to implement the proposed *sukuk al mudaraba* to be issued by a Subsidiary of New Topco pursuant to the Plan or Reorganization.

"**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.

"**Obligors**" means, at any time:

(a) prior to the Exit Conversion Date, the DIP Purchaser, the Original Guarantors and any Additional Guarantor which has acceded to this Agreement at that time as an Additional Guarantor since the date of this Agreement; and

(b) on and after the Exit Conversion Date, the Exit Purchaser, each Original Guarantor which has not resigned in accordance with Clause 22.5 (*Resignation of Guarantors*), each New Exit Guarantor and any Additional Guarantor which has acceded to this Agreement as an Additional Guarantor since the date of this Agreement (which has not resigned in accordance with Clause 22.5 (*Resignation of 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 the Purchaser (offering to enter into a Purchase Contract) substantially in the form set out in SCHEDULE 3 (*Form of Offer Letter And Acceptance*).

"**Oman Logistics**" means Oman Industrial Holding Company Limited, an exempted company incorporated in the Cayman Islands with limited liability, and the direct and indirect Subsidiaries thereof.

"**On-sale Costs**" means an amount which is equal to the aggregate of:

(a) any Commodity Taxes applicable to the relevant on-sale of Commodities specified in the relevant Appointment of Agency Letter; and

(b) any other direct or indirect costs and expenses, including insurance and transport expenses applicable to the relevant on-sale.

"**Orders**" means the collective reference to the Final DIP Order and the Confirmation Order.

"**Original Financial Statements**" means:

(a) in respect of AIHL, the audited consolidated financial statements of Arcapita Bank for the Financial Years ending 30 June 2009, 30 June 2010 and 30 June 2011; and

(b) in respect of Arcapita Bank, its audited consolidated financial statements for the Financial years ending 30 June 2009, 30 June 2010 and 30 June 2011.

"**Original Jurisdiction**" means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement or, in the case of an Additional Guarantor, as at the date on which that Additional Guarantor becomes Party as a Guarantor.

"**Parent**" means, at any time prior to the Exit Conversion Date, Arcapita Bank, and, at any time on or after the Exit Conversion Date, New Holdco 1.

"**Participants**" means those banks, financial institutions and other persons listed in SCHEDULE 1 Part 1 (*Initial Condition Precedent Documents*) 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.

"**Participating Member State**" means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"**Participation**" has the meaning given in the Investment Agency Agreement.

"**Party**" means a party to this Agreement or 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 Carryover**" means, in any one month period covered by the DIP Budget, any amount allocated towards disbursements in any previous period covered by the DIP Budget which was not utilised in payment of non-restructuring disbursements.

"**Permitted Disposal**" means any sale, lease, licence, transfer or other disposal which (other than for the purposes of paragraph (c) below) is on arm's length terms:

(a) of assets secured by the Existing Security, provided that the proceeds of disposal are (x) applied to the payment of the Existing US$ Facilities no later than the effective date of the Plan of Reorganization, if then outstanding and (y) pending such application are held in escrow or other arrangements satisfactory to the Investment Agent (acting reasonably) 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 Deferred Sale Prices in accordance with Clause 9.4 (*Proceeds*);

(b) of Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;

(c) disposals (i) in accordance with the terms of the Cooperation Settlement Documents so long as the proceeds thereof shall be applied as required by Clause 9.4 (*Proceeds*) or (ii) contemplated by the Implementation Memorandum;

(d) other disposals, the proceeds of which (valued at the principal amount thereof in the case of non-Cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-Cash proceeds), when aggregated with the proceeds of all other disposals made pursuant to this paragraph (d) within the same Financial Year, are less than $1,000,000 (or its equivalent); provided (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the board of directors of the Purchaser (or similar governing body)), (2) no less than 75% of such consideration shall be paid in Cash, and (3) the proceeds thereof shall be applied as required by Clause 9.4 (*Proceeds*); or

(e) made with the consent of the Majority Participants;

"**Permitted Distribution**" means:

(a) the payment of a dividend to the Purchaser or any of its wholly-owned Subsidiaries;

(b) the payment of a dividend by any Obligor to the Parent, or by the Parent to its immediate Holding Company, in each case so long as no Default has occurred and is continuing and the proceeds thereof are promptly used by the Parent (or any of its Holding Companies) to pay its operating expenses and any other corporate overhead costs and expenses (including payroll and legal authority expenses) in each case in the ordinary course of business and only to the extent (i) prior to the Exit Conversion Date, permitted by and, in compliance with the DIP Budget (subject to the Permitted Variance and Permitted Carryover) and (ii) on and after the Exit Conversion Date, any such dividends (excluding any such dividends made to fund (and so long as such dividends are used to so fund) any reasonable and customary (1) audit and regulatory fees, (2) administrative agency, trustee and other similar fees (excluding arrangement and similar fees and any fees paid to participants) pursuant to the New Topco Mudaraba Documents, (3) payments under management services agreements to the extent permitted under Clause 15.21(b) (*Management Agreements*), (4) fees and expenses of the board of directors of New Topco and of New Topco representatives on Disposition Committees, (5) legal fees as it relates to wind down and Chapter 11 related litigation expenses and (6) changes to organizational structures related to entities organized in the Cayman Islands) do not exceed US$2,000,000 (or its equivalent) (or such greater amount as may be reasonably acceptable to the Investment Agent) in the aggregate in any Financial Year; and

(c) any other payment made with the consent of the Majority Participants.

"**Permitted Financial Indebtedness**" means Financial Indebtedness:

(a) prior to the Exit Conversion Date, arising under the Existing US$ Facilities;

(b) permitted by Clause 15.23 (*Speculative Transactions and Treasury Transactions*);

(c) existing on the Effective Date and identified on the SOFA Schedules or the Disclosure Schedules;

(d) ordinary course Inter-Obligor Indebtedness incurred after the Effective Date; *provided* that the intercompany Investments giving rise to such Financial Indebtedness are, prior to the Exit Conversion Date, permitted by, and in compliance with, the DIP Budget, subject to the Permitted Variance and Permitted Carryover and, at all times, are permitted by Clause 15.8 (*No Investments*);

(e) intercompany Financial Indebtedness incurred in connection with Arcapita Bank's (or, after the Exit Conversion Date, the [Exit Purchaser'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, on or prior to the Exit Conversion Date, such payments are in compliance with the DIP Budget, subject to any Permitted Variance and Permitted Carryover;

(f) 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 Permitted Variance and Permitted Carryover;

(g) incurred or maintained with the consent of the Majority Participants; or

(h) not permitted by the preceding paragraphs or as a Permitted Transaction and the outstanding principal amount of which does not exceed $5,000,000 (or its equivalent) in aggregate for the Group at any time.

"**Permitted Representation Exceptions**" means (a) with respect to representations and warranties contained in Clause 12.24(a) (*Structure and Organization*), changes resulting solely from transactions permitted by Clauses 15.7 (*Change of Business or Group Structure*), 15.8 (*No Investments*), 15.14 (*Disposals*) or 15.26 (*Exit Plan Subsidiaries*), and (b) with respect to representations and warranties contained in Clause 12.29 (*Proxies*), changes resulting solely from actions taken by (i) holders of Equity Interests of Syndication Companies (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, 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.

"**Permitted Security**" means (other than in relation to any Charged Property (except in the case of paragraph (j) below:

(a) any Security 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 Security 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 Security or Quasi-Security arising as a result of any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group or as a result of interest, profit rate or currency hedging arrangements in the ordinary course of business and not for speculative purposes but only so long as, in each case, (i) such arrangement does not permit credit balances of Obligors to be netted or set off against debit balances of members of the Group which are not Obligors and (ii) such arrangement does not give rise to other Security or Quasi-Security over the assets of Obligors in support of liabilities of members of the Group which are not Obligors;

(d) any Security created by operation of law, such as materialmen's liens, mechanics' liens and other similar Security, 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;

(e) Security or Quasi-Security (A) upon or in any equipment acquired or held by any member of the Group 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 Security is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment, provided that the aggregate maximum amount secured pursuant to any Security permitted pursuant to this paragraph (a) shall not exceed US$500,000 (or its equivalent) at any time ;

(f) 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 Security 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;

(g) any Security or Quasi-Security 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;

(h) any Security or Quasi-Security incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Security of the type described in (a) to (f) above, provided that any extension, renewal or replacement Security shall be limited to the property encumbered by the existing Security and the principal amount of the indebtedness being extended, renewed or refinanced does not increase;

(i) any Security or Quasi-Security arising as a result of 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;

(j) any Security in favour of the Finance Parties securing the obligations under the Finance Documents;

(k) any Security in favour of customs and revenue authorities arising as a matter of law to secure payments of custom duties in connection with the importation of goods;

(l) prior to the Exit Conversion Date, the Existing Security;

(m) any Security or Quasi-Security incurred or maintained with the consent of the Majority Participants; and

(n) any other Security securing Permitted Financial Indebtedness the principal amount of which (when aggregated with the principal amount of any other Permitted Financial Indebtedness which has the benefit of Security other than as permitted pursuant to paragraphs (a) to (m) above) does not exceed US$500,000 (or its equivalent).

"**Permitted Share Issue**" means an issue of shares by a member of the Group which is a Subsidiary of the Purchaser to its immediate Holding Company where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms.

"**Permitted Transaction**" means:

(a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents;

(b) the solvent liquidation or reorganisation of any member of the Group which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are ultimately distributed to other members of the Group;

(c) provided no Event of Default is continuing, the wind down of PointPark Properties s.r.o; or

(d) any payments or other transactions contemplated by the Implementation Memorandum.

"**Permitted Variance**" means, in any one month period covered by the DIP Budget, a variance of 10% in the aggregate amount of disbursements as set out the DIP Budget for that period.

"**Petition Date**" means 19 March 2012.

"**Plan of Reorganization**" means the Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code filed on April 25, 2013 (Docket No. 1036) in the Cases, together with all exhibits, schedules, annexes, supplements and other attachments thereto, in each case, as may be amended, modified or supplemented in form and substance reasonably satisfactory to the Investment Agent.

"**Post-Petition**" means the time period beginning immediately upon the filing of the Cases.

"**Profit Amount**" means, subject to Clause 18.5 (*Increased Costs*) in respect of each Purchase Contract:

(applicable Cost Price * applicable Profit Rate * (N/360))

where **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 Quotation Date relating to that Purchase Contract by the Investment Agent and (ii) 1.5% per annum plus (b) 8.25% per annum.

"**Pro Forma Security Cover**" means, at any time, Security Cover as set out in the most recent Compliance Certificate delivered by the Purchaser under this Agreement, adjusted to take into account any Disposals, prepayments of Deferred Sale Prices, any increase in the aggregate Cost Price element of outstanding Deferred Sale Prices and any withdrawals from the Retention Account, in each case since the relevant Quarter Date.

"**Purchase Contract**" means the agreement for the sale by the Investment Agent of Commodities and the purchase of those Commodities by the Purchaser pursuant to Clause 5 (*Procedures*).

"**Purchase Costs**" means an amount so specified in the Offer Letter which is equal to the aggregate of:

(a) any Commodity Taxes applicable to the purchase (and on-sale) of Commodities specified in the relevant Transaction Request; and

(b) any other direct or indirect costs and expenses, including insurance and transport expenses applicable to the purchase or on-sale.

"**Purchaser**" means, prior to the Exit Conversion Date, the DIP Purchaser and, on and after the Exit Conversion Date, the Exit Purchaser.

"**Put Failure**" means (i) a Failure as defined in the Initial Cooperation Settlement Term Sheet or (ii) such other phrase or concept as may replace, replicate or implement such defined term in the Cooperation Settlement Documents.

"**Quasi-Security**" has the meaning given to that term in Clause 15.13 (*Negative pledge*).

"**Quotation Day**" means, in relation to any Contract Period or Late Payment Calculation Period, two Business Days before the first day of that period unless market practice differs in the London interbank market, in which case the Quotation Day will be determined by the Investment Agent in accordance with market practice in the London interbank market (and if quotations would normally be given by leading banks in the London interbank market on more than one day, the Quotation Day will be the last of those days).

"**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) (*Value Added Tax*).

"**Reference Banks**" means the principal London offices of [ ], [ ] and [ ] or such other banks as may be appointed by the Investment Agent in consultation with the Purchaser.

"**Reference Bank Rate**" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Investment Agent at its request by the Reference Banks as the rate at which the relevant Reference Bank could borrow funds in the London interbank market in

Dollars for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

"**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.

"**Released Parties**" has the meaning given in Clause 2.5 (*Release*).

"**Releasing Parties**" has the meaning given in Clause 2.5 (*Release*).

"**Relevant Party**" has the meaning given in Clause 8.4(b) (*Value Added Tax*).

"**Relevant Jurisdiction**" means, in relation to an Obligor:

(a) its Original Jurisdiction;

(b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;

(c) any jurisdiction where it conducts its business; and

(d) the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

"**Remedies Notice Period**" has the meaning given in Clause 16.24(d) (*Acceleration*).

"**Repeating Representations**" means each of the representations set out in Clause 12.2 (*Status*) to Clause 12.7 (*Governing law and enforcement*), Clause 12.11 (*No default*), paragraph (f) of Clause 12.12 (*No misleading information*), Clause 12.13 (*Original Financial Statements*), Clause 12.20 (*Ranking*) to Clause 12.23 (*Equity Interests*), Clause 12.25 (*Investment Company; Margin lending regulation*) and Clause 12.28 (*Shari'ah compliance*) to 12.30 (*Anti-Terrorism Laws, Foreign Corrupt Practices Act*).

"**Resignation Letter**" means a document substantially in the form set out in SCHEDULE 6 Part 2 (*Form of Resignation Letter*).

"**Retention Account**" means a profit-bearing account:

(a) held in London by the Investment Agent or other bank or financial institution acceptable to the Investment Agent ;

(b) identified in a letter between the Purchaser and the Investment Agent as the Retention Account;

(c) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Investment Agent and Security Agent; and

(d) subject to control agreements in favour of and satisfactory to the Investment Agent (acting reasonably) so that no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

(as the same may be redesignated, substituted or replaced from time to time).

"**Retention End Date**" has the meaning given in Clause 9.6 (*Retention Account, Mandatory Prepayment Amount and Holding Account*).

"**Saadiyat Island** means District Cooling Development III Limited, an exempted company incorporated in the Cayman Islands with limited liability, and the direct and indirect Subsidiaries thereof.

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

"**Sanctions**" means the economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by: (i) the United States government; (ii) the United Nations; (iii) the European Union; (iv) the United Kingdom; or (v) the respective governmental institutions and agencies of any of the foregoing, including, without limitation, OFAC, the United States Department of State, the United States Department of Commerce, the United States Department of Treasury and Her Majesty's Treasury ("**HMT**") (together "the **Sanctions Authorities**").

"**Sanctions Authorities**" has the meaning given in the definition of Sanctions.

"**Sanctions List**" means the "Specially Designated Nationals and Blocked Persons" list maintained by OFAC, the "Consolidated List of Financial Sanctions Targets" and the "Investment Ban List" maintained by HMT, or any similar list maintained by, or public announcement of Sanctions designation made by, any of the Sanctions Authorities, each as amended, supplemented or substituted from time to time.

"**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.

"**Screen Rate**" means in relation to LIBOR, the London interbank offered rate administered by the British Bankers Association (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Investment Agent may specify another page or service displaying the relevant rate after consultation with the Purchaser.

"**Security**" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Security Agent**" means [●] as security agent for the Participants.

"**Security Cover**" has the meaning given in Clause 14.1 (*Financial definitions*).

"**Security Documents**" means:

(a) the U.S. Security Agreement;

(b) prior to the Exit Conversion Date, the Cayman Charge;

(c) the Cayman Debentures;

(d) each Investment Company Murabaha Facility Assignment;

(e) prior to the Exit Conversion Date, the Final DIP Order; and

(f) any other document creating, evidencing or acknowledging Security in favour of the Security Agent (as agent for the Participants) in respect of the obligations of the Purchaser or any other Obligor under any of the Finance Documents.

"**Security Questionnaire**" means a certificate in form satisfactory to Security Agent that provides information with respect to the personal or mixed property of each Obligor.

"**Seller**" means DD&Co Limited.

"**SOFA Schedules**" means SOFA Schedules D, F and G filed on June 8, 2012, as provided to the Investment Agent on [●] and provided to the Investment Agent prior to the date of this Agreement.

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

"**Speculative Transaction**" means any transaction involving commodity options, futures contracts or similar transactions.

"**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.

"**Sterling**" means the lawful currency of the United Kingdom

"**Structure Chart**" means the structure charts provided to Investment Agent on [●], 2013.

"**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 per cent 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;

"**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.

"**Supplemental Profit**" means, in relation to any Purchase Contract which has a proposed Transaction Date falling (i) prior to the second anniversary of the Exit Conversion Date and (ii) on a date when the Facility Limit is to be reduced in part (but not in full):

(a) pursuant to Clause 9.8(a)(i) as a result of a prepayment under (i) Clause 9.2(a) (*Voluntary Prepayment and Facility Limit Reduction*) other than any Exempted Voluntary Prepayment (or any other voluntary prepayment made using proceeds paid directly from the Retention Account to the Investment Agent) or (ii) Clause 9.4(b)(iv) (*Proceeds*); or

(b) as a result of a voluntary reduction pursuant to Clause 9.2(c) (*Voluntary Prepayment and Facility Limit Reduction*),

an amount equal to 1% of the amount by which the Facility Limit is to be reduced on the proposed Transaction Date. For the avoidance of doubt, no Supplemental Profit shall be payable in relation to a Purchase Contract which does not satisfy the requirements of this definition.

"**Supplier**" has the meaning given in Clause 8.4(b) (*Value Added Tax*).

"**Syndication Companies**" means each of the companies organized in the Cayman Islands that are co-owned by the Purchaser, on the one hand, and third party investors, on the other hand, for the purpose of funding the Purchaser's portfolio investments through the sale of Syndication Companies' Equity Interests to third party investors, including each of the companies listed on SCHEDULE 5 Part 6 (*List of Entities - Syndication Companies*), which schedule shall designate whether such company is wholly-owned or majority-owned by any Obligor on the Effective Date, and which the Purchaser 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.

"**Syndication Date**" means the day which is 45 days after the date of this Agreement or such earlier date on which the Arranger confirms that the primary syndication of the Facility has been completed.

"**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, interest 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, other than a FATCA Deduction.

"**Tax Payment**" means either the increase in a payment made by an Obligor to a Finance Party under Clause 8.1 (*Grossing-up*) or payment under Clause 8.3 (*Tax Indemnity*).

"**Termination Date**" means, prior to the Exit Conversion Date, the DIP Termination Date and, on or after the Exit Conversion Date, the Exit Termination Date.

"**Third Parties Act**" means the Contracts (Rights of Third Parties) Act 1999.

"**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 entities that wholly-own, directly or indirectly, the Equity Interests in entities that hold the operations of portfolio investments of the Group, the Equity Interest of each Transaction Holdco being 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 entities listed on SCHEDULE 5 Part 5 (*List of Entities – Transaction Holdcos*), which schedule shall designate whether such entity is wholly-owned by any Obligor on the Effective Date, and which the Purchaser represents is a complete list of all of the Transaction Holdcos in existence on the Effective Date.

"**Transaction Request**" means a request from the Purchaser to the Investment Agent to make a Purchase Contract, substantially in the form set out in SCHEDULE 2 (*Form of Transaction Request*).

"**Transaction Security**" means the Security created or expressed to be created in favour of the Security Agent pursuant to the Security Documents.

"**Treasury Transaction**" means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

"**Unpaid Amount**" as defined in Clause 6.3 (*Late Payment*).

"**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.

"**Valuation**" means any valuation of a Major Investment or an Appraised Minor Investment provided by the Purchaser to the Investment Agent pursuant to Clause 13.10(a) (*Valuations*).

"**VAT**" means:

(a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

(b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

"**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 12 April 2013.

"**WCFs**" means the companies organized in the Cayman Islands that are Subsidiaries of the Purchaser (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 other direct and indirect Subsidiaries of the Purchaser (each a "**Working Capital Facility**"), including each of the companies listed in SCHEDULE 5 Part 5 (*WCFs*) which schedule sets forth the WCFs that are wholly-owned by any Obligor on the Effective Date, and which the Purchaser represents is a complete list of all of the wholly-owned WCFs 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**

(a) Unless a contrary indication appears, a reference in this Agreement to:

(i) the "**Investment Agent**", the "**Arranger**", any "**Finance Party**", any "**Participant**", any "**Obligor**", any "**Party**", any "**Secured Party**", the "**Security Agent**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;

(ii) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Purchaser and the Agent or, if not so agreed, is in the form specified by the Investment Agent;

(iii) "**assets**" includes present and future properties, revenues and rights of every description;

(iv) a "**Finance Document**" or any other agreement or instrument (other than the Initial Cooperation Settlement Term Sheet and the Initial New Topco Mudaraba Documents) is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;

(v) a "**group of Participants**" includes all the Participants;

(vi) "**guarantee**" means (other than in Clause 11 (*Guarantee and Indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

(vii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

(viii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);

(ix) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

(x) a Utilisation made or to be made to a Borrower includes a Letter of Credit issued on its behalf;

(xi) a provision of law is a reference to that provision as amended or re-enacted; and

(xii) a time of day is a reference to London time.

(b) Section, Clause and Schedule headings are for ease of reference only.

(c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

(d) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.

1.3 **Rights of Third Parties**

Except for the Finance Parties or unless expressly provided to the contrary in this Agreement, a person who is not a Party may not enforce or enjoy the benefit of any of its terms under the Third Parties Act and, notwithstanding any term of this Agreement, no consent of any third party (other than the Finance Parties in accordance with the terms of the Investment Agency Agreement) is required for any variation (including any release or compromise of any liability) or termination of this Agreement.

2. MURABAHA FACILITY

2.1 **Facility**

(a) 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 the Purchaser during the Availability Period and on behalf of the Participants a senior secured Dollar-denominated multiple-draw term *murabaha* facility in an aggregate amount outstanding at any time not to exceed the 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.

(b) On the day following the Transaction Date of the Initial DIP Purchase Contract, the Facility Limit shall be reduced by the amount, if any, by which the Cost Price of the Initial DIP Purchase Contract was less than the Facility Limit on the Transaction Date.

(c) On the Exit Conversion Date, the Facility Limit shall be increased by $175,000,000.

(d) On the day following the Exit Conversion Date, the Facility Limit shall be reduced by the amount, if any, by which the Cost Price of the Initial Exit Purchase Contract was less than the maximum amount permitted under this Agreement.

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 (*Facility*) and 4.1 (*Limitations*) hereof and the satisfaction of each applicable condition precedent set forth in Clause 3 (*Conditions Precedent*)), the Investment Agent will, on behalf of the Participants, purchase Commodities from the Seller at Cost Price and sell those Commodities to the Purchaser at the Deferred Sale Price on deferred payment terms pursuant to a Purchase Contract. The obligations of the Purchaser to purchase and pay for the Commodities pursuant to the preceding sentence shall at all times prior to the Exit Conversion Date constitute an allowed Superpriority Claim in the Cases, subject to the Carve-Out.

2.3 **DIP Termination Date Extension**

If the effective date of the Plan of Reorganization will be delayed beyond 31 July 2013, the Purchaser may, if it gives the Investment Agent not less than 10 Business Days' prior written notice, extend the DIP Termination Date for an additional period not to extend beyond 30 September 2013; *provided* that there shall be no more than one extension pursuant to this Clause. Such notice shall state (i) that the Purchaser is requesting that the DIP Termination Date be extended, and (ii) the extended DIP Termination Date, which shall be a Business Day. Any extension pursuant to this Clause shall be effective on the date of such notice.

2.4 **Exit Facility Option.**

(a) The Investment Agent hereby grants the Purchaser the option (the "**Exit Facility Option**") to cause the DIP Facility to be converted to an Exit Facility in accordance with this Clause 2.4.

(b) The Purchaser may exercise the Exit Facility Option by giving the Investment Agent at least 5 Business Days' notice of the proposed Exit Conversion Date.

(c) The occurrence of the Exit Conversion Date is subject to the satisfaction, or waiver, of the following conditions on or before the Exit Conversion Date:

(i) entry by the Bankruptcy Court of the Confirmation Order not later than fourteen (14) days prior to the DIP Termination Date, and no order modifying, reversing, staying or vacating the Confirmation Order shall have been entered and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal or motion to reconsider has been dismissed or denied;

(ii) the Exit Conversion Date shall occur on or before the DIP Termination Date (as it may be extended pursuant to Clause 2.3 (*DIP Termination Date Extension*));

(iii) the Investment Agent having received all the documents and evidence set out in Schedule 1 Part 2 (*Condition Precedent to Exit Conversion Date*) in form and substance satisfactory to it.

(iv) as of the Exit Conversion Date, the representations and warranties contained herein and in the other Finance Documents 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, on and as of the Exit Conversion Date to the same extent as though made on and as of such date, except to the extent such representations and

warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; and

(v) as of the Exit Conversion Date, no event shall have occurred and be continuing or would result from the exercise by the Purchaser of the Exit Facility Option that would constitute an Event of Default or a Default.

(d) The Exit Facility Option shall be implemented in accordance with Clause 5.2 (*Exit Facility Option*) of the Investment Agency Agreement.

2.5 **Release**

Subject to and qualified entirely by the Final DIP Order and Confirmation Order, the Obligors, on behalf of themselves and the Group, hereby acknowledge that neither Obligors nor any of member of the Group has any defence, counterclaim, offset, recoupment, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all or any part of the Obligors' liability to pay the Finance Parties as provided in this Agreement and the other Finance Documents or to seek affirmative relief or damages of any kind or nature from any Finance Party, solely in their respective capacities as such. The Obligors, in their own right and with respect to the members of the Group and the Debtors' bankruptcy estates, and on behalf of all their respective successors, assigns, Subsidiaries and any Affiliates and any person acting for and on behalf of, or claiming through them (collectively, the "**Releasing Parties**"), hereby fully, finally and forever release and discharge the Participants (in their capacities as Participants), the Investment Agent, the Security Agent and the Arranger and all of each of their past and present officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, and each person acting for or on behalf of any of them (collectively, the "**Released Parties**") of and from any and all past, present and future actions, causes of action, demands, suits, claims, liabilities, Security, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including, without limitation, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to this Agreement, the other Finance Documents, the Final DIP Order, the Disclosure Statement or the Plan of Reorganization and the transactions contemplated hereby and thereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing provided that the foregoing shall not release the Finance Parties from their express contractual obligations in accordance with the terms and conditions of the Finance Documents.

3. CONDITIONS PRECEDENT

3.1 **Initial Conditions Precedent**

The Purchaser may not deliver the initial Transaction Request or request the Investment Agent to enter into a Purchase Contract unless the Investment Agent has received all of the conditions

precedent listed in SCHEDULE 1 Part 1 (*Initial Condition Precedent Documents*), in form and substance, satisfactory to the Investment Agent, at which time the Investment Agent shall inform the Purchaser and the Participants that it is so satisfied and, subject to the satisfaction of the conditions precedent contained in Clause 3.2 (*Conditions Precedent to each Purchase*), the Investment Agent will be obligated to purchase the Commodities on behalf of the Participants pursuant to Clause 2.2 (*Purchase Contracts*).

3.2 **Conditions Precedent to each Purchase**

The Investment Agent's obligations to purchase Commodities pursuant to Clause 2.2 (*Purchase Contracts*) at any time, shall also be subject to the satisfaction, or waiver in accordance with the terms hereof, of the following conditions:

(a) No order modifying, reversing, staying or vacating the Final DIP Order shall have been entered;

(b) Before and after giving effect to such Commodities purchase:

(i) in the case of the Initial DIP Purchase Contract and the Initial Exit Purchase Contract, all representations and warranties; and

(ii) in the case of each other Purchase Contract, the Repeating Representations,

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 the relevant Transaction Request and the date of such purchase (or such earlier date as may be expressly referenced in any such representation and warranty);

(c) Before and after giving effect to such Commodities purchase, no Default shall have occurred and be continuing; and

(d) No Broker Disruption Event is continuing on the date of the Transaction Request or the proposed Transaction Date.

4. PURCHASE CONTRACT LIMITATIONS

4.1 **Limitations**

The Purchaser 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 (other than the Transaction Date for the Initial DIP Purchase Contract which may fall on Friday 14 June 2013) falling within the Availability Period or, if the Purchaser has exercised the Exit Facility and the Exit Conversion Date has not yet occurred, the proposed Exit Conversion Date;

(b) the Cost Price payable in respect of such Purchase Contract must be:

(i) in relation to the Initial Purchase Contract, an amount which is no greater than the Facility Limit on the proposed Transaction Date and no less than the Cost Price (as defined in the Existing DIP Facility) element of the maturing Deferred Sale Price (as defined in the Existing DIP Facility) under the Existing DIP Facility;

(ii) in relation to each Subsequent Purchase Contract proposed to be entered into prior to the Exit Conversion Date, an amount equal to the Facility Limit on the proposed Transaction Date;

(iii) in relation to the Initial Exit Purchase Contract:

(A) if the proposed Transaction Date falls on the Deferred Payment Date of the last Purchase Contract entered into under the DIP Facility (the "**Final DIP Purchase Contract**"), an amount which is no greater than the Facility Limit on the proposed Transaction Date and no less than the Cost Price element of the maturing Deferred Sale Price; or

(B) if the proposed Transaction Date does not fall on the Deferred Payment Date of the Final DIP Purchase Contract, an amount which, when aggregated with the Cost Price element of the Final DIP Purchase Contract, is no greater than the Facility Limit on the proposed Transaction Date; and

(iv) in relation to each further Subsequent Purchase Contract to be entered into after the Exit Conversion Date, an amount equal to the Facility Limit on the proposed Transaction Date (including, for the avoidance of doubt, any scheduled increase of the Facility Limit on that date pursuant to Clause 2.1(c) (*Facility*)).

(c) the applicable conditions precedent set forth in Clause 3.2 (*Conditions Precedent to each Purchase*) 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 the Purchaser 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; and

(e) there shall be no more than one Purchase Contract outstanding at any time provided that the Purchaser may enter into the Initial Exit Purchase Contract on or after the Exit Conversion Date at a time when the Final DIP Purchase Contract is outstanding if the Transaction Date of such Initial Exit Purchase Contract does not fall on the Deferred Payment Date of the Final DIP Purchase Contract at that time.

