

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

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:
IN RE: : **Chapter 11**
:
ARCAPITA BANK B.S.C.(c), et al., : **Case No. 12-11076 (SHL)**
:
Debtors. : **Jointly Administered**
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INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), AND 364(e) AND BANKRUPTCY RULES 4001 AND 6004 (I) AUTHORIZING DEBTORS (A) TO ENTER INTO AND PERFORM UNDER MURABAHA AGREEMENT, AND (B) TO OBTAIN CREDIT ON A SECURED SUPERPRIORITY BASIS, (II) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c) AND (III) GRANTING RELATED RELIEF

Upon the motion dated December 4, 2012 (as supplemented, the “**Motion**”) of Arcapita Bank B.S.C.(c) (“**Arcapita**”) and its affiliated debtors, each as debtor and debtor-in-possession (collectively, the “**Debtors**”), in the above-captioned chapter 11 cases (the “**Cases**”) pursuant to sections 105, 362, 363(b)(1), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001 2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of New York (the “**Local Rules**”), requesting, among other things:

- (1) authorization for Arcapita Investment Holdings Limited (the “**Purchaser**”) to obtain a senior secured superpriority debtor-in-possession multiple-draw term Murabaha facility, in an aggregate principal amount up to \$150,000,000 (the “**DIP Facility**”) (the availability of which shall be subject to

the terms and conditions set forth in the Finance Documents (as defined in the DIP Agreement (as defined below) and including any exhibits thereto)), to be provided by CF ARC LLC (“**Fortress**”), acting as agent (in such capacity, the “**Investment Agent**”) for institutions participating in the DIP Facility (together with Fortress, the “**Participants**”), to be arranged by Fortress (in such capacity, the “**Arranger**”), and for all of the other Debtors except for Falcon Gas Storage Company, Inc. (“**Falcon**”) (collectively, the “**Debtor Guarantors**”) to guaranty all of the Purchaser’s obligations under such DIP Facility;

(2) authorization for the Purchaser to enter into and perform under a senior secured Superpriority Debtor-in-Possession Master Murabaha Agreement substantially in the form filed as Exhibit B to the Motion (as the same has been or may be hereafter amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with terms thereof or hereof, the “**DIP Agreement**”), and the other Finance Documents and to perform such other and further acts as may be reasonably required or appropriate in connection with the Finance Documents;

(3) authorization for the Purchaser to enter into and perform under agreements with the Investment Agent for the purchase of the Commodities (as defined in the DIP Agreement) on the terms set forth in the Finance Documents, and for the Purchaser to sell and convey such Commodities to a third-party purchaser;

(4) the grant of superpriority administrative expense claims to the Investment Agent pursuant to section 364(c)(1) of the Bankruptcy Code over any

and all administrative expenses of any kind or nature, subject only to the Carve Out (as defined below), the Prior SCB Claims (as defined below) and as set forth herein and in the Finance Documents;

(5) the grant of valid, enforceable, non-avoidable and fully perfected first priority priming liens pursuant to section 364(c)(2) on and security interests in all of the property, assets, and other interests in property and assets of Arcapita, the Purchaser, and Arcapita LT Holdings Limited (“**ALTHL**”) not otherwise subject to a lien, whether such property is presently owned or after-acquired, and all other “property of the estate” (within the meaning of the Bankruptcy Code) of the Purchaser, Arcapita and ALTHL, of any kind or nature whatsoever, real or personal, tangible, intangible or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date (as defined in the DIP Agreement), excluding actions for preferences, fraudulent conveyances, and other avoidance power claims under sections 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code (the “**Avoidance Actions**”) and the proceeds thereof, subject only to the Carve Out on the terms and conditions set forth herein and in the Finance Documents;

(6) the grant of valid, enforceable, non-avoidable and fully perfected junior liens pursuant to section 364(c)(3) on and security interests in all of the property, assets, and other interests in property and assets of the Debtors (except for Falcon) that are subject to valid, perfected, and non-avoidable liens in existence on the Petition Date (or that are perfected after the Petition Date pursuant to 546(b)), whether such property is presently owned or after-acquired,

and all other “property of the estate” (within the meaning of the Bankruptcy Code) of such Debtors, of any kind or nature whatsoever, real or personal, tangible, intangible or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date, excluding Avoidance Actions and the proceeds thereof, subject only to the Carve Out on the terms and conditions set forth herein and in the Finance Documents;

(7) subject only to, and effective upon entry of, a final order granting such relief and such other relief as provided herein and in such final order (the “**Final Order**”), the waiver of the Debtors’ and their estates’ rights to surcharge the Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code;

