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Hearing Date: April 10, 2013
At: 10:00 A.M.

Co-Counsel for CF ARC LLC in Its Capacity as
Investment Agent and Security Agent for the
Debtor-in-Possession Murabaha Facility

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:
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ARCAPITA BANK B.S.C.(c), et al.,	:
	:
Debtors.	:
	:
-----X	

Chapter 11 Case
Case No. 12-11076 (SHL)
Jointly Administered

**LIMITED OBJECTION AND RESERVATION OF
RIGHTS OF CF ARC LLC TO MOTION OF GOLDMAN SACHS
INTERNATIONAL FOR ALLOWANCE OF ADMINISTRATIVE
EXPENSE PURSUANT TO 11 U.S.C. §§ 503(B)(1), 503(B)(3)(D) AND 503(B)(4)**

CF ARC LLC, an affiliate of Fortress Credit Corp., in its capacity as Investment Agent and Security Agent (the "Agent") under the senior secured superpriority debtor-in-possession Murabaha facility with Arcapita Bank B.S.C.(c) and its affiliated debtors other than Falcon Gas Storage Company Inc. (the "Debtors"), hereby submits this limited objection and reservation of rights (the "Objection") to the motion for allowance of an administrative expense pursuant to 11 U.S.C. §§ 503(b)(1), 503(b)(3)(D) and 503(b)(4) (the "Motion") filed by Goldman Sachs International ("GSI"). With respect to the Motion, the Agent respectfully represents as follows:

1. In the Motion, GSI seeks allowance of a \$250,000 administrative expense to cover costs and expenses incurred as a result of GSI's participation in a competitive process to provide a Shari-ah compliant alternative to more traditional debtor-in-

possession financing. At the conclusion of this competitive process, the Debtors selected the Agent's proposal as the best of the competing alternatives. The Debtors and the Agent executed the Superpriority Debtor-in-Possession Master Murabaha Agreement (the "DIP Agreement") on December 14, 2012, which was approved by this Court on December 18, 2012 [Docket No. 727].

2. Setting aside the merits of the Motion, the Agent believes that the relief sought by GSI is premature. Allowance of substantial contribution claims is reserved for extraordinary actions. *In re Granite Partners, L.P.*, 213 B.R. 440, 445 (Bankr. S.D.N.Y. 1997). As recognized at paragraph 21 of the Motion, the Court must scrutinize whether GSI has provided an actual benefit to the case with the benefit of hindsight. *Id.* at 447. Furthermore, GSI must show that it has contributed to "the proper administration of the case as a whole." *In re Bayou Group, LLC*, 431 B.R. 549, 561 (Bankr. S.D.N.Y. 2010). Accordingly, the time for assessing whether a party has benefited the estates and satisfied the requirements for allowance of a substantial contribution is at the conclusion of a case:

It is true that substantial contribution applications are heard only at the end of the case. Parties in interest, and the bankruptcy courts, need an understanding, with as much information as possible, of the extent of the benefits constituting the asserted substantial contribution. Considering them (and, presumably, making payment) at an earlier time (which this Court has never seen) would encourage parties to routinely make such applications to finance their private agendas, and, if granted, add significant administrative costs to already expensive chapter 11 cases without any real indication of their resulting benefit.

In re Adelphia Commc'ns Corp., 336 B.R. 610, 662 n.130 (Bankr. S.D.N.Y. 2006).

3. It is too early to tell whether any of GSI's alleged contributions have conferred any benefit to the estate or its creditors. While the Agent hopes for an orderly resolution of the Debtors' chapter 11 cases, no plan of reorganization has been

confirmed. Negotiations between the Debtors and the official committee of unsecured creditors on the terms of the final form of a plan of reorganization have continued for several months without an apparent consensus among the creditor constituencies. In the meantime, the Debtors' obligations under the DIP Agreement remain outstanding. Until the time that a plan of reorganization is substantially consummated that provides for payment of administrative creditors—including the Agent—in full and establishes the final distributions to other creditors, it is premature for the Court to consider whether GSI provided an actual benefit to the estate for purposes of its substantial contribution claim.

4. Accordingly, through this Objection, the Agent (i) requests that the hearing on the Motion be continued indefinitely until the Debtors substantially consummate a plan of reorganization and (ii) reserves its rights to supplement the Objection in advance of any such rescheduled hearing.

Dated: New York, New York
March 29, 2013

CF ARC LLC in Its Capacity as
Investment Agent and Security Agent for the
Debtor-in-Possession Murabaha Facility
By Its Co-Counsel
TOGUT, SEGAL & SEGAL LLP
By:

/s/ Frank A. Oswald
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