4.2 **Expiration**

The Facility shall expire and be terminated, and the Facility Limit, shall be reduced to zero, on the DIP Termination Date if the Exit Conversion Date has not occurred on or before that date or, if the Exit Conversion Date does occur on or prior to the DIP Termination Date, the Exit Termination Date.

5. PROCEDURES

5.1 Transaction Request

(a) When the Purchaser 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 the Purchaser and the Investment Agent).

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

5.2 Purchase of Commodities by Investment Agent

If the conditions set out in this Agreement have been met, the Investment Agent shall purchase the Commodities specified in the Transaction Request from the Seller in accordance with the terms of the Transaction Request not later than 12:00 noon London time on the day falling two Business Days prior to the Transaction Date.

5.3 Offer

After the Investment Agent has purchased the requested Commodities from the Seller in accordance with Clause 5.2 (*Purchase of Commodities by Investment Agent*), the Investment Agent shall by no later than 2pm (London time) on the day falling two Business Days prior to the Transaction Date (or such other time as may be agreed between the Purchaser and the Investment Agent) offer to sell to the Purchaser 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 Additional Profit (if applicable); plus

(iv) the Supplemental Profit (if applicable); plus

(v) the Mandatory Costs (if any); plus

(vi) the Purchase Costs (if any).

5.4 **Acceptance**

The Purchaser 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 3.00pm (London time)) on the date of the Offer Letter (or such other time as may be agreed between the Purchaser 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 the Purchaser communicating acceptance of the Offer Letter:

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

(b) ownership of, and title to, the relevant Commodities shall immediately pass to and be vested in the Purchaser, together with all rights and obligations relating thereto; and

(c) risk in all Commodities purchased by the Purchaser from the Investment Agent pursuant to the relevant Purchase Contract will pass to the Purchaser once title to such Commodities passes to the Purchaser.

5.5 **Investment Agent Warranties**

(a) The Investment Agent represents and warrants to the Purchaser that any Commodities sold by the Investment Agent to the Purchaser in connection with a Purchase Contract will not be subject to any Security created by it. All commodities sold by Investment Agent to the Purchaser 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 5.5(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. The Purchaser 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 5.5(a).

5.6 **Audit and delivery**

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

(b) The Purchaser acknowledges that:

(i) the Investment Agent will not be responsible for arranging or providing physical delivery of any Commodities pursuant to this Agreement; and

(ii) to the extent the Investment Agent (acting on the instructions of the Majority Participants) agrees to the physical delivery of the Commodities to the Purchaser, such delivery shall be arranged at the Purchaser's risk and cost, including payment of all fees, costs and expenses relating to the shipping and delivery and all Taxes arising from or payable in connection with such physical delivery.

5.7 **No Cancellation**

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

5.8 **On-Sale**

(a) Provided that a Purchase Contract has been created in accordance with Clause 5.4 (*Acceptance*), the Purchaser will sell to Condor Trade Limited, on the same day, the Commodities it has purchased under that Purchase Contract in accordance with the remainder of this Clause 5.8.

(b) The Purchaser shall appoint the Investment Agent as its agent to on-sell to Condor Trade Limited the Commodities which the Purchaser has purchased under such Purchase Contract.

(c) The appointment of the Investment Agent as agent of the Purchaser, and any such on-sale of Commodities, shall be in accordance with the terms of the Appointment of Agency Letter set out in SCHEDULE 11 (*Appointment of Agency Letter*) which shall be delivered to the Investment Agent in writing, by email, by fax or telephone together with the acceptance referred to in Clause 5.4 (*Acceptance*).

(d) In respect of each on-sale of Commodities, the Purchaser hereby agrees that any On-sale Costs shall be deducted from the Selling Price (as defined in the relevant Appointment of Agency Letter) on the Transaction Date.

5.9 **Use of on-sale proceeds in relation to Initial DIP Purchase Contract**

(a) The Purchaser shall use the proceeds of the on-sale of Commodities pursuant to Clause 5.8 (*On-sale*) above in relation to the Initial DIP Purchase Contract (following payment of the Additional Profit pursuant to Clause 6.1(a)(i) (*Deferred Sale Price*), the "**DIP Facility Proceeds**"):

(i) in compliance with the disbursement terms of the DIP Budget (subject to the Permitted Variance and Permitted Carryover), to:

(A) pay transaction costs, profits, fees and expenses which are incurred in connection with the Facility, including payment of professionals' fees and expenses;

(B) to repay all obligations outstanding under the Existing DIP Facility;

(C) for working capital and other general corporate purposes (other than the repayment of pre-petition financing obligations except as permitted in the Final DIP Order or the Finance Documents);

(D) for adequate protection payments made to SCB in accordance with the SCB Settlement Order; and

(E) to pay other amounts, including, without limitation, in connection with investment deal fundings; and

(ii) to be segregated for the benefit of a trustee appointed under Section 726(b) or 1104 of the Bankruptcy Code, members of the Committee and Professional Persons (as defined in the definition of "Carve-Out") to pay the amounts that constitute the Carve-Out.

(b) No portion of the DIP Facility Proceeds or the Transaction Security may be used (i) for any purpose that is prohibited under the Bankruptcy Code or by the Final DIP Order, or (ii) to commence or prosecute or join in any action against the Released Parties seeking (x) to avoid, subordinate or recharacterize the Obligations or any of the Transaction Security, (y) any monetary, injunctive or other affirmative relief against the Released Parties or any Transaction Security in connection with the Finance Documents, or (z) to prevent or restrict the exercise by any Finance Party of any of their respective rights or remedies under the Finance Documents.

5.10 **Use of on-sale proceeds in relation to Initial Exit Purchase Contract**

(a) The Purchaser shall use the proceeds of the on-sale of Commodities pursuant to Clause 5.8 (*On-sale*) above in relation to the Initial Exit Purchase Contract (following payment of the Additional Profit pursuant to Clause 6.1(a)(i) (*Deferred Sale Price*), the "**Exit Facility Proceeds**"):

(i) if the Transaction Date of the Initial Exit Purchase Contract falls on the Deferred Payment Date of the final Purchase Contract under the DIP Facility, to repay in full the Deferred Sale Price relating to such final Purchase Contract;

(ii) to repay in full the obligations with respect to the SCB Facilities in accordance with the Plan of Reorganization; and

(iii) to the extent not required for the purposes of paragraphs (i) and (ii) above, for other corporate purposes, in the Purchaser's sole discretion.

(b) No part of the Exit Facility Proceeds shall be used (i) for any purpose that is prohibited under the Confirmation Order, or (ii) to commence or prosecute or join in any action against the Released Parties seeking (x) to avoid, subordinate or recharacterize the Obligations or any of the Transaction Security, (y) any monetary, injunctive or other affirmative relief against the Released Parties or any Transaction Security in connection with the Finance Documents, or (z) to prevent or restrict the exercise by any Finance Party of any of their respective rights or remedies under the Finance Documents.

5.11 **Use of on-sale Proceeds in relation to Initial DIP Purchase Contract and Initial Exit Purchase Contract**

No part of the DIP Facility Proceeds or the Exit Facility Proceeds shall:

(a) 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 whether or not acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the Bribery Act 2010, the FCPA or other similar legislation in other jurisdictions; or

(b) 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 OFAC, HMT or any other Sanctioned Authority; or

(c) be used in any manner that would violate the provisions of Regulation T, U or X of the Board.

6. DEFERRED SALE PRICE AND PAYMENTS

6.1 Deferred Sale Price

(a) The Purchaser shall:

(i) pay the Purchase Costs (and, if the relevant Deferred Sale Price includes Additional Profit and/or Supplemental Profit, that Additional Profit and/or Supplemental Profit) relating to a Purchase Contract on the relevant Transaction Date;

(ii) if the Deferred Sale Price includes any amount attributable to Increased Costs, pay such Increased Costs no later than the date falling five Business Days after the relevant Transaction Date; and

(iii) pay the Deferred Sale Price (less Purchase Costs, any Additional Profit and any Supplemental Profit paid under paragraph (i) of this Clause 6.1(a) and any Increased Costs paid pursuant to paragraph (ii) of this Clause 6.1(a)) on its Deferred Payment Date for the account of the Participants,

in each case (subject to the terms of the Netting Letter) in immediately available funds to the account the Investment Agent notifies in writing to the Purchaser for this purpose.

(b) The Purchaser 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 General Provisions Regarding Payments

All payments relating to a Deferred Sale Price shall be paid in accordance with Clause 21 (*Payment Mechanics*) of the Investment Agency Agreement.

6.3 Late Payment

(a) If any sum (including, without limitation, any late payment charge) which is due and payable by the Purchaser under or in connection with this Agreement is not paid in full on the due date in accordance with this Agreement (an "**Unpaid Amount**"), the Purchaser undertakes to pay late payment charges (calculated in accordance with Clause 6.3(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 the Purchaser, to such charitable foundations as may be selected by the Purchaser 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:

Unpaid Amount x (LIBOR for such period as the Investment Agent may select (each a "**Late Payment Calculation Period**") + 8.25% +2%) /360.

7. PRIORITY AND SECURITY; ETC.

7.1 Priority and Security prior to Exit Conversion Date

The Purchaser hereby covenants, represents and warrants that, upon entry of the Final DIP Order, and prior to the Exit Conversion Date), the Obligations of each of the Debtors hereunder and under the other Finance Documents:

(a) 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 favour of SCB solely to the extent provided under the SCB Order;

(b) pursuant to Section 364(c)(2) of the Bankruptcy Code, shall be secured by a perfected first-priority Security on substantially all now owned or after acquired assets of Arcapita Bank, the Purchaser and AIHL Sub, in each case, that are not otherwise subject to the Existing Security, including, without limitation, (i) all personal, real and mixed property of Arcapita Bank, the Purchaser and AIHL Sub (except as otherwise agreed to by the Investment Agent), (ii) 100% of the capital stock of each of the Obligors and other first tier subsidiaries of the Debtors and all intercompany debt payable to the Debtors, in each case, that are not otherwise subject to Existing Security (i.e., all LT CayCos that are reasonably determined to be material by the Investment Agent other than WTHL, AEID II, and RailInvest, but only for so long as the Existing US$ Facilities guaranteed by such entities remain unpaid) (including AIHL's interests in the WCFs (but only those that are reasonably determined to be material by the Investment Agent)); (iii) AIHL's non-syndicated interests in the Syndication Companies (but only those that are reasonably determined to be material by the Investment Agent); and (iv) Encumbered Property (as defined below) solely to the extent that the Existing Security is extinguished or released; in each case, where the benefit of such additional collateral likely exceeds the cost of providing such Security as determined by the Investment Agent (acting reasonably); *provided* that any claim secured by Security granted on any asset of WTHL, AEID II or RailInvest shall be subordinate in right of payment to the Existing US$ Facilities;

(c) pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected junior lien on substantially all now owned or after acquired assets of the Debtors (including without limitation, (i) all personal, real and mixed property of the Debtor Obligors (except as

otherwise agreed to by the Investment Agent) subject to the Existing Security and (ii) 100% of the capital stock of each of the Debtor Obligors and their first tier subsidiaries and all intercompany debt payable to the Debtor Obligors subject to the Existing Security) 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) (collectively, "**Encumbered Property**"), in each case, where the benefit of such additional collateral likely exceeds the cost of providing such Security as determined by the Investment Agent (acting reasonably);

subject and subordinate in each case with respect to Clauses 7.1(a) through 7.1(c) above, to the Carve-Out.

Notwithstanding the foregoing, the Security described above shall not attach to 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.

The obligations of the Obligors under the Finance Documents will also be secured by the Charged Property owned by the non-Debtor Obligors as provided in the Security Documents.

7.2 **Perfection prior to Exit Conversion Date**

(a) Prior to the Exit Conversion Date, each Debtor acknowledges that, pursuant to the Final DIP Order, the Security granted in favour of the Investment Agent and the Participants in all of the Charged Property of such Debtor shall be perfected without the recordation of any financing statements, notices of Security 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 16.16 (*Acceleration*), the Security Documents and the Final DIP Order in respect of the Charged Property 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 Charged Property on terms reasonably satisfactory to the Investment Agent.

(b) Notwithstanding the provisions of paragraph (a) above and without prejudice to the Debtors' obligations under Clause 15.24 (*Further Assurance*), the Debtors will, if requested by the Investment Agent (acting reasonably), record any financing statements, notices of Security or other instruments of mortgage, charge or assignment and take any other action required to perfect the Security created by the Security Documents in any Relevant Jurisdiction.

7.3 **Payment of obligations**

Upon the maturity (whether by acceleration or otherwise) of any of the obligations under the Finance Documents, 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 under the Finance Document are not satisfied in full, (a) such obligations 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 Security granted to the Investment Agent pursuant to the Orders, in each case and described in Clause 7.1 (*Priority and Security*) shall not be affected in any manner by the entry of a Confirmation Order.

7.5 **Priority and Security on and after the Exit Conversion Date**

The Exit Facility shall be a secured facility which shall be secured by a perfected first-priority Security (except to the extent described below) on substantially all now owned or after acquired assets (including without limitation, (i) all personal, real and mixed property of the Obligors (except as otherwise agreed to by the Investment Agent), including, without limitation, any and all rights to damages upon any Put Failure and (ii) 100% of the Equity Interests of each of the Obligors and each other first tier subsidiary of the Obligors and all intercompany debt payable to the Obligors) of the Obligors (including (w) the Exit Purchaser's direct or indirect interests in the WCFs (but only those that are reasonably determined to be material by the Investment Agent), (x) the Exit Purchaser's Equity Interests in the LT CayCos (but only those that are reasonably determined to be material by the Investment Agent), (y) the LT CayCos' Equity Interests in Transaction Holdcos (but only those that are reasonably determined to be material by the Investment Agent) and (z) the Exit Purchaser's non-syndicated interests in the syndication companies (but only those that are reasonably determined to be material by the Investment Agent)); in each case, where the benefit of such additional Security likely exceeds the cost of providing such Security as determined by the Investment Agent.

7.6 **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 **Grossing-Up**

(a) All payments under the Finance Documents that are made by the Purchaser or any other Obligor shall be made without any Tax Deduction unless such Tax Deduction is required by law. In such event (other than in the case of Taxes which relates to a FATCA Deduction required to be made by a Party), the Purchaser or such other Obligor shall pay to the appropriate authorities the amount required to be deducted or withheld and shall increase the payment in respect of which the Tax Deduction is required to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(b) Within 30 days of any Obligor making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Purchaser 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 the Purchaser or any other Obligor makes a Tax Payment and the relevant Finance Party determines that:

(a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; 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 the Purchaser 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 the Purchaser; *provided* that the Purchaser, upon the request of the Finance Party, agrees to repay the amount paid over to the Purchaser (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 **Tax 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 8.3 (*Tax*)) 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, the Purchaser 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:

(A) 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

(B) 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

(C) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 8.1 (*No Deductions and Grossing-Up*) or relates to a FATCA Deduction required to be made by a Party.

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 Document to a Finance Party which (in whole or in part) constitute the

consideration for any supply for VAT purposes 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 and such Finance Party is required to account to the relevant tax authority for the VAT, that party shall pay to the Finance Party (in addition to and at the same time as paying the consideration for such supply) 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 to a Finance Document other than Recipient (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):

(i) (where the Supplier is the person required to account to the relevant tax authority for the VAT), the Relevant 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 (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which it reasonably determines relates to the VAT chargeable on that supply; and

(ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

(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 (*Tax*) 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 (*Mitigation*), 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 in respect of Taxes.

9. PREPAYMENTS; FACILITY LIMIT REDUCTION

9.1 Illegality

If at any time following the date of this Agreement it becomes unlawful in any applicable jurisdiction for a Participant to perform any of its obligations as contemplated by the Finance Documents or to fund issue or maintain its Contribution in any Purchase Contract, 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 the Purchaser accordingly, and:

(a) the Facility Commitment of each such Participant under the Finance Documents will be immediately cancelled;

(b) the Purchaser 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

(c) on the payment date determined in accordance with Clause 9.1(b), after giving effect to such payment, the Facility Limit shall be reduced by an amount equal to the Facility Commitments so cancelled.

9.2 Voluntary Prepayment and Facility Limit Reduction

(a) The Purchaser may, if it gives the Investment Agent not less than 5 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 $5,000,000 and an integral multiple of $1,000,000) of the Cost Price element of the then outstanding Deferred Sale Price. Upon the giving of any such notice, the 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 (*General Provisions Regarding Payments*).

(b) 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.

(c) The Purchaser may, if it gives the Investment Agent not less than 5 Business days' prior written notice by no later than 12.00 noon (London time) on the date required, reduce the Facility Limit in part or in full.

9.3 Disposal of substantially all assets

Upon the occurrence of the sale of all or substantially all of the assets of the Group (other than pursuant to the Implementation Memorandum) whether in a single transaction or a series of

related transactions, the Facility Limit will be cancelled and all outstanding Deferred Sale Prices, together with all other amounts accrued under the Finance Documents, shall become immediately due and payable.

9.4 **Proceeds**

(a) For the purposes of this Clause 9.4, Clause 9.5 (*Application of mandatory prepayments*) and Clause 9.6 (*Retention Account, Mandatory Prepayment Amount and Holding Account*):

"**Compulsory Acquisition**" means the taking of any assets by any Person pursuant to compulsory acquisition, the power of eminent domain, condemnation, requisition, appropriation, expropriation, deprivation or confiscation for any reason.

"**Disposal**" means a sale, lease, licence, transfer, loan or other disposal by a person of any asset (including equity), undertaking, business or management or similar rights (whether by a voluntary or involuntary single transaction or series of transactions and includes, for the avoidance of doubt, any such disposal made under threat of Compulsory Acquisition).

"**Disposal Proceeds**" means:

(i) the cash proceeds (including any cash collateral released as a result of the Relevant Disposal) received by any member of the Group, Syndication Company, Transaction Holdco or Investment Company (including, without duplication, management fees and any amount received in repayment of working capital facilities to WCFs or LT CayCos or other intercompany debt) for any Relevant Disposal except for Excluded Disposal Proceeds and after deducting:

(A) any reasonable costs and expenses (including any Disposition Expenses funded by an Investment Company or financed by any member of the Group and permitted pursuant to Clause 15.8(c) (*No Investments*)) which are incurred by any member of the Group, Transaction Holdco or Investment Company with respect to that Disposal to Persons who are not members of the Group, Transaction Holdcos or Investment Companies;

(B) fees and expenses payable to or for the account of AIM Group Limited (or its Subsidiaries) in accordance with the Cooperation Settlement Documents; and

(C) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance); and

(ii) without duplication of amounts in clause (i) above, the proceeds received by any WCF or LT CayCo in repayment or prepayment of working capital facilities provided by that WCF or LT CayCo.

"**Excluded Disposal Proceeds**" means

(i) the consideration receivable for any Relevant Disposal which is received by a Syndication Company, Transaction Holdco or Investment Company unless and

until such proceeds (or any part thereof) are received by an Obligor (as a result of dividend, repayment of intercompany debt, liquidation or other distribution) or could be required to be paid to an Obligor, in each case using all of the Obligors' direct or indirect control of the relevant Syndication Company, Transaction Holdco or Investment Company or all of the Obligors' direct or indirect voting power on the relevant Disposition Committee under the Cooperation Settlement Documents;

(ii) any consideration received from a Permitted Disposal falling under paragraph (a) of the definition thereof to the extent such Disposal Proceeds are applied in repayment of the Existing US$ Facilities (or, pending such repayment, held in escrow in accordance with the terms of such paragraph (a)); and

(iii) any cash distribution in respect of litigation relating to Falcon or the Falcon Escrow Agreement.

"**Excluded Insurance/Compensation Proceeds**" means any proceeds of an insurance claim or any proceeds of any Compulsory Acquisition:

(i) which the Purchaser notifies the Investment Agent are, or are to be, applied:

(A) to meet a third party claim;

(B) in the case of:

(I) insurance proceeds, in the replacement, reinstatement and/or repair of the assets or otherwise in amelioration of the loss in respect of which the relevant insurance claim was made; or

(II) proceeds of a Compulsory Acquisition, in the replacement of the assets subject to that Compulsory Acquisition,

in each case as soon as possible (but in any event within 180 days, or such longer period as the Majority Participants may agree) after receipt;

(ii) which are received by a Syndication Company, Transaction Holdco or Investment Company unless and until such proceeds (or any part thereof) are received by an Obligor (as a result of a dividend, repayment of intercompany debt, liquidation or other distribution) or could be required to be paid to an Obligor, in each case using all of the Obligors' direct or indirect control of the relevant Syndication Company, Transaction Holdco or Investment Company or all of the Obligors' direct or indirect voting power on the relevant Disposition Committee under the Cooperation Settlement Documents; and

(iii) which are received by a Transaction Holdco or an Investment Company and which do not relate to a loss of, or Compulsory Acquisition of, all or substantially all of the assets of that Transaction Holdco or Investment Company.

"**Insurance and Compensation Proceeds**" means:

(i) the cash proceeds of any insurance claim received by any member of the Group, Syndication Company, Transaction Holdco or Investment Company on account

of any loss of, or damage to, any property or assets and after deducting any reasonable costs and expenses in relation to that claim which are incurred by any member of the Group to persons who are not members of the Group; and

(ii) the cash proceeds received by any member of the Group, Syndication Company, Transaction Holdco or Investment Company as a result of the Compulsory Acquisition of any assets of any member of the Group, Transaction Holdco or Investment Company,

in each case except for Excluded Insurance/Compensation Proceeds.

"**New Financial Indebtedness Proceeds**" means the cash proceeds of any Financial Indebtedness raised by any member of the Group after the date of this Agreement which is not Permitted Financial Indebtedness and after deducting any reasonable costs and expenses attributable to the incurrence of that Financial Indebtedness incurred by any member of the Group, Transaction Holdco or Investment Company to Persons who are not members of the Group, Transaction Holdcos or Investment Companies.

"**Relevant Disposal**" means:

(i) any Disposal made by any member of the Group;

(ii) any Disposal made by a Syndication Holdco, Transaction Holdco or Investment Company of any Equity Interests in a Transaction Holdco or Investment Company; and

(iii) any Disposal made by a Transaction Holdco or any Investment Company which relates to the disposal of all or substantially all of the assets of that Transaction Holdco or that Investment Company.

(b) Subject to Clause 9.6 (*Retention Account, Mandatory Prepayment Amount and Holding Account*), the Purchaser shall prepay the Cost Price elements of Deferred Sale Prices, in amounts equal to the following amounts at the times and in the order of application contemplated by Clause 9.5 (*Application of mandatory prepayments*):

(i) 50% of the amount of any Disposal Proceeds received in relation to any Disposal of all of part of Oman Logistics, AIBPD II or Saadiyat Island;

(ii) 100% of the amount of any other Disposal Proceeds;

(iii) 100% of the amount of Insurance and Compensation Proceeds; and

(iv) 100% of the amount equal to New Financial Indebtedness Proceeds.

(c) The Purchaser shall notify the Investment Agent within five Business Days after the date on which any member of the Group receives any Disposal Proceeds, Insurance Proceeds or New Financial Indebtedness Proceeds of the date of that receipt and the amount of those Disposal Proceeds, Insurance and Compensation Proceeds or New Financial Indebtedness Proceeds, as the case may be.

9.5 **Application of mandatory prepayments**

(a) A prepayment of Deferred Sale Prices made under Clause 9.4 (*Proceeds*) shall be applied in prepayment of the Cost Price element of outstanding Deferred Sale Prices (pro rata) as contemplated in paragraph (b) below.

(b) Unless the Purchaser makes an appropriate election under Clause 9.6 (*Retention Account, Mandatory Prepayment Amount and Holding Account*) below, the Purchaser shall prepay the Cost Price elements Deferred Sale Prices no later than the first Business Day after receipt of the relevant proceeds or, in the case of Disposal Proceeds, no later than five Business Days after receipt of the relevant proceeds or, in relation to any Excluded Insurance/Compensation Proceeds which cease to be Excluded Insurance/Compensation Proceeds by virtue of the expiration of the 180 day period referred to in the definition thereof, immediately upon the expiry of such 180 day period.

9.6 **Retention Account, Mandatory Prepayment Account and Holding Account**

(a) In relation to any Disposal Proceeds to be applied in prepayment under Clause 9.4 (*Proceeds*) (other than any Disposal Proceeds relating to the Disposal of all or part of Oman Logistics, AIBPD II or Saadiyat Island) which are received by the relevant member of the Group prior to the date falling 18 months from the Exit Conversion Date (the "**Retention End Date**"), the Purchaser may elect that an amount up to 50% of the respective Disposal Proceeds of such Disposal are paid into the Retention Account provided that:

(i) at the time of receipt of those Disposal Proceeds, Pro-forma Security Cover is greater than 2.25:1;

(ii) to the extent that, following such payment (or part thereof) into the Retention Account, the aggregate amounts paid into the Retention Account since the date of this Agreement would exceed $25,000,000, the maximum amount of Disposal Proceeds that may be further paid into the Retention Account shall be 25% of the additional Disposal Proceeds relating to the relevant Disposal; and

(iii) following such payment into the Retention Account, the aggregate amount paid into the Retention Account since the date of this Agreement would not exceed $50,000,000.

(b) The Purchaser shall pay the relevant Disposal Proceeds into the Retention Account immediately upon making an election pursuant to Clause 9.6 and, subject to paragraph (d) below, shall not be obliged to apply such Disposal Proceeds in prepayment of the Deferred Sale Prices.

(c) If Pro Forma Security Cover is greater than 2.50:1 but less than or equal to 3:1 and the aggregate amount of Cash and Cash Equivalents is less than $25,000,000, the Purchaser may withdraw sums standing to the credit of the Retention Account provided that:

(i) no Default is continuing (or would occur as a result of the withdrawal); and

(ii) following such withdrawal:

(A) Pro Forma Security Cover will be no less than 2.50:1; and

(B) the aggregate amount withdrawn from the Retention Account would be no greater than $25,000,000.

(d) If Pro Forma Security Cover is greater than 3:1 and the aggregate amount of Cash and Cash Equivalents is less than $25,000,000, the Purchaser may withdraw sums standing to the credit of the Retention Account provided that:

(i) no Default is continuing (or would occur as a result of the withdrawal); and

(ii) following such withdrawal, Pro Forma Security Cover will be no less than 3:1.

(e) The Purchaser irrevocably authorises the Investment Agent to apply sums standing to the credit of the Retention Account in prepayment of the Cost Price element of Deferred Sale Prices:

(i) following an Event of Default; or

(ii) on the Retention End Date.

(f) Subject to paragraph (g) below, the Purchaser may elect that any prepayment under Clause 9.4 (*Proceeds*) relating to Disposal Proceeds or Insurance and Compensation Proceeds be applied in prepayment of the Cost Price element of a Deferred Sale Price on the Deferred Payment Date relating to that Deferred Sale Price. If the Purchaser makes that election then the Facility Limit shall be immediately reduced in an amount equal to the amount of the relevant prepayment and the Purchaser shall not be required to prepay the relevant portion of the Deferred Sale Price.

(g) If the Purchaser has made an election under paragraph (f) above (or pursuant to the definition of Exempted Voluntary Prepayment) but a Default has occurred and is continuing, that election shall no longer apply and a proportion of the Deferred Sale Price in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Majority Participants otherwise agree in writing).

(h) The Purchaser shall ensure that:

(i) Disposal Proceeds and Insurance and Compensation Proceeds in respect of which the Purchaser has made an election under paragraph (f) above are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Group; and

(ii) any Excluded Insurance/Compensation Proceeds falling under paragraph (i)(B) of the definition thereof are paid into a Holding Account as soon as reasonably practicable after receipt by a member of the Group.

(i) The Purchaser irrevocably authorises the Investment Agent to apply:

(i) amounts credited to the Holding Account which have not been applied in accordance with paragraph (i)(B) of the definition of Excluded Insurance/Compensation Proceeds within 180 days of receipt of the relevant proceeds (or such longer time period as the Investment Agent may agree); and

(ii) amounts credited to the Mandatory Prepayment Accounts,

to pay amounts due and payable under Clause 9.2(a) (*Voluntary Prepayment and Facility Limit Reduction*) in relation to an Exempted Voluntary Prepayment and Clause 9.5 (*Application of mandatory prepayments*) and otherwise under the Finance Documents. The Purchaser further irrevocably authorises the Investment Agent to so apply amounts credited to the Holding Account whether or not 180 days have elapsed since receipt of those proceeds if an Event of Default has occurred and is continuing.

(j) The Investment Agent acknowledges and agrees in relation to the Retention Account, Mandatory Prepayment Account and Holding Account that:

(i) profit shall accrue at normal commercial rates on amounts credited to those accounts and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless a Default is continuing; and

(ii) each such account is subject to the Transaction Security.

9.7 **Excluded proceeds**

Where Excluded Insurance/Compensation Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the definition of Excluded Insurance Proceeds), the Purchaser shall ensure that those amounts are used for that purpose and, if requested to do so by the Investment Agent, shall promptly deliver a certificate to the Agent at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition.

9.8 **Reduction of Facility Limit and administration fee**

(a) On:

(i) the date of any prepayment made pursuant to this Clause 9 and the date any Facility Commitment is cancelled pursuant to Clause 9.1(a) (*Illegality*), the Facility Limit shall (to the extent not already reduced as a result of an election pursuant to Clause 9.6(f) (*Retention Account, Mandatory Prepayment Amount and Holding Account*)) relating to such prepayment be reduced by an amount equal to the amount of the relevant prepayment or cancellation; and

(ii) any Deferred Payment Date on which the Purchaser does not enter into a Subsequent Purchase Contract in accordance with Clauses 4 (*Purchase Contract Limitations*) and 5 (*Procedures*), the Facility Limit shall be reduced to zero.

(b) Any reduction of the Facility Limit pursuant to Clause (a) above (other than in relation to a prepayment or cancellation under Clause 9.1 (*Illegality*) or Clause 9.9 (*Right of replacement or repayment and cancellation in relation to a FATCA Protected Participant*)) shall reduce the Facility Commitments of the Participants *pro rata*.