(8) pursuant to Bankruptcy Rule 4001, that an interim hearing (the “**Interim Hearing**”) on the Motion be held before this Court to consider entry of the proposed interim order annexed to the Motion (the “**Interim Order**”) (a) authorizing the Debtors on an interim basis, to borrow under the DIP Agreement in an aggregate amount of \$25 million and (b) granting the other relief described in the Finance Documents and this Interim Order; and

(9) that this Court schedule a final hearing (the “**Final Hearing**”) to consider entry of the Final Order approving the Motion and approving the Debtors’ notice with respect thereto;

and due and appropriate notice of the Motion, the relief requested therein and the Interim Hearing having been served by the Debtors on the Investment Agent (for itself and the Participants); Standard Chartered Bank (“**SCB**”), as agent under the prepetition secured

Murabaha facilities dated May 30, 2011, and December 22, 2011 (the “**SCB Facilities**”); the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.) (the “**U.S. Trustee**”); Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq., Abhilash M. Raval, Esq., and Evan R. Fleck, Esq.), counsel for the official committee of unsecured creditors in the Cases (the “**Committee**”); the Joint Provisional Liquidators (as defined in the DIP Agreement), Sidley Austin LLP, Woolgate Exchange, 25 Basinghall Street London, EC2V 5HA (Attn: Patrick Corr and Benjamin Klinger); and all parties listed on the Master Service List established in the Cases (collectively, the “**Notice Parties**”), and upon the record of the Interim Hearing held by this Court on December 7, 2012; and upon the arguments of counsel at the Interim Hearing; based on the Debtors’ representations to the Court and the record in these cases; and the Court having considered any objections to the relief sought herein; and after due deliberation and consideration and sufficient cause appearing therefor,

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Motion.* The Motion is hereby granted on an interim basis, to the extent set forth herein.
2. *Jurisdiction.* This Court has core jurisdiction over the Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. *Notice.* Notice of the Motion, the relief requested therein and the Interim Hearing was served by the Debtors on the Notice Parties. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final

Hearing. Under the circumstances, the request for the interim relief granted herein and the notice given by the Debtors of the Motion and the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rule 4001(b) and (c), and Local Rule 4001-2, and no further notice of the relief sought at the Interim Hearing is necessary or required.

4. *Effectiveness.* This Interim Order shall constitute findings of fact and conclusions of law. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, and 9024, or any other Bankruptcy Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

5. *Findings Regarding the Commodities Transactions.*

(a) The purchases and sales of the Commodities are essential to the DIP Agreement and the DIP Facility, and thus provide a basis for the Debtors to access liquidity essential to operate their businesses and preserve and enhance their enterprise value for the benefit of their stakeholders, and are necessary for the Debtors' overall restructuring.

(b) The purchases and sales of the Commodities shall be entitled to the protections of section 363(m) of the Bankruptcy Code.

6. *Findings Regarding the DIP Facility.*

(a) Good cause has been shown for approval of the DIP Facility and entry of this Interim Order.

(b) The Debtors have an immediate need to obtain the credit available under the DIP Facility in order to permit, among other things, the orderly continuation of the operation of their businesses, including to fund general corporate and working capital

requirements; to fund administrative costs of the Cases; and to pay such other amounts in accordance with the Finance Documents. The Debtors' access to sufficient working capital and liquidity by obtaining new credit under the DIP Facility is vital to the preservation and maintenance of the going concern values of the Debtors and necessary to avoid immediate and irreparable harm to the Debtors' estates.

(c) The Debtors are unable to obtain sufficient credit on more favorable terms from sources other than the Investment Agent and the Participants under the Finance Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code on better terms without the Debtors granting liens or claims similar to the DIP Lien (as defined below) and the Superpriority Claims (as defined below) granted to Fortress, as Security Agent under the DIP Facility (in such capacity, the "**Security Agent**") for the benefit of the Finance Parties (as defined in the DIP Agreement) upon the terms and conditions set forth in this Interim Order and in the Finance Documents.

(d) The terms of the DIP Facility are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute "reasonably equivalent value" and "fair consideration" within the meaning of such terms under section 548 of the Bankruptcy Code and under applicable non-bankruptcy law.

(e) The DIP Facility has been negotiated in good faith and at arm's length among the Debtors and the Investment Agent, among others, and the terms of the DIP Facility are fair and reasonable under the circumstances and reflect the Debtors'

exercise of prudent business judgment consistent with their fiduciary duties. Further, all of the Debtors' obligations arising under, in respect of or in connection with the DIP Agreement or any of the other Finance Documents (collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the Investment Agent and the Participants and their affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the Investment Agent and the Participants shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(f) The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). The authorization granted herein on an interim basis to enter into the Finance Documents and to purchase and sell Commodities up to an aggregate purchase price of \$25 million is necessary to avoid immediate and irreparable harm to the Debtors and their estates. Consummation of the DIP Facility in accordance with this Interim Order and the Finance Documents is therefore in the best interest of the Debtors' estates as its consummation will, among other things, allow the Debtors to facilitate their chapter 11 goals and maximize the value of their estates.

7. *Authorization of the Commodities Transactions.*

(a) Pursuant to section 363(b)(1) of the Bankruptcy Code, the Purchaser is hereby authorized to (i) enter into and perform its obligations under the Purchase Contracts (as defined in the DIP Agreement), including the obligation to purchase Commodities from the Investment Agent at the Cost Price plus Profit Amount (as such terms are defined in the DIP Agreement) and such other amounts due and payable under

the Finance Documents, and (ii) sell such Commodities as set forth in the DIP Agreement. The transactions described in this subparagraph (a) shall be referred to collectively as the “**Commodities Transactions.**”

(b) To the extent provided in the DIP Agreement, the Purchaser shall indemnify the Investment Agent for any actions, claims, proceedings, liabilities, costs, and expenses associated with, or arising in connection with, the Commodities Transactions or the other transactions contemplated under the Purchase Contracts, other than any actions, claims, proceedings, liabilities, costs, and expenses arising from the ownership of the Commodities by any of the Indemnified Parties (as defined in the DIP Agreement).

8. *Authorization of the Finance Documents.*

(a) The Debtors are hereby authorized to execute, issue, deliver, and enter into the Finance Documents and the Finance Documents are hereby approved. The Purchaser is hereby authorized to enter into the DIP Agreement, and the Debtor Guarantors are hereby authorized to unconditionally guaranty (on a joint and several basis and except that the guarantees of AEID II Holdings Limited (“**AEID II**”), RailInvest Holdings Limited (“**RailInvest**”), and WindTurbine Holdings Limited (“**WTHL**”) shall be expressly subordinated to the Prior SCB Claims) the Purchaser’s obligations under the Finance Documents up to an aggregate principal or face amount of \$25,000,000 (plus profits, fees, costs and other expenses and amounts provided for in the Finance Documents) on an interim basis, in accordance with the terms of this Interim Order and the Finance Documents, the proceeds of which shall be used for all purposes permitted under the Finance Documents, including, without limitation, to provide working capital for the Purchaser and the Debtor Guarantors; to fund general corporate purposes; and to pay

profits, fees and expenses, in each case in accordance with this Interim Order, the Finance Documents and the DIP Budget (as defined in the DIP Agreement) (subject to the variances set forth in Clause 13 of the DIP Agreement).

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and, without further application to the Court, to pay all fees under the Finance Documents, that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Facility, including, without limitation:

(i) the execution, delivery and performance of the Finance Documents;

(ii) the execution, delivery and performance of one or more amendments, waivers, consents, or other modifications to and under the Finance Documents including, among other things, to at any time, add additional institutions as Participants or reallocate the commitments under the Finance Documents among Participants, in each case in such form as Arcapita, the Purchaser, the Investment Agent, and the Participants (to the extent required under the DIP Agreement) may reasonably agree, it being understood that no further approval of the Court shall be required for amendments, waivers, consents, or other modifications to and under the Finance Documents or the DIP Obligations that do not (A) shorten the maturity of the extensions of credit thereunder, (B) increase the commitments or the rate of profit or fees payable thereunder, (C) materially impair

SCB's rights under the SCB Order, or (D) are otherwise not materially burdensome to the Debtors' estates; provided that, notwithstanding the foregoing, the Debtors shall provide 3 days' notice to and consult with counsel to the Committee, SCB, and the Joint Provisional Liquidators prior to entering into any amendment or other modification to the Finance Documents or the DIP Obligations;

(iii) the non-refundable payment to the Investment Agent, the Security Agent, the Arranger and the Participants, as the case may be, of the fees referred to in the Finance Documents and the reasonable fees, costs and expenses of professionals retained by the Investment Agent and the Security Agent, as and to the extent provided for in the Finance Documents, without the necessity of filing retention applications or fee applications; and

(iv) the performance of all other acts required under or in connection with the Finance Documents.

(c) Upon execution and delivery of the Finance Documents, the Finance Documents shall constitute valid and binding obligations of the Debtors (except for Falcon), enforceable against each such Debtor party thereto in accordance with their terms and this Interim Order. No obligation, payment, transfer or grant of security under the Finance Documents or this Interim Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, setoff, recoupment or counterclaim.