(c) If the Facility Limit is reduced:

(i) in part on any date which is not a Transaction Date or in full, at any time, pursuant to Clause (a)(i) above as a result of a prepayment under:

(A) Clause 9.2(a) (*Voluntary Prepayment and Facility Limit Reduction*) other than an Exempted Voluntary Prepayment or any other prepayment made using proceeds paid directly from the Retention Account to the Investment Agent; or

(B) Clause 9.4(b)(iv) (*Proceeds*);

(ii) pursuant to Clause (a)(ii) above; or

(iii) in part on any date which is not a Transaction Date or in full, at any time, as a result of a voluntary reduction pursuant to Clause 9.2(c) (*Voluntary Prepayment and Facility Limit Reduction*),

in each case, on a date falling prior to the second anniversary of the Exit Conversion Date then, on the date the relevant reduction becomes effective, the Purchaser shall pay to the Investment Agent an administration fee equal to 1% of the amount by which the Facility Limit was reduced.

(d) Without any duplication of any administration fee payable under paragraph (c) above, if any Repricing Event (as defined below) occurs at any time during the period prior to the second anniversary of the Exit Conversion Date, the Purchaser shall pay to the Investment Agent on the date of the relevant Repricing Event an administration fee in an amount equal to 1% of the Facility Limit at that time. For the purposes of this paragraph (d), a "**Repricing Event**" shall mean any amendment to the Finance Documents, or any conversion of the Facility into a new or replacement facility, the effect of which is to reduce the all-in return applicable to the Facility (in each case, the all-in return shall include any Profit Amount and Additional Profit (or the equivalent thereof) but shall exclude any arrangement or similar fees, Administration fees or other similar fees).

9.9 **Right of replacement or repayment and cancellation in relation to a FATCA Protected Participant**

(a) If any FATCA Protected Participant notifies the Investment Agent of a FATCA Event pursuant to paragraph (g) below, the Purchaser may, whilst the circumstance giving rise to the FATCA Event continues, give the Investment Agent notice of cancellation of the Facility Commitment of that Participant and its intention to procure the repayment of that Participant's participation in the Deferred Sale Prices or give the Investment Agent notice of its intention to replace that Participant in accordance with paragraph (d) below.

(b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Facility Commitment of that Participant shall immediately be reduced to zero.

(c) On the first Deferred Payment Date which falls after the Purchaser has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Purchaser in that notice), the Purchaser shall repay that Participant's participation in the Deferred Sale Prices.

(d) The Purchaser may, in the circumstances set out in paragraph (a) above, on [ ] Business Days' prior notice to the Investment Agent and that Participant, replace that Participant by requiring that Participant to (and, to the extent permitted by law, that Participant shall) transfer pursuant to Clause 16 (*Changes to the Participants*) of the Investment Agency Agreement all (and not part only) of its rights and obligations under the Finance

Documents to a Participant or other bank, financial institution, trust, fund or other entity selected by the Purchaser which confirms its willingness to assume and does assume all the obligations of the transferring Participant in accordance with Clause 16 (*Changes to the Participants*) of the Investment Agency Agreement for a purchase price in cash or other cash payment payable at the time of the transfer equal to the outstanding amount of such Participant's participation in the outstanding Deferred Sale Prices and other amounts payable in relation thereto under the Finance Documents.

(e) The replacement of a Participant pursuant to paragraph (d) above shall be subject to the following conditions:

(i) the Purchaser shall have no right to replace the Investment Agent;

(ii) neither the Investment Agent nor any Participant shall have any obligation to find a replacement Participant;

(iii) in no event shall the Participant replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Participant pursuant to the Finance Documents; and

(iv) the Participant shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.

(f) A Participant shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Investment Agent and the Purchaser when it is satisfied that it has complied with those checks.

(g) If on the date falling six months before the earliest FATCA Application Date for any payment by a Party to a FATCA Protected Participant (or to the Investment Agent for the account of that Participant), that Participant is not a FATCA Exempt Party and, in the opinion of that Participant (acting reasonably), that Party will, as a consequence, be required to make a FATCA Deduction from a payment to that Participant (or to the Investment Agent for the account of that Participant) on or after that FATCA Application Date (a "**FATCA Event**"):

(i) that Participant shall, reasonably promptly after that date, notify the Investment Agent of that FATCA Event and the relevant FATCA Application Date;

(ii) if, on the date falling one month before such FATCA Application Date, that FATCA Event is continuing and that Participant has not been repaid or replaced pursuant to paragraphs (a) to (f) above (other than by reason of that Participant's failure to comply with its obligations pursuant to paragraph (d) above):

(A) that Participant may, at any time between one month and two weeks before such FATCA Application Date, notify the Investment Agent;

(B) upon the Investment Agent notifying the Purchaser, the Facility Commitment of that Participant will be immediately cancelled; and

(C) the Purchaser shall repay that Participant's participation in the Deferred Sale Prices on the first Deferred Payment Date occurring after the Investment Agent has notified the Purchaser or, if earlier, the last Business Day before the relevant FATCA Application Date.

9.10 **Restrictions**

(a) **Notices of Prepayment**

Any notice of, prepayment, authorisation or other election given by any Party under this Clause shall (subject to the terms of this Clause) be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant prepayment is to be made and the amount of that prepayment.

(b) **Profit Amounts and other amounts**

Any prepayment of all or part of the Cost Price element of any Deferred Sale Price under this Agreement shall be made together with the corresponding portion of the relevant Profit Amount and, subject to any administration fee payable pursuant to Clause 9.8(c) (*Reduction of Facility Limit and administration Fee*), without premium or penalty.

(c) **No re-utilisation of the Facility**

The Purchaser may not re-utilise any part of the Facility which is prepaid.

(d) **Prepayment and cancellation in accordance with Agreement**

The Purchaser shall not repay or prepay all or any part of the Deferred Sale Prices, reduce the Facility Limit or cancel all or any part of the Facility Commitments except at the times and in the manner expressly provided for in this Agreement.

(e) **No reinstatement of Commitments**

No amount of the Facility Commitments cancelled under this Agreement may be subsequently reinstated.

(f) **Application of prepayments and reductions**

(i) Any prepayment of a Deferred Sale Price (other than a prepayment pursuant to Clause 9.1 (*Illegality*)) or Clause 9.9 (*Right of replacement or repayment and cancellation in relation to a FATCA Protected Participant*) shall be applied *pro rata* to each Participants' participation in that Deferred Sale Price.

(ii) Any reduction of the Facility Limit (other than a reduction pursuant to Clause 9.1 (*Illegality*)) or Clause 9.9 (*Right of replacement or repayment and cancellation in relation to a FATCA Protected Participant*) shall be applied *pro rata* to each Participant's Facility Commitment.

(g) **Prepayments on Deferred Payments Dates**

Any prepayment under this Clause 9 (*Prepayments; Facility Limit Reduction*) which is made on a Deferred Payment Date shall be deemed to be a prepayment notwithstanding

the fact that the relevant Deferred Sale Price (or part thereof) was, in any event, due on that Deferred Payment Date.

9.11 **Rebate**

Upon any prepayment under this Clause 9 (*Prepayments; Facility Limit Reduction*), the Purchaser may request the Investment Agent for a rebate of the Profit Amount applicable to that Deferred Sale Price or part thereof prepaid. The Investment Agent shall promptly notify the affected Participants of such request and if the affected Participant or Participants are, within five Business Days of such request so agreeable (at their sole discretion), the Investment Agent shall notify the Company of the amount of the rebate and confirm the amount of the relevant Profit Amount after deducting such rebate.

10. MITIGATION

10.1 **Duty to Mitigate**

Each Finance Party shall, in consultation with the Purchaser, 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 (*No Deductions and Grossing-Up*), 8.3 (*Indemnity*), Clause 9.1 (*Illegality*) and Clause 18.5 (*Increased Costs*) 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 the Purchaser under the Finance Documents.

10.2 **Indemnity**

The Purchaser 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 (*Duty to Mitigate*).

10.3 **No Prejudice**

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

11. GUARANTEE AND INDEMNITY

11.1 **Guarantee and indemnity**

Each Guarantor irrevocably and unconditionally jointly and severally:

(a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;

(b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and

(c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor

under this indemnity will not exceed the amount it would have had to pay under this Clause 11 if the amount claimed had been recoverable on the basis of a guarantee.

11.2 **Continuing Guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

11.3 **Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 11 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

11.4 **Waiver of defences**

The obligations of each Guarantor under this Clause 11 will not be affected by an act, omission, matter or thing which, but for this Clause 11, would reduce, release or prejudice any of its obligations under this Clause 11 (without limitation and whether or not known to it or any Finance Party) including:

(a) any time, waiver or consent granted to, or composition with, any Obligor or other person;

(b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

(c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

(d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;

(e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;

(f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

(g) any insolvency or similar proceedings.

11.5 **Guarantor Intent**

Without prejudice to the generality of Clause 11.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents.

11.6 **Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 11. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

11.7 **Appropriations**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

(a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and

(b) hold in a profit-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 11.

11.8 **Deferral of Guarantors' rights**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Investment Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 11:

(a) to be indemnified by an Obligor;

(b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;

(d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 11.1 (*Guarantee and indemnity*);

(e) to exercise any right of set-off against any Obligor; and/or

(f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Investment Agent or as the Investment Agent may direct for application in accordance with the Investment Agency Agreement.

11.9 **Release of Guarantors' right of contribution**

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of the Plan of Reorganization then on the date such Retiring Guarantor ceases to be a Guarantor:

(a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and

(b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

11.10 **Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

12. REPRESENTATIONS

12.1 **General**

Each Obligor makes the representations and warranties set out in this Clause 12 to each Finance Party.

12.2 **Status**

(a) It and each member of the Group is a limited liability corporation or company duly incorporated or organised and validly existing and, except for AIHL (as a result of the Cayman Proceedings), is in good standing under the law of its Original Jurisdiction.

(b) In the case of the Debtors, subject to Bankruptcy Court approval (which has been obtained) and in the case of the Purchaser, subject to approval by the Joint Provisional Liquidators in the Cayman Proceedings (which has been obtained), it and each member of the Group has the power to own its assets and carry on its business as it is being conducted.

(c) It and each member of the Group is qualified to do business in every jurisdiction where its (or any member of the Group's) assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or

in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

12.3 **Binding obligations**

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 the Cayman Validation Order, and subject to the Legal Reservations:

(a) it has duly executed and delivered each of the Finance Documents to which it is a Party;

(b) the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and

(c) (without limiting the generality of paragraph (a) above), each Security Document to which it is a party creates the security interests which that Security Document purports to create and those security interests are valid and effective.

12.4 **Non-conflict with other obligations**

Upon entry of the Orders and the Cayman Validation Order (in the case of the Debtors), the entry into and performance by it of, and the transactions contemplated by, the Finance Documents and the granting of the Transaction Security do not and will not conflict with:

(a) any law or regulation applicable to it;

(b) the constitutional documents of any member of the Group; or

(c) any agreement or instrument binding upon it or any member of the Group or any of its or any member of the Group's assets or constitute a default or termination event (however described) under any such agreement or instrument (other than, prior to the Exit Conversion Date and in the case of Obligors that are Debtors, agreements entered into prior to the commencement of the Cases if the enforcement of such agreement by the counterparty thereto is stayed).

12.5 **Power and authority**

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):

(a) it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.

(b) no limit on its powers will be exceeded as a result of the raising of Financial Indebtedness borrowing, grant of security or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

12.6 **Validity and admissibility in evidence**

(a) Other than the Orders and the Cayman Validation Order and subject to the Legal Reservations, all Authorisations required or desirable:

(i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and

(ii) to make the Finance Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect.

(b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect.

12.7 **Governing law and enforcement**

(a) The choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.

(b) Any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

12.8 **Insolvency**

Other than the Cases and the Cayman Proceedings, no:

(a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 16.7 (*Insolvency proceedings*); or

(b) creditors' process described in Clause 16.8 (*Creditors' process*),

has been taken or, to the knowledge of the Purchaser, threatened in relation to a member of the Group; and none of the circumstances described in Clause 16.6 (*Insolvency*) applies to a member of the Group.

12.9 **No filing or stamp taxes**

Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except:

(a) the payment of nominal stamp duty in the Cayman Islands;

(b) the registration of particulars of [●] at [●] and payment of associated fees; and

(c) registration of particulars of [●] at [●] and payment of associated fees,

which registrations, filings, stamp taxes and fees will be made [and paid] promptly after the date of the relevant Finance Document.

12.10 **Deduction of Tax**

It is not required to make any deduction or withholding for or on account of Tax from any payment it may make under any Finance Document to a Finance Party.

12.11 **No default**

(a) No Event of Default and, on the date of this Agreement and the Exit Conversion Date, no Default is continuing or is reasonably likely to result from the making of any Purchase Contract or the entry into, the performance of, or any transaction contemplated by, any Finance Document.

(b) It is not, and no member of the Group is, in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Post-Petition Contractual Obligations other than as a result of the filing of the Cases (and any payment default directly related to such filing), and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default.

(c) No default (however so described) would be caused under any third party financings or other material agreements of any Investment Companies arising by the enforcement of remedies by the Finance Parties under the Finance Documents.

(d) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any member of the Group or to which its (or any member of the Group's) assets are subject which has or is reasonably likely to have a Material Adverse Effect.

12.12 **No misleading information**

Save as disclosed in writing to the Investment Agent prior to the date of this Agreement:

(a) any factual information provided to the Investment Agent was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given;

(b) the Budget has been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements, and the financial projections contained in the Budget have been prepared on the basis of recent historical information, are fair and based on reasonable assumptions and have been approved by the board of directors of the Purchaser;

(c) any financial projection or forecast provided to the Investment Agent has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;

(d) the expressions of opinion or intention provided by or on behalf of an Obligor to the Investment Agent were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds;

(e) no event or circumstance has occurred or arisen and no information has been omitted from the information provided to the Investment Agent and no information has been given or withheld that results in the information, opinions, intentions, forecasts or

projections provided to the Investment Agent being untrue or misleading in any material respect; and

(f) all other written information provided by any member of the Group (including its advisers) to a Finance Party was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

12.13 **Original Financial Statements**

(a) The Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.

(b) The Original Financial Statements give a true and fair view of Arcapita Bank's and AIHL's consolidated financial condition and results of operations during the relevant financial year.

(c) Except as relates to the Cases, no event or circumstance has occurred since the date of the most recent Original Financial Statements which has had, or could reasonably be expected to have, a Material Adverse Effect.

(d) Its most recent financial statements delivered pursuant to Clause 13.1 (*Financial statements*):

(i) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements; and

(ii) give a true and fair view of (if audited) or fairly represent (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.

(e) The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

12.14 **No proceedings pending or threatened**

Other than the Cases and the Cayman Proceedings, no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it or any member of the Group.

12.15 **No breach of laws**

(a) It has not (and no member of the Group has) breached any law or regulation in any material respect.

(b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

12.16 **Environmental laws**

(a) Each member of the Group is in compliance in all material respects with the Environmental Laws and Environmental Permits described in Clause 15.3 (*Environmental compliance*) in effect at the date of this Agreement and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.

(b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.

(c) The cost to the Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for in the Budget.

12.17 **Taxation**

(a) It is not (and no member of the Group is) materially overdue in the filing of any Tax returns and it is not (and no member of the Group is) overdue in the payment of any amount in respect of Tax of [●](or its equivalent in any other currency) or more.

(b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any member of the Group) with respect to Taxes such that a liability of, or claim against, any member of the Group of [●] (or its equivalent in any other currency) or more is reasonably likely to arise.

(c) It is resident for Tax purposes only in its Original Jurisdiction.

12.18 **Anti-corruption law**

Each member of the Group has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

12.19 **Security and Financial Indebtedness**

(a) No Security or Quasi-Security exists over all or any of the present or future assets of any member of the Group other than as permitted by this Agreement.

(b) No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement (including without limitation Permitted Financial Indebtedness).

12.20 **Ranking**

Other than as permitted by this Agreement, the Transaction Security has or will have the ranking in priority which it is expressed to have in the Security Documents and other than as expressed therein it is not subject to any prior ranking or *pari passu* ranking Security.

12.21 **Good title to assets**

It and each of member of the Group has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

12.22 **Legal and beneficial ownership**

It and each member of the Group is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.

12.23 **Equity Interests**

The Equity Interests of any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of entities whose Equity Interests are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those Equity Interests on creation or enforcement of the Transaction Security. There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any Equity Interest of any member of the Group (including any option or right of pre-emption or conversion).

12.24 **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 Security, Existing Security and, except with respect to sub-Clause (ii) below, as set forth in the Structure Charts and the Disclosure Schedule, all equity securities of the Purchaser and its wholly-owned Subsidiaries, and all equity securities directly owned by the Purchaser and its wholly-owned Subsidiaries in their respective Subsidiaries or Investment Companies, are free and clear of (i) Security 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 KPMG Reports, the 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 all guarantees of the Purchaser and all other Obligors as of the Effective Date.

12.25 **Investment Company; Margin lending regulation**

No Obligor is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940. No Obligor nor any member of the Group 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.

12.26 **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 validating 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.

12.27 **No 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 the Finance Documents.

12.28 **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.

12.29 **Proxies**

(a) Each investor in a Syndication Company 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, and no such appointments have been revoked;

(b) all of the directors of each Syndication Company are Arcapita Bank employees or directors, and pursuant to the organizational documents of each Syndication Company, the removal of the required directors requires approval of 66.67% of the shareholders of such Syndication Company or an affirmative vote of the board of directors or such Syndication Company; and

(c) (i) prior to the Exit Conversion Date, AIML is a party to administration agreements or management agreements with each Syndication Company, pursuant to which AIML has the sole power and authority to manage and administer the affairs of each Syndication

Company (subject to the overriding authority and overall supervision or the Board of Directors of such Syndication Company) and (ii) on and after the Exit Conversion Date, New Holdco 3 and/or other Obligors are a party to administration agreements or management agreements with each Syndication Company, pursuant to which New Holdco 3 (or such other Obligor) has the sole power and authority to manage and administer the affairs of each Syndication Company (subject to the overriding authority and overall supervision or the Board of Directors of such Syndication Company).

12.30 **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, whether or not 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**"), the Bribery Act 2010 or any other similar legislation in other jurisdictions.

12.31 **Times when representations made**

(a) All the representations and warranties in this Clause 12 are made by each Original Obligor on the date of this Agreement.

(b) All the representations and warranties in this Clause 12 are deemed to be made by each Obligor on the Exit Conversion Date.

(c) The representations and warranties in Clause 12.12 (*No misleading information*) are deemed to be made by each Obligor on the Syndication Date.

(d) The Repeating Representations are deemed to be made by each Obligor on the date of each Transaction Request, and on each Transaction Date (except that those contained in

Clauses 12.13(a) and 12.13(b) (*Original Financial Statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement).

(e) All the representations and warranties in this Clause 12 except Clause 12.12 (*No misleading information*), and Clause 12.24 (*Structure and Organisation*) are deemed to be made by each Additional Guarantor on the day on which it becomes (or it is proposed that it becomes) an Additional Guarantor.

(f) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

(g) Each representation and warranty made on the Exit Conversion Date shall be deemed to have been made after all the conditions to the Exit Conversion Date have been satisfied.

(h) Each representation and warranty deemed to be made on or after the Exit Conversion Date shall be deemed to be made without the benefit of any carve-out or qualification relating to the Cases, the Bankruptcy Court, the Orders, the Cayman Proceedings or the Joint Provisional Liquidators.

13. INFORMATION UNDERTAKINGS

The undertakings in this Clause 13 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

In this Clause 13:

"**Annual Financial Statements**" means the financial statements for a Financial Year delivered pursuant to paragraph (a) of Clause 13.1 (*Financial statements*).

"**Quarterly Financial Statements**" means the financial statements delivered pursuant to paragraph (b) of Clause 13.1 (*Financial statements*).

13.1 Financial statements

The Purchaser or, after the Exit Conversion Date, New Holdco 1 shall supply to the Investment Agent in sufficient copies for all the Participants:

(a) as soon as they are available, but in any event within 90 days after the end of each of its Financial Years ending on or after 30 June 2014:

(i) its audited consolidated financial statements for that Financial Year; and

(ii) to the extent available, the audited financial statements of each Investment Company.

(b) as soon as they are available, but in any event within 60 days after the end of the Financial Quarter ending 30 September 2013 (or such longer period as the Investment Agent may agree) and within 45 days of each Financial Quarter ending on or after 31 December 2013, its unaudited consolidated financial statements for that Financial Quarter and, as soon as, and to the extent that, they are available, the quarterly unaudited financial statements of each Investment Company; and

(c) after the Exit Conversion Date, to the extent available, its and the Investment Company's monthly financial statements (in the form received);

(d) 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;

(e) if during the period covered by the financial statements delivered under Clauses 13.1(a) to 13.1(c) above there has been a dilutive change in the Purchaser's direct or indirect 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 (e)), 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 (e) after giving effect to such change in ownership interest; and

(f) as soon as practicable after the Exit Conversion Date and in any event within 120 days of the Exit Conversion Date, an audited starting balance sheet of New Holdco 1 and related footnotes as at the Exit Conversion Date, which shall include appraisals of each Major Investment and Appraised Minor Investment.

13.2 **Provision and contents of Compliance Certificate**

(a) The Purchaser shall supply a Compliance Certificate to the Investment Agent with each set of its audited consolidated Annual Financial Statements and each set of its consolidated Quarterly Financial Statements.

(b) The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 14 (*Financial Covenants*) to the extent then applicable.

(c) Each Compliance Certificate shall be signed by two directors of the Purchaser and, if required to be delivered with the consolidated Annual Financial Statements of the Purchaser, shall be reported on by the Purchaser's Auditors in the form agreed by the Purchaser and the Investment Agent.

13.3 **Requirements as to financial statements**

(a) The Purchaser shall procure that each set of Annual Financial Statements and Quarterly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Parent shall procure that:

(i) each set of Annual Financial Statements is accompanied by a statement by the directors of the Purchaser commenting on the performance of the Group for the Financial Year to which the financial statements relate and any material developments or proposals affecting the Group or its business and shall be audited by the Auditors; and

(ii) each set of Quarterly Financial Statements is accompanied by a statement by the directors of the Purchaser commenting on the performance of the Group for the

Financial Quarter to which the financial statements relate and the Financial Year to date.

(b) Each set of financial statements delivered pursuant to Clause 13.1 (*Financial statements*):

(i) shall be certified by a director of the relevant company as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the relevant company by the Auditors and accompanying those Annual Financial Statements;

(ii) in the case of consolidated financial statements of the Group, shall be accompanied by a statement by the directors of the Purchaser comparing actual performance for the period to which the financial statements relate to:

(A) the projected performance for that period set out in the Budget; and

(B) the actual performance for the corresponding period in the preceding Financial Year of the Group; and

(iii) shall be prepared in accordance with the Accounting Principles and, in the case of Arcapita Bank and the Purchaser shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the most recent Original Financial Statements for that Obligor (or, in the case of the Exit Purchaser and New Holdco 1, for the DIP Purchaser), unless, in relation to any set of financial statements, the Purchaser notifies the Investment Agent that there has been a change in the Accounting Principles or the accounting practices and its Auditors deliver to the Investment Agent:

(A) a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the relevant Original Financial Statements were prepared; and

(B) sufficient information, in form and substance as may be reasonably required by the Investment Agent, to enable the Participants to determine whether Clause 14 (*Financial covenants*) has been complied with and to make an accurate comparison between the financial position indicated in those financial statements and the relevant Original Financial Statements (in the case of an Obligor).

Any reference in this Agreement to any financial statements of Arcapita Bank or the Purchaser shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which its Original Financial Statements were prepared.

(c) If the Investment Agent wishes to discuss the financial position of any member of the Group with the Auditors, the Investment Agent may notify the Purchaser, stating the questions or issues which the Investment Agent wishes to discuss with the Auditors. In this event, the Purchaser must ensure that the Auditors are authorised (at the expense of the Purchaser):

(i) to discuss the financial position of each member of the Group with the Investment Agent on request from the Investment Agent; and

(ii) to disclose to the Investment Agent for the Finance Parties any information which the Investment Agent may reasonably request.

13.4 **Budget**

(a) Prior to the Exit Conversion Date, the Purchaser shall supply to the Investment Agent in sufficient copies for all the Participants, (i) on the first Business Day of each week, an updated DIP Budget for the period commencing as of such Business Day and (ii) on the fifth Business Day of each month, a DIP Budget variance report/reconciliation (A) showing by line item actual cash receipts, disbursements and total available liquidity for the immediately preceding month, noting therein all variances, on a line-item basis, from values set forth for such period in the DIP Budget, and shall include explanations for all material variances, and (B) certified by the chief financial officer of AIHL.

(b) After the Exit Conversion Date, the Purchaser shall supply to the Investment Agent in sufficient copies for all the Participants, (i) on the first Business Day of each Financial Quarter, an updated Exit Budget commencing as of such Business Day and (ii) no later than the 30th day following the end of each Financial Quarter, an Exit Budget variance report/reconciliation (A) showing by line item actual cash receipts, disbursements and total available liquidity for the immediately preceding Financial Quarter, noting therein all variances, on a line-item basis, from values set forth for such period in the Exit Budget, and shall include explanations for all material variances, and (B) certified by the chief financial officer of the Purchaser or a director of New Topco.

13.5 **Investment Statements**

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

13.6 **Presentations; Participant Calls**

Upon the request of the Investment Agent, the Purchaser will arrange quarterly conference calls with the Investment Agent, the Participants and the chief financial officer (or such other representative reasonably satisfactory to the Investment Agent) of (prior to the Exit Conversion Date) Arcapita Bank and (after the Exit Conversion Date) the Purchaser to discuss the Quarterly Financial Statements, Budget (and all updates and Budget Variance Reports related thereto) and the status of asset dispositions, including answering questions from the Investment Agent and the Participants.

13.7 **Year-end**

The Purchaser shall procure that each Financial Year-end of each member of the Group falls on 30 June.

13.8 **Information: miscellaneous**

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

(a) at the same time as they are dispatched, copies of all documents dispatched by the Parent or any Obligors to its creditors generally (or any class of them);

(b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect or which would involve a liability, or a potential or alleged liability, exceeding $10,000,000 (or its equivalent in other currencies);

(c) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Security Documents;

(d) promptly upon becoming aware of them, details of any event, occurrence or circumstance in which a material portion of the Charged Assets is damaged, destroyed or otherwise impaired or adversely restricted;

(e) 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;

(f) promptly upon becoming aware of it, 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;

(g) promptly upon obtaining actual knowledge thereof, 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 12.29(a)) and 12.29(c) (*Proxies*), or (b) prior to the Exit Conversion Date, alter the composition of any board of directors of any Syndication Company such that the Purchaser employees do not constitute 100% of the board of directors of such Syndication Company; and

(h) promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by any Obligor under this Agreement, any changes to management of the Group and an up to date copy of its shareholders' register (or equivalent in its Original Jurisdiction)) as any Finance Party through the Investment Agent may reasonably request.

13.9 **Notification of default**

(a) Each Obligor shall notify the Investment Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).

(b) Promptly upon a request by the Investment Agent, the Purchaser shall supply to the Investment Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

13.10 **Valuations**

(a) The Purchaser shall, at its own expense, provide to the Investment Agent within 45 days of each Quarter Date falling on or after 31 December 2013, the following valuation reports in relation to each Major Investment and Appraised Minor Investment in form reasonably satisfactory to the Investment Agent and setting out the fair market value of the applicable Major Investment or Appraised Minor Investment as at that Quarter Date:

(i) with respect to each Quarter Date falling on 30 June of any Financial Year, an annual valuation report (each, an "**Annual Valuation Report**") prepared by a third party reasonably acceptable to the Investment Agent (such appraiser, the "**Appraiser**"), and

(ii) with respect to each other Quarter Date, a desk top appraisal (each, a "**Desk Top Appraisal**") prepared by the Appraiser.

13.11 **"Know your customer" checks**

(a) If:

(i) 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;

(ii) any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or

(iii) a proposed assignment or transfer by a Participant of any of its rights and/or obligations under this Agreement 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 (iii) above, any prospective new Participant) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor 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 the event described in paragraph (iii) above, on behalf of any prospective new Participant) in order for the Investment Agent, such Participant or, in the case of the event described in paragraph (iii) above, any prospective new 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 pursuant to the transactions contemplated in the Finance Documents.

(b) 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" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

(c) If the accession of such Additional Guarantor obliges the Investment Agent or any Participant to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Purchaser 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 on behalf of any prospective new Participant) in order for the Investment Agent or such Participant or any prospective new 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 pursuant to the accession of such company to this Agreement as an Additional Guarantor.

14. FINANCIAL COVENANTS

14.1 Financial definitions

In this Agreement:

"**Appraised Minor Investment**" shall mean each Minor Investment that the Purchaser designates in writing to the Investment Agent as a Minor Investment that it desires to include in the calculation of "Security Cover" and in relation to which an Annual Valuation Report has been delivered to the Investment Agent for the first Quarter Date such Minor Investment is to be included in the calculation of "Security Cover."

"**Appraised Security Value**" means:

(a) in relation to the Quarter Date falling on 30 September 2013, the aggregate of:

(i) the value of each Major Investment listed on Schedule 9 Part 1 (*Major Investments*) as set out opposite the relevant Major Investment in SCHEDULE 9 Part 1 (*Major Investments*);

(ii) the Attributable Value of each Major Investment listed on Schedule 9 Part 2 (*Major Investments*) (in each case multiplied by the relevant Obligor's Percentage);

(iii) the value of each Minor Investment listed on Schedule 10 Part 1 (*Minor Investments*) as set out opposite the relevant Minor Investment in Schedule 10 Part 1 (*Minor Investments*); and

(iv) the Attributable Value of each Minor Investment listed on Schedule 10 Part 2 (*Minor Investments*) (in each case multiplied by the relevant Obligor's Percentage);

(b) in relation to the Quarter Dates falling on 31 December 2013 and 31 March 2014, the value of each Major Investment and Appraised Minor Investment as disclosed in the starting balance sheet delivered pursuant to Clause 13.1(f) (*Financial statements*) updated by the Appraiser as at such Quarter Date; and

(c) in relation to each subsequent Quarter Date, the aggregate fair market value as at such Quarter Date of each Major Investment and each Appraised Minor Investment as set out in the Valuations (using the midpoint of any range of values set out therein) delivered by the Purchaser to the Investment Agent in relation to that Quarter Date pursuant to Clause 13.10 (*Valuations*) (in each case multiplied by the relevant Obligor's Percentage unless already accounted for in the Valuation).