(d) The Debtors shall promptly (but within three Business Days) provide to Committee counsel a copy of any duly completed Transaction Request (as

defined in the DIP Agreement) made to the Investment Agent pursuant to section 5.2 of the DIP Agreement. The Debtors shall further promptly (but within three Business Days) provide to Committee counsel a copy of the acceptance of an Offer Letter (as defined in the DIP Agreement) made pursuant to section 5.3 of the DIP Agreement.

9. *Indemnity.* The indemnity provisions of the Finance Documents are hereby approved to the extent provided therein.

10. *Superpriority Claims.*

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations, including without limitation any obligations arising from the Commodities Transactions, shall constitute allowed administrative expenses against each of the Debtors (excluding Falcon) with priority over any and all administrative expenses, and all other claims against such Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under section 105, 326, 328, 330, 331, 365, 503(b), 506(c) (upon entry of the Final Order, to the extent therein approved), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, including, without limitation, any superpriority claims granted as adequate protection in favor of secured parties in the Cases, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from and have recourse to all pre- and post-petition property of the Debtors (excluding Falcon) and all proceeds thereof (the “**Superpriority Claims**”), subject only to the payment of the Carve Out to the extent specifically provided for herein, and excluding Avoidance Actions and the proceeds

thereof. Notwithstanding anything to the contrary contained in the DIP Agreement, Finance Documents, this Interim Order, or the Motion, so long as the obligations under the SCB Facilities remain outstanding, (i) the DIP Obligations and the Superpriority Claims shall be junior to the SCB Superpriority Claims (as defined in the Settlement Term Sheet attached as Exhibit 1 to the SCB Order¹) to the extent that the SCB Superpriority Claims relate to funds transferred by, or other disposition of, AEID II, RailInvest, or WTHL; (ii) the DIP Obligations and the Superpriority Claims against AEID II, RailInvest, and WTHL shall be subordinated to the existing guarantees in favor of SCB against AEID II, RailInvest; and WTHL; and (iii) SCB shall have a prior superpriority claim in all proceeds of the EuroLog IPO (as defined in the SCB Order) to the extent provided under the SCB Order (the claims in favor of SCB as described in (i) through (iii), and the Listco Pledge (as defined in the SCB Order) in connection with the EuroLog IPO, in each case to the extent allowed, referred to collectively as, the “**Prior SCB Claims**”).

(b) For purposes hereof, the “**Carve Out**” shall mean (i) any unpaid fees required to be paid to the Clerk of the United States Bankruptcy Court for the Southern District of New York and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code and interest thereon, (ii) the reasonable fees and expenses approved by the Bankruptcy Court incurred by a trustee under sections 726(b) or 1104 of the Bankruptcy Code in an aggregate amount not to exceed \$25,000, (iii) the reasonable and documented expenses of members of the Committee (excluding fees and expenses of professional persons employed by the Committee and/or such Committee member

¹ The “**SCB Order**” means the Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing and Approving the Settlement with Standard Chartered Bank (Docket No. 587), entered October 19, 2012.

individually) in an amount not to exceed \$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 by the Debtors or the Committee (the “**Professional Persons**”) and the reasonable fees and expenses of the Joint Provisional Liquidators, in each case, that were accrued or incurred, as applicable through the date upon which the Purchaser and the Committee receives from the Investment Agent a written notice of the occurrence of an Event of Default (as defined in the DIP Agreement) and the Investment Agent’s intention to involve the Carve Out (the “**Carve Out Notice**”); and (v) to the extent allowed at any time, all fees and expenses of Professional Persons and the Joint Provisional Liquidators incurred after the date upon which the Purchaser receives the Carve Out Notice, in the aggregate amount not to exceed \$15,000,000 (the “**Carve Out Cap**”), provided that (a) the Carve Out Cap shall not be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred by or paid to any Professional Person or the Joint Provisional Liquidators prior to the Purchaser’s receipt of the Carve Out Notice or by any fees, expenses, indemnities, or other amounts paid to the Investment Agent, Participants, or their respective attorneys or agents under the DIP Facility or otherwise and (b) to the extent that the Carve Out Cap is reduced by an amount as a result of payment of fees and expenses during the continuation of an Event of Default and after delivery of the Carve Out Notice, and such Event of Default is subsequently cured or waived and the Carve Out Notice is rescinded in writing, such dollar limitation shall be increased by an amount equal to the amount by which it has been so reduced.

(c) Notwithstanding anything herein, without the prior written consent of the Investment Agent or the Security Agent, as applicable, the Carve Out shall not include, apply to, or be available for any fees or expenses incurred by any party in connection with (1) any challenge to the validity, perfection, priority, extent or enforceability of the DIP Obligations or other transactions under the DIP Facility, or the DIP Liens on any Collateral or security interests securing the DIP Obligations; (2) any investigation or assertion of any other claims, adversary proceedings, causes of action, or other litigation, including any action or obligation with respect to the Superpriority Claims or DIP Liens, against any Participant, the Investment Agent or any other holder of any DIP Obligations in such capacity; (3) to object to, contest, delay, prevent or interfere in any way with the exercise of rights or remedies by the Security Agent under the Finance Documents (except that the Debtors may dispute whether an Event of Default has occurred under paragraph 14(b) hereof and the Debtors shall be entitled to any notice provisions provided in this Interim Order); or (4) during the continuation of an Event of Default and after delivery of the Carve Out Notice, any separate or additional act or series of acts which would constitute an Event of Default, provided that deviations from the DIP Budget for purposes of making payments to Professional Persons that would constitute an Event of Default but that are otherwise permitted under the Carve Out shall not be subject to this clause (4). Nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation of any Professional Person. The Carve Out must be used in full and exhausted prior to the Debtors' use of the \$1,000,000 carve out for professional fees provided for in the SCB Order.

11. *Adequate Protection.* Nothing contained in this Interim Order modifies, alters, amends or supersedes the grant of adequate protection to SCB and the priority of SCB's claims against the Debtors pursuant to the SCB Order.

12. *DIP Liens.* As security for the DIP Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution, recordation or filings of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Security Agent of, or over, any Collateral, the following security interests and liens are hereby granted to the Security Agent for the benefit of the Investment Agent and the Finance Parties (all tangible and intangible property, whether real or personal, identified in clauses (a) and (b) below being collectively referred to as the "**Collateral**"); all such liens and security interests granted to the Security Agent for the benefit of the Finance Parties pursuant to this Interim Order, the "**DIP Liens**", subject and subordinate only to the payment of the Carve Out and the Prior SCB Claims and, in the case of the collateral identified in clause (b) below, any claim secured by a senior lien therein; *provided, however,* that the Collateral shall not include (i) the Debtors' claims and causes of action under sections 544, 545, 547, 548 and 550 (but not to the extent of any recoveries under section 549 of the Bankruptcy Code) of the Bankruptcy Code (the "**Avoidance Actions**") or the proceeds thereof, (ii) Arcapita Investment Funding Limited's interests in PointPark Properties s.r.o., or (iii) the assets of AEID II, RailInvest, or WTHL (except to the extent such assets constitute collateral under the SCB Facilities, in which case the Security Agent's liens shall be junior to liens granted to SCB); *provided further, however,* that the Collateral shall not include any property to the extent that the Investment Agent reasonably determines, and notifies the

Purchaser in writing, that the costs of obtaining liens or security interests with respect to such property are excessive in relation to the value of the security interest afforded thereby:

(a) *First Lien Unencumbered Property.* Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all property of Arcapita, the Purchaser, and ALTHL, whether existing on the Petition Date or thereafter arising, coming into existence or acquired, whether tangible or intangible, whether real or personal, that (1) is not subject to valid, perfected and non-avoidable liens or security interests as of the Petition Date or (2) becomes unencumbered and is no longer subject to any lien or security interest, including, without limitation, the Purchaser's interests in the WCFs (as defined in the DIP Agreement) and the Purchaser's voting rights with respect thereto, ALTHL's interests in LT CayCos (as defined in the DIP Agreement) that are unencumbered or become unencumbered, the Purchaser's non-syndicated interests in the Syndication Companies (as defined in the DIP Agreement), cash, general intangibles, accounts, equipment, goods, inventory, fixtures, documents, instruments, chattel paper, letters of credit and letters of credit rights, investment property, commercial tort claims, money, deposit accounts, supporting obligations (each of foregoing terms as defined in the Uniform Commercial Code as in effect from time to time in the State of New York (the "UCC")), all books and records relating to the foregoing, and all other personal and real property, whether tangible or intangible, and all proceeds (as defined in the UCC) and products of each of the foregoing (the "**First Lien Collateral**").

(b) *Liens Junior to Certain Other Liens.* Pursuant to sections 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security

interest in and junior lien upon all property of the Debtors (except for Falcon) that are subject to (i) any valid, perfected and non-avoidable lien in existence on the Petition Date or (ii) any valid lien in existence on the Petition Date that is perfected subsequent to the Petition Date pursuant to section 546(b) of the Bankruptcy Code or otherwise comes into existence or is acquired after the Petition Date, whether tangible or intangible, whether real or personal, together with all proceeds and products thereof, including, in each case and for so long as the obligations under the SCB Facilities remain unpaid, the liens on the collateral securing the obligations under the SCB Facilities.