"**Attributable Value**" means, in relation to a Major Investment listed on Schedule 9 Part 2 (*Major Investments*) or Minor Investment listed on Schedule 10 Part 2 (*Minor Investments*), the difference between (A) the product of (i) EBITDA for that Major Investment or Minor Investment as the case may be and (ii) the multiple set forth opposite such Major Investment in SCHEDULE 9 Part 2 (*Major Investments*) or opposite such Minor Investment in SCHEDULE 9 Part 2 (*Minor Investments*) as the case may be and (B) any Financial Indebtedness (other than a Working Capital Facility) of that Investment as at 30 June 2013 and as set out in its financial statements for the twelve month period ending 30 June 2013; provided that EBITDA of any such Investment for which financial statements for the twelve month period ending 30 June 2013 have not been delivered to the Investment Agent shall be deemed to be US$0.

"**Capital Expenditure**" means any expenditure or obligation in respect of expenditure which, in accordance with the Accounting Principles, is treated as capital expenditure and including the capital element of any expenditure or obligation incurred in connection with any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease.

"**EBITDA**" means, in relation to each Major Investment listed on Schedule 9 Part 2 (*Major Investments*) and each Minor Investment listed on Schedule 10 Part 2 (*Minor Investments*), the consolidated earnings before interest, taxation, depreciation and amortisation of that Investment for the twelve month period ending on 30 June 2013, as set out in the financial statements for the Investment delivered to the Investment Agent pursuant to clause **Error! Reference source not found.** (*Financial Statements*).

"**Major Investment**" means each investment set forth on Schedule 9 (Major Investments).

"**Minor Investment**" means each investment set forth on Schedule 10 (Minor Investments).

"**Obligor's Percentage**" means, in relation to a Major Investment or a Minor Investment, the percentage of the sum (without duplication) of any (a) equity distributions of, (b) repayment of Working Capital Facilities or other intercompany Financial Indebtedness by and (c) payment of accrued management fees by such Major Investment or Minor Investment (expressed as a decimal) to which the Obligors (or their wholly-owned Subsidiaries) would be entitled in the event of the liquidation of such Major Investment or Minor Investment.

"**Quarter Date**" means each of 31 March, 30 June, 30 September and 31 December.

"**Security Cover**" means, in respect of a Quarter Date, the ratio of (i) the Appraised Security Value for that Quarter Date to (ii) the aggregate Cost Price element of all Deferred Sale Prices outstanding on such Quarter Date *minus* (A) the balances standing to the credit of the Retention Account and Mandatory Prepayment Account as at that Quarter Date and *minus* (B) the amount, not to exceed $10,000,000 (or its equivalent), by which the sum of all Cash and Cash Equivalent Investments exceeds $15,000,000 (or its equivalent).

14.2 **Financial condition**

The Purchaser shall ensure that

(a) *Minimum Liquidity*: at any time after the Effective Date, the sum of all Cash and Cash Equivalent Investments and the balance standing to the credit of the Retention Account shall not be less than $15,000,000.

(b) *Security Cover*: on each Quarter Date, Security Cover shall not be less than 2.00:1.

(c) *Capital Expenditure*: the aggregate Capital Expenditure of the Group (other than Capital Expenditure funded by the retention of the proceeds of insurance claims or Compulsory Acquisitions in accordance with Clause 9.7 (*Excluded Proceeds*)) in respect of:

(i) the period beginning on the Exit Conversion Date and ending on the expiry of the first Financial Year specified in column 1 below; and

(ii) each other Financial Year specified in column 1 below,

shall not exceed the amount set out in column 2 below opposite that Financial Year.

Column 1 **Financial Year**	**Column 2** **Maximum Expenditure**
Financial Year Ending 30 June 2014	$1,500,000 (or its equivalent)
Each Financial Year thereafter	$2,000,000 (or its equivalent)

If in any Financial Year (the "**Original Financial Year**") the amount of the Capital Expenditure is less than the maximum amount permitted for that Original Financial Year (the difference being referred to below as the "**Unused Amount**"), then the maximum expenditure amount set out in column 2 above for the immediately following Financial Year (the "**Carry Forward Year**") shall for the purpose of that Carry Forward Year only be increased by an amount (the "**Permitted Carry Forward Amount**") equal to the lower of (1) the Unused Amount and (2) 50% of the maximum amount permitted for the Original Financial Year.

In any Carry Forward Year, the original amount specified in column 2 above shall be treated as having been incurred prior to any Permitted Carry Forward Amount carried forward into that Carry Forward Year and no amount carried forward into that Carry Forward Year may be carried forward into a subsequent Financial Year.

14.3 **Financial testing**

The financial covenants set out in Clause 0 (*Financial condition*) shall be calculated in accordance with the Accounting Principles and tested by reference to each of the financial

statements delivered pursuant to paragraphs (a), (b) and (c) of Clause 13.1 (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 0 (*Provision and contents of Compliance Certificate*).

15. GENERAL UNDERTAKINGS

The undertakings in this Clause 15 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Facility Commitment is in force.

Authorisations and compliance with laws

15.1 Authorisations

Each Obligor shall promptly:

(a) obtain, comply with and do all that is necessary to maintain in full force and effect; and

(b) supply certified copies to the Investment Agent of:

any Authorisation (including the Orders and the Cayman Validation Order) required under any law or regulation of a Relevant Jurisdiction to:

(i) enable it to perform its obligations under the Finance Documents;

(ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; and

(iii) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

15.2 Compliance with laws

Each Obligor shall (and the Parent shall ensure that each member of the Group will) comply in all material respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

15.3 Environmental compliance

Each Obligor shall (and the Purchaser shall ensure that each member of the Group will):

(i) comply with all Environmental Law;

(ii) obtain, maintain and ensure compliance with all requisite Environmental Permits; and

(iii) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

15.4 **Environmental claims**

Each Obligor shall (through the Parent), promptly upon becoming aware of the same, inform the Investment Agent in writing of:

(a) any Environmental Claim against any member of the Group which is current, pending or threatened; and

(b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

15.5 **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 the Purchaser.

(b) The Parent 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 12.30 (*Anti-Terrorism Laws; Foreign Corrupt Practices Act*) and 5.11 (*Use of Proceeds in relation to Initial DIP Purchase Contract and Initial Exit Purchase Contract*), (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 15.5);

(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 under the Finance Documents to be derived from any unlawful activity with the result that the sale of Commodities under the Facility would be in violation of the Bribery

Act 2010, the FCPA, other similar legislation in other jurisdictions 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 under the Finance Documents to constitute assets of, or be beneficially owned directly or indirectly by, any Embargoed Person 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 under the Finance Documents or the other transactions contemplated by the Finance Documents are in violation of a requirement of any Governmental Authority.

15.6 **Taxation**

(a) Each Obligor shall (and the Parent shall ensure that each member of the Group (other than any Specified Non-Guarantor Subsidiary that is subject to bankruptcy or any liquidation proceedings)) pay and discharge all material Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent:

(i) that payment is permitted not to be filed or paid under the Bankruptcy Code or the Cayman Proceedings; or

(ii) that

(A) such payment is being contested in good faith;

(B) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Investment Agent under Clause 13.1 (*Financial statements*); and

(C) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

(b) No member of the Group may change its residence for Tax purposes.

Restrictions on business focus

15.7 **Change of Business or Group Structure**

Other than pursuant to the Implementation Memorandum or the Cooperation Settlement Documents or as otherwise consented to by the Investment Agent (acting on the instructions of the Majority participants, acting reasonably):

(a) The Parent shall ensure that no substantial change is made to (i) the general nature of the business of the Purchaser 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 this Clause 15.7, Clauses 15.8 (*No*

Investments) or 15.14 (*Disposals*) or as (or as part of) a Permitted Transaction), in each case from that carried on at the date of this Agreement.

(b) The Parent shall ensure that no company other than a Guarantor or a Subsidiary owns (whether wholly or otherwise) any of the Purchaser's equity ownership interests in the Investment Companies.

(c) The Parent 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, other than as (or as part of) a Permitted Transaction.

(d) The Parent shall ensure that each long-term equity ownership interest owned by the Purchaser in an Investment Company is owned indirectly by AIHL Sub through its ownership of an LT CayCo.

(e) The Parent shall ensure that:

(i) each Guarantor (other than Arcapita Bank and New Holdco 1) shall remain a directly or indirectly wholly-owned Subsidiary of the Parent;

(ii) AIHL Sub will remain a directly or indirectly wholly-owned Subsidiary of the Purchaser; and

(iii) each LT CayCo will remain a directly or indirectly wholly-owned Subsidiary of the Purchaser.

(f) Notwithstanding any other provision of this Agreement, the Parent 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 Syndication Company which is a Subsidiary of an Obligor or (y) as permitted in accordance with this Clause 15.7, Clauses 15.8 (*No Investments*) or 15.14 (*Disposals*) or as (or as part of) a Permitted Transaction, in each case without the prior consent of the Investment Agent.

(g) The Purchaser 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 $ 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.

(h) The Parent 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 or Third Party) any management or administrative role in the business of any Obligor or any Transaction Holdco.

(i) The Purchaser 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 Security created under or pursuant to the Finance Documents. The Purchaser 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.

15.8 **No Investments**

The Parent will not (and shall ensure that no member of the Group shall) make any advance, loan, Shari'ah-compliant financing, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Equity Interests, bonds, notes, *sukuk*, 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:

(a) Investments made as (or as part of) a Permitted Transaction;

(b) Investments made by one Obligor in another Obligor;

(c) Investments made to pay for any Disposition Expenses (provided the proceeds of such Investment are immediately so applied);

(d) Investments to fund Permitted Indebtedness falling under paragraph (e) of the definition thereof;

(e) Investments made in any Exit Plan Subsidiary to meet the minimum capitalization requirements of the jurisdiction of organization of such Exit Plan Subsidiary;

(f) Investments in the form of Working Capital Facilities with Major Investments or Minor Investments held by the Group as the date of this Agreement in an aggregate amount not to exceed:

(i) during the period commencing on the Effective Date and ending on 30 June 2014, (A) US$40,000,000 (or its equivalent) *plus* (B) if Security Cover as set out in the most recently delivered Compliance Certificate is greater than 2.5:1, the lesser of (1) 1.25% of Appraised Security Value as of the date of such Compliance Certificate or (2) US$10,000,000 (or its equivalent);

(ii) during the period commencing on 1 July 2014 and ending on 30 June 2015, (A) US$11,000,000 (or its equivalent) in the aggregate *plus* the amount (if any) by which Investments made and permitted pursuant to paragraph (i) were less than US$40,000,000 (or its equivalent) *plus* (B) if Security Cover as set out in the most recently delivered Compliance Certificate is greater than 2.5:1, the lesser of (1) 1.25% of Appraised Security Value as of the date of such Compliance Certificate or (2) US$7,500,000 (or its equivalent); and

(iii) thereafter, the amount (if any) by which the Investments permitted pursuant to clauses (i)(A) and (ii)(A) of this paragraph (f) made during the period commencing on the Effective Date and ending on 30 June 2015 is less than US$56,000,000 (or its equivalent); and

(g) other Investments in or to Major Investments or Minor Investments held by the Group as of the date of this Agreement to cash collateralize letters of credit or surety bonds not to exceed US$2,500,000 (or its equivalent) at any time outstanding.

15.9 **Holding Companies**

The Obligors shall not trade, carry on any business, own any assets or incur any liabilities except for:

(a) the provision of administrative services (excluding treasury services) to other members of the Group of a type customarily provided by a holding company to its Subsidiaries;

(b) ownership of shares in its Subsidiaries, intra-Group debit balances, intra-Group credit balances and other credit balances in bank accounts, cash and Cash Equivalent Investments but only if those shares, credit balances, cash and Cash Equivalent Investments are subject to the Transaction Security; and

(c) any liabilities under the Transaction Documents to which it is a party and professional fees and administration costs in the ordinary course of business as a holding company.

15.10 **Deposits**

The Parent shall ensure that 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. Notwithstanding the foregoing, the aggregate amount of all funds credited to any deposit account and all financial assets carried in any securities account, in each case owned by any Obligor, shall not exceed $1,500,000 at any time unless such Obligor and the applicable financial institution have executed and delivered to the Investment Agent one or more control agreements, each in form and substance reasonably satisfactory to the Investment Agent pursuant to which:

(a) the depositary bank or securities intermediary, as applicable, shall acknowledge the Security of the Security Agent granted under the applicable Security Documents; and

(b) the depositary 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.

Restrictions on dealing with assets and Security

15.11 **Preservation of assets**

Each Obligor shall (and the Parent shall ensure that each other member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business.

15.12 **Pari passu ranking**

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least *pari passu* with the claims of all its

other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

15.13 **Negative pledge**

In this Clause 15.13, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

Except as permitted under paragraph (c) below:

(a) No Obligor shall (and the Parent shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.

(b) No Obligor shall (and the Parent shall ensure that no other member of the Group will):

(i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;

(ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

(iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, which is Permitted Security.

15.14 **Disposals**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will) 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.

(b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is:

(i) a Permitted Disposal; or

(ii) a Permitted Transaction.

15.15 **Arm's length basis**

(a) Except as permitted by paragraph (b) below, no Obligor shall (and the Purchaser shall ensure that no other member of the Group will) enter into, or permit to be outstanding, any transaction with any person except on terms no less favourable to the relevant member of the Group than arm's length terms and for fair market value.

(b) The following transactions shall not be a breach of this Clause 15.15:

(i) fees, costs and expenses payable under the Finance Documents in the amounts set out in the Finance Documents delivered to the Investment Agent under Clause 3.1 (*Initial conditions precedent*) or agreed by the Investment Agent; and

(ii) any Permitted Transaction.

Restrictions on movement of cash - cash out

15.16 **Dividends and share redemption**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall not (and will ensure that no other member of the Group will):

(i) declare, make or pay any dividend, charge, fee or other distribution (or interest or profit on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital) or make any payment to, or in respect of any obligations of any Person directly or indirectly owning the share capital of any member of the Group;

(ii) repay or distribute any dividend or share premium reserve;

(iii) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the direct or indirect shareholders of the Parent; or

(iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.

(b) Paragraph (a) above does not apply to:

(i) a Permitted Distribution; or

(ii) a Permitted Transaction.

Restrictions on movement of cash - cash in

15.17 **Financial Indebtedness**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.

(b) Paragraph (a) above does not apply to Financial Indebtedness which is:

(i) Permitted Financial Indebtedness; or

(ii) a Permitted Transaction under paragraph (a) of the definition thereof.

15.18 **Share capital**

No Obligor shall (and the Purchaser shall ensure that no other member of the Group will) issue any shares except pursuant to:

(a) a Permitted Share Issue; or

(b) a Permitted Transaction under paragraph (d) of the definition thereof.

Miscellaneous

15.19 **Insurance**

(a) Each Obligor shall (and the Parent shall ensure that each other member of the Group (other than and Specified Non-Guarantor Subsidiary that is subject to bankruptcy or any liquidation proceedings will)) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business and will ensure that the Security Agent is named as loss payee in relation to all such insurances.

(b) All insurances must be with reputable independent insurance companies or underwriters.

15.20 **Access**

Each Obligor shall, and the Parent shall ensure that each member of the Group will (not more than once in every Financial Year unless the Investment Agent reasonably suspects a Default is continuing or may occur) permit the Investment Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Investment Agent or Security Agent free access at all reasonable times and on reasonable notice at the risk and cost of the Obligor or Company to (a) the premises, assets, books, accounts and records of each member of the Group and (b) meet and discuss matters with management.

15.21 **Management Agreements**

(a) If any administration agreement, management agreement or similar agreement to which (i) prior to the Exit Conversion Date, AIML is a party is terminated or (ii) on and after the Exit Conversion Date, New Holdco 3 or any other member of the Group is a party is terminated[1] (in each case, other than in connection with a Permitted Disposal or Permitted Transaction), the Parent must as soon as reasonably practicable thereafter:

(i) notify the Investment Agent; and

(ii) enter into a replacement administration agreement, management agreement or similar agreement as promptly as practicable on an arms-length basis.

(b) The Parent shall not (and shall ensure that no member of the Group shall) pay, directly or indirectly, any fees or other amounts pursuant to any administration agreement, management agreement or similar agreement other than, following the Exit Conversion Date and so long as no Default has occurred and is continuing, the payment, directly or indirectly, to AIM Group Limited of the fees set forth on Schedule 13 in amounts not to exceed the amounts set forth on Schedule 13 (or in the case of fees calculated by reference to a formula set forth on Schedule 13, calculated consistent with such formula).

15.22 **Intellectual Property**

[1] GDC/MB to confirm all management agreements with AIM Group will be with New Holdco 3 or other members of the Group.

(a) Each Obligor shall (and the Parent shall procure that each other member of the Group will):

(i) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group member;

(ii) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;

(iii) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;

(iv) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and

(v) not discontinue the use of the Intellectual Property,

where failure to do so, in the case of paragraphs (i) and (ii) above, or, in the case of paragraphs (iv) and (v) above, such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.

(b) Failure to comply with any part of paragraph (a) above shall not be a breach of this Clause 15.22 to the extent that any dealing with Intellectual Property which would otherwise be a breach of paragraph (a) above is contemplated by the definition of Permitted Transaction.

15.23 **Speculative Transactions and Treasury Transactions**

No Obligor shall (and the Parent will procure that no other member of the Group will) enter into any Speculative Transaction or Treasury Transactions, other than:

(a) spot and forward delivery foreign exchange contracts entered into in the ordinary course of business and not for speculative purposes; and

(b) any Speculative Transaction or Treasury Transactions entered into for the hedging of actual or projected real exposures arising in the ordinary course of trading activities of a member of the Group for a period of not more than [●] months and not for speculative purposes and provided any such Speculative Transaction or Treasury Transactions is consistent with such member of the Group's hedging policies existing at the date hereof.

15.24 **Further assurance**

(a) Each Obligor shall (and the Parent shall procure that each other member of the Group will) at the expense of the Obligors promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):

(i) to correct any defect or error that may be discovered in any Finance Document or in the execution, acknowledgement, filing or recordation thereof;

(ii) to perfect the Security created or intended to be created under or evidenced by the Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;

(iii) to confer on the Security Agent or confer on the Finance Parties Security over any property and assets of that Obligor (whether acquired before or after the Effective Date) located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Security Documents; and/or

(iv) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.

(b) Each Obligor shall (and the Purchaser shall procure that each other member of the Group will) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

15.25 **Transactions with Affiliates**

No Obligor shall, and the Purchaser will not permit any member of the Group 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 favourable to the relevant Group member than it would obtain in a comparable arm's length transaction with a person that is not an Affiliate as evidenced by a certificate from a responsible officer of the Purchaser.

15.26 **Restrictions on Subsidiary Distributions.**

Except as provided herein, no Obligor shall, nor shall it permit any of its Subsidiaries which are members of the Group to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Obligor or member of the Group to (a) pay dividends or make any other distributions on any of such entity's Equity Interests owned by an Obligor or any other member of the Group, (b) repay or prepay any Indebtedness owed by such entity to an Obligor or any other member of the Group, (c) make loans or advances to an Obligor or any other member of the Group, or (d) transfer, lease or license any of its property or assets to an Obligor or any other member of the Group other than restrictions (i) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements permitted under the Finance Documents, or (ii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Equity Interests not otherwise prohibited under this Agreement or (iii) created by any Finance Document.

15.27 **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 Plan of Reorganization).

15.28 **Chapter 11 Claims**

The Purchaser shall not, and will not permit any Debtor to incur, create, assume, suffer to exist or permit any other Superpriority Claim or Security on any Charged Property 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 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.

15.29 **Chapter 11 and Cayman Proceedings Filings and Plan**

(a) The Debtors shall not file any:

(i) proposed orders or pleadings related to the DIP Facility or Final DIP Order;

(ii) amendments, supplements or any other modifications to the Plan of Reorganization (including, without limitation, the Plan Supplement (as defined in the Plan of Reorganization) in a manner that would be adverse to the interests of the Finance Parties;

(iii) amendments, supplements or any other modifications to the Disclosure Statement;

(iv) proposed amendments, supplements or any other modifications to the Commitment Order;

(v) proposed form of the Confirmation Order, or any amendments, supplements or modifications to the Confirmation Order;

(vi) amendments, supplements or any other modifications to the SCB Order;

(vii) motion, pleading or other document which have or are reasonably likely to have a Material Adverse Effect or Event of Default, including, without limitation, a motion or consent for dismissal of the Cases, a motion or consent for conversion of the Cases to cases under chapter 7 of the Bankruptcy Code, a motion or consent for appointment of a trustee or 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; or

(viii) [other documents in relation to the Cayman Proceedings],[2]

in each case, without the prior written consent of the Investment Agent, acting reasonably.

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[2] Note to draft: Principal Cayman Proceedings documents to be identified.

(b) The Debtors shall oppose the approval of any plan, disclosure statement or amendment to any plan (including the Plan of Reorganization) or disclosure statement for any plan, in each case, that either fails to provide for indefeasible payment in full in cash of the DIP Facility (and termination of all Participations) or the conversion of the DIP Facility in full to the Exit Facility upon the effective date of such plan, or provides for treatment other than indefeasible payment in full of the DIP Facility (and termination of all Participations and Facility Commitments) or the conversion of the DIP Facility in full to the Exit Facility without the prior written consent of the Investment Agent.

15.30 **Cancellation of Indebtedness**

No Obligor shall, or shall permit any of its Subsidiaries which are members of the Group to, cancel any claim or debt owing to it, except (i) for reasonable consideration negotiated on an arm's length basis and in the ordinary course of its business consistent with past practices, (ii) Arcapita Hong Kong Limited may cancel the Arcapita Hong Kong Indebtedness or any portion thereof or (iii) rebates of excess profit amounts under Investment Company *murabaha* facilities in the ordinary course of its business and consistent with past practices.

15.31 **No Impairment of Intercompany Transfers**

No Obligor shall, or shall permit any of its Subsidiaries which are members of the Group 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 which is a member of the Group to any Obligor or between Obligors.

15.32 **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 (i) changes, modifications or amendments to effect the cancelation of the Arcapita Hong Kong Indebtedness permitted pursuant to 15.30 (*Cancellation of Indebtedness*), (ii) 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) and (iii) changes pursuant to the Plan of Reorganization, (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 (i) prior to the Exit Conversion Date, AIML is a party or (ii) on and after the Exit Conversion Date, New Holdco 3 or any of its Subsidiaries 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 reasonably be expected to 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 (i) 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, where such change, modification, amendment, supplement or waiver is materially adverse to the interests of the Finance Parties, without in each case obtaining the prior written consent of the Investment Agent, and (ii) consent to any change, modification, amendment, supplement to, or waiver of, any of its rights under any organizational or constitutional document of any Syndication Company or any

Transaction Holdco, where such change, modification, amendment, supplement or waiver is materially adverse to the interests of the Finance Parties, without in each case obtaining the prior written consent of the Investment Agent.

15.33 **Repayment of Indebtedness**

Except pursuant to (a) and in accordance with a confirmed Plan of Reorganization or (b) as expressly required under the SCB Order, no Obligor shall, without the express prior written consent of the Investment Agent, make any payment or transfer with respect to any Security 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.

15.34 **Cooperation Settlement Documents, Implementation Memorandum and New Topco Mudaraba Documents**

(a) The Purchaser shall ensure that no Cooperation Settlement Document is entered into, and no amendment, supplement, waiver or replacement is made to or of any Cooperation Settlement Document, which in any case (relative to the terms set forth in the Initial Cooperation Settlement Term Sheet) is materially adverse to the interests of the Finance Parties, without the prior written consent of the Investment Agent.

(b) The Purchaser shall ensure that no amendment, supplement or replacement is made to or of the Implementation Memorandum, which in any case (relative to the structure set forth in the Implementation Memorandum) is materially adverse to the interests of the Finance Parties, without the prior written consent of the Investment Agent.

(c) The Purchaser shall ensure that (i) no New Topco Mudarbaha Document is entered into which is materially adverse to the interests of the Finance Parties, and (ii) no amendment, supplement, waiver or replacement is made to or of any New Topco Mudaraba Document, which in any case (relative to the terms set forth in the Initial New Topco Mudaraba Documents) is materially adverse to the interests of the Finance Parties, in each case, without the prior written consent of the Investment Agent.

15.35 **Conditions subsequent**

[●]

16. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 16 is an Event of Default (save for Clause 16.24 (*Acceleration*)) provided that, following the Exit Conversion Date, the events and circumstances set out in Clauses 16.16 (*Dismissal or Conversion*) to 16.21 (*Other Bankruptcy items*) (inclusive) shall no longer be Events of Default.

16.1 **Non-payment**

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless its failure to pay is caused by administrative or technical error at a Disruption Event and, in each case, payment is made within 3 Business Days of its due date.

16.2 **Financial covenants and other obligations**

(a) Any requirement of Clause 14 (*Financial covenants*) is not satisfied or an Obligor does not comply with the provisions of Clause 13.1 (*Financial Statements*), Clause 0 (*Provision and contents of Compliance Certificate*), Clause 13.3 *(Requirements as to financial statements*), Clause 13.9 (*Notification of Default*) or Clause 15.35 (*Conditions subsequent*).

(b) An Obligor does not comply with any provision of any Security Document unless the failure to comply is capable of remedy and is remedied with 10 Business Days of the earlier of (i) the Investment Agent giving notice to the Purchaser and (ii) the Purchaser or an Obligor becoming aware of the failure to comply.

16.3 **Other obligations**

(a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 16.1 (*Non-payment*) and Clause 16.2 (*Financial covenants and other obligations*)).

(b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 15 Business Days of the earlier of (i) the Investment Agent giving notice to the Purchaser and (ii) the Purchaser or an Obligor becoming aware of the failure to comply.

16.4 **Misrepresentation**

(a) Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

(b) No Event of Default under paragraph (a) above will occur if the circumstances giving rise to the misrepresentation or incorrect or misleading statement are capable of remedy and are remedied within 15 Business Days of the earlier of (i) the Investment Agent giving notice to the Purchaser or relevant Obligor and (B) the Purchaser or an Obligor becoming aware of the circumstances giving rise to the misrepresentation or incorrect or misleading statement.

16.5 **Cross default**

(a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.

(b) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

(c) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).

(d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).

(e) No Event of Default will occur under this Clause 16.5 if (i) the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than $10,000,000 (or its equivalent in any other currency or currencies) or (ii) at any time prior to the Exit Conversion Date, the Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above relates solely to (x) the Debtors to the extent the applicable default thereunder existed as of the Effective Date or would customarily result from the filing or continuation of the bankruptcy proceedings in the Bankruptcy Court or the courts of the Cayman Islands or (y) intercompany obligations between members of the Group to the extent the applicable default thereunder existed as of the Effective Date.

16.6 **Insolvency**

(a) A member of the Group (other than, prior to the Exit Conversion Date, the Debtors):

(i) is unable or admits inability to pay its debts as they fall due;

(ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;

(iii) suspends or threatens to suspend making payments on any of its debts; or

(iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.

(b) The value of the assets (taking into account any rights of contribution) of any member of the Group (other than, prior to the Exit Conversion Date, the Debtors) is less than its liabilities (taking into account contingent and prospective liabilities).

(c) A moratorium is declared in respect of any indebtedness of any member of the Group (other than, prior to the Exit Conversion Date, the Debtors). If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

16.7 **Insolvency proceedings**

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

(i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group (other than, prior to the Exit Conversion Date, the Debtors);

(ii) a composition, compromise, assignment or arrangement with any creditor of any member of the Group (other than, prior to the Exit Conversion Date, the Debtors);

(iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any member of the

Group (other than, prior to the Exit Conversion Date, the Debtors) or any of its assets; or

(iv) enforcement of any Security over any assets of any member of the Group,

or any analogous procedure or step is taken in any jurisdiction.

(b) Paragraph (a) shall not apply to:

(i) any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement; or

(ii) any step or procedure contemplated by paragraph (b) of the definition of "Permitted Transaction."

16.8 **Creditors' process**

(a) Any judgement or order in excess of US$10,000,000 made against any member of the Group is not stayed or complied with within 14 days unless it is being contented in good faith and with adequate resources.

(b) Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a member of the Group with an aggregate value of more than US$10,000,000 and is not discharged within 14 days.

16.9 **Unlawfulness and invalidity**

(a) It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents or any Transaction Security (other than any immaterial portion of the Transaction Security) created or expressed to be created or evidenced by the Security Documents ceases to be effective.

(b) Any obligation or obligations of any Obligor under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Participants under the Finance Documents.

(c) Any Finance Document ceases to be in full force and effect or any Transaction Security (other than any immaterial portion of the Transaction Security) ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective other than in accordance with the terms of the Finance Documents.

16.10 **Cessation of business**

Other than as contemplated by the Implementation Memorandum, any member of the Group suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of a Permitted Disposal or a Permitted Transaction.

16.11 **Change of Control**

A Change of Control occurs.

16.12 **Audit qualification**

The Auditors of the Group qualify the audited annual consolidated financial statements of the Parent or Purchaser (other than by a going concern or like qualification or exception resulting from an upcoming maturity of the Facility occurring within one year from the time the relevant opinion is delivered).

16.13 **Expropriation**

The authority or ability of any member of the Group to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any member of the Group or any of its assets.

16.14 **Repudiation and rescission of agreements**

An Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

16.15 **Litigation**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against any member of the Group or its assets which have or are reasonably likely to have a Material Adverse Effect.

16.16 **Dismissal or Conversion**

(a) Any of the Cases of the Debtors shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;

(b) Any Debtor shall file a motion or other pleading seeking:

(i) the dismissal of any Case of any Debtor under Section 1112 of the Bankruptcy Code or otherwise;

(ii) the conversion of any Case of any Debtor to a case under Chapter 7 of the Bankruptcy Code;

(c) 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.

16.17 **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 Security of the Finance Parties against the Purchaser 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 Security, except as expressly permitted hereunder.