(c) For so long as any of the DIP Obligations remain outstanding, the Collateral shall be free and clear of all senior liens, claims and encumbrances, other than the DIP Liens granted to the Security Agent for the benefit of the Finance Parties and except for those liens, claims, and encumbrances expressly permitted under the Finance Documents or this Interim Order. Any liens and claims granted as adequate protection to any secured party (other than those granted to SCB in connection with the SCB Facilities and the SCB Order) are junior and subordinate to the DIP Liens in the Collateral granted to the Security Agent, for the benefit of the Finance Parties pursuant to this Interim Order.

13. *Proceeds of Collateral.* All proceeds of the First Lien Collateral of any kind which are now or shall hereafter come into the possession or control of Purchaser, Arcapita or ALTHL, or to which any such Debtor is now or shall become entitled under the Finance Documents, shall be promptly deposited into deposit accounts maintained by the Purchaser or Arcapita upon which the Security Agent shall have first priority liens pursuant to this Interim Order, and such collections and proceeds shall remain subject to the DIP Liens and shall be treated in accordance with this Interim Order and the Finance Documents. Subject to the

provisions of this Interim Order, upon the occurrence and continuation of an Event of Default under the Finance Documents, all financial institutions in which any deposit accounts, lockboxes, blocked accounts, or other accounts of any of the Debtors (except Falcon) holding the proceeds of any of the First Lien Collateral are located are hereby authorized and directed to comply with any request of the Security Agent to turn over to the Security Agent all funds therein without setoff, recoupment, or deduction of any kind.

14. *Protection of Financing Parties' Rights.* The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary, without the need for any further order of the Court:

(a) To permit the Investment Agent and/or Security Agent to exercise, upon the occurrence and continuation of any Event of Default under the Finance Documents or the Maturity Date (as defined in the DIP Agreement), all rights and remedies under the Finance Documents, and, to the extent provided for in the Finance Documents, to take any or all of the following actions without further order of or application to this Court: (i) cease to make any extensions of credit or advances to the Debtors and declare the Participants' commitments under the DIP Facility terminated; (ii) declare all DIP Obligations to be immediately due and payable without presentment, demand, protest or notice; (iii) set off and apply immediately any and all amounts in accounts maintained by Arcapita, the Purchaser, and ALTHL with the Investment Agent, Security Agent or any Participant against the DIP Obligations to the extent permitted under the Finance Documents or applicable law; (iv) exercise all rights and remedies against the Collateral to the extent provided for in any Finance Document; and (v) take any other actions or exercise any other rights or remedies permitted under this Interim Order, the

Finance Documents, or applicable law to realize upon the Collateral and/or effect the repayment and satisfaction of the DIP Obligations, subject to SCB's rights under paragraph 14(b) and the Investment Agent and/or the Security Agent providing seven (7) days written notice (by facsimile, telecopy, electronic mail or otherwise) to the Debtors, counsel to the Debtors, the U.S. Trustee, the Joint Provisional Liquidators, counsel to the Committee, and counsel to SCB, prior to exercising any enforcement rights or remedies under (iii) through (v) above (but not any of the rights described in clauses (i) and (ii) above).

(b) In any hearing regarding any exercise of rights or remedies by the Investment Agent and/or the Security Agent, the only issue that may be raised by the Debtors or any party in interest shall be whether, in fact, an Event of Default under the Finance Documents has occurred and is continuing, and neither the Debtors nor any party in interest shall be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the Investment Agent or the Security Agent set forth in this Interim Order or the Finance Documents. Notwithstanding the foregoing, so long as the obligations under the SCB Facilities remain outstanding, SCB shall be permitted to assert that any exercise of rights or remedies by the Investment Agent and/or the Security Agent against (i) collateral securing the obligations under the SCB Facilities and/or (ii) AEID II, RailInvest, or WTHL is not permitted under the Interim Order or the SCB Order. In no event shall the Investment Agent, the Security Agent or the Participants be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral.

(c) Until the payment in full of the DIP Obligations, any party other than the Security Agent that has or obtains a lien or security interest in the Collateral shall

not exercise any rights or remedies with respect to the First Lien Collateral to the extent allowed by applicable law.

15. *Limitation on Charging Expenses Against Collateral.* Subject only to, and effective only upon entry of, the Final Order and only to the extent provided for therein, except to the extent of the Carve Out, no expenses of administration of the Cases or any future proceeding that may result therefrom, including a chapter 7 liquidation in bankruptcy and the cost of preservation or disposition of the Collateral, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the Investment Agent, and no such consent shall be implied from any other action, inaction, or acquiescence by the Investment Agent, the Security Agent or the Participants. Subject to entry of a Final Order which provides for a waiver of such claims, the Debtors (for themselves and their estates) hereby irrevocably waive and relinquish any rights they may have under section 506(c) of the Bankruptcy Code with respect to the Collateral.

16. *Perfection of DIP Liens.*

(a) The Investment Agent and the Security Agent, on behalf of the Finance Parties, are each hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over, or take any other action in order to validate and perfect the liens and security interests granted hereunder. Whether or not the Investment Agent or the Security Agent, on behalf of the Finance Parties shall, in its sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over, or otherwise confirm perfection of the liens and security

interests granted hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination, at the time and on the date of entry of this Interim Order. Without limitation of the foregoing, the Security Agent on behalf of the Finance Parties shall have a perfected lien upon and security interest of the same relative priority or priorities set forth in paragraphs 12(a) and 12(b) in all bank accounts in which any cash constituting the Collateral is deposited, without any need for entering into any control agreement.

(b) A certified copy of this Interim Order may, in the discretion of the Investment Agent or the Security Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording. For the avoidance of doubt, the automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the Investment Agent, the Security Agent, and the Finance Parties to take all actions, as applicable, referenced in this paragraph 16.

17. *Preservation of Rights Granted Under this Interim Order.*

(a) Except as otherwise provided for herein or in the SCB Order, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to the Security Agent (for the benefit of the Participants) and/or the Investment Agent shall be granted or allowed while any portion of the DIP Facility (or any refinancing thereof) or the commitments thereunder or the DIP Obligations remain outstanding, and the DIP Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the

Bankruptcy Code or (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise other than the Carve Out and the SCB Prior Claims as set forth herein, and as expressly provided in this Interim Order.

(b) Unless all DIP Obligations shall have been indefeasibly paid in full, the Debtors shall not seek (i) any modification or extension of this Interim Order without the prior written consent of the Investment Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the Investment Agent, or (ii) an order converting or dismissing any of the Cases of the Debtors (excluding Falcon). If an order dismissing any of such Cases under section 305 or 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (i) the Superpriority Claims and DIP Liens granted to the Investment Agent and the Security Agent (for the benefit of the Participants) pursuant to this Interim Order shall continue in full force and effect, shall maintain their priorities as provided in this Interim Order and shall, notwithstanding such dismissal, remain binding on all parties in interest until all DIP Obligations shall have been indefeasibly paid in full in cash and the commitments under the DIP Facility have been terminated in accordance with the Finance Documents and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the Superpriority Claims and DIP Liens.

(c) Any DIP Obligations or DIP Liens and Superpriority Claims authorized or created hereby or pursuant to the Financing Documents, incurred prior to the actual receipt by the Investment Agent of written notice of the effective date of any

reversal, stay, modification or vacation of this Interim Order shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code.

(d) Any purchases or sales of Commodities pursuant to the Purchase Contracts or other Finance Documents that were effected or incurred, as applicable, prior to any reversal, stay, modification or vacation of this Interim Order shall be entitled to all the privileges, benefits, and protections granted in section 363(m) of the Bankruptcy Code.

(e) Except as expressly provided in this Interim Order or in the Finance Documents, no order providing for the sale of any First Lien Collateral under section 363 or any other provision of the Bankruptcy Code shall be entered by this Court unless in connection with and concurrently with the consummation of such sale, the proceeds of such sale are distributed in accordance with the terms of the Finance Documents.

(f) Except as expressly provided in this Interim Order or in the Finance Documents, the DIP Liens, the Superpriority Claims and all other rights and remedies of the Investment Agent granted by the provisions of this Interim Order and the Finance Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases of the Debtors to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Cases of the Debtors, terminating the joint administration of these Cases of the Debtors or by any other act or omission, (ii) the entry of an order approving the sale of any Collateral pursuant to section 363(b) of the Bankruptcy Code or (iii) the entry of an order confirming a plan of reorganization in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Interim Order and the Finance Documents shall continue in these Cases, in any

successor cases if these Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims and all other rights and remedies of the Investment Agent granted by the provisions of this Interim Order and the Finance Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full.