16.18 **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 any third party to permit foreclosure, the granting of a deed in lieu of foreclosure, or any other enforcement of remedies or the like with respect to any assets of any of the Debtors which have a value in excess of $100,000,000 in the aggregate.

16.19 **The Orders**

(a) 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 any Order or any of the Finance Documents.

(b) 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.

16.20 **The Cayman Proceedings**

Any event or circumstance occurs in relation to the Cayman Proceedings which could have a Material Adverse Effect.

16.21 **Other Bankruptcy items**

(a) Without the consent of the Investment Agent (acting reasonably) the entry of an order or filing authorizing, approving, granting or seeking:

(i) additional post-petition financing not otherwise permitted under the Finance Documents;

(ii) any Security on the assets of members of the Group not otherwise permitted under the Finance Documents;

(iii) modification of the Commitment Letter; or

(iv) any action adverse to the Investment Agent or any Participant or their rights and remedies or their interest in the Charged Property.

(b) The commencement of any action, adversary proceeding or motion against any of the Investment Agent or any Participant by or on behalf of any Debtor or any of its affiliates, officers or employees.

(c) 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.

(d) The:

(i) filing of any chapter 11 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) entry of an order in any of the Cases confirming a chapter 11 plan;

in each case that (x) is not acceptable to the Investment Agent (acting reasonably); (y) unless the Facility is converted to the Exit Facility in accordance with the terms of the Finance Documents, does not contain a provision for termination of all Facility Commitments and obligations of the Investment Agent and the Participants to provide or continue to provide the Facility and indefeasible 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 chapter 11 plan; or (z) treats the claims of the Finance Parties in any other manner to which they do not consent in their discretion.

(e) 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 chapter 11 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 or continue to provide the Facility.

(f) 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 Charged Property.

16.22 **Put Failure; Disposition Committees**

(a) After the Exit Conversion Date, any Put Failure by New Topco occurs in relation to any Transaction Holdco in which any member of the Group is the Majority Investor.

(b) Any change is made to the composition of any Disposition Committee that reduces the relative voting power of New Topco (as set out in the Initial Cooperation Settlement Term Sheet) on such Disposition Committee with respect to (i) any Major Investment or Minor Investment where New Topco has a majority of such voting power on the Exit Conversion Date but after such change New Topco no longer has a majority of such voting power or (ii) any Major Investment or Minor Investment where New Topco has a minority of the voting power on the Exit Conversion Date but after such change New Topco no longer has a majority of minority voting rights other than, (A) in the case of clause (ii), to the extent the value of such affected Investments in the aggregate is less than 15% of the Appraised Security Value as at the most recent Quarter Date and (B) in the case of clauses (i) and (ii), as a result of a sale of all or part of New Topco's indirect Equity Interest in the relevant Major Investment or Minor Investment in accordance with the Cooperation Settlement Documents where the proceeds of such sale are applied in prepayment to the extent required pursuant to Clause 9 (Prepayment; Facility Limit Reduction).

16.23 **Administrative proceedings**

The commencement of an administration or similar regulatory proceeding, or appointment of an asset manager, receiver, custodian, trustee or similar official, with respect to any Obligor, Arcapita Bank, [New Arcapita Topco 1] or any material direct or indirect wholly-owned subsidiaries or and/or [New Arcapita Topco], in each case that is either (i) commenced voluntarily or (ii) commenced involuntarily and is not withdrawn, vacated or dismissed for 30 calendar days.

16.24 **Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Investment Agent may, and shall if so directed by the Majority Participants, by notice to the Purchaser:

(a) cancel the Facility Commitments at which time they shall immediately be cancelled;

(b) declare that all or part of the Deferred Sale Prices, together with accrued profit amounts, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;

(c) declare that all or part of the Deferred Sale Prices be payable on demand, at which time they shall immediately become payable on demand by the Investment Agent on the instructions of the Majority Participants;

(d) prior to the Exit Conversion Date, upon seven days' prior written notice given to the Purchaser, counsel to the Purchaser, the Joint Provisional Liquidators, counsel to SCB, counsel to the Committee and the United States Trustee (such seven day period herein referred to as the "**Remedies Notice Period**"), 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 Final DIP Order:

(i) require that any or all of the Obligors sell or otherwise dispose of any or all of the Charged Property 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 Charged Property to the 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 Charged Property; and/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 Final DIP Order, 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 Finance 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 Finance Documents, each of the Obligors shall assist the Investment Agent and the Participants in effecting a sale or other disposition of the Charged Property upon such terms as are acceptable to the Investment Agent.

(e) after the Exit Conversion Date, exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

17. FEES AND EXPENSES

17.1 Fees

The Purchaser shall pay the fees described in the amounts and at the times agreed in the Fee Letter.

17.2 Expenses

(a) The Purchaser shall promptly on demand pay the Investment Agent, the Security 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 in relation to the Finance Documents, the Purchaser shall, within three Business Days of demand, reimburse the Investment Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Investment Agent or the Security Agent in responding to, evaluating, negotiating or complying with that request or requirement.

(c) The Purchaser 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.

18. INDEMNITIES

18.1 Indemnity

(a) The Purchaser shall indemnify each Finance Party and their respective directors, officers, employees and agents (each, an "**Indemnified Party**") within 5 Business Days of 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 the Purchaser to make payment on the due date of any sum due to the Investment Agent under any Finance Document;

(ii) the failure of the Purchaser to accept the Investment Agent's offer to sell the Commodities on the date offered, whether or not such acceptance is required under Clause 5.4 (*Acceptance*) or sell the Commodities pursuant to Clause 5.8 (*On-Sale*) of this Agreement;

(iii) the occurrence of any Event of Default;

(iv) the Exit Conversion Date not occurring on or before the proposed Transaction Date of any requested Initial Exit Purchase Contract;

(v) 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 18.1(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

(vi) any prepayment not being made in accordance with Clause 9 (*Prepayments; Facility Limit Reduction*);

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 6.3 (*Late Payment*), the Purchaser shall make payment of any indemnity in favour of an Indemnified Party provided for in this Clause 18.1(a) within 10 days of demand by such Indemnified Party. Any Indemnified Party may rely on this Clause 18.1 subject to Clause 1.3 (*Rights of Third Parties*) and the provisions of the Third Parties Act.

(b) The Purchaser 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.

18.2 **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 the Purchaser. The Investment Agent shall be entitled but not obliged to pay any such duties or Taxes (whether or not they are its primary responsibility). The Purchaser 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.

18.3 **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 the Purchaser 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 the Purchaser) and for whatever reason shall constitute a discharge by the Purchaser 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 the Purchaser shall within 5 Business Days of 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) The Purchaser 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.

18.4 **Communications Indemnity**

(a) The Purchaser 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) The Purchaser verifies that each person the Purchaser 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.

18.5 **Increased costs**

(a) Subject to paragraph (d) below, if a Participant determines that it or any of its Affiliates has incurred Increased Costs 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:

(i) in respect of any Purchase Contract other than the final Purchase Contract entered into under this Agreement, the Profit Amount in respect of the next Purchase Contract to be made after the date on which those Increased Costs were incurred shall be increased to include an additional amount equal to the amount of the Increased Costs incurred by that Participant; or

(ii) in respect of the final Purchase Contract to be entered into under this Agreement, the Purchaser shall within five Business Days of demand by the Investment Agent, pay for the account of that Participant an amount equal to the amount of the Increased Costs incurred by that Participant.

(b) The Investment Agent shall promptly notify the Purchaser if a Participant has notified it that it intends to make a claim pursuant to paragraph (a) above.

(c) Each Participant shall, as soon as practicable after a demand by the Investment Agent, provide a certificate confirming the amount of its Increased Costs.

(d) Paragraph (a) above does not apply to the extent any Increased Cost is:

(i) attributable to a Tax Deduction required by law to be made by the Purchaser or another Obligor;

(ii) attributable to a FATCA Deduction required to be made by a Party or a Finance Party;

(iii) compensated for under Clause 8.3 (*Indemnity*) or would have been compensated for under that Clause but was not so compensated solely because any of the exclusion in paragraph (b) of that Clause apply;

(iv) attributable to any Tax on the net income of any Participant or its Affiliates;

(v) attributable to a Participant or its Affiliate wilfully failing to comply with any law or regulation;

(vi) compensated for by the payment of any Mandatory Cost;

(vii) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (but excluding any amendment arising out of Basel III) ("**Basel II**") or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Participant or any of its Affiliates).

(e) In this Clause 13.3 (*Exceptions*):

(i) "**Basel III**" means:

(A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

(B) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and

(C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III."

18.6 **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 the Obligors except for any manifest error.

18.7 **Market Disruption**

(a) Absence of quotations

Subject to Clause (b) (*Market disruption*) if LIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by 17:00 on the Quotation Day, the applicable LIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

(b) Market disruption

If a Market Disruption Event occurs in relation to LIBOR for any Contract Period, then the Profit Rate on each Participant's share of the Cost Price for the Purchase Contract shall be the percentage rate per annum which is the sum of:

(i) 8.25%; and

(ii) the greater of (x) 1.5% and (y) the rate notified to the Investment Agent by that Participant by 1.00pm London time on the Quotation Day to be that which expresses as a percentage rate per annum the cost to that Participant of funding its Contribution in that Cost Price from whatever source it may reasonably select and, if any such percentage rate is below zero, than such percentage rate shall be deemed to be zero.

(c) "**Market Disruption Event**" means:

(i) the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Investment Agent to determine LIBOR for the relevant currency and period by 11:00 am on the Quotation Day; or

(ii) the Investment Agent receives by 5:00 p.m. on the Quotation Day for the relevant period notification from a Participant or Participants whose Participations exceed fifty (50) per cent of the Participations of all the Participants, that the cost to it of funding its Participation from whatever source it may reasonably select would be in excess of the greater of (i) LIBOR and (ii) 1.5%.

19. REMEDIES AND NO WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No waiver or election to affirm any of the Finance Documents on the part of any Finance Party shall be effective unless in writing. No or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Finance Documents are cumulative and not exclusive of any rights or remedies provided by law.

20. MISCELLANEOUS

20.1 Partial invalidity

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

20.2 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.

20.3 Amendments

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 made or given in accordance with Clause 27 (*Amendment and waivers*) of the Investment Agency Agreement. Prior to the Exit Conversion Date, 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 the Purchaser's property, transfer of the Purchaser's shares or alterations in the status of the Purchaser's members, without a prior validation order obtained from the Grand Court of the Cayman Islands.

20.4 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 the Purchaser that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Purchaser and the other Obligors, which information includes the name, address and tax identification

number of the Purchaser and the other Obligors and other information regarding the Purchaser and the other Obligors that will allow such Participant or the Investment Agent, as applicable, to identify the Purchaser 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.

21. NOTICES

All notices or other communications under or in connection with this Agreement shall be given in accordance with Clause 23 (*Notices*) of the Investment Agency Agreement.

22. CHANGES TO THE PARTIES

22.1 Benefit of Agreement

This Agreement, the other Finance Documents, and all Security and other rights and privileges created hereby or pursuant hereto or to any other Finance Document shall be binding upon the Purchaser, the estate of the Purchaser, and any trustee, other estate representative or any successor in interest of the Purchaser 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 Security 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 Charged Property from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Investment Agent file financing statements or otherwise perfect its Security under applicable law.

22.2 Assignments and Transfers by the Purchaser

Other than pursuant to Clause 2.4 (*Conversion to Exit Facility*) of the Investment Agency Agreement, the Purchaser 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.

22.3 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 in accordance with the terms of the Investment Agency Agreement.

22.4 Additional Guarantors

(a) The Purchaser shall ensure that:

(i) each new direct or indirect wholly-owned Subsidiary of any Obligor created or acquired after the Effective Date (excluding Exit Plan Subsidiaries but including each new LT CayCo and WCF) (each a "**New Guarantor Subsidiary**") shall become an Additional Guarantor and shall grant Transaction Security as soon as practicable after it becomes a Subsidiary of an Obligor and, in any event, within 20 Business Days of becoming a Subsidiary; and

(ii) each New Exit Guarantor shall become an Additional Guarantor and, in the case of New Holdco 1, the Parent and shall grant Transaction Security on the Exit Plan Conversion Date.

(b) A New Guarantor Subsidiary or a New Exit Guarantor shall become an Additional Guarantor if:

(i) the Purchaser and the proposed Additional Guarantor deliver to the Investment Agent a duly completed and executed Accession Letter;

(ii) in the case of an Additional Guarantor other than a New Exit Guarantor, the Investment Agent has received all of the documents and other evidence listed in SCHEDULE 7 (*Conditions precedent required to be delivered by each Additional Guarantor*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Investment Agent; and

(iii) in the case of a New Exit Guarantor, the Exit Conversion Date occurs.

(c) The Investment Agent shall notify the Purchaser and the Participants promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Schedule 7 (*Conditions precedent required to be delivered by each Additional Guarantor*).

(d) Other than to the extent that the Majority Participants notify the Investment Agent in writing to the contrary before the Investment Agent gives the notification described in paragraph (c) above, the Participants authorise (but do not require) the Investment Agent to give that notification. The Investment Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

22.5 **Resignation of a Guarantor**

(a) Subject to paragraph (b) below, on the Exit Conversion Date, Arcapita Bank and [others to be confirmed] may cease to be a Guarantor by delivering to the Agent a Resignation Letter.

(b) No resignation or release of a Guarantor pursuant to paragraph (a) above shall be effective until the Exit Facility Option has become effective.

22.6 **Changes to the Obligors – FATCA**

(a) Other than on the Exit Conversion date, no Subsidiary may become an Additional Guarantor, or cease to be a Guarantor, before the date falling ten Business Days after the Purchaser's request in relation thereto has been notified by the Investment Agent to the Participants, unless each Participant is a "FATCA Protected Participant". The Investment Agent shall notify the Participants reasonably promptly of any such requests from the Purchaser.

(b) After the Exit Conversion Date, if the Investment Agent or a Participant reasonably believes that a Subsidiary becoming an Additional Guarantor, or ceasing to be a Guarantor, may constitute a "material modification" for the purposes of FATCA that may result (directly or indirectly) in a Party being required to make a FATCA Deduction and the Investment Agent or such Participant (as the case may be) notifies the Purchaser and

the Investment Agent accordingly, that Subsidiary may, subject to paragraphs (c) below, not become an Additional Guarantor, or cease to be a Guarantor (as the case may be) without the consent of the Investment Agent or that Participant (as the case may be).

(c) The consent of a Participant shall not be required pursuant to paragraph (b) above if that Participant is a FATCA Protected Participant.

22.7 **Repetition of Representations**

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in paragraph (e) of Clause 12.31 (*Times when representations made*) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

23. GOVERNING LAW & DISPUTE RESOLUTION

23.1 **Governing Law**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

23.2 **Jurisdiction prior to the Exit Conversion Date**

IN RELATION TO ANY PROCEEDINGS COMMENCED PRIOR TO THE EXIT CONVERSION DATE, THE PURCHASER, 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 THE PURCHASER 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 FAVOUR OF INVESTMENT AGENT. THE PURCHASER EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND THE PURCHASER 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.

23.3 **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.

23.4 **Jurisdiction on and after the Exit Conversion Date**

In relation to any proceedings commenced on and after the Exit Conversion Date:

(a) the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "Dispute");

(b) the Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary; and

(c) this Clause 23.4 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

23.5 **Conflict of Terms**

Except as otherwise provided in this Agreement or 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 other Finance Document, the provision contained in this Agreement shall govern and control.

23.6 **Service of Process**

(a) Without prejudice to any other mode of service allowed under any relevant law the Purchaser agrees that the process by which any suit, action or proceeding is begun prior to the Exit Conversion Date 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 23.2 (*Addresses*) of the Investment Agency Agreement.

Nothing in this agreement will affect the right of any Party hereto to serve process in any other manner permitted by applicable law.

(b) Without prejudice to any other mode of service allowed under any relevant law, the Purchaser:

(i) irrevocably appoints Arcapita Limited of [●] as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and

(ii) agrees that failure by a process agent to notify the Purchaser of the process will not invalidate the proceedings concerned.

23.7 **Waivers of immunity**

Each Obligor irrevocably waives any claim to immunity in relation to any arbitration or court proceedings arising out of or connected with the Finance Documents, including without limitation, immunity from:

(a) jurisdiction of any court or tribunal;

(b) service of process;

(c) injunctive or other interim relief, or any order for specific performance or recovery of land or other property; and

(d) any process for execution of any award or judgment against its property.

In addition, in respect of any proceedings arising out of or connected with the enforcement and/or execution of any award or judgment made against it, each Obligor hereby submits to the jurisdiction of any court in which any such proceedings are brought.

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

SCHEDULE 1

Part 1 - INITIAL CONDITION PRECEDENT DOCUMENTS

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. **THE OBLIGORS**

1.1 A certified copy of the constitutional documents of each Obligor, including, to the extent applicable, a good standing certificate issued by the applicable office of its jurisdiction of incorporation.

1.2 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 the Purchaser, written evidence of the Purchaser's directors' consultation with its Joint Provisional Liquidators (in accordance with the Protocol made between them and the Purchaser's directors) of the terms of, the transactions contemplated by and the execution by the Purchaser 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 Obligor:

(a) confirming that the utilisation of the Facility, guaranteeing of the Facility and/or the granting of the Security pursuant to the Security Documents to which it is a party (as applicable) would not cause any Financial Indebtedness guarantee or security limit binding on such Obligor 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 Obligor 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 the Purchaser 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.

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

2.4 A legal opinion of Latham & Watkins LLP, legal advisers to the Investment Agent in England and Wales.

3. **FEES, COSTS AND EXPENSES**

Evidence that the fees, costs and expenses and other compensation then due from the Purchaser pursuant to this Agreement, the Commitment Letter or any other Finance Document have been paid or will be paid by on the Effective 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:

(a) this Agreement, the Investment Agency Agreement, the Netting Letter and the DD&Co Agreements each duly executed and delivered by the parties thereto;

(b) the U.S. Security Agreement, duly executed and delivered by the Purchaser and each Guarantor and the Security Agent;

(c) [the Cayman Charge, duly executed and delivered by Arcapita Bank and the Security Agent]; and

(d) [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. **BANKRUPTCY MATTERS**

6.1 The Bankruptcy Court shall have entered, upon motion in form and substance reasonably satisfactory to the Investment Agent, on such prior notice as may be satisfactory to the Investment Agent, the Final DIP Order in form and substance reasonably satisfactory to the Investment Agent on or before June 10, 2013, authorizing and approving the use of the DIP Facility, all provisions thereof and the priorities and liens granted under Sections 364(c) of the Bankruptcy Code, as applicable, which Final DIP Order shall, among other things: (i) modify the automatic stay to permit the creation and perfection of the Transaction Security; (ii) provide for the automatic vacation of such stay to permit the enforcement of the Investment Agent's and/or Participants' remedies under the DIP Facility, including without limitation the enforcement, upon seven (7) Business Days' prior written notice, of such remedies upon the Transaction Security; (iii) prohibit the assertion of claims arising under Section 506(c) of the Bankruptcy Code against any or all of the Investment Agent and the Participants or the commencement of other actions adverse to the Investment Agent or any Participant or their respective rights and remedies under the DIP Facility or the Final DIP Order; (iv) prohibit the incurrence of debt or granting of liens with priority equal to or greater than the Investment Agent's and Participants' liens under the DIP Facility, other than in connection with the SCB Order; (v) (A) prohibit any granting or imposition of liens other than liens set forth in the Final DIP Order or otherwise reasonably acceptable to the Investment Agent and (B) terminate all liens upon any asset subject to the Transaction Security (except for permitted liens to be mutually agreed upon, including the liens confirmed in the SCB Order) upon payment of the amounts to be funded under the DIP Facility; (vi) authorize and approve the DIP Facility and the transactions contemplated hereby, including without limitation the granting of the Superpriority Claims and the Transaction Security (other than liens securing the Existing US$ Facilities); (vii) authorize the payment by the DIP Purchaser of all of the fees provided for herein and in any separate fee letter (including authorizing the entering into of any such fee letter) as administrative expense claims under Section 503(b)(1) of the

Bankruptcy Code, including with respect to any indemnification obligations, whether or not any Finance Documents are executed or any Facility is funded (which fees and indemnification obligations shall be secured by all of the priorities and liens granted pursuant to Section 364(c) of the Bankruptcy Code with respect to any and all other financing obligations under the DIP Facility); (viii) find that the Participants are extending financing to the Debtors in good faith within the meaning of Section 364(e) of the Bankruptcy Code; (ix) set forth the mechanics affecting the DIP Facility as reasonably determined by the DIP Purchaser and the Investment Agent; and (x) authorize the Debtors entry into the Finance Documents.

6.2 The Debtors shall be in compliance in all respects with the Final DIP Order and Cayman Validation Order.

7. **SECURITY MATTERS**

In order to create in favour of Security Agent, for the benefit of Secured Parties, a valid, perfected first priority Security in the personal property and Equity Interests of the Obligors:

7.1 Evidence of the compliance by each Obligor of their obligations under the Security Documents (including their obligations to execute or authorize, as applicable, and deliver UCC financing statements, originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts as provided therein).

7.2 A completed Security Questionnaire dated the Effective Date and executed by an authorized officer of each Obligor, together with all attachments contemplated thereby, including (A) the results of a recent search, by a person satisfactory to Security Agent, of all effective UCC financing statements (or equivalent filings) made with respect to any personal or mixed property of any Obligor in the jurisdictions specified in the Security Questionnaire, together with copies of all such filings disclosed by such search, and (B) UCC termination statements (or similar documents) duly authorized and, if applicable, executed by all applicable persons for filing in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements (or equivalent filings) disclosed in such search (other than any such financing statements in respect of Permitted Security).

7.3 Originals of all certificates (if any) representing the pledged Equity Interests constituting Charged Property, together with undated stock powers executed in blank and instruments constituting Charged Property indorsed in blank, in each case in accordance with the terms of the applicable Security Documents.

7.4 A certificate from the applicable Obligor's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Clause 15.19 (*Insurance*) is in full force and effect, together with endorsements naming Security Agent as additional insured and loss payee thereunder to the extent required under Clause 15.19 (*Insurance*).

7.5 Evidence that each Obligor shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Security Agent.

8. **OTHER DOCUMENTS AND EVIDENCE**

8.1 A fatwa from Arcapita Bank's Sharia'a Board approving the Finance Documents and the transactions contemplated thereby.

8.2 The initial DIP Budget.

8.3 The Original Financial Statements.

8.4 The Implementation Memorandum

8.5 (a) satisfactory evidence that the Obligors shall have obtained all required consents and approvals of all persons including all requisite Authorisations, 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 Security of the Security Agent in the Charged Property 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 the Purchaser in form and substance reasonably satisfactory to the Investment Agent affirming that no Authorisations are required.

8.6 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 the 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 Security over the Purchaser's shares to be created under the Security Documents and also providing that neither section 97(1) of the Companies Law (2012 Revision) of the Cayman Islands nor paragraph 8 of the Order made in the Cayman Proceedings dated 19 March 2012 (as amended) shall operate so as to prevent the Investment Agent from taking any action to enforce its rights under the Finance Documents.

8.7 At least 10 days prior to the Effective Date (or such shorter period as the Investment Agent shall agree) all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

8.8 Evidence that there shall not exist any action, suit, investigation, litigation, proceeding, hearing or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable opinion of Investment Agent, singly or in the aggregate, materially impairs the transactions contemplated by the Finance Documents or that could have a Material Adverse Effect.

8.9 Evidence that, concurrently with the consummation on the Effective Date of the transactions contemplated by the Finance Documents, all indebtedness of the Obligors and their respective subsidiaries with respect to the Existing DIP Facility shall have been satisfied, and all liens and security interests related thereto shall have been terminated or released, in each case, on terms satisfactory to the Investment Agent.

Part 2 - CONDITION PRECEDENT TO EXIT CONVERSION DATE

The documents and other evidence referred to in Clause 2.4(c)(ii) (*Exit Facility Option*) are as follows, in each case in a form satisfactory to the Investment Agent:

1. THE NEW OBLIGORS

1.1 A certified copy of the constitutional documents of each entity which, following the Exit Conversion Date, will be an Obligor together the "**New Obligors**", including, to the extent applicable, a good standing certificate issued by the applicable office of its jurisdiction of incorporation.

1.2 A certified copy of the minutes of the meeting of the board of directors of each New Obligor containing resolutions approving the terms of and the transactions contemplated by the Finance Documents to which that New 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 the Purchaser, written evidence of the Purchaser's directors' consultation with its Joint Provisional Liquidators (in accordance with the Protocol made between them and the Purchaser's directors) of the terms of, the transactions contemplated by and the execution by the Purchaser of the Finance Documents.

1.3 A certified specimen of the signature of the authorized signatory of each New Obligor who will sign the Finance Documents on that New Obligor's behalf.

1.4 A certificate of a director of each New Obligor confirming that the utilising of the Facility guaranteeing of the Facility and/or the granting of the Security pursuant to the Security Documents to which it is a party (as applicable) would not cause any Financial Indebtedness, guarantee or security limit binding on such New Obligor to be exceeded.

1.5 To the extent such approval is necessary or advisable for the enforceability of any Finance Document against any New Obligor, a certified copy of resolutions of the shareholder(s) of such New 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 the Purchaser and each Guarantor in New York.

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

2.3 A legal opinion of Latham & Watkins LLP, legal advisers to the Investment Agent in England and Wales.

[*Required opinions to be discussed*]

3. FEES, COSTS AND EXPENSES

Evidence that the fees, costs and expenses and other compensation then due from the Obligors pursuant to this Agreement, the Commitment Letter or any other Finance Document have been paid or will be paid by on the Exit Conversion Date.

4. FINANCE DOCUMENTS

The Accession and Novation Deed duly executed by each of the parties to them and all Security Documents, documents and other instruments to be delivered to the Investment

Agent in accordance with the Finance Documents, including, but not limited to, an Accession Letter from each New Exit Guarantor, in each case duly executed by the relevant Obligors and New Exit Guarantor.

[NOTE: New Security Documents to be listed]

5. PROCESS AGENT

Evidence of the appointment of process agent for each Obligor.

6. BANKRUPTCY MATTERS

6.1 Evidence satisfactory to the Investment Agent of the occurrence of the effective date under the Plan of Reorganization and that the Plan of Reorganization shall have been substantially consummated, in each case, on or before the DIP Termination Date.

6.2 Evidence satisfactory to the Investment Agent of an order in the Cayman Proceedings recognising and validating the Plan of Reorganisation and the transactions contemplated thereby in form and substance acceptable to the Investment Agent.

7. SECURITY MATTERS

In order to create in favour of Security Agent, for the benefit of Secured Parties, a valid, perfected first priority Security in the personal property and Equity Interests of the New Obligors:

7.1 Evidence of the compliance by each Obligor and New Obligor of their obligations under the Security Documents (including their obligations to execute or authorize, as applicable, and deliver UCC financing statements, originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts as provided therein).

7.2 A completed Security Questionnaire dated the Exit Conversion Date and executed by an authorized officer of each Obligor and New Obligor, together with all attachments contemplated thereby, including (A) the results of a recent search, by a person satisfactory to Security Agent, of all effective UCC financing statements (or equivalent filings) made with respect to any personal or mixed property of (or the Equity Interest in) any New Obligor in the jurisdictions specified in the Security Questionnaire, together with copies of all such filings disclosed by such search, and (B) UCC termination statements (or similar documents) duly authorized and, if applicable, executed by all applicable persons for filing in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements (or equivalent filings) disclosed in such search (other than any such financing statements in respect of Permitted Security).

7.3 Originals of all certificates (if any) representing the pledged Equity Interests constituting Charged Property, together with undated stock powers executed in blank and instruments constituting Charged Property indorsed in blank, in each case in accordance with the terms of the applicable Security Documents.

7.4 A certificate from each New Obligor's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Clause 15.19 (*Insurance*) is in full force and effect, together with endorsements naming Security Agent as loss payee thereunder to the extent required under Clause 15.19 (*Insurance*).

7.5 Control agreements as required by Clause 15.10 (*Deposits*).

7.6 [Fully executed and notarized Intellectual Property Security Agreements, in proper form for filing or recording in all appropriate places in all applicable jurisdictions, memorializing and recording the encumbrance of the Intellectual Property Assets listed in Schedule [__] to the Pledge and Security Agreement] ***[Note: discuss IP filings following review of security questionnaire]***.

7.7 Evidence that each Obligor and New Obligor shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument reasonably required by Security Agent.

8. OTHER DOCUMENTS AND EVIDENCE

8.1 The initial Exit Budget.

8.2 A fatwa from the Exit Purchaser's Sharia'a Board approving the Finance Documents and the transactions contemplated thereby and a pronouncement by a Sharia'a Advisor to the Investment Agent approving the Finance Documents and the transactions contemplated thereby.

8.3 (a) Evidence satisfactory evidence that the Obligors and New Obligors shall have obtained all required Authorisations, in connection with the filing of the Cases and to the execution, delivery and performance of the Finance Documents, the consummation of the transactions contemplated hereby and thereby, the validity and perfection of the Security of the Security Agent in the Charged Property 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 the Exit Purchaser in form and substance reasonably satisfactory to the Investment Agent affirming that no such consents or approvals are required.

8.4 The Investment Agent shall have received a certificate, dated the Exit Conversion Date and signed by an authorized officer of the Exit Purchaser, certifying compliance with each of the conditions precedent set forth in Clause 2.4(c)(iv) and (v) (*Exit Facility Option*) have been satisfied.

8.5 At least 10 days prior to the Exit Conversion Date (or such shorter period as the Investment Agent shall agree) all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

8.6 Evidence that there shall not exist any action, suit, investigation, litigation, proceeding, hearing or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the reasonable opinion of Investment Agent, singly or in the aggregate, materially impairs the transactions contemplated by the Finance Documents or that could have a Material Adverse Effect.

8.7 Agreements or other arrangements in form and substance reasonably acceptable to the Investment Agent authorizing the Investment Agent to exercise all rights of the Obligors and New Obligors with respect to the Cooperation Settlement Documents and LT CayCos, including, without limitation, with respect to the disposition of portfolio companies, upon the occurrence and during the continuation of an Event of Default.

Subordination of all claims of AIHL, the Obligors and New Obligors or their affiliates against the WCFs to the obligations under the Finance Documents on terms in form and substance reasonably acceptable to the Investment Agent; provided that, for the avoidance of doubt, no claims against the WCFs held by or participated to third parties that are not affiliates of Obligors and New Obligors shall be required to be subordinated.

8.8 Subordination of all claims for Disposition Expenses (as defined in the Plan of Reorganization) of the Obligors, New Obligors and their respective affiliates to the Obligations under the Finance Documents on terms in form and substance reasonably acceptable to the Investment Agent, which shall permit payment of claims for such Disposition Expenses] prior to the occurrence of an Event of Default.

8.9 The timing and amounts of any fees payable under the Management Services Agreement (as defined in the Plan of Reorganization) shall be materially consistent with the timing and amounts of such fees disclosed to Investment Agent in the Initial Cooperation Settlement Term Sheet prior to 2 May 2013 or otherwise in form and substance reasonably acceptable to the Investment Agent.

8.10 Evidence that New Topco and all of the Obligors and New Obligors shall not be regulated directly by the Central Bank of Bahrain, the Bahrain Ministry of Industry & Commerce or any other Bahraini governmental authority except to the extent that such regulation could not reasonably be expected to materially and adversely impact (i) the ability of the Obligors and New Obligors to perform under the Finance Documents or (ii) the rights or remedies of the Investment Agent or the Participants under the Finance Documents.

8.11 A Solvency Certificate from the chief financial officer, if any (or alternatively chief executive officer or chief restructuring officer) of the Exit Purchaser, on a pro forma basis after giving effect to the confirmation of the Plan of Reorganization, the consummation of the transactions contemplated thereby and the occurrence of the Exit Conversion Date.

8.12 Evidence that (a) concurrently with the consummation of the Plan of Reorganization, all pre-existing indebtedness of the Obligors and their respective subsidiaries shall have been satisfied or otherwise treated in the manner specified in the Plan of Reorganization (to the extent applicable), and all liens and security interests related thereto, to the extent required by the Plan of Reorganization, shall have been terminated or released, in each case, on terms satisfactory to the Investment Agent, (b) the respective indebtedness of the Obligors and their respective subsidiaries and any liens securing same that are outstanding immediately after the consummation of the Plan of Reorganization shall not exceed the amount contemplated by the Plan of Reorganization (to the extent applicable), and (c) there shall not occur as a result of, and after giving effect to, the Exit Facility and the other Plan of Reorganization effective date transactions, a default (or any event which with the giving of notice or lapse of time or both will be a default) under any of the Obligors or their respective subsidiaries' debt instruments and other material agreements.

8.13 A novation agreement, duly executed by the parties thereto, novating the rights and obligations of the DIP Purchaser under the Netting Letter to the Exit Purchaser, together with any necessary amendments to the DD&Co Ltd Agreements.

SCHEDULE 2

FORM OF TRANSACTION REQUEST

From: [Arcapita Investment Holdings Limited] [New Arcapita Holdco 2]

To: Goldman Sachs International, as Investment Agent

Date: [ ]

SUPERPRIORITY DEBTOR-IN-POSSESSION AND EXIT FACILITY MASTER MURABAHA AGREEMENT DATED [●], 2013 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

We confirm that each of the [representations and warranties][3] [Repeating Representation][4] 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 (*Conditions Precedent to each Purchase*) of the Agreement have been satisfied on the date of this Transaction Request and will be satisfied on the proposed Transaction Date.

[We hereby authorise you to pay the [DIP] [Exit] Facility Proceeds as follows:

(a) to the account of [CF ARC LLC] [Standard Chartered Bank] with the following details:

[insert bank account details]; and

(b) the remainder to our account with the following details :

[insert bank account details]] [5]

---

[3] Include for Initial DIP Purchase Contract and Initial Exit Purchase Contract.

[4] Include for all other Purchase Contracts.

[5] Include for Initial DIP Purchase Contract and Initial Exit Purchase Contract.

……
authorized signatory
[**Arcapita Investment Holdings Limited**] [**New Arcapita Holdco 2**]

SCHEDULE 3

FORM OF OFFER LETTER AND ACCEPTANCE

From: Goldman Sachs International, as Investment Agent

To: [Arcapita Investment Holdings Limited] [New Arcapita Holdco 2] Date:

SUPERPRIORITY DEBTOR-IN-POSSESSION AND EXIT FACILITY MASTER MURABAHA AGREEMENT DATED [●], 2013 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:	[ ]
D.	Increased Costs:	[ ]
E.	Profit Amount:	[ ]
F.	[Additional Profit:]	[ ]
G.	[Supplemental Profit:]	[ ]
H.	Mandatory Costs:	[ ]
I.	Purchase Costs:	[ ]
J.	Deferred Sale Price:	[ ]
K.	Deferred Payment Date:	[ ]
L.	[Documentation Fee:]	[ ]

The above offer is subject to the terms of the Agreement, including, without limitation, Clauses 20 (*Miscellaneous*) and 23 (*Governing Law & Dispute Resolution*) 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.

[Signature page follows.]

……

GOLDMAN SACHS INTERNATIONAL,
as Investment Agent

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

Date: [ ]

……
authorized signatory
[**Arcapita Investment Holdings Limited**] [**New Arcapita Holdco 2**]

SCHEDULE 4

DISCLOSURE SCHEDULE

[Note: to be confirmed – dates to be updated]

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 [●].

6. HarborVest Agreements as provided to the Investment Agent on [●].

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 [●].

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.

10. [Each of Chicago Condominium Holdings Limited, Perennial Holdings IV Limited, GAS Holdings Limited and Arcapita Ventures I Holdings Limited is party to a murabaha working capital financing facility with a WCF.]

SCHEDULE 5

LIST OF ENTITIES

[*NOTE SCHEDULES TO BE CONFIRMED.*]

Part 1 – Debtor Subsidiaries

1. AEID II Holdings Limited
2. Arcapita LT Holdings Limited
3. RailInvest Holdings Limited
4. WindTurbine Holdings Limited

Part 2- Miscellaneous Guarantor Subsidiaries

1. Arcapita (Europe) Limited
2. Arcapita (Singapore) Limited
3. Arcapita (US) Limited
4. Arcapita Inc.
5. Arcapita Industrial Management I Limited
6. Arcapita Investment Funding Limited
7. Arcapita Investment Management Limited
8. Arcapita LT Holdings Limited
9. Arcapita Structured Finance Limited
10. Arcapita US Holding Co., Inc.
11. Arcapita Ventures LLC

Part 3- LT CayCos

1. AEI II Holdings Limited
2. AEID II Holdings Limited
3. AHQ Cayman Holdings Limited
4. AIDT India Holdings Limited
5. Ampad Holdings Limited
6. AquaInvest Holdings Limited
7. Arcapita Ventures I Holdings Limited
8. ArcIndustrial European Development Holdings Limited
9. ArcResidential Japan Holdings Limited
10. Aspen Valley Ranch Holdings Limited
11. Avionics Holdings Limited
12. Blacktop Holdings Limited
13. Bospower Holdings Limited
14. BT Holdings Limited
15. Cajun Holdings Limited
16. Castello Holdings Limited
17. CEE Residential I Holdings Limited
18. CEIP Holdings Limited
19. Chicago Condominium Holdings Limited
20. DAH Holdings Limited
21. District Cooling Holdings Limited
22. Drillbit Holdings Limited
23. Earth Holdings Limited
24. ElectricInvest Holdings Limited
25. Eternal Holdings Limited
26. French Kitchen Holdings Limited
27. GAS Holdings Limited
28. India Growth Holdings Limited
29. Insulation Holdings Limited
30. JJ Holdings Limited
31. La Mesa Holdings Limited
32. Locker Room Holdings II Limited
33. Locker Room Holdings Limited
34. Loghomes Holdings Limited
35. Logistics Holdings Limited
36. Longwood Holdings Limited
37. Medifax Holdings Limited
38. MS Surgery Holdings Limited
39. NavIndia Holdings Limited
40. Orlando Residential Holdings Limited
41. OSP Holdings Limited
42. Outlet Center Holdings Limited
43. Palatine Holdings Limited
44. Perennial Holdings II Limited
45. Perennial Holdings IV Limited
46. Perennial Holdings Limited
47. Pond Bay Holdings Limited
48. Premium Coffee Holdings Limited
49. PVC Holdings Limited
50. RailInvest Holdings Limited
51. Rapids Limited
52. Riffa Holdings Limited
53. Ritzy Property Holdings Limited

54. Singapore Industrial II Holdings Limited
55. Small Smiles Holdings Limited
56. Sonar Holdings Limited
57. Sortalogic Holdings Limited
58. StoraFront Holdings Limited
59. Storapod Holdings Limited
60. TechInvest Holdings Limited
61. Tender Loving Care Holdings Limited
62. Victory Heights Lifestyle Holdings Limit
63. WaterWarf Holdings II Limited
64. WaterWarf Holdings Limited
65. Waverly Holdings Limited
66. Wind Power Holdings Limited
67. WindTurbine Holdings Limited
68. YAK Holdings Limited

Part 4 - Transaction Holdcos

1. AEID II Holding Company Limited
2. AHQ Cayman Holding Company I Limited
3. AIDT India Holding Company Limited
4. AquaInvest Funding Limited
5. Arcapita Ventures I Holding Company Limited
6. ArcIndustrial European Development Funding Limited
7. ArcResidential Japan Funding Limited
8. Aspen Valley Ranch Holding Company, Inc.
9. Assisted Living First Euro Funding Limited
10. BBB Holding Company II Limited
11. BBB Holding Company Limited
12. BT Holding Company, Inc.
13. Caribou Holding Company Limited
14. Castello Holding Company Limited
15. CEIP Capital Limited
16. Chicago Condominium Properties Inc.
17. Cirrus Holding Company Limited
18. Crescent Euro Self-Storage Funding II Limited
19. Crescent Euro Self-Storage Funding Limited
20. District Cooling Holding Company Limited
21. Drillbit Holding Company Limited
22. ElectricInvest Funding Limited
23. GAStorage Funding II Inc.
24. GAStorage Funding Inc.
25. India Growth Holding Company Limited
26. Insulation Funding Limited
27. JJ Holding Company Limited
28. Logistics Holding Company Limited
29. Lusail Heights Holding Company Limited
30. MS Holding Company, Inc.
31. NavIndia Holding Company Limited
32. Oman Industrial Holding Company Limited
33. Orlando Conversion Property Inc.
34. Orlando Development Property Inc.
35. OSP Holding Company, Inc.
36. Outlet Center Funding, Inc.
37. Palatine Properties Holding Company, Inc.
38. Poland Residential Holding Company Limited
39. PVC (Cayman) Holding Company II Limited
40. PVC (Cayman) Holding Company Limited
41. RailInvest Funding Limited
42. Riffa Holding Company Limited
43. Singapore Industrial Funding Limited
44. Sortalogic Funding Limited
45. StoraFront Holding Company Limited
46. Storapod Holding Company, Inc.
47. TechInvest (Cayman) Holding Company Limited
48. Tensar (Cayman) Holding Company Limited
49. Timber Holdings, Inc.
50. TPG Holding Company Limited
51. TST Holdings Limited
52. US Senior Living Funding, Inc.

53. VGC (Cayman) Holding Company Limited
54. VGC Funding Limited
55. Victory Heights Holding Company Limited
56. Wind Power First Euro Funding Limited
57. WindTurbine Holding Company Limited

No Transaction Holdco is wholly owned.

Part 5 - Wholly-Owned WCFs

1. Arcapita Ventures I WCF Limited
2. Arcapita WCF Limited
3. ArcResidential Japan WCF Limited
4. Aspen Valley Ranch WCF Limited
5. Avionics WCF Limited
6. BERT Funding Company Limited
7. BosPower WCF II Limited
8. BosPower WCF Limited
9. Castello WCF Limited
10. CEIP WCF Limited
11. Chicago Condominium WCF Limited
12. Condo Conversion WCF Limited
13. Drillbit WCF II Limited
14. Drillbit WCF Limited
15. FEDI Limited
16. HEDI Investments Limited
17. Isoftechnology WCF Limited
18. JEDI Limited
19. LogHomes II WCF Limited
20. LogHomes WCF Limited
21. MEDI Limited
22. OSP WCF Limited
23. Outlet Center WCF Limited
24. PVC WCF Limited
25. Singapore Industrial II WCF Limited
26. Singapore Industrial WCF Limited
27. Sortalogic WCF Limited
28. TechInvest WCF Limited
29. US Senior Living WCF Limited
30. VGC WCF Limited
31. Windturbine WCF Limited

Part 6 - Syndication Companies

Part 1: Wholly Owned Syndication Companies

1. BlackFoot Capital Limited
2. Carsonar Capital Limited
3. Chatooga Capital Limited
4. Elegant Property Capital Limited
5. Exclusive Property Capital Limited
6. Klamath Capital Limited
7. LandsBrough Capital Limited
8. Luxurious Property Capital Limited
9. Snake Capital Limited
10. SonarTech Capital Limited
11. Sortalogic Capital II Limited
12. StoraFront Capital Limited
13. WindTurbine Capital II Limited

Part 2: Majority Owned Syndication Companies

1. Airstream Capital Limited
2. AutoTech Capital Limited
3. BlackFoot Capital Limited
4. Castello Estate Capital Limited
5. Castello Place Capital Limited
6. Castello Residence Capital Limited
7. Castello Resort Capital Limited
8. CEE Residential I Capital Limited
9. Chatooga Capital Limited
10. Component Capital Limited
11. Depot Capital II Limited
12. ElectricInvest WCF Capital (Holdco) IV Limited
13. Elegant Property Capital Limited
14. Exclusive Property Capital Limited
15. India Growth Capital I Limited
16. India Growth Capital II Limited
17. India Growth Capital III Limited
18. India Growth Capital IV Limited
19. JJ Capital I Limited
20. JJ Capital II Limited
21. JJ Capital III Limited
22. LandsBrough Capital Limited
23. Lusail Capital Limited
24. Luxurious Property Capital Limited
25. Luxury Residential Capital I Limited
26. Luxury Residential Capital II Limited
27. Luxury Residential Capital III Limited
28. Luxury Residential Capital IV Limited
29. NavIndia Capital Limited
30. Oman Industrial Capital Limited
31. Pond Bay Estate Capital Limited
32. Pond Bay Place Capital Limited
33. Pond Bay Residence Capital Limited
34. Pond Bay Resort Capital Limited

35. RetailCenter Capital Limited
36. RetailComplex Capital Limited
37. RetailMall Capital Limited
38. RetailOutlet Capital Limited
39. Snake Capital Limited
40. Sonic Capital Limited
41. StoreHouse Capital II Limited
42. TechNet Capital Limited
43. TechShield Capital Limited
44. TechTV Capital Limited
45. Wind Energy Capital Limited
46. Wind Speed Capital Limited

Part 3: Non- Majority Owned Syndication Companies

1. AccessData Capital Limited
2. Acumen Capital Limited
3. AED Building Capital Limited
4. AED Construction Capital Limited
5. AED Development Capital Limited
6. AED Structural Capital Limited
7. AEID II Capital I Limited
8. AEID II Capital II Limited
9. AEID II Capital III Limited
10. AEID II Capital IV Limited
11. AIDT India Capital Limited
12. Altimeter Capital Limited
13. Annotate Capital Limited
14. Aqua Capital Limited
15. Astute Capital Limited
16. Authentic Kitchen Capital Limited
17. Avenue Capital LDC
18. Awal Lifestyle Capital Limited
19. BosPower Capital I Limited
20. BosPower Capital II Limited
21. BosPower Capital III Limited
22. BosPower Capital IV Limited
23. BosPower Capital V Limited
24. BosPower Capital VI Limited
25. Byway Capital LDC
26. Cafelatte Capital Limited
27. CafeMocha Capital Limited
28. CajunChicken Capital Limited
29. CajunChilly Capital Limited
30. CajunFowl Capital Limited
31. CajunPoultry Capital Limited
32. CajunRooster Capital Limited
33. CajunSpice Capital Limited
34. CEIP Capital Limited
35. Chicago Apartment Capital Limited
36. Chicago Condo Capital Limited
37. Chicago Dwelling Capital Limited
38. Chicago Residence Capital Limited
39. Classic Kitchen Capital Limited
40. CoffeeBean Capital Limited

41. CoffeeBlend Capital Limited
42. CoffeeHouse Capital Limited
43. Colorado Capital Limited
44. Contemporary Kitchen Capital Limited
45. Deira Lifestyle Capital Limited
46. Delmon Lifestyle Capital Limited
47. Depot Capital Limited
48. DermaSurgery Capital Limited
49. Designer Capital Limited
50. District Cooling Capital Limited
51. Drillbit Capital I Limited
52. Drillbit Capital II Limited
53. Drillbit Capital III Limited
54. Drillbit Capital IV Limited
55. EarthSolutions Capital limited
56. ElectricInvest Pylon Capital Limited
57. ElectricInvest Supply Capital Limited
58. Experienced Capital II Limited
59. Experienced Capital IV Limited
60. Experienced Capital Limited
61. Façade Insulation Capital Limited
62. Fashionista Capital Limited
63. Floor Insulation Capital Limited
64. Flyover Capital LDC
65. Fountain Capital Limited
66. Fountains WCF Capital Limited
67. Fuselage Capital Limited
68. Gasdeposit Capital Limited
69. Gastock Capital Limited
70. Gastorage Capital Limited
71. Gaswarehouse Capital Limited
72. GravelSolutions Capital Limited
73. HealthCare Capital Limited
74. HealthData Capital Limited
75. Highway Capital LDC
76. HomeCare Capital Limited
77. Japan Apartment Capital Limited
78. Jumeirah Lifestyle Capital Limited
79. La Mesa Apartment Capital Limited
80. La Mesa Condo Capital Limited
81. La Mesa Dwelling Capital Limited
82. La Mesa Residence Capital Limited
83. Landing Capital Limited
84. LandSolutions Capital Limited
85. Lane Capital LDC
86. LogCabin Capital Limited
87. LogChalet Capital Limited
88. LogHouse Capital Limited
89. LogiCargo Capital Limited
90. LogiFreight Capital Limited
91. LogiShipment Capital Limited
92. LogiTransport Capital Limited
93. LogVilla Capital Limited
94. Longwood Apartment Capital Limited
95. Longwood Condo Capital Limited

96. Longwood Dwelling Capital Limited
97. Longwood Residence Capital Limited
98. Luxuria Capital Limited
99. Manuscript Capital Limited
100. Matured Capital II Limited
101. Matured Capital IV Limited
102. Matured Capital Limited
103. Medical Capital Limited
104. MedInfo Capital Limited
105. MedSoftware Capital Limited
106. MedSystems Capital Limited
107. Motorway Capital LDC
108. Notepad Capital Limited
109. Orlando Apartment Capital Limited
110. Orlando Condo Capital Limited
111. Orlando Townhouse Capital Limited
112. Orlando Villa Capital Limited
113. Outpatient Capital Limited
114. Palatine Apartment Capital Limited
115. Palatine Condo Capital Limited
116. Palatine Dwelling Capital Limited
117. Palatine Residence Capital Limited
118. Panel Insulation Capital Limited
119. Paper Products Capital Limited
120. Parachute Capital Limited
121. Perceptive Capital Limited
122. Profusion Capital Limited
123. Propeller Capital Limited
124. PVC Door Capital Limited
125. PVC Frame Capital Limited
126. PVC Shutter Capital Limited
127. PVC Window Capital Limited
128. RailInvest Capital I Limited
129. RailInvest Capital II Limited
130. RainWater Capital Limited
131. Ramp Capital LDC
132. Reservoir Capital Limited
133. Retro Kitchen Capital Limited
134. Road Capital LDC
135. Roof Insulation Capital Limited
136. Season Capital Limited
137. Seasoned Capital II Limited
138. Seasoned Capital IV Limited
139. Singapore Industrial Capital I Limited
140. Singapore Industrial Capital II Limited
141. Singapore Industrial Capital III Limited
142. Singapore Industrial Capital IV Limited
143. Small Smiles WCF Capital Limited
144. Smile Light Capital Limited
145. Smile Shine Capital Limited
146. Smile Sparkle Capital Limited
147. Smile White Capital Limited
148. SoilSolutions Capital Limited
149. Sortalogic Capital I Limited
150. Storapod Capital I Limited

151. Storapod Capital II Limited
152. Storapod Capital III Limited
153. Storapod Capital IV Limited
154. Storapod WCF Capital Limited
155. StoreHouse Capital Limited
156. Street Capital LDC
157. Stylistic Capital Limited
158. Sweetwater Capital Limited
159. TechAccess Capital Limited
160. Tensar WCF Capital Limited
161. Teton Capital Limited
162. Treatment Capital Limited
163. US Distribution Equity II Limited
164. US Distribution Equity III Limited
165. US Distribution Equity Limited
166. US Distribution Finance II Limited
167. US Distribution Finance III Limited
168. US Distribution Finance Limited
169. US Multifamily I Equity LDC
170. US Multifamily I Finance LDC
171. US Multifamily II Equity LDC
172. US Multifamily II Finance LDC
173. VCI Angel Capital Limited
174. VCI Corporate Capital Limited
175. VCI Enterprise Capital Limited
176. VCI Investment Capital Limited
177. Wall Insulation Capital Limited
178. Warehouse Capital II Limited
179. WareHouse Capital Limited
180. Water Capital Limited
181. WaterBay Capital II Limited
182. WaterBay Capital Limited
183. WaterFront Capital II Limited
184. WaterFront Capital Limited
185. WaterSide Capital II Limited
186. WaterSide Capital Limited
187. WaterWay Capital II Limited
188. WaterWay Capital Limited
189. Waverly Apartment Capital Limited
190. Waverly Condo Capital Limited
191. Waverly Dwelling Capital Limited
192. Waverly Residence Capital Limited
193. WindTurbine Capital Limited
194. Wisdom Capital II Limited
195. Wisdom Capital IV Limited
196. Wisdom Capital Limited

Part 7 - Excluded Businesses

1. CEPL
2. CEE Residential
3. Luxury - Avr
4. Luxury – Cdc
5. Riffa Views
6. SouthLand Log Homes
7. US Residential Dev III

Part 8 - Immaterial Subsidiaries

[Note: to be confirmed]

1. AIDT India Holding Company Limited
2. Arcapita Hong Kong Limited
3. Arcapita Limited
4. Arcapita Pte. Limited
5. Aspen Valley Ranch Holding Company, Inc.
6. Aspen Valley Ranch Holdings Limited
7. Aspen Valley Ranch WCF Limited
8. Castello Estate Capital Limited
9. Castello Holding Company Limited
10. Castello Place Capital Limited
11. Castello Residence Capital Limited
12. Castello Resort Capital Limited
13. Castello WCF Limited
14. CEE Residential I Capital Limited
15. Condo Conversion WCF Limited
16. La Mesa Apartment Capital Limited
17. La Mesa Condo Capital Limited
18. La Mesa Dwelling Capital Limited
19. La Mesa Holdings Limited
20. La Mesa Residence Capital Limited
21. Loghomes Holdings Limited
22. LogHomes II WCF Limited
23. LogHomes WCF Limited
24. Longwood Apartment Capital Limited
25. Longwood Condo Capital Limited
26. Longwood Dwelling Capital Limited
27. Longwood Holdings Limited
28. Longwood Residence Capital Limited
29. Luxury Residential Capital I Limited
30. Luxury Residential Capital II Limited
31. Luxury Residential Capital III Limited
32. Luxury Residential Capital IV Limited
33. Orlando Conversion Property Inc.
34. Orlando Development Property Inc.
35. OSP Holding Company, Inc.
36. Poland Residential Holding Company Limited
37. RetailCenter Capital Limited
38. RetailComplex Capital Limited
39. RetailMall Capital Limited
40. RetailOutlet Capital Limited
41. Riffa Holding Company Limited
42. Sortalogic Funding Limited
43. Sortalogic WCF Limited
44. TechInvest (Cayman) Holding Company Limited
45. Timber Holdings, Inc.
46. Waverly Apartment Capital Limited
47. Waverly Condo Capital Limited
48. Waverly Dwelling Capital Limited
49. Waverly Holdings Limited
50. Waverly Residence Capital Limited

SCHEDULE 6

Part 1 - FORM OF ACCESSION LETTER

To: Goldman Sachs International, as Investment Agent

From: [Subsidiary] [New Exit Guarantor] and [Arcapita Investment Holdings Limited] [New Arcapita Holdco 2]

Dated: [ ] 201[ ]

Dear Sirs

ARCAPITA INVESTMENT HOLDINGS LIMITED — SUPERPRIORITY DEBTOR-IN-POSSESSION AND EXIT FACILITY MASTER MURABAHA AGREEMENT DATED DECEMBER 14, 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] [New Exit Guarantor] agrees to become an Additional Guarantor and to be bound by the terms of the Agreement and the other Finance Documents as an Additional Guarantor [and the Parent] pursuant to Clause 22.4 (*Additional Guarantor*) of the Agreement.

3. [Subsidiary] [New Exit Guarantor] 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 22.4 (*Additional Guarantor*) of the Agreement.

4. [Subsidiary] [New Exit Guarantor] is a company duly incorporated under the laws of [name of relevant jurisdiction].

5. [Subsidiary's] [New Exit Guarantor] administrative details are as follows:

   Address:

   Fax No:
   Attention:

6. This Accession Letter and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with English law.

[SUBSIDIARY] [NEW EXIT GUARANTOR]

Executed and delivered	
as a Deed by	)
duly authorized for and	)
on behalf of	)
[Subsidiary]	)
[**New Exit Guarantor**]	)
	)

Part 2 - FORM OF RESIGNATION LETTER

To: Goldman Sachs International, as Investment Agent

From: [Subsidiary][Arcapita Bank] and [Arcapita Investment Holdings Limited]

Dated: [ ] 201[ ]

Dear Sirs

ARCAPITA INVESTMENT HOLDINGS LIMITED — SUPERPRIORITY DEBTOR-IN-POSSESSION AND EXIT FACILITY MASTER MURABAHA AGREEMENT DATED DECEMBER 14, 2012 (THE "AGREEMENT")

51. We refer to the Agreement. This is a Resignation Letter. Terms defined in the Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Accession Letter.

52. Pursuant to Clause 22.5 (*Resignation of a Guarantor*), we request that [*resigning Obligor*] be released from its obligations as Guarantor [and Parent] under the Agreement and the Finance Documents.

53. This Accession Letter and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with English law.

Executed and delivered)
as a Deed by:)
duly authorized for and)
on behalf of)
[Subsidiary][Arcapita Bank])
)

SCHEDULE 7

CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED BY EACH ADDITIONAL GUARANTOR

1. An Accession Letter executed by the Additional Guarantor and the Purchaser.

2. A copy of the constitutional documents of the Additional Guarantor.

3. A copy of a resolution of the board of directors of the Additional Guarantor:

   (a) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute, deliver and perform the Accession Letter and any other Finance Document to which it is party;

   (b) authorising a specified person or persons to execute the Accession Letter and other Finance Documents on its behalf;

   (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and

   (d) authorising the Purchaser to act as its agent in connection with the Finance Documents.

4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.

5. A copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.

6. A certificate of the Additional Guarantor (signed by a director) confirming that guaranteeing or securing, as appropriate, the Facility Limit would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.

7. A certificate of an authorised signatory of the Additional Guarantor certifying that each copy document listed in this Schedule 7 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Letter.

8. A copy of any other Authorisation or other document, opinion or assurance which the Investment Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Letter or for the validity and enforceability of any Finance Document.

9. If available, the latest audited financial statements of the Additional Guarantor.

10. The following legal opinions, each addressed to the Investment Agent, the Security Agent and the Participants:

    (a) A legal opinion of the legal advisers to the Investment Agent in England, as to English law in the form distributed to the Participants prior to signing the Accession Letter.

    (b) If the Additional Guarantor is incorporated in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than

English law, a legal opinion of the legal advisers to the Investment Agent in the jurisdiction of its incorporation, or, as the case may be, the jurisdiction of the governing law of that Finance Document (the "**Applicable Jurisdiction**") as to the law of the Applicable Jurisdiction and in the form distributed to the Participants prior to signing the Accession Letter.

11. If the proposed Additional Guarantor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 23.6(b) (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Guarantor.

12. If the proposed Additional Guarantor is incorporated in a jurisdiction other than New York and is acceding to this Agreement prior to the Exit Conversion Date, evidence of the appointment of process agent.

13. Any Security Documents which are required by the Investment Agent to be executed by the proposed Additional Guarantor to grant a first priority Security in favour of the Security Agent over the Equity Interests in the proposed Additional Guarantor and the assets of that Additional Guarantor.

14. Any notices or documents required to be given or executed under the terms of those Security Documents.

15. 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.

16. 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 Security of the Security Agent in the Charged Property 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.

17. 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.

SCHEDULE 8

FORM OF COMPLIANCE CERTIFICATE

To: Goldman Sachs International as Investment Agent

From: [*Purchaser*]

Dated:

Dear Sirs

[Purchaser] - [ ] Superpriority Debtor-in-Possession and Exit Facility Master Murabaha Agreement dated [ ] (the "Murabaha Agreement")

1.1 We refer to the Murabaha Agreement. This is a Compliance Certificate. Terms defined in the Murabaha Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

1.2 We confirm that:

[*Insert details of covenants to be certified*].

1.3 [We confirm that no Default is continuing.]*

Signed ……..
Director
of
[Purchaser]

……..
Director
of
[Purchaser]

[*insert applicable certification language*][6]
……..
for and on behalf of
[*name of Auditors of the Purchaser*]**

NOTES:

* If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

** Only applicable if the Compliance Certificate accompanies the audited financial statements and is to be signed by the Auditors. To be agreed with the Purchaser's auditor's prior to signing the Agreement.

[6] To be agreed with the Purchaser's Auditors and the Lenders prior to signing the Agreement.

SCHEDULE 9

MAJOR INVESTMENTS

SCHEDULE 10

MINOR INVESTMENTS

SCHEDULE 11

APPOINTMENT OF AGENCY LETTER

From: [The Purchaser]

To: Goldman Sachs International

Dated: [*TRANSACTION DATE*]

Dear Sirs

Arcapita Investment Holdings Limited – Murabaha DIP and Exit Facility Agreement dated [_____] (the "Agreement")

1. We refer to the Agreement and the Purchase Contract relating to the Facility concluded between us pursuant to the Offer dated [_____] and Acceptance thereof dated [_____].

2. This is an Appointment of Agency Letter issued pursuant to Clause 5.8(c) of the Agreement. Terms defined in the Agreement have the same meaning in this Appointment of Agency Letter unless given a different meaning in this Appointment of Agency Letter.

3. We hereby authorise you to act as our agent to sell to the Broker the following Commodities[7] on the following terms:

Type of Commodities:	[_____]
Amount of Commodities:	[_____]
Selling Price[8]:	U.S.$[_____]
Selling Date[9]:	[_____]

4. Subject to the Netting Letter, we hereby irrevocably instruct you to immediately credit to our account [*insert account details*] on the Selling Date the Selling Price (each as specified above) less applicable Onsale Costs (if any).

5. This Appointment of Agency Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

6. Please signify your acceptance of the above terms and conditions of this Appointment of Agency Letter by signing and returning the acceptance portion of this letter.

Yours faithfully

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7 Such Commodities shall be the same commodities as those purchased pursuant to the Offer Letter and acceptance referred to in paragraph 1 above.

8 Selling Price shall be equal to the Cost Price specified in the Offer Notice and acceptance referred to in paragraph 1 above.

9 Selling Date shall be Transaction Date specified in the Offer Notice and acceptance referred to in paragraph 1 above.

……

authorised signatory for

[the Purchaser]

We hereby accept the terms of the above appointment.

……

authorised signatory for

GOLDMAN SACHS INTERNATIONAL

SCHEDULE 12

INITIAL COOPERATION SETTLEMENT TERM SHEET

[attached]

SYNDICATION COMPANIES AND REORGANIZED ARCAPITA
SETTLEMENT TERM SHEET

This term sheet (the "***Term Sheet***") describes the material terms of an agreement among the Debtors, AIM, the Syndication Companies and, after the Effective Date of the Plan, Reorganized Arcapita (each as defined below) relating to the sale or other disposition of the portfolio investments identified on Exhibit A (each, an "***Investment***" and, collectively, the "***Investments***"). As set forth on Exhibit A, the Investments are divided into two categories, the "***Major Investments***" and the ***"Minor Investments***." It will be a condition precedent to the effectiveness of this Term Sheet that Arcapita Bank will continue to be an "affiliate" of the Arcapita Group through and after the effective date of the Plan (the "***Effective Date***") as a result of the transfer of 50.01% of the shares in Arcapita Bank to New Arcapita Bank Holdco, provided that such condition precedent may be waived in writing by the UCC (as defined below) in its sole discretion. Absent further agreement by the parties hereto, the agreement evidenced by the Term Sheet will become effective on the Effective Date of a consensual Plan that implements all of the provisions of this Term Sheet, including those described on Exhibit B attached hereto, which the Debtors (as defined below) and the UCC agree describes their agreement with respect to certain issues that will be incorporated into the Plan.

The transactions described in this Term Sheet are subject to conditions to be set forth in definitive documents and to the approval by the United States Bankruptcy Court for the Southern District of New York (the "***Bankruptcy Court***"). This Term Sheet is being presented for discussion and settlement purposes only and is entitled to protection from any use or disclosure to any person pursuant to Federal Rule of Evidence 408 and any similar rules. Nothing in this Term Sheet shall be construed as an admission of any fact or liability, a stipulation or a waiver, and each statement contained herein is made without prejudice, with a full reservation of all rights, remedies, claims and defences of the parties hereto.

Capitalized terms not defined in this Term Sheet have the meanings given to them in the joint plan of reorganization filed on February 8, 2013 (as may be amended or modified from time to time, the "***Plan***"), to be confirmed in the pending bankruptcy cases of the Debtors, and the related disclosure statement (the "***Disclosure Statement***").

PARTIES	
UCC	The Official Committee of Unsecured Creditors appointed in the Debtors' chapter 11 cases.
Debtors	The following companies which filed for protection under chapter 11 of the Bankruptcy Code: 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***").
Reorganized Arcapita	Refers to, and includes, (i) the entity that will be formed under the laws of the Cayman Islands on or prior to the date on which the Plan shall take effect (the "***Effective Date***") that will issue the New Arcapita Shares (such entity, "***New Arcapita Topco***") and will own, after the Effective Date, [substantially all of the issued and outstanding shares in an entity that will be formed under the laws of Bahrain ("New Bahraini Arcapita Holdco"), which will own] 100% of the issued and outstanding shares in New Arcapita Bank Holdco and 99.99% of the issued

	and outstanding shares in New Arcapita Holdco 1 and (ii) all other new entities to be formed in connection with implementation of the Plan, together with the Debtors, as reorganized pursuant to the Plan, and each of their subsidiaries. The formation of New Bahraini Arcapita Holdco as an intermediate subsidiary between New Arcapita Topco and New Arcapita Bank Holdco and New Arcapita Holdco 1, and regulation of New Bahraini Arcapita Holdco by the Central Bank of Bahrain ("***CBB***") and/or Bahrain Ministry of Industry and Commerce ("***MOIC***"), are subject to an acceptable resolution of the Bahrain structure and CBB and MOIC regulatory issues that are presently under discussion.
Syndication Companies	For each Investment, each Cayman Islands holding company through which the Arcapita Group initially syndicated the interests in the Investment to third-party investors, as described in the Disclosure Statement other than any such holding company which is wholly owned by a single investor who has not provided a proxy to Arcapita Investment Management Limited ("***AIML***") and/or does not currently have an administration agreement in place with AIML. For the avoidance of doubt, the term "Syndication Companies" shall include any PVs or PNVs which hold any interests in Transaction HoldCos as of the Effective Date.
Transaction HoldCos	For each Investment, the top-level holding company through which the Debtors (before the Effective Date of the Plan) and Reorganized Arcapita (after the Effective Date of the Plan), and the Syndication Companies each own their interests in the Investment.
LT CayCos	For each Investment, any Reorganized Arcapita entity that holds a direct equity interest in the Transaction HoldCo applicable to that Investment.
AIM and AIM Bahrain	AIM Group Limited, a Cayman Islands company that will be a party to the Management Services Agreement (as defined below). AIM will form and own, after the Effective Date, 99.99% of the issued and outstanding shares (with the remaining shares owned by another wholly owned newly formed Cayman Islands subsidiary of AIM) in an entity that will be formed under the laws of Bahrain (***"AIM Bahrain"***).
DISPOSITION COMMITTEES	
Purpose	For each Major Investment and Minor Investment (except for those Major Investments and Minor Investments in which there is a third party investor that is not a Syndication Company, a Debtor or one of its wholly-owned subsidiaries (each, a ***"Third-Party Investor"***)), the relevant Syndication Companies and the LT CayCos, as necessary, shall amend the articles of association or similar organizational documents of the applicable Transaction HoldCo (and/or enter into a shareholders' agreement or other arrangement) to provide that the shareholders' consent shall be required with respect to the sale or other disposition of (i) all of the interests in the Transaction HoldCo and (ii) all or substantially all of the assets directly or indirectly owned by the Transaction HoldCo, whether structured as a merger, consolidation, or otherwise (each, a "***Sale Approval***"). As of the Effective

	Date, the shareholders of each such Transaction Holdco shall have established a committee (each, a "***Disposition Committee***"), which shall have sole authority to make all decisions and give all approvals with respect to any Sale Approval. For each Major Investment and Minor Investment which has a Third-Party Investor, the relevant Syndication Companies and the LT CayCos, as necessary, shall either (x) obtain all necessary consents from each applicable Third-Party Investor to the establishment of the Sale Approval and the Disposition Committee and to the other rights and duties of the Majority Investors and the Minority Investors specified in this Term Sheet with respect to the sale or other disposition of the interests in or assets of the applicable Transaction Holdco and shall amend the relevant articles of association or similar organizational documents of the applicable Transaction HoldCo (and/or enter into a shareholders' agreement or other arrangement) to effectuate this result, or (y) enter into a shareholders' agreement or similar arrangement that implements, only as between the relevant Syndication Companies and the LT CayCos, their agreement with respect to the matters described in (x), above, subject to the existing rights of each applicable Third-Party Investor relating to such matters. The sole purpose of each Disposition Committee shall be to implement the sale or other disposition of the Investment or Investments to which it relates. The Major Investments will be sold in accordance with a disposition plan negotiated prior to the Effective Date by the Debtors and the UCC (each, a "***Disposition Plan***"). The Disposition Plan for each Major Investment will set forth the material conditions (the "***Sale Conditions***") applicable to the sale or other disposition of that Investment. Any material deviation from the Disposition Plan for a Major Investment may only be effected with the approval of a majority of each of the Majority Committee Members (as defined below) and the Minority Committee Members (as defined below) of the relevant Disposition Committee. Each Disposition Committee must accept or reject a Qualifying Third-Party Offer (as defined below) within 10 business days after receipt of such an offer, except as provided in paragraph 2 of "Sale Conditions" below, in which case, the Disposition Committee must accept or reject a Qualifying Third-Party Offer no later than 10 business days after the end of the 45-day marketing period provided for therein. Each Disposition Committee shall have sole discretion to determine whether or not to sell a Minor Investment upon receipt of a bona fide third-party offer, provided that if the consideration to be received pursuant to such offer is not all cash and in a currency that can be readily bought or sold without government restrictions (a "***Hard Currency***"), such offer may only be accepted by the Disposition Committee in the event the majority of the Minority Committee Members shall have consented with respect to the form of consideration.
Shareholder Representation	**1. DISPOSITION COMMITTEES** For each Major Investment, the Disposition Committee shall have seven members. For each Minor Investment, the Disposition Committee shall have seven members or such fewer number as may be agreed by the parties and as described in Exhibit A. Representation of Reorganized Arcapita and the Syndication Companies on each Disposition Committee shall be as provided in Exhibit A. Reorganized

	Arcapita or the Syndication Companies may elect to have as few as one designee to each Disposition Committee, in which case such designee(s) shall, in the aggregate, have the number of votes on such Disposition Committee as is allocated to Reorganized Arcapita or the Syndication Companies with respect to such Disposition Committee For each Disposition Committee, Reorganized Arcapita's designees are referred to in this Term Sheet as the "***Reorganized Arcapita Committee Members***," and the Syndication Companies' designees are referred to in this Term Sheet as the "***Co-Investor Committee Members***." For each Disposition Committee, the group of members (whether the Reorganized Arcapita Committee Members or the Co-Investor Committee Members) which constitutes the majority in number of votes are referred to in this Term Sheet as the ***"Majority Committee Members***" and the group of members which constitutes the minority in number of votes are referred to as the "***Minority Committee Members***." **2. GENERAL** In this Term Sheet, references to the majority, or to obtaining the majority approval, of the Majority Committee Members or the Minority Committee Members shall mean obtaining the approval of 50% or more of the relevant group Committee members. The initial Co-Investor Committee Members of the Disposition Committees shall be designated by the Syndication Companies within 10 business days after the Effective Date. The initial Reorganized Arcapita Committee Member(s) shall be designated by the New Arcapita Topco Board within 10 business days after the Effective Date. At such time as Reorganized Arcapita, on the one hand, or the Syndication Companies, on the other hand, no longer own any equity interests in a particular Investment or any obligations related to such Investment, the Reorganized Arcapita Committee Members or Co-Investor Committee Members, as applicable, shall resign from the relevant Disposition Committee. By way of example, if Reorganized Arcapita no longer owns any equity interests in a particular Investment but any obligations, including WCF Obligations or Post-Exit WCF Obligations (each as defined below), remain owing to Reorganized Arcapita by the Transaction HoldCo or any of its direct or indirect subsidiaries, the Reorganized Arcapita Committee Members shall not be required to resign from the relevant Disposition Committee.
CBB Oversight and Regulatory Role	The CBB will regulate AIM Bahrain in accordance with applicable CBB regulatory requirements. The formation of New Bahraini Arcapita Holdco as an intermediate subsidiary between New Arcapita Topco and New Arcapita Bank Holdco and New Arcapita Holdco 1, and regulation of New Bahraini Arcapita Holdco by the CBB and/or MOIC, are subject to an acceptable resolution of the Bahrain structure and CBB and MOIC regulatory issues that are presently under discussion.
Bankruptcy Court Jurisdiction	Notwithstanding anything in this Term Sheet to the contrary, enforcement of the Plan will be subject to the jurisdiction of the Bankruptcy Court.

Authorization of Sale Approvals	As of the Effective Date, the articles of association (or similar organizational documents) of each Transaction HoldCo shall be amended (i) to reserve to the shareholders all authority with respect to any Sale Approval and (ii) to provide that the shares of each shareholder shall be voted in support of any Sale Approval recommended by the Disposition Committee for that Investment. Nothing herein shall obligate Reorganized Arcapita or the Syndication Companies to violate any agreement with any Third-Party Investor , nor does it permit Reorganized Arcapita or the Syndication Companies to give rights to any third parties, including any Third-Party Investor, without the unanimous consent of the relevant Disposition Committee.
Disposition Expenses	All expenses relating to (i) the conduct of each Disposition Committee (which shall include the reasonable out-of-pocket expenses incurred by the members thereof, but shall not include any compensation paid to any member for serving on a Disposition Committee, the obligation for which shall be the sole responsibility of the entity that designated such member to serve on the Disposition Committee), (ii) maintaining the existence of the Reorganized Arcapita and Syndication Company structures relevant for the Investments and liquidating or winding up existing legal entities in such structures or for investments sold prior to the Effective Date, as appropriate (which shall include filing fees, corporate secretary fees, legal fees, registered office fees and expenses, and similar items), in each case consistent with the past practices of Reorganized Arcapita and without duplication of any costs or expenses to be borne by AIM under the Management Services Agreement (as defined below), but only until the sale, disposition or other liquidation or winding up of the applicable Investment, and (iii) the marketing, sale or other disposition of each Investment, including the fees and expenses of the Investment Banks (as defined below), provided, however, that the relevant Disposition Committee must first obtain the consent of the majority of the Minority Investor Committee Members prior to incurring Disposition Expenses in respect of any individual Investment in excess of $250,000 (clauses (i) through (iii) collectively, the "***Disposition Expenses***"), shall be funded by Reorganized Arcapita, to the extent they are not funded by the applicable Transaction Holdco or its subsidiaries. Reorganized Arcapita shall be entitled to earn a profit rate on Disposition Expenses in excess of $2.5 million funded by Reorganized Arcapita at the rate of (i) 15% prior to the date the Exit Facility is repaid in full and (ii) 5% thereafter. The Disposition Expenses shall be allocated to the Investments to which they relate and repaid from the proceeds distributable from the sale of such Investments as provided in "General Conditions" below. All Disposition Expenses shall be allocated pro rata to the shareholders of the Transaction HoldCo for the relevant Investment.
Minority Investor Protections	On the Effective Date, the articles of association (or similar organizational documents) of the Transaction HoldCo for each Major and Minor Investment shall be amended to provide the minority investors (whether Reorganized Arcapita or the relevant Syndication Companies) (the "***Minority Investor*,**" with the other investor being the "***Majority Investor***") with the following minority protections to

	the extent consistent with the other provisions of this Term Sheet: o Transaction HoldCo board observer rights; o One Reorganized Arcapita seat on the "legacy book" investment committee of AIM, applicable only to Reorganized Arcapita Committee Members; o Information rights with respect to the operating companies of each Major or Minor Investment; o *Restricted Actions*. Without the Minority Investor's consent, the Transaction HoldCo and its direct and indirect subsidiaries shall be prohibited from taking certain material actions, including: • With respect to a Major Investment, any Sale Approval, unless such Sale Approval is consistent with the applicable Disposition Plan, or with respect to a Minor Investment, such Sale Approval is approved by the applicable Disposition Committee; • The liquidation, dissolution or winding up of the Transaction HoldCo, or any direct or indirect subsidiary, except (i) if the Minority Investor receives at least the consideration set forth in the Disposition Plan in the case of a Major Investment, then no additional approvals shall be required or (ii) in the event of a liquidation, dissolution or winding up of a subsidiary, certain other limited exceptions apply; • Distributions or dividends to shareholders by the Transaction HoldCo, subject to certain thresholds; • Transactions with AIM, the Syndication Companies, investors in any Syndication Companies and/or any of their respective affiliates that are not otherwise contemplated by the Plan, this Term Sheet or the Disposition Plans; and • Any amendments or modifications to the organizational documents of the Transaction HoldCo or its direct or indirect subsidiaries that materially and adversely affect the Minority Investor's interests. o Without the Minority Investor's consent, each Transaction HoldCo (listed on a schedule which is mutually agreed by the Syndication Companies, Debtors and the UCC no later than the date the Plan Supplement is due), and such Transaction HoldCo's direct and indirect subsidiaries, shall be prohibited from taking the following material actions: • Incurrence of third party indebtedness for borrowed money (other than indebtedness incurred in the ordinary course of business) such that the aggregate amount of such third party indebtedness exceeds the aggregate amount outstanding as of the Effective Date by a margin of more than 25%; • Acquisitions or joint ventures other than those entered into in the ordinary course of business or acquisitions or joint ventures with an aggregate value that does not exceed the dollar amounts listed on the above-referenced schedule. o Tag-along rights; o The Minority Investor will be subject to drag-along rights; o Preemptive rights; and o Transfer Restrictions, with customary carve-outs for internal transfers and similar transactions.
New Arcapita	Initial membership of the New Arcapita Topco Board to be designated by the UCC in the Plan and filed with the Bankruptcy Court by the date the Plan Supplement is

Topco Board	filed. The New Arcapita Topco Board will determine the Reorganized Arcapita designee(s) of each Disposition Committee.
DISPOSITION PLANS	
Major Investments	For the avoidance of doubt, the provisions summarized under the caption "Disposition Plans" of this Term Sheet shall apply only with respect to the Major Investments, and not with respect to any Minor Investments.
Disposition Date	Prior to the Effective Date, the Debtors and the UCC shall determine by mutual agreement the date by which the Disposition Committees are required to have completed a sale process for each Major Investment as set forth on Exhibit A (the "***Disposition Date***"). The Disposition Date may only be changed with the consent of a majority of both the Majority Committee Members and the Minority Committee Members. Each Disposition Committee, in consultation with the Advisor Investment Banks (as defined below), shall determine the proper timing and methodology for the marketing of the relevant Major Investment; provided, however, that the marketing period, if any, for each Major Investment shall begin no later than six months before the relevant Disposition Date.
Investment Banks/Brokers	Each Disposition Committee shall identify one or more investment banks or, in the case of real estate Investments, brokers (the ***"Advisor Investment Banks***") for the relevant Major Investment upon the vote of the majority of each of the Majority Committee Members and Minority Committee Members. The Advisor Investment Banks, under the supervision and direction of the Disposition Committee, will market the Major Investment for a sale or other disposition in accordance with the Disposition Plan. The Investment Banks (as defined below) shall be engaged by and report to the relevant Disposition Committee. Expenses incurred by the Investment Banks, including the fees associated with retaining the Investment Banks, shall be treated as Disposition Expenses.
Minimum Sale Price	Prior to the Effective Date, the Debtors and the UCC will work in good faith to agree on the minimum sale price (the ***"Minimum Sale Price"***) for each Major Investment. If the Debtors and the UCC have not agreed on the Minimum Sale Price by the Effective Date, then within five business days of the Effective Date the relevant Disposition Committee, with the consent of a majority of the Minority Committee Members, shall retain two investment banks (the ***"Valuation Investment Banks"*** and, together with the Advisor Investment Banks, the ***"Investment Banks")*** to prepare an updated valuation for purposes of setting an appropriate Minimum Sale Price. The Valuation Investment Banks will each prepare a valuation for such relevant Major Investment on or before September 1, 2013. The Minimum Sale Price for the relevant Major Investment will equal the average of these two valuations. The Minimum Sale Price for any Major Investment may only be changed with the consent of the majority of each of the relevant Majority Committee Members and Minority Committee Members.
Sale Conditions	Unless a majority of each of the Majority Committee Members and the Minority Committee Members determines otherwise, as part of the Disposition Plan for each

Major Investment, the relevant Disposition Committee, in consultation with the relevant Advisor Investment Bank, shall conduct a marketing process for such Major Investment.

Each Disposition Committee, acting consistently with the Disposition Plan, shall have sole discretion to determine whether or not to sell a Major Investment upon the receipt of a Qualifying Third-Party Offer for such Major Investment . A "***Qualifying Third-Party Offer***" shall mean, with respect to a Major Investment, a bona-fide, third party, all cash offer in a Hard Currency for such Major Investment that meets or exceeds the applicable Minimum Sale Price, provided that if the consideration to be received pursuant to such offer is not all cash and in a Hard Currency, such offer will be deemed to be a Qualifying Third Party Offer if the majority of the Minority Committee Members shall have consented with respect to the form of the proposed consideration.

1. SALE CONDITIONS PRIOR TO THE DISPOSITION DATE:

Each Disposition Committee shall have authority to sell a Major Investment upon the vote of a majority of its members (which shall include a majority of the Majority Committee Members) only if one of the following conditions has been satisfied: (i) the sale is to be made pursuant to a Qualifying Third-Party Offer; or (ii) a majority of the Minority Committee Members approves the terms and conditions of the proposed transaction.

If a majority of the Disposition Committee members (which shall include a majority of the Majority Committee Members) vote to sell a Major Investment pursuant to a Qualifying Third-Party Offer, then the Disposition Committee will have authority to sell the Major Investment, subject to the rights of any third parties, and without the consent of the Minority Committee Members.

If a Disposition Committee or its agent receives an offer to purchase a Major Investment at a price in excess of the Minimum Sale Price, the recipient of such offer must disclose it in writing to each member of the Disposition Committee. For the avoidance of doubt, the receipt of such offer will not, in and of itself, obligate the Disposition Committee to authorize a sale of the Major Investment nor be interpreted to require or permit the Minority Investors to invoke the Put Option (as defined below).

The Disposition Committee may accept an offer below the Minimum Sale Price only if prior consent is provided by a majority of each of the Majority Committee Members and the Minority Committee Members. If a sale offer at or above the Minimum Sale Price is not accepted on or prior to five business days after the Disposition Date or a sale offer below the Minimum Sale Price is not accepted because such requisite prior consent is not obtained, then the Disposition Date will automatically be extended by one year, provided that the Disposition Date will not be extended if the Disposition Committee has accepted a Qualifying Third-Party Offer, and the sale of the Investment pursuant to such Qualifying Third-Party Offer is consummated within sixty (60) days after acceptance. The Disposition Date shall not be extended more than two times.

2. SALE CONDITIONS AFTER THE INITIAL DISPOSITION DATE

	The provisions of this subsection 2 shall only apply to Dispositions of Major Investments after the expiration of the initial Disposition Date. If a Qualifying Third-Party Offer is received and a majority of the Majority Committee Members vote to approve the sale, then the Disposition Committee shall be authorized to sell the Major Investment pursuant to such Qualifying Third-Party Offer without the need to obtain the consent of the Minority Committee Members or the Minority Investors. If a Qualifying Third Party Offer for a Major Investment is received pursuant to a marketing process conducted by the relevant Disposition Committee, in consultation with the applicable Advisor Investment Bank, and a majority of the Majority Committee Members vote not to sell the Major Investment, then the Minority Investors shall have a put option (the "***Put Option***") as described below. If a Qualifying Third-Party Offer for a Major Investment is received other than pursuant to a marketing process conducted by the relevant Disposition Committee, in consultation with the applicable Advisor Investment Bank, then the Majority Investors may, in consultation with the applicable Advisor Investment Bank, for up to 45 days after receipt of such Qualifying Third Party Offer, market such Major Investment in accordance with the applicable Disposition Plan, prior to determining whether or not to sell the Major Investment, and if the majority of the Majority Investors vote not to sell such Major Investment pursuant to such Qualifying Third Party Offer, then the Put Option shall be exercisable by the Minority Investors as described below. The Put Option shall obligate the Majority Investors (or, in the sole discretion of the Majority Investors, some subset thereof, or their assignees) to purchase the Minority Investors' interests in the Major Investment (whether such interests be in the form of equity, WCF or similar obligations) in exchange for payment to the Minority Investors of the same aggregate amount of consideration as such Minority Investors would have received if the Qualifying Third Party Offer had been accepted. Pursuant to the Put Option, the Minority Investors shall have the right to sell to the Majority Investors none, some or all of their interests in such Major Investment, provided that the Minority Investors must tender such interests (the ***"Put Offer"***) to the Majority Investors no later than 10 business days after the Majority Investors shall have given the Minority Investors written notice that they have decided not to sell to the third party purchaser making the Qualifying Third Party Offer. If such Qualifying Third-Party Offer is received other than pursuant to a marketing process conducted by the relevant Disposition Committee, in consultation with the applicable Advisor Investment Bank, then the Minority Investors may cause the Majority Investors to conduct a marketing process for the applicable Investment, in consultation with the applicable Advisor Investment Bank, for up to 45 days after receipt of the Put Offer and in accordance with the applicable Disposition Plan. No later than 10 business days after the end of such marketing period, the Minority Investors must elect to whether or not to make a Put Offer in respect of such Investment. The Majority Investors (or, in the sole discretion of the Majority Investors, some subset thereof, or their assignees) shall have a period of 20 business days after the end of the applicable 10 business day period to close the purchase of any interests put to them by the Minority Investors pursuant to the Put Offer. If a Minority Investor elects to retain all or any portion of its interests after the Put Option has been exercised, the Put Option will cease to

	exist with respect to the retained interests of such Minority Investor in such Major Investment. In the event that the Majority Investors fail to close the purchase of any interests put to them by the Minority Investors pursuant to the Put Offer (a "***Put Failure***"), then, without the need to obtain the consent of the Majority Committee Members or the Majority Investors, the majority of the Minority Committee Members shall be authorized to (i) engage in a marketing process for the Investment and (ii) sell or otherwise dispose of such Investment pursuant any bona fide third-party offer. Additionally, upon the ultimate sale or other disposition of such Investment, the Minority Investors shall be entitled to receive out of the net proceeds attributable to the Majority Investors' interest therein any actual damages suffered by the Minority Investors resulting from the Put Failure, including (a) the difference between the aggregate consideration that would have been received by the Minority Investors under (x) the rejected Qualifying Third-Party Offer and (y) the ultimate sale or other disposition of the Investment; and (b) all reasonable costs and expenses incurred by the Disposition Committee and the Minority Investors in selling such Investment following the Put Failure. If no Qualifying Third Party Offer is received prior to the initial Disposition Date then, during any subsequent disposition period, the Disposition Committee may reduce the Minimum Sale Price with the consent of a majority of each of the Majority Committee Members and the Minority Committee Members. Regardless of whether the Minimum Sale Price is reduced, the Put Option will remain in effect.
GENERAL CONDITIONS	
General Conditions	In order to maximize the value of the Investments, prior to the disposition of an Investment (a) Reorganized Arcapita will keep in place (and, upon expiration, agree to rollover, on substantially the same terms, but in any event, terms that shall not be adverse to Reorganized Arcapita in any material respect relative to such expiring agreement, for no additional fee) working capital murabaha agreements in place with respect to such Investment as of the Effective Date (the "***WCF Obligations***"), and (b) the parties to the existing management agreements in effect between the non-debtor management company affiliates of the Debtors and the Transaction HoldCos and/or their subsidiaries, and the existing administration agreements between AIML and each Syndication Company (collectively, the "***Management Agreements***"), will agree to keep such Management Agreements in place (and, upon expiration, renew such Management Agreements, on substantially the same terms, but in any event, terms that shall not be adverse to AIML or the applicable Syndication Companies in any material respect relative to such expiring agreement, for no additional fee). Upon the prior consent of a majority of the Majority Committee Members and a majority of the Minority Committee Members, a Transaction Holdco or its direct or indirect subsidiaries, as applicable, may pay down or refinance the WCF Obligations. Prior to any distribution on account of equity interests owned in connection with an Investment, the net proceeds from any sale, assignment or other disposition of such Investment shall be applied to repay any (a) payables or Management

	Obligations (as hereinafter defined) owed in connection with such Investment, (b) WCF Obligations or Post-Exit WCF Obligations (as defined below) owed with respect to such Investment, and (c) Disposition Expenses owed with respect to such Investment. In determining the distribution of net proceeds, obligations shall receive distributions in their order of structural seniority. It is understood that Post-Exit WCF Obligations (as defined below) shall have the same seniority as the WCF Obligations and that Disposition Expenses shall be paid in full prior to any distributions made on account of the equity of the applicable Transaction HoldCo or Performance or Incentive Fees (both as defined below). Notwithstanding the foregoing and provided the other conditions for sale of an Investment set forth in this Term Sheet are satisfied, an Investment may be sold even if the net sale proceeds are insufficient to pay in full the obligations described in this paragraph. To the extent that a WCF Obligation existing on the Effective Date or a WCF entered into by the relevant Syndication Company (or its assignee, including AIM) and Reorganized Arcapita after the Effective Date (a ***"Post-Exit WCF Obligation")*** is proposed to remain in place subsequent to disposition of an Investment, the consent of the parties to that WCF Obligation or Post-Exit WCF Obligation will be required. In the event of bankruptcy, receivership, liquidation, insolvency or similar administrative proceeding of the Transaction HoldCo or any of its direct or indirect subsidiaries related to an Investment, any forbearance by Reorganized Arcapita or any Syndication Company (or its assignee, including AIM) from exercising any of its rights with respect to any obligations held by it in respect of such Investment shall immediately terminate. For the avoidance of doubt, the provisions summarized under the caption "General Conditions" of this Term Sheet shall apply to all Investments, whether they are Major Investments or Minor Investments.
MANAGEMENT SERVICES AGREEMENT	
Services	Reorganized Arcapita shall enter into an agreement with AIM (the "***Management Services Agreement***"), relating to the provision by AIM (or any controlled subsidiary of AIM, or mutually agreed sub-servicers) of management and advisory services, as outlined in Exhibit C, relating to the Investments. The Plan shall transfer to AIM all rights to the use of the Arcapita name, trademarks and all related intellectual property. The Management Services Agreement shall be (i) governed by New York law; (ii) filed with the Bankruptcy Court by the Plan Supplement Date; and (iii) in form and substance reasonably acceptable to the UCC, Reorganized Arcapita and AIM. The Management Services Agreement shall provide that (i) AIM shall report all material information regarding the Investments to the Disposition Committees, including purchase offers, indications of interest and analyses provided by investment bankers whether or not prepared or received in connection with a marketing process conducted by a Disposition Committee and (ii) Reorganized Arcapita shall have the right, on reasonable notice and no more frequently than once per calendar quarter, to inspect the books and records of AIM related to Investments.

Term	The Management Services Agreement shall be entered into as of the Effective Date of the Plan and shall not be terminable for a period of five years after the Effective Date; provided, however that the New Arcapita Topco Board shall have the right to terminate the Management Services Agreement prior to the five-year period (i) for cause (to include fraud, gross negligence and wilful misconduct) or (ii) if, as a result of transactions approved by the applicable Disposition Committees, Reorganized Arcapita's assets under management ("AUM") by AIM (as measured by Reorganized Arcapita's share of the Minimum Sale Prices for the Major Investments and by the valuations provided by AIM for the Minor Investments) falls below $300 million, in the aggregate (a "***Convenience Termination***"); provided, however, that no Convenience Termination shall be effectuated prior to the expiration of the 18th month following the effective date of the Management Services Agreement (the "***Initial Term***"). The Management Services Agreement shall contain the parties' agreement with respect to key person events and incentive plans, which will be negotiated in good faith by the date the Plan Supplement is due.
Management Fees	Reorganized Arcapita shall pay AIM a management fee in respect of the Initial Term as follows: $6.67 million on the Effective Date and $3.33 million on each of the sixth, ninth, twelfth and fifteenth month anniversaries of the Effective Date, which total $20 million (the "***Base Management Fee***"). In addition to the Base Management Fee, during the Initial Term, AIM shall be entitled to a fee (the "***Enhanced Management Fee***") equal to (a) $10 million in the event Lusail is sold and Reorganized Arcapita receives (before payment of the $10 million Enhanced Management Fee attributable to Lusail) at least $[redacted] of the net sale proceeds thereof on or prior to the end of the Initial Term *plus* (b) 10% of the net sale proceeds received by Reorganized Arcapita on or prior to the end of the Initial Term in respect of any Investments other than Lusail during the Initial Term; provided, however, that the Enhanced Management Fee shall in no event exceed $20 million. Reorganized Arcapita shall pay AIM a management fee in respect of each 12 month period of the term of the Management Services Agreement after the Initial Term in an amount equal to 2% of Reorganized Arcapita's AUM (determined within 30 days before the beginning of each such period and six months thereafter), payable quarterly in advance; such amount shall be (a) prorated to the extent the management fees are in respect of a period less than twelve months, and (b) reduced effective as of the 30 day anniversary of the sale or other disposition of an Investment and Reorganized Arcapita shall get a rebate or credit against future fees equal to the pre-paid fees attributable to such Investment. The UCC and the Debtors will work cooperatively to reach an agreement, on or before the date the Plan Supplement must be filed on a mutually acceptable incentive compensation plan for the legacy deal team employees who will be employed by AIM. For the avoidance of doubt, such incentive compensation shall be funded solely by AIM. The management fees due to AIM will be reduced dollar for dollar if, and to the extent, (i) any management, administration or management services agreement entered into in connection with any Investment is terminated or modified by the

	counterparty to Reorganized Arcapita in such a manner as to adversely affect Reorganized Arcapita in any material respect, or (ii) Reorganized Arcapita's interest in an Investment is reduced or eliminated; provided, however, that during the Initial Term there shall not be any reduction in Management Fees as a result of a sale or disposition of any Investments pursuant to a Disposition Plan.
Incentive Fees	Reorganized Arcapita shall pay AIM incentive fees as follows: • 10% of any amounts received by Reorganized Arcapita in excess of $[redacted] plus a 10% IRR hurdle rate (beginning on June 30, 2013) in connection with the sale or other disposition of Lusail (the ***"Lusail Incentive Fee"***). • 7.5% of any amounts received by Reorganized Arcapita in respect of the sale or other disposition of any Investment (other than Lusail) to the extent such amounts exceed the current KPMG midpoint value (as reflected in the KPMG reports prepared in mid-2012) for such Investment *plus* a 10% IRR hurdle rate (calculated beginning on April 30, 2012) on such amount (the ***"Other Investments Current Incentive Fee"*** and, collectively with the Lusail Incentive Fee, the "***Current Pay Incentive Fees***"). The Current Pay Incentive Fees shall be payable upon the receipt by Reorganized Arcapita of such amounts. • 2.5% of all amounts received by Reorganized Arcapita in respect of the sale or other disposition of all of the Investments (other than Lusail) to the extent such amounts exceed the current KPMG midpoint value (as reflected in the KPMG reports prepared in mid-2012) for such Investment *plus* a 10% IRR hurdle rate (calculated beginning on April 30, 2012) on such aggregate amount (such fee, the "***Deferred Incentive Fee***"). The Deferred Incentive Fee, to the extent it is earned, shall be payable in full upon the final sale or other liquidation and winding up of all of the Investments or the termination of the Management Services Agreement pursuant to the Convenience Termination right, or at such earlier time as is agreed in the Management Services Agreement.
Other Costs	Reorganized Arcapita shall be responsible for the following: • payment, on the Effective Date or as soon thereafter as practicable, of any separation costs owed, pursuant to the Court approved Employee Program and Global Settlement Order, dated July 5, 2012 (the "***Key Employee Severance Order***"), to employees (other than any beneficiary of the Senior Management Global Settlement) of the Debtors, Arcapita Investment Management Limited ("***AIML***"), or their non-debtor affiliates (e.g., Arcapita Ltd. and Arcapita Inc.) as of the Effective Date of the Plan on account of their termination or deemed termination from such entities, (the "Separated Employees") up to a maximum aggregate amount of $8,800,000. Reorganized Arcapita shall receive credits as follows: o against any Incentive Fees or, as applicable, Base Management Fees owed by it to AIM, ▪ with respect to Separated Employees other than the

member of management not covered by the Senior Management Global Settlement and Rehired Parties (as defined below): 50% of the difference between (i) the actual amounts paid to such Separated Employees, which amounts shall be consistent with the requirements in the Key Employee Severance Order, and (ii) the greater of (x) the amount such Separated Employees are entitled to receive under their employment contracts and (y) the statutorily required severance payable to such Separated Employees under the laws of the relevant jurisdictions in which such Separated Employees are based (which result in this subsection (ii) shall be referred to as the "***Minimum Severance Amounts***"); plus

- 50% of the difference between the actual amounts paid to the Rehired Parties (as defined below), which amounts shall be consistent with the requirements in the Key Employee Severance Order, and the Minimum Severance Amounts which would have been payable to such Rehired Parties,
- provided, however, that the amount of the credit determined in the foregoing two paragraphs shall be applied as follows: (a) first, up to a maximum of $900,000 against the Incentive Fees; and (b) thereafter, any excess against the Base Management Fees.

- against the Base Management Fees owed by it to AIM, with respect to the member of management not covered by the Senior Management Global Settlement, 50% of the amount paid to him, which amount shall be consistent with the requirements of the Key Employee Severance Order; plus
- against the Base Management Fees owed by it to AIM, with respect to Separated Employees that AIM or any of its subsidiaries employs, or retains as consultants, independent contractors (or other similar arrangement that, in any case, is substantially equivalent to full time employment), within 12 months after the Effective Date (the "***Rehired Parties***"), an amount equal to 50% of the Minimum Severance Amounts which would have been payable to such Rehired Parties.
- provided, however, that Reorganized Arcapita shall be entitled to a minimum credit against the Base Management Fees owed and the Incentive Fees owed in respect of the Rehired Parties in the amount of not less than $1,950,000 but may be entitled to a larger credit based on the identity of the actual Rehired Parties.

- Obligations. With respect to any Separated Employee who owes any loans, advances or other obligations to Reorganized Arcapita (other than the loans made pursuant to the IPP or IIP that shall be extinguished as part of the Global Settlement effectuated pursuant to the Key Employee

	Severance Order), Reorganized Arcapita will receive a credit against the Base Management Fees or Incentive Fees, as applicable, for any portion of Reorganized Arcapita's severance obligation satisfied through offset to, such loans, advances or other obligations as provided in the Key Employee Severance Order. Reorganized Arcapita shall receive a 100% credit against the Base Management Fees owed by it to AIM for any loans, advances or other obligations owed to Reorganized Arcapita (other than the loans made pursuant to the IPP or IIP that shall be extinguished as part of the Senior Management Global Settlement) by any beneficiary of the Senior Management Global Settlement. • For the avoidance of doubt, any separation costs owed to any beneficiary of the Senior Management Global Settlement shall be the sole responsibility of AIM. • Reorganized Arcapita will also be responsible for all costs and expenses listed on Exhibit D. AIM shall be responsible for all costs and expenses (a) related to the start-up of AIM, and (b) for the annual remuneration of the Shari'ah board. AIM shall pay Reorganized Arcapita the fair market value of any property of the Debtors to be acquired, used or leased by AIM as of the Effective Date. Notwithstanding the foregoing, in consideration of the services to be provided by AIM pursuant to the Management Services Agreement, the Debtors shall transfer to AIM, on the Effective Date, the name, trademarks and trade names of Arcapita. Each of Reorganized Arcapita and the Syndication Companies (or AIM or an affiliate, as may be agreed with the Syndication Companies) shall have the opportunity to provide its pro rata share of any working capital funding required by any of the Investments after the Effective Date at a profit rate not to exceed 15%.
Existing Management and Administration Agreements	The Management Agreements shall remain in effect after the Effective Date, and those Reorganized Arcapita entities shall continue to receive all fees (the "***Management Obligations***") currently payable to them pursuant to the terms of those agreements, except for the Performance Fees (as defined under the Management Agreements) payable by the Syndication Companies which shall be payable to AIM upon receipt of such fees by Reorganized Arcapita.

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EXHIBIT A TO TERM SHEET

Investments

EXHIBIT A

Major and Minor Investments[1]

Investment Name	Reorganized Arcapita Committee Members[2]	Co-Investor Committee Members[3]
Viridian	3	4
AEIY I	6	1
Bahrain Bay II	3	4
US Residential Dev II	6	1
Victory Heights	4	3
Tensar	4	3
US Residential Dev III	6	1
AEID II	6	1
AEID I	5	2
US Senior Living IV	2	5
AGUD I	2	5
Arcapita Ventures	3	4
Lusail	6	1
Honiton	6	1
Freightliner	2	5
AHQ Building	3	4
PODS	2	5
J. Jill	3	4
3PD	2	5
Varel	1	6

[1] Whether an Investment is a Major Investment or a Minor Investment is a matter of continuing discussion between the Parties. The final list of Major Investments and Minor Investments will be set forth in the Plan Supplement.

[2] For each Investment, Reorganized Arcapita, in its sole discretion, may elect to designate the number of members listed or, alternatively, one or more members who, collectively, are entitled to exercise the number of votes corresponding to the number of members listed.

[3] For each Investment, the Syndication Companies, in their sole discretion, may elect to designate the number of members listed or, alternatively, one or more members who, collectively, are entitled to exercise the number of votes corresponding to the number of members listed.

Investment Name	Reorganized Arcapita Committee Members	Co-Investor Committee Members
ArcJapan	6	1
Falcon/MoBay	6	1
Bijoux Terner	6	1
US Retail Yielding I	6	1
Cypress	6	1
India Business Park I	2	5
Luxury – CdC	6	1
Oman Logistics	4	3
India Business Park II	5	2
Meridian	1	6
India - Polygel (OT + PM)	6	1
Bahrain Bay	1	6
India – Idhasoft	6	1
US Residential Dev I	1	6
City Square	3	4
CEE Residential	6	1

EXHIBIT B TO TERM SHEET

Key Plan-Related Agreements

The parties to the Cooperation Term Sheet (the "***Parties***") have agreed to the following provisions in the Debtors' proposed chapter 11 plan (the "***Plan***") and/or related disclosure statement (and exhibits thereto) (the "***Disclosure Statement***") on file with the Bankruptcy Court. The agreement of the Parties to these terms is incorporated into the Cooperation Term Sheet by reference. Capitalized terms (including the reference to the Plan) used herein but not defined herein shall have the meanings ascribed to them in the Plan and Disclosure Statement, as applicable, filed by the Debtors with the Bankruptcy Court on February 8, 2013.

Plan Provision	**Agreement**
Releases and Exculpations Pursuant to Sections 9.2.1, 9.2.2, and 9.2.4 of the Plan:	The following parties shall receive releases and exculpations under the Plan from the Debtors other than Falcon: • Each of the Debtors (only Bank and AIHL released by Debtors) • Each of the Debtors' Affiliates (exculpation only) • The Committee and their members solely in their capacity as members of the Committee • The JPLs solely in their capacity as JPLs • Members of the Ad Hoc Group • SCB, if it votes to accept the treatment afforded to it under the Plan • CBB, in any capacity, including in its capacity as creditor and regulator • The investors in the Syndication Companies, the PVs, the PNVs, provided, however, that if any such investor is also a Placement Bank, such release shall be solely in its capacity as an investor, (releases only) • Holders of Interests in Bank (releases only) • The respective current and former officers, members of the board of directors, employees, managers (in their capacities as officers, members of the board of directors, employees, or managers, as applicable) of the Debtors and the Debtors' Affiliates. • Professionals, other professionals, and agents (in their capacities as Professionals, other professionals, or agents, as applicable), for services rendered during the pendency of the chapter 11 cases to or for the Debtors, the Debtors' Affiliates, the Committee, the JPLs, or

	the Ad Hoc Group, along with the successors, and assigns of each of the foregoing.
Third Party Releases Pursuant to Section 9.2.4 of the Plan	The Debtors will seek third-party releases from Holders of Claims and Interests (other than Holders of Claims and Interests in Falcon): The current and former officers, directors, employees, managers (in their capacities as officers, directors, employees, or managers, as applicable), Professionals, other professionals and agents (in their capacities as Professionals, other professionals or agents, as applicable, for services rendered during the pendency of the Chapter 11 Cases) to or for the Debtors or the Debtors' Affiliates.
Release of AHQ Cayman I Investors:	The Debtors shall release AHQ Cayman I Investors in connection with the HQ Settlement (described below).
Avoidance Action Releases:	The following parties shall receive releases from the Debtors (other than Falcon) from any Avoidance Actions under the Plan: • All recipients of the releases identified above • Each of the Debtors • Each of the Debtors' Affiliates • Qatar Islamic Bank Q.S.C. ("QIB"), in connection with the Lusail Transaction (if QIB and QInvest provide any required consents to the assumption and assignment of the QRE Letter Agreement, Lease and Option, each as defined in the Disclosure Statement) • QInvest LLC, in connection with the Lusail Transaction (if QIB and QInvest provide any required consents to the assumption and assignment of the QRE Letter Agreement, Lease and Option, each as defined in the Disclosure Statement) • Any Persons that have had funds on deposit with Arcapita Bank in a restricted investment account or an unrestricted investment account (other than Placement Banks or their Affiliates).
Standing to Pursue Certain Avoidance Actions:	The Debtors shall not oppose the UCC's standing to pursue avoidance actions against the Placement Banks (other than in the Placement Banks' capacities as investors in the Syndication Companies, the PVs, and the PNVs) and with respect to Arcapita Investment Holding Limited's guarantee of the Arcsukuk Facility.
Treatment of SCB under the Plan:	The treatment of SCB under the Plan shall be as set forth in the Plan and in the SCB Term Sheet, except to the extent that a different treatment is mutually agreed by the UCC and the Debtors or determined by the Bankruptcy Court.
Treatment of Other Creditors	The treatment of creditors (other than SCB and Convenience Claims) shall be as set forth in the Plan.
Convenience Class:	The treatment of Holders of Class 5(a) Claims who elect to participate in

	the Convenience Class Election shall be as set forth in the Plan, provided, however that there shall be a cap on payments on account of Convenience Class Claims of $9.7 million.
Treatment of Intercompany Claims:	Intercompany Claims shall be treated as set forth in the Plan.
Equity Term Sheet Provisions:	The "Voting Rights," "Directors and Corporate Governance", "Removal of Directors", "Vacancies on the Board", "Board Meetings", "Transfer of Shares and Warrants", "Information Rights", "Structure, Mechanics", "Funding", "Confidentiality and Announcements", "Amendments", "Indemnification" and "D&O Insurance" sections of the Equity Term Sheet attached as an Exhibit to the Disclosure Statement shall be applicable unless modified as specified by the UCC in a filing no later than the due date of the Plan supplement and after consultation with the Debtors, provided, however, that any modification (i) to the "Transfer of Shares and Warrants" section or to the first proviso of the first paragraph of the "Arcapita Group Boards" section, or (ii) that renders the Plan to be inconsistent with section 1123(a)(6) or would require the resolicitation of votes on the Plan, shall require the consent of the Debtors, not to be unreasonably withheld
Corporate Structure of Reorganized Debtors:	The Corporate Structure of the Reorganized Debtors shall be as set forth in the Plan and the Implementation Memorandum.
Allocations:	The allocation of consideration under the Plan to the various Classes of Claims and Interests shall be as set forth in the Plan.
HQ Settlement:	The HQ Settlement shall be as set forth below: • Arcapita Bank has agreed to waive and release any claim to recharacterize the HQ Lease or the Sale-Leaseback Transaction as a financing transaction. • The HQ Lease shall be treated as an unexpired lease under section 365 of the Bankruptcy Code and rejected as of the Effective Date. • AHQ and AHQ Cayman I shall waive any Administrative Expense Claim or General Unsecured Claim against any Debtor under the Plan. • The AHQ Cayman I Investors, on a pro rata basis to their ownership in AHQ Cayman I, shall be entitled to an Allowed Administrative Expense Claim against Arcapita Bank in the amount of $1.159 million. • The AHQ Cayman I Investors, on a pro rata basis to their ownership in AHQ Cayman I, shall be entitled to an Allowed Class 5(a) General Unsecured Claim against Arcapita Bank in the amount of $35.38 million (for accrued but unpaid pre-petition rent and damages arising from the rejection of the HQ Lease). • Pursuant to a new lease option, Reorganized Arcapita Bank shall have

	the option, which option shall be exercised no later than the date of the filing of the Plan Supplement, to enter into a new post-Effective Date lease (the "***New HQ Lease***") with AHQ on the following terms: • Term - 3 years commencing on the Effective Date. • Extension Terms - two additional one (1) year terms (for a total extension of 2 years). Each extension may be exercised by giving notice not later than 90 days before the end of the existing term. • Premises - One half floor of the HQ Building (approximately 1,750 square meters) for the initial term as well as any subsequent terms. • Rental Rate - Rental rate of approximately $1.50 per square foot per month for the first year increasing by 3% per annum thereafter for the remaining term including any extensions. In addition, there will be a 20% service charge (approximately $0.30 per square foot per month) and utility costs of approximately $0.75 per square foot per month. • Payment Dates - Lease payments shall be due quarterly in advance, with the first quarterly lease payment due upon the Effective Date and subsequent quarterly payments due every 3 months thereafter. • Assignment – With the consent of AHQ, Reorganized Arcapita Bank shall be permitted to assign the New HQ Lease; provided however that no consent shall be required to assign the New HQ Lease to AIM.
Senior Management Global Settlement	The Senior Management Global Settlement shall be as set forth in the Plan and the Senior Management Global Settlement Term Sheet (which incorporates the provisions of the Senior Management Global Settlement Motion); provided, however, that, notwithstanding the Senior Management Global Settlement Term Sheet, neither the Debtors nor Reorganized Arcapita shall be responsible to pay any severance or bonus amounts owed to beneficiaries of the Senior Management Global Settlement.
Severance Costs of Non-Senior Management	Non-Senior management employee severance payments shall be due as is set forth in the Plan and Reorganized Arcapita shall be responsible to make such payments, provided, however, that Reorganized Arcapita shall be entitled to credits against such payments as provided in the section "Other Costs" in the Cooperation Term Sheet.
Survival of indemnifications obligations for Officers and Directors:	All indemnification obligations of the Debtors to their officers and directors shall survive as set forth in the Plan.

EXHIBIT C TO TERM SHEET

Management Services Agreement
Scope of Services

The parties to the Syndication Companies and Reorganized Arcapita Settlement Term Sheet (the "***Term Sheet***") have agreed that AIM (or its designees) shall provide or procure the provision of, and shall have the right to provide or procure the provision of, the following services related to the management, monitoring and sale or disposition of the Investments pursuant to the Management Services Agreement with Reorganized Arcapita.

I. Definitions.

For the purposes of this Exhibit C, the following terms shall have the following meanings:

1. "***Company***" means (w) Reorganized Arcapita, (x) each WCF Entity, to the extent not covered by clause (w), (y) each Transaction HoldCo and (z) each Intermediate Holdco.

2. "***Excluded Costs***" means the out-of-pocket costs and expenses listed on Exhibit D to the Term Sheet, notwithstanding that such Excluded Costs may relate to services that are within the scope of this Exhibit C.

3. "***Intermediate HoldCo***" means, as appropriate with respect to each Investment, each entity that is both (i) a wholly-owned direct or indirect subsidiary of a Transaction Holdco and (ii) a direct or indirect parent of an OpCo.

4. "***Investment Entities***" means, as appropriate with respect to each Investment, the Transaction Holdco, any Intermediate HoldCo and any OpCo.

5. "***WCF Entity***" means each special purpose Cayman Islands companies that provide working capital financing to the Investment Entities**.**

Capitalized terms not defined in this Exhibit C have the meanings given to them in the Term Sheet.

II. Costs and Expenses

Notwithstanding anything to the contrary contained in this Exhibit C, for the avoidance of doubt, any reasonable out-of-pocket expenditures incurred in connection with the provision of the services described in this Exhibit C and any Excluded Costs shall be borne solely by the entity to which such services relate and not by AIM. The parties will develop customary industry guidelines for reimbursable expenses. Promptly upon the submission by AIM to any such entity of a request for reimbursement (including reasonable documentation to substantiate such request), such entity shall reimburse AIM for any such out-of-pocket expenditures or Excluded Costs incurred by AIM on behalf of such entity.

III. Services to be provided by AIM to each Company.

AIM shall provide to each Company the following services:

1. *Accounting, Reporting and Regulatory Compliance*. Accounting, reporting and regulatory compliance services, including:

   (a) keeping accounts and maintaining the financial books and records, maintaining internal controls, and approving audited accounts and preparing tax returns where required by law or contract;

   (b) preparing and delivering periodic reporting packages to the boards of directors of each Company and each Disposition Committee, as applicable, and responding to reasonable additional inquiries by such directors, officers, employees, attorneys, accountants or other agents as Reorganized Arcapita may designate for such purposes;

   (c) compliance reporting to relevant regulatory authorities, and ensuring that all compliance requirements, from the formation through the liquidation or dissolution of each Company, are met on a timely basis, provided that any regulatory and compliance costs relating to any securities issued pursuant to the Plan shall be borne exclusively by Reorganized Arcapita; and

   (d) in-house legal.

2. *Treasury and Operations*. Treasury and operations services, including:

   (a) making capital calls and disbursements against investments (other than any disbursements by New Arcapita Topco to its investors);

   (b) opening, maintaining and closing bank accounts, drawing checks or other orders for the payment of money, managing surplus cash resources and collecting moneys due;

   (c) facilitating the settlement of murabaha transactions, and entering into foreign exchange and other hedging transactions subject to agreed-upon protocols; and

   (d) responding to "know-your-customer" requests.

3. *Corporate Governance*. Corporate governance and company secretarial services, including:

   (a) creating, establishing, maintaining, winding-up, or restructuring, partnerships, trusts, corporations, limited liability companies or other entities of any kind subject to appropriate approvals, provided that any costs associated with the wind-up or restructuring of the Atlanta, London, Bahrain, Hong Kong and Singapore offices of Reorganized Arcapita shall be borne exclusively by Reorganized Arcapita;

   (b) preparing and maintaining share registers, minute books and other statutory books and records of each Company;

   (c) arranging for meetings of shareholders and of boards of directors for each Investment Entity; and

   (d) providing domiciliation agent services for Luxembourg companies.

4. *Investment Administration.* Investment administration services, including*:*

   (a) transaction support to Investment teams at the time of closing of relevant transactions (acquisitions, capitalizations, restructurings and divestments); and

   (b) upon the exit of any Investment, liquidation and the preparation of relevant liquidation documents, including general assistance to the liquidator to ensure the absence of assets and liabilities and to arrange all meetings, gazettes, notices and regulatory filings.

5. *General Administration*. General administration services, including:

   (a) hiring, for usual and customary payments and expenses, professionals and/or other agents for or on behalf of each Company;

   (b) subject to appropriate approvals, entering into, executing, maintaining and/or terminating contracts, undertakings, agreements and any and all other documents and instruments in the name of each Company, and doing or performing all such things as may be necessary or advisable in furtherance of the Company's powers, objects or purposes or the conduct of the Company's activities; and

   (c) devoting such portion of its time, resources, personnel (including outside consultants and agents), office space and equipment to the affairs of each Company as AIM in good faith considers necessary or advisable for the proper performance of its duties and obligations.

6. *Shari'ah Compliance.* Advisory services relating to Shari'ah compliance, including the execution of murabaha transactions in accordance with Islamic principles and the updating of any Shari'ah structuring documents (e.g., lease, istisna or ijara agreements).

IV. Services to be provided by AIM to the Investment Entities.

AIM shall provide (i) to the applicable Investment Entities, the management, consulting and advisory services ("Management Services") that Arcapita Inc., Arcapita Limited, Arcapita Investment Management Limited or Arcapita Bank B.S.C.(c), as applicable, are currently obligated to provide under the existing management, consulting and advisory agreements with such Investment Entities and (ii) to the other Investment Entities, such Management Services relating to the Investments as are applicable or appropriate for each such entity, including (a) advisory services related to monitoring of Investments, divestitures and add-on acquisitions (including structuring required agreements and assisting in negotiations), (b) assistance in determining capital needs and in identifying sources for such capital, (c) strategic and tactical planning assistance and (d) selection and management of third party professionals to render required services to the Investment Entities in connection with any divestiture or add-on acquisition (including legal counsel, accountants, financial advisers and investment bankers and other applicable professionals).

V. Services to be provided by AIM to the Syndication Companies.

AIM shall provide to each Syndication Company, including for the avoidance of doubt any Syndication Company wholly owned by a single investor, the services that Arcapita Investment Management Limited and/or Arcapita Investment Funding Limited are currently obligated to provide under existing administration agreements with such Syndication Companies, subject as specified in such administration agreements to the overriding authority of the board of directors of each Syndication Company.

VI. Services to be provided by AIM to Reorganized Arcapita for Additional Fees.

AIM offers to provide the following services to Reorganized Arcapita (excluding, for the avoidance of doubt, any Investment Entity) for additional fees to be agreed upon among the parties. For the avoidance of doubt, these additional fees are separate from and in no way linked to the Base Management Fee, the Enhanced Management Fee, or any Incentive Fees.

(a) litigation support; and

(b) other services (e.g., HR) not included under Section III above.

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EXHIBIT D TO TERM SHEET

Other Costs and Expenses Excluded
From Management Services Agreement

Unless specifically addressed by the Term Sheet, all out-of-pocket (a) costs, (b) fees, and (c) expenses (the "OP Costs"), including but not limited to the following items, will be deemed Excluded Costs as defined in the Management Services Agreement Scope of Services (attached to the Term Sheet as Exhibit C):

1. All OP Costs associated with the Board of Directors of Reorganized Arcapita
2. All OP Costs associated with Disposition Committee members representing the interests of Reorganized Arcapita
3. D&O, general liability and other insurance premiums and related OP Costs incurred on behalf of Reorganized Arcapita
4. Central Bank of Bahrain ("CBB") regulatory fees and associated OP Costs incurred on behalf of Reorganized Arcapita
5. Legal fees and other OP costs associated with modifying organizational documents of Transaction Hold Cos as contemplated in the Term Sheet
6. Legal fees and related OP costs associated with documenting Murabahas, including new WCF Obligations and Post-Exit WCF Obligations or renewals of such WCF Obligations and Post-Exit WCF Obligations, between Reorganized Arcapita and various Transaction HoldCos, or their direct or indirect subsidiaries
7. External audit OP costs incurred on behalf of Reorganized Arcapita
8. All licensing, professional and other fees and OP Costs required to maintain Cayman and other corporate structures in good standing
9. All professional OP Costs required to wind-up Cayman and other corporate structures upon sale or disposition of an Investment, and the wind-up of existing Cayman and other corporate structures involving Investments previously sold
10. Disposition Expenses
11. All legal, professional and other OP costs incurred in connection with litigation related to Reorganized Arcapita, including but not limited to those incurred to pursue preferences and other avoidance actions on behalf of Reoganized Arcapita
12. All OP Costs associated with Arcapita Bank(and its direct and indirect subsidiaries), including, but not limited to, (a) OP Costs to restore leased premises to agreed-upon condition: (b) lease termination OP Costs ; (c) moving OP Costs ; and (d) electronic or physical transition of records to permanent location.
13. All OP Costs associated with maintaining bank accounts in the name of Reorganized Arcapita
14. All professional OP Costs associated with implementation of the Chapter 11 Plan of Reorganization (the "Plan"), including but not limited to documenting and administering the securities issued pursuant to the Plan, claims reconciliation and litigation, administration of plan distributions and any other post-effective date plan implementation costs
15. All OP Costs of Shari'ah board services, including, but not limited to, travel expenses, to the extent they relate to Reorganized Arcapita; such OP Costs do not include the annual remuneration of the Shari'ah board members, which shall be borne by AIM

SCHEDULE 13

MANAGEMENT FEES

[●]

EXECUTION PAGE OF SUPERPRIORITY DEBTOR-IN-POSSESSION AND EXIT FACILITY
MASTER MURABAHA AGREEMENT

THE PURCHASER

Signed by)
duly authorized for and)
on behalf of)
ARCAPITA INVESTMENT)
HOLDINGS LIMITED)
)

ORIGINAL GUARANTORS

[*to be inserted*]

INVESTMENT AGENT

Signed by)
duly authorized for and)
on behalf of)
GOLDMAN SACHS INTERNATIONAL)
as Investment Agent)