18. *Limitation on Use of Financing Proceeds and Collateral.* Notwithstanding anything herein or in any other order by this Court to the contrary, no portion of the proceeds under the DIP Facility, shall be used (i) in connection with the investigation, initiation or prosecution of any claims against the Investment Agent or any Participant or other holder of DIP Obligations under the Finance Documents, provided that, with respect to Participants and holders other than Fortress and its subsidiaries and affiliates, the foregoing shall apply solely to claims against such parties in their capacities as Participants and holders under the DIP Facility; (ii) to make any payment on account of any claims or indebtedness arising or incurred prior to the Petition Date except as permitted under the Finance Documents, and then only in accordance with the DIP Budget (subject to applicable variances under the DIP Agreement); (iii) for any act which has the effect of materially or adversely modifying or compromising the rights and remedies of the Investment Agent, the Security Agent, or any Participant as set forth herein and in the other Finance Documents, or which results in the occurrence of an Event of Default (except as permitted under the Carve Out); (iv) directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended; (v) be paid to (A) any Embargoed Person (as defined in the

DIP Agreement), (B) any agency of the government of any Sanctioned Country (as defined in the DIP Agreement), (C) any organization controlled by a Sanctioned Country or (D) any person residing in a Sanctioned Country, to the extent subject to a sanctions program administered by U.S. Department of the Treasury's Office of Foreign Assets Control; or (vi) in any manner that violates Regulations T, U, or X of the Board of Governors of the Federal Reserve System of the United States or any other regulation thereof or to violate the Securities Exchange Act of 1934. Except as provided in the Finance Documents or in this Interim Order, no portion of the proceeds of any Collateral, including cash collateral, shall be used for any purpose other than as provided for in the DIP Budget (subject to the variances set forth in Clause 13 of the DIP Agreement and except as permitted under the Carve Out).

19. *Order Governs.* In the event of any inconsistency between the provisions of this Interim Order and the Finance Documents, the provisions of this Interim Order shall govern.

20. *Binding Effect; Successors and Assigns.* Except as expressly provided herein, the Finance Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in the Cases, including, without limitation, the Investment Agent, the Security Agent, the Participants, the Committee, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors) and shall inure to the benefit of the Financing Parties and the Debtors and their respective successors and assigns; *provided, however,* that the Investment Agent and the Participants shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to enter into any Commodities transaction, make any loan under the DIP Agreement or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or

the Finance Documents, the Investment Agent and the Participants shall not be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors, so long as the Participants’ actions do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by a Debtor, or cause the status of responsible person or managing agent to exist under applicable law (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute). Nothing in this Interim Order or the Finance Documents shall permit the Debtors to violate 28 U.S.C. § 959(b). Further, nothing in this Interim Order providing for the release of non-Debtors or injunction of actions against non-Debtors shall apply to (a) any claims, debts, obligations, rights, suits, damages, actions, causes of action, remedies and liabilities of the United States and any agency thereof, (b) any claims, debts, obligations, rights, suits, damages, actions, causes of action, remedies, and liabilities of any State or any agency of any State, under state or federal environmental laws, or (c) any criminal liability under the laws of the United States.

21. *Final Hearing.* The Final Hearing is scheduled for December 18, 2012, at 11:00 a.m. (prevailing Eastern time) before this Court. The Debtors shall promptly mail copies of this Interim Order (which shall constitute adequate notice of the Final Hearing, including without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under section 506(c) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court and to counsel to the Committee. Any party in interest objecting to the relief sought at the Final

Hearing shall serve and file written objections; which objections shall be served upon (a) counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Michael A. Rosenthal, Esq., Matthew J. Williams, Esq., Matthew K. Kelsey, Esq., and Joshua P. Weisser, Esq.); (b) counsel for CF ARC LLC, as Investment Agent, Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York 10036 (Attn: Kenneth S. Ziman); (c) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); (d) the Official Committee of Unsecured Creditors, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq., Abhilash M. Raval, Esq., and Evan R. Fleck, Esq.); (e) counsel to SCB, Dechert LLP, 1095 Avenue of the Americas, New York, New York 10036 (Attn: Brian E. Greer, Esq. and Nicole Herther-Spiro, Esq.); and (f) the Joint Provisional Liquidators, Sidley Austin LLP, Woolgate Exchange, 25 Basinghall Street London, EC2V 5HA (Attn: Patrick Corr and Benjamin Klinger), in each case to allow actual receipt by the foregoing no later than December 13, 2012 at 4:00 p.m. (prevailing Eastern time), with any replies filed by December 17, 2012 at 12:00 noon (prevailing Eastern time).

Dated: December 7, 2012
New York, New York

/s/ Sean H. Lane
THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE