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Attorneys for the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DEBTORS' APPENDIX OF MATERIAL DOCUMENTS IN SUPPORT OF SUBORDINATION OF THE TIDE CLAIMS

The Debtors hereby submit this Appendix in support of the *Debtors' Memorandum of Law in Support of Subordination of the Tide Claims Pursuant to the Confirmation of the Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c), et al.*, which attaches copies of the following material documents:

- *Exhibit 1*: NorTex LLC Purchase Agreement – referenced by Tide in the Complaint filed in the District Court Action
- *Exhibit 2*: Purchase Amendment – referenced by Tide in the Complaint filed in the District Court Action
- *Exhibit 3*: Escrow Agreement – referenced by Tide in the Complaint filed in the District Court Action

- *Exhibit 4*: Opinion issued in the District Court Action – *Tide Natural Gas Storage I, L.P. v. Falcon Gas Storage Co., Inc.*, 2011 U.S. Dist. LEXIS 111532 (S.D.N.Y. Sep. 29, 2011)

- *Exhibit 5*: Proof of Claim No. 295 of Tide Natural Gas Storage II LP – signed under penalty of perjury by John Laxmi, Secretary

- *Exhibit 6*: Proof of Claim No. 296 of Tide Natural Gas Storage I LP – signed under penalty of perjury by John Laxmi, Secretary

- *Exhibit 7*: Proof of Claim No. 297 of Tide Natural Gas Storage II LP – signed under penalty of perjury by John Laxmi, Secretary

- *Exhibit 8*: Proof of Claim No. 298 of Tide Natural Gas Storage I LP – signed under penalty of perjury by John Laxmi, Secretary

Dated: New York, New York
May 16, 2013

Respectfully submitted,

/s/ Craig H. Millet

Michael A. Rosenthal (MR-7006)
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ATTORNEYS FOR THE DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT 1

NorTex LLC Purchase Agreement

Execution Version

PURCHASE AGREEMENT

by and between

FALCON GAS STORAGE COMPANY, INC.,

and

ALINDA NATURAL GAS STORAGE I, L.P. AND
ALINDA NATURAL GAS STORAGE II, L.P.

Dated as of March 15, 2010

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LIST OF EXHIBITS

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PURCHASE AGREEMENT

This PURCHASE AGREEMENT (this "Agreement"), dated as of March 15, 2010, is made and entered into by and between ALINDA NATURAL GAS STORAGE I, L.P., a Delaware limited partnership ("Alinda I"), and ALINDA NATURAL GAS STORAGE II, L.P., a Delaware limited partnership ("Alinda II", and, together with Alinda I, each a "Purchaser" and herein collectively referred to as the "Purchaser"), and FALCON GAS STORAGE COMPANY, INC., a Delaware corporation (the "Seller"). The Purchaser and the Seller are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the Seller owns all of the issued and outstanding units (the "Units") of NorTex Gas Storage Company, LLC, a Delaware limited liability company (the "Company");

WHEREAS, subject to the terms and conditions of this Agreement, the Purchaser desires to purchase all of the Units from the Seller for the consideration set forth in this Agreement;

WHEREAS, at the Closing and subject to the terms and conditions of this Agreement, Arcapita Bank, B.S.C.(c), a joint stock company incorporated in the Kingdom of Bahrain, (the "Guarantor"), shall execute a guaranty in the form attached as Exhibit A pursuant to which the Guarantor will guarantee the performance of each obligation of Seller after the Closing under this Agreement (the "Guaranty Agreement");

WHEREAS, contemporaneously with the execution of this Agreement, each of Alinda Infrastructure Fund I, L.P., a Delaware limited partnership, Alinda Infrastructure Parallel Fund I, L.P., a Cayman Islands limited partnership, and Alinda Infrastructure Parallel Fund I-A, L.P., a Cayman Islands limited partnership (collectively, the "Sponsors"), is executing an equity contribution letter (the "Equity Contribution Letter") and a guaranty pursuant to which the Sponsors guarantee the performance of each obligation of the Purchaser hereunder (the "Alinda Guaranty Agreement"); and

WHEREAS, the Parties desire to make certain representations, warranties and agreements in connection with the transactions contemplated by this Agreement.

ARTICLE I
CONSTRUCTION; DEFINITIONS

Section 1.1 Definitions. The following terms, as used herein, have the following meanings:

"Affiliate" of any specified Person means any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such specified Person. For the avoidance of doubt, Affiliates of the Seller shall include Arcapita Bank B.S.C.(c).

"Audited Financial Statements" means the audited consolidated balance sheet of the Company and its Subsidiaries as of March 31, 2009, the audited consolidated statements of income, members' equity and cash flows of the Company and its Subsidiaries for the twelve (12)-month period then ended.

"Business" means as to the Company or any of its Subsidiaries, the direct or indirect ownership and/or operation of the Facilities, the Company-Titled Real Property, the Company-Titled Oil and Gas Leases, and the Wells, including the storage, injection, withdrawal and production of Hydrocarbons.

"Business Day" means any day except Saturday, Sunday or any day on which banks are generally not open for business in the city of Houston, Texas.

"CERCLA" means the United States Comprehensive Environmental Response, Compensation and Liability Act and the rules and regulations promulgated thereunder.

"Claims Period" means the period during which a claim for indemnification may be asserted hereunder by an Indemnified Party.

"Closing" means the consummation of the transactions contemplated by Article II, as set forth in Section 8.1.

"Closing Date" means the date on which the Closing occurs.

"Closing Date Indebtedness" means all indebtedness of the Company and any of its Subsidiaries, as of the Closing Date, with respect to borrowed money (other than intercompany), notes payable, amounts outstanding under letter-of-credit facilities, and capital leases, including any interest accrued thereon and prepayment penalties and expenses which would be payable if such indebtedness were paid other than indebtedness arising under the letter-of-credit facility issued by Barclays Bank PLC at the request of Worsham-Steed for the benefit of GDF SUEZ Energy Marketing NA, Inc. "Code" means the United States Internal Revenue Code of 1986, as amended.

"Company Ancillary Documents" means any certificate, agreement, document or other instrument, other than this Agreement, to be executed and delivered by the Company or the Seller in connection with the transactions contemplated hereby.

"Company Benefit Plan" means each Employee Benefit Plan under which the Company or any of its Subsidiaries has any liabilities directly or indirectly.

"Confidential Information" means any data or information of the Company or any of its Subsidiaries (including trade secrets) that is valuable to the operation of the Company's or any of its Subsidiaries' business and not generally known to the public or competitors.

"Company-Titled Oil and Gas Leases" means any oil and gas lease, fee mineral interest, oil, gas or mineral leasehold interest or other leasehold interest, sublease, mineral servitude, license, concession, working interest, farm-out or farm-in right, royalty interest, overriding royalty interest, net profits interest or other non-working or carried interest, rights of recoupment

or other similar instrument, right or interest in and to the Hydrocarbons in, on, under, and that may be produced from the lands described in Schedule 4.6(c) or otherwise held in the name of the Company or any of its Subsidiaries, including (a) any interest in any pooled or unitized area in which any of the above described interests and rights are included and (b) any renewal, amendment, ratification or extension of or related to the foregoing.

"Company-Titled Real Property" means the Leased Real Property, the Owned Real Property and the Gas Storage Leases.

"Control" means, when used with respect to any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

"Employee Benefit Plan" means (a) any plan, program or policy described in Section 3(3) of ERISA (as determined without regard to whether such plan, program, or policy is subject to ERISA) with respect to which a Person has any liabilities, direct or indirect, (b) any agreements or other arrangements which provide benefits upon a termination of employment or retention of employment with such Person or upon a change in control of such Person, (c) each equity bonus, equity ownership, equity option, equity purchase, equity appreciation rights, phantom equity or other equity plan (whether qualified or nonqualified) with respect to which such Person has any liabilities, direct or indirect, (d) each bonus or incentive compensation plan to which such person has any liabilities, direct or indirect, and (e) each prerequisite or fringe benefit agreement or plan with respect to which such Person has any liabilities, direct or indirect.

"Environmental Laws" means all Laws relating to protection of surface or ground water, drinking water supply, soil, surface or subsurface strata or medium, or ambient air, pollution control and Hazardous Materials.

"ERISA" means the United States Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any Person (whether incorporated or unincorporated) that together with the Company or any of its Subsidiaries would be deemed a "single employer" within the meaning of Section 414 of the Code and Section 4001(b)(1) of ERISA, or that is a member of the same "controlled group" as the Company and its Subsidiaries pursuant to Section 4001(a)(14) of ERISA.

"Facilities" means, collectively, the Hill-Lake Facility and the Worsham-Steed Facility.

"Falcon Conditions Notice Date" the date that the Seller notifies the Purchaser that it is reasonably certain that all conditions to Closing set forth in Article VII that are not within the control of the Purchasers will be satisfied without undue delay.

"Falcon Payable" means any and all amounts owed by the Company or any of its Subsidiaries to the Seller, as recorded on the unaudited consolidated balance sheet of the Company and its Subsidiaries as of the Closing Date.

"Falcon Receivable" means any and all amounts owed by the Seller to the Company or any of its Subsidiaries, as recorded on the unaudited consolidated balance sheet of the Company and its Subsidiaries as of the Closing Date.

"Final Closing Statement" means the Proposed Closing Statement as finally determined in accordance with Section 3.5.

"Financial Statements" means, collectively, the Audited Financial Statements and the Unaudited Financial Statements .

"GAAP" means generally accepted accounting principles as applied in the United States of America, applied in a manner consistent with those used in preparing the Financial Statements. For the avoidance of doubt if any alternative available under generally accepted accounting principles as applied in the United States of America exists, the methodology used in preparation of the Financial Statements will prevail.

"Gas Storage Lease" means any agreement or instrument granting the Company or any Subsidiary the right to inject, store or withdraw Hydrocarbons underground, including all storage easements constituting a part of the Facilities or outside the boundaries of the Facilities.

"Governmental Entity" means any federal, state or local or foreign government, any political subdivision thereof or any court, administrative or regulatory agency, department, instrumentality, body or commission or other governmental authority or agency, domestic or foreign.

"Hazardous Materials" means any waste, pollutant, contaminant, hazardous substance, toxic, ignitable, reactive or corrosive substance, hazardous waste, special waste, petroleum or petroleum-derived substance or waste, or any constituent of any such substance or waste, the use, handling or disposal of which by the Company or any of its Subsidiaries is in any way governed by or subject to any Environmental Law.

"Hedging Adjustment" means an amount (expressed as a positive number if there is a net amount owed to the Company and its Subsidiaries or as a negative number if there is a net amount owed by the Company and its Subsidiaries) equal to the amount that would be paid or received by the Company or any of its Subsidiaries under any interest rate or hedging or derivative transaction to which the Company or any of its Subsidiaries is a party if such transactions were to be closed out on the Closing Date.

"Hill-Lake" means Hill-Lake Gas Storage, LP, a Texas limited partnership.

"Hill-Lake Buffer Zone" means those lands, including both the surface and the mineral estates thereof, which lie outside or beyond the aerial boundary of the Hill-Lake Original Unit but which lands comprise a portion of the Hill-Lake Facility.

"Hill-Lake Facility" means a 12 Bcf depleted reservoir natural gas storage facility, which includes both the Hill-Lake Original Unit and the Hill-Lake Buffer Zone, located in Eastland County, Texas and all assets (whether tangible or intangible) related to the ownership, operation, and maintenance thereof, including equipment, pipelines, compressor facilities and gas control

facilities, and all improvements relating the ownership, operation, and maintenance of such plant and associated equipment.

"Hill-Lake Original Unit" means the entire area covered by that certain Unit Agreement dated April 1, 1962 and attached hereto as Exhibit B.

"HSR Act" means the United States Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"Hydrocarbons" means crude oil, natural gas, casinghead gas, condensate, sulphur, natural gas liquids, plant products and other liquid or gaseous hydrocarbons produced in association therewith, including coalbed methane and gas and CO_2, and all other minerals of every kind and character.

"Indemnified Party" means a Purchaser Indemnified Party or a Seller Indemnified Party.

"Intellectual Property" means all intellectual property rights, including: (a) all United States and foreign patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (b) all inventions (whether patentable or not), invention disclosures, improvements, mask works, trade secrets, manufacturing processes, test and qualification processes, designs, schematics, proprietary information, know-how, technology, technical data and customer lists, and all documentation to the extent embodying any of the foregoing throughout the world; (c) all works of authorship (whether copyrightable or not), copyrights, copyright registrations and applications therefor throughout the world; (d) all industrial designs and any registrations and applications therefor throughout the world; (e) all Software; (f) all internet uniform resource locators, domain names, trade names, logos, slogans, designs, trade dress, common law trademarks and service marks, trademark and service mark and trade dress registrations and applications therefor throughout the world; (g) all databases and data collections and all rights therein throughout the world; and (h) all moral and economic rights of authors and inventors, however denominated, throughout the world.

"Knowledge" means with respect to the Seller, when used with reference to a particular fact, circumstance, event or other matter, the actual knowledge of each of the individuals listed under "the Company" on Exhibit 1.1; provided, that solely for purposes of Sections 4.19 and 4.20, "Knowledge" shall include an obligation of due inquiry on such individuals.

"Laws" means all statutes, rules, codes, regulations, restrictions, ordinances, orders, decrees, approvals, directives, judgments, injunctions, writs, awards and decrees of, or issued by, all Governmental Entities.

"Leased Real Property" means those parcels of real property or portions thereof in which the Company or any of its Subsidiaries holds a leasehold interest for a term of not less than two (2) years (together with those fixtures and improvements thereon which are included in the terms of the leases therefor), excluding Company-Titled Oil and Gas Leases or Gas Storage Leases.

"Lender Fee" means all costs or expenses reasonably incurred by the Purchaser, the Company, the Company's lenders or any of their respective Affiliates as a result of the transactions contemplated hereby, other than the repayment in full of such indebtedness.

"Licenses" means all notifications, licenses, permits (including environmental, construction and operation permits), franchises, certificates, approvals, exemptions, classifications, registrations and other similar documents and authorizations issued by any Governmental Entity, and applications therefor.

"Liens" mean all mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances of any nature whatsoever, including all proxies, voting trusts, obligations, undertakings or any other restriction on the title and transfer of any nature whatsoever.

"Material Adverse Effect" means any state of facts, conditions, change, event, effect or occurrence (when taken together with all other states of fact, conditions, changes, events, effects or occurrences) that (i) is, or would reasonably likely to be, individually or in the aggregate, materially adverse to the condition (financial or otherwise), business, results of operations, properties, assets or liabilities of the Company and its Subsidiaries taken as a whole or (ii) would reasonably be expected to make the satisfaction of the conditions set forth in Sections 7.1, 7.2 or 7.3 unlikely; provided, however, that a Material Adverse Effect shall not include any states of fact, conditions, changes, events, effects or occurrences arising out of or attributable to (a) a downturn in general economic, business or regulatory conditions, (b) the industries and markets in which the Company and its Subsidiaries operate including changes in the prevailing prices for crude oil, natural gas or natural gas liquids or condensate, (c) the United States or world economies or securities or financial markets, (d) earthquakes, hostilities, acts of war or terrorism, (e) the execution or delivery of this Agreement or the transactions contemplated hereby or the public announcement thereof, (f) the failure of the Seller, the Company or any Subsidiary to meet any of its internal projections, or (g) applicable Laws or accounting rules; provided, however, that the exceptions provided in clauses (a), (b) and (c) shall only apply so long as and to the extent that the state of facts, change, event, effect or occurrence does not affect the Company in a materially disproportionate manner when compared to the effect of such state of facts, change, event, effect or occurrence on other Persons in the industry in which the Company and its Subsidiaries operate.

"Office Lease" means the San Felipe Office Lease, by and between TPG-San Felipe Plaza, L.P. and Falcon Gas Storage Company, Inc., dated as of April 3, 2006, as amended, by the First Amendment to Lease Agreement between TPG-San Felipe Plaza, L.P., and Falcon Gas Storage Company, Inc. dated March 27, 2007, the Second Amendment to Lease Agreement between TPG-San Felipe Plaza, L.P., and Falcon Gas Storage Company, Inc. dated January 8, 2008, the Third Amendment to Lease Agreement between TPG-San Felipe Plaza, L.P., And Falcon Gas Storage Company, Inc. dated August 7, 2008, the Letter Agreement dated as of November 30, 2008 and the Letter Agreement dated as of November 29, 2009.

"Ordinary Course" means the ordinary course of business consistent with the past practices of the Company and its Subsidiaries.

"Owned Real Property" means parcels of real property held in fee not constituting part of the severed mineral estate by the Company or any of its Subsidiaries (together with all fixtures and improvements thereon), including any easements other than those constituting the Company-Titled Oil and Gas Leases or Gas Storage Leases.

"Permitted Liens" means (a) Liens for Taxes not yet due and payable; (b) Liens of landlords with respect to Leased Real Property; (c) Liens of carriers, warehousemen, mechanics, materialmen, and repairmen incurred in the Ordinary Course and not yet delinquent; (d) in the case of Company-Titled Real Property, in addition to items (a) and (b), zoning, building, or other restrictions, variances, covenants, rights of way, encumbrances, easements and other minor irregularities in title, none of which, individually or in the aggregate, would have a Material Adverse Effect or the present use of or occupancy of the affected parcel by the Company or any of its Subsidiaries; (e) liens securing the Closing Date Indebtedness as disclosed in Schedule 1.1(b) (to the extent terminated on the Closing Date upon payment in full of the Closing Date Indebtedness); (f) in the case of Intellectual Property, third party license agreements entered into in the Ordinary Course; and (g) liens incurred in connection with capital lease obligations of the Company or any of its Subsidiaries as set forth in Schedule 1.1(b) under the caption "Permitted Liens".

"Person" means, any individual, corporation, partnership, joint venture, limited liability company, trust, unincorporated organization, other entity or Governmental Entity.

"Purchaser Ancillary Documents" means any certificate, agreement, document, or other instrument, other than this Agreement, to be executed and delivered by the Purchaser in connection with the transactions contemplated hereby.

"Purchaser Indemnified Parties" means the Purchaser and its Affiliates (which, following the Closing, shall include the Company and its Subsidiaries), each of their respective officers, directors, employees, agents and representatives and each of the heirs, executors, successors and assigns of any of the foregoing.

"Release" means, with respect to any Hazardous Material, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into any surface or ground water, drinking water supply, soil, surface or subsurface strata or medium, or the ambient air.

"Seller Indemnified Parties" means the Seller and its Affiliates, each of their respective officers, directors, agents and representatives, and each of the heirs, executors, successors and assigns of any of the foregoing.

"Software" means all computer software programs, together with any error corrections, updates, modifications, or enhancements thereto, in both machine-readable form and human-readable form.

"Subsidiary" means any Person of which the Company (or other specified Person) shall own directly or indirectly through a Subsidiary, a nominee arrangement or otherwise at least a majority of the outstanding capital stock (or other shares of beneficial interest) entitled to vote

generally or otherwise have the power to elect a majority of the board of directors or similar governing body or the legal power to direct the business or policies of such Person.

"Tangible Personal Property" means all machinery, mobile or otherwise, equipment, vehicles, pumps, fittings, tools, furniture or furnishings, meter equipment, and other tangible movable property located on the lands on which the Facilities are located or purchased by any Company or any of its Subsidiaries specifically for use or consumption exclusively at any Facility, including assets temporarily off-site for repair or other purposes or being shipped to any Project Company and including the property listed on Schedule 4.24.

"Targeted Working Capital" means Four Million Dollars ($4,000,000.00).

"Taxes" means all (a) income, franchise, gross margin, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, transfer, sales, use, excise, gross receipts, value-added, severance and all other taxes of any kind imposed by any Governmental Entity, whether disputed or not, and any related interest, additions to tax, or penalties imposed by any Governmental Entity and (b) liability for Taxes described in (a) of any other Person imposed by Law (including Treasury Regulation section 1.1502-6), by contract or otherwise.

"Tax Return" means any report, return, declaration or other information supplied or required to be supplied to a Governmental Entity in connection with Taxes, including estimated returns and reports of every kind with respect to Taxes.

"Termination Date" means the date prior to the Closing, if any, when this Agreement is terminated in accordance with Article IV.

"Transaction Expenses" means the legal, accounting, financial advisory and other third party advisory or consulting fees and other expenses incurred by the Seller or any of its Subsidiaries in connection with the transactions contemplated by the Agreement and other related matters including the D&O Tail Premium. Notwithstanding the foregoing, Transaction Expenses shall not include any fees or expenses incurred by the Company or its Subsidiaries in connection with any financing required by the Purchaser in connection with the transactions contemplated hereby.

"Treasury Regulations" means the Income Tax Regulations promulgated under the Code.

"Unaudited Financial Statements" means the unaudited consolidated balance sheet of the Company and its Subsidiaries as of December 31, 2009, the unaudited consolidated statements of income, members' equity and cash flows of the Company and its Subsidiaries for the nine (9)-month period then ended.

"Wells" means any and all oil, condensate, natural gas or combination wells, gas storage injection and withdrawal wells, observation wells, water source wells and water and other types of injection or disposal wells and systems located on any Company-Titled Oil and Gas Lease or any Company-Titled Real Property, whether producing, non-producing, permanently or temporarily plugged and abandoned, and whether or not fully described on Schedule 4.6(d),

owned by the Company or its Subsidiaries, or for which the Company or any Subsidiary has regulatory responsibility.

"Worsham-Steed" means Worsham-Steed Gas Storage, LP, a Texas limited partnership.

"Worsham-Steed Facility" means a 23 Bcf depleted reservoir natural gas storage facility located on Jack County, Texas and all assets (whether tangible or intangible) related to the ownership, operation, and maintenance thereof, including equipment, pipelines, compressor facilities and gas control facilities, and all improvements relating the ownership, operation, and maintenance of such plant and associated equipment.

Section 1.2 Construction. Unless the context of this Agreement otherwise clearly requires, (a) references to the plural include the singular, and references to the singular include the plural, (b) references to one gender include the other gender, (c) the words "include," "includes" and "including" do not limit the preceding terms or words and shall be deemed to be followed by the words "without limitation," (d) the terms "hereof, "herein," "hereunder," "hereto" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, (e) the terms "day" and "days" mean and refer to calendar day(s) and (f) the terms "year" and "years" mean and refer to calendar year(s). Unless otherwise set forth herein, references in this Agreement to a particular Law means such Law as amended, modified, supplemented or succeeded, from time to time and in effect at any given time. All Article, Section, Exhibit and Schedule references herein are to Articles, Sections, Exhibits and Schedules of this Agreement, unless otherwise specified. This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

Section 1.3 Other Definitions. Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Agreement	Preamble
Alinda I	Preamble
Alinda II	Preamble
Alinda Guaranty Agreement	Recitals
Arbitrator	3.5(e)
Cash Deficit	3.5(a)
Cash Surplus	3.5(a)
Claims Period Expiration Date	10.4
Closing Cash	3.5(a)
Closing Date Certificate	3.2
Closing Date Expense Statement Fees	3.2
Closing Date Net Working Capital	3.5(a)
Company	Preamble
Company Contracts	4.14(a)
D&O Tail Premium	6.11(b)
Equity Contribution Letter	Recitals
Estimated Closing Cash	3.5(a)
Estimated Working Capital	3.5(a)

Section 1.4 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP.

ARTICLE II
PURCHASE AND SALE

Section 2.1 Agreement to Purchase and Sell. Subject to the terms and conditions of this Agreement, at the Closing, the Seller shall sell, transfer and deliver to the Purchaser, and the Purchaser shall purchase and acquire from the Seller, the Units, free and clear of all Liens other than Permitted Liens, in exchange for the payment of the Purchase Price as set forth in Article III.

ARTICLE III
PURCHASE PRICE; ADJUSTMENTS

Section 3.1 Purchase Price. The aggregate cash amount to be paid by the Purchaser (the "Purchase Price") shall be an amount equal to (a) Five Hundred Fifteen Million Dollars ($515,000,000.00), plus (b) the amount of the Estimated Closing Cash, if any, plus (c) the amount of the Estimated Working Capital, minus (d) the Closing Date Indebtedness, plus (e) the Hedging Adjustment, minus (f) the aggregate amount of all Transaction Expenses (to the extent not paid prior to the Closing Date), minus (g) only if the Purchaser, on behalf of the Company, and with equity or debt capital contributed or provided to the Purchaser only from or guaranteed by the Sponsors, pays at Closing the aggregate amount of Closing Date Indebtedness in accordance with Section 3.4(a), Ten Million Dollars ($10,000,000.00) minus (h) the Targeted Working Capital; provided, however, there shall be no duplication in any of such additions or reductions. The Purchaser shall bear any and all amount of any Lender Fee.

Section 3.2 Closing Date Certificate. Not less than five (5) Business Days prior to the Closing Date, the Seller shall deliver to the Purchaser a statement from the Seller (the "Closing Date Certificate") signed by the Chief Financial Officer or the President (on behalf and in the name of the Seller) which sets forth, (a) the amount of the Closing Date Indebtedness, (b) by payee, the aggregate amount of the Transaction Expenses as of the Closing Date, detailing the amount of Transaction Expenses paid to date and the amount of outstanding Transaction Expenses as of the Closing Date as shown on the Closing Date Certificate (the "Closing Date Expense Statement Fees"), (c) the Estimated Closing Cash, (d) the Estimated Working Capital, and (e) the Hedging Adjustment.

Section 3.3 Payment of Purchase Price. On the Closing Date, the Purchaser shall pay or cause to be paid to the Seller an amount equal to the Purchase Price (utilizing, as the adjustments, the amounts set forth in the Closing Date Certificate).

Section 3.4 Payment of Other Amounts Payable at Closing. On the Closing Date, the Purchaser shall:

(a) Unless the Purchaser, in its sole discretion, seeks and obtains all consents and waivers to retain all Closing Date Indebtedness, pay, on behalf of the Company, to such account or accounts as the Company specifies to the Purchaser in writing at least two (2) Business Days prior to the Closing Date, the aggregate amount of the Closing Date Indebtedness;

(b) on behalf of the Seller, pay to such account or accounts as the Seller specifies to the Purchaser in writing at least two (2) Business Days prior to the Closing Date, the aggregate amount of the Transaction Expenses, in each case to the extent not paid prior to the Closing Date; and

Section 3.5 Closing Date Cash Calculation; Adjustment of Purchase Price.

(a) Definitions. For purposes of this Section 3.5:

(i) "Cash Deficit" means the amount, if any, by which the Closing Cash is less than the Estimated Closing Cash.

(ii) "Cash Surplus" means the amount, if any, by which the Closing Cash is greater than the Estimated Closing Cash.

(iii) "Closing Cash" means the cash of the Company and its Subsidiaries, as determined in accordance with GAAP, as of 11:59 p.m. (central time) on the Closing Date less (A) the aggregate amount of checks or drafts of the Company or any of its Subsidiaries outstanding as of 11:59 p.m. (central time) on the Closing Date (to the extent such amounts have been relieved from accounts payable and other than payments of the amounts specified in Section 3.3 or Section 3.4) plus (B) checks received by the Company and its Subsidiaries but not posted as of 11:59 p.m. (central time) on the Closing Date and (C) exclusive of any cash delivered by the Purchaser pursuant to Section 3.3 or Section 3.4; provided, however, that there shall be no duplication with respect to any such additions or deductions in determining Closing Cash.

(iv) "Closing Date Net Working Capital" means the current assets of the Company and its Subsidiaries on a consolidated basis (not including Closing Cash, derivative assets, and all amounts relating to prepaid, accrued, current and deferred income, profits, margins and similar Taxes) less the current liabilities of the Company and its Subsidiaries on a consolidated basis (not including derivative liabilities, accrued, current and deferred income, profits margins and similar taxes, Indebtedness or any of the amounts paid pursuant to Section 3.4) as of 11:59 p.m. (central time) on the Closing Date prepared in accordance with GAAP, as modified in accordance with the guidelines set forth on Exhibit 3.5(a) and on a basis that excludes any changes or transactions resulting from this Agreement.

(v) "Estimated Closing Cash" means the estimate of the Closing Cash as set forth in the Closing Date Certificate.

(vi) "Estimated Working Capital" means the estimate of the Closing Date Net Working Capital as set forth in the Closing Date Certificate.

(vii) "Final Shortfall" means the amount, if any, by which (A) the sum of (1) the Working Capital Deficit, if any, and (2) the Cash Deficit, if any,

exceeds (B) the sum of (1) the Working Capital Surplus, if any, and (2) the Cash Surplus, if any.

(viii) "Final Surplus" means the amount, if any, by which (A) the sum of (1) the Working Capital Surplus, if any, and (2) the Cash Surplus, if any, exceeds (B) the sum of (1) the Working Capital Deficit, if any, and (2) the Cash Deficit, if any.

(ix) "Working Capital Deficit" means the amount, if any, by which the Closing Date Net Working Capital is less than the Estimated Working Capital, as reflected on the Final Closing Statement.

(x) "Working Capital Surplus" means the amount, if any, by which the Closing Date Net Working Capital is greater than the Estimated Working Capital, as reflected on the Final Closing Statement.

(b) No later than forty-five (45) days following the Closing Date, the Purchaser shall prepare and deliver to the Seller the draft closing statement of the Company as of the Closing Date (the "Proposed Closing Statement") which shall include a calculation of each of the Closing Date Net Working Capital, the Working Capital Surplus, if any, the Working Capital Deficit, if any, the Closing Cash, the Cash Deficit, if any, the Cash Surplus, if any, the Final Shortfall, if any, and the Final Surplus, if any.

(c) The Seller shall have thirty (30) days following receipt of the Proposed Closing Statement during which to notify the Purchaser of any dispute of any item contained in the Proposed Closing Statement, which notice shall set forth in reasonable detail the basis for such dispute. At any time within such thirty (30)-day period, the Seller shall be entitled to agree with any or all of the items set forth in the Proposed Closing Statement.

(d) If the Seller does not notify the Purchaser of any such dispute within such thirty (30)-day period, or notifies the Purchaser of its agreement with the adjustments in the Proposed Closing Statement prior to the expiration of the thirty (30)-day period, the Proposed Closing Statement prepared by the Purchaser shall be deemed to be the "Final Closing Statement."

(e) If the Seller does notify the Purchaser of any such dispute within such thirty (30)-day period, the Final Closing Statement shall be resolved as follows:

(i) The Purchaser and the Seller shall cooperate in good faith to resolve any such dispute as promptly as possible.

(ii) In the event the Purchaser and the Seller are unable to resolve any such dispute within fifteen (15) days (or such longer period as the Purchaser and the Seller shall mutually agree in writing) of notice of such dispute, such dispute and each Party's work papers related thereto shall be submitted to, and all issues having a bearing on such dispute shall be resolved by an independent national

accounting firm that has not performed work for either the Company or any of its Subsidiaries, the Seller, the Guarantor, the Purchaser or any of their respective Affiliates within the past two (2) years (any such firm, an "Uninterested Accounting Firm"), (A) the initial Uninterested Accounting Firm which shall be Deloitte & Touche LLP or (B) in the event such accounting firm identified in (A) is unable or unwilling to take such assignment, another Uninterested Accounting Firm mutually agreed upon by the Purchaser and the Seller (such identified Uninterested Accounting Firm shall be referred to herein as the "Arbitrator"). Such resolution shall be final and binding on the parties, be based solely on presentations of the Purchaser and the Seller and not on the Arbitrator's independent review, shall be limited to only those matters in dispute, shall affirm in all respects the presentations of only one party, and reject in all respects the presentations of the other. The Arbitrator shall use commercially reasonable efforts to complete its work within thirty (30) days following its engagement. The fees, costs and expenses of the Arbitrator shall be paid one-half (1/2) by the Purchaser and one-half (1/2) by the Seller.

(iii) The Purchaser and the Seller jointly shall revise the Proposed Closing Statement and the calculation of Closing Date Net Working Capital, the Working Capital Surplus, if any, the Working Capital Deficit, if any, the Closing Cash, the Cash Deficit, if any, the Cash Surplus, if any, the Final Shortfall, if any, and the Final Surplus, if any, as appropriate to reflect the resolution of the Seller's objections (as agreed upon by the Purchaser and the Seller or as determined by the Arbitrator) and the Purchaser shall deliver it to the Seller within three (3) days after the resolution of such objections. Such revised balance sheet shall be the "Final Closing Statement."

(f) For purposes of determining the information on the Final Closing Statement, the Parties may take into consideration all facts which are known prior to the final determination of the Final Closing Statement.

(g) To the extent there is a Final Surplus on the Final Closing Statement, the Purchaser shall pay the Seller the amount of the Final Surplus by wire transfer of immediately available funds within twelve (12) Business Days after the Purchaser's delivery of the Final Closing Statement to the Seller to an account designated by the Seller.

(h) To the extent there is a Final Shortfall on the Final Closing Statement, the Seller shall pay the Purchaser the amount of the Final Shortfall by wire transfer of immediately available funds within twelve (12) Business Days after the Purchaser's delivery of the Final Closing Statement to the Seller to an account designated by the Purchaser.

Section 3.6 Purchase Price Allocation. The Purchaser shall prepare a proposed allocation of the purchase price (as determined for U.S. federal income tax purposes) among the assets of the Company and its Subsidiaries in accordance with Section 1060 of the Code and the Treasury Regulations thereunder (and any similar provision of state, local or non-U.S. law, as

appropriate). The Purchaser shall deliver such proposed allocation to the Seller within ninety (90) days following the Closing Date for Seller's approval. The Seller shall have thirty (30) days following the receipt of the proposed allocation during which to notify the Purchaser of any dispute concerning the proposed allocation, which notice shall set forth in reasonable detail the basis for dispute. The Purchaser and the Seller shall work in good faith to resolve any such disputes. If the Purchaser and the Seller are unable to resolve any such dispute within fifteen (15) days (or such longer period as the Purchaser and the Seller shall mutually agree in writing) of notice of such dispute, such dispute shall be resolved by the Arbitrator (as selected under the procedure described in Section 3.5(e) if not previously selected), which shall resolve any issue in dispute as promptly as practicable and in accordance with the procedures and subject to provisions regarding the decision of the Arbitrator set forth in Section 3.5(e). The determination by the Arbitrator shall be final, conclusive and binding on the parties. The fees, costs and expenses of the Arbitrator shall be paid in the same manner as in Section 3.5(e). The Purchaser and the Seller and their Affiliates shall report, act and file Tax Returns (including, but not limited to, Internal Revenue Service Form 8594) in all respects and for all purposes consistent with the allocation, as finally determined pursuant to this Section 3.6. The Seller shall prepare, execute, file and deliver all such documents, forms and other information as the Purchaser may reasonably request to prepare such allocation. Neither the Seller nor the Purchaser shall take any position (whether in audits, Tax Returns or otherwise) that is inconsistent with such allocation unless required to do so by applicable Law.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants to the Purchaser as follows as of the date hereof and as of the Closing Date:

Section 4.1 Organization. The Company and each of its Subsidiaries is a limited liability company or other entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization set forth on Schedule 4.1. The Company and each of its Subsidiaries is duly qualified to transact business as a foreign limited liability company or other organization, as applicable, and is in good standing in each other jurisdiction in which the ownership or leasing of its properties or assets or the conduct of its business requires such qualification, except where the failure to so qualify or to be in good standing has not had and would not reasonably be expected to result in a Material Adverse Effect. The Seller has heretofore made available to the Purchaser correct and complete copies of the organizational documents of the Company and each of its Subsidiaries as currently in effect and the organizational record books, as applicable, with respect to actions taken by its governing body, as applicable.

Section 4.2 Authorization. The Company and each of its Subsidiaries, as applicable, has the right, power, and capacity to execute and deliver each Company Ancillary Document to which such Company is a party and to perform its obligations thereunder and to consummate the transactions contemplated thereby. As of the Closing Date, the Company Ancillary Documents shall be duly executed and delivered by the Company or the Seller, as applicable, and shall constitute the valid and binding agreements of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability (a) may be limited by

bankruptcy, insolvency, moratorium or other similar Laws affecting or relating to enforcement of creditors' rights generally, and (b) is subject to general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

Section 4.3 Capitalization. Schedule 4.3 accurately and completely sets forth the capital structure of the Company and each of its Subsidiaries, as of the date hereof, including the number of Units of the Company and number of units, membership interests or shares of each of its Subsidiaries which are authorized and which are issued and outstanding. All of the issued and outstanding Units of the Company and units, membership interests or shares of each of its Subsidiaries are duly authorized, validly issued, fully paid, and held of record by the Seller or the Company in the amounts set forth on Schedule 4.3, are not subject to any right of rescission, right of first refusal or preemptive right, and have been offered, issued, sold and delivered by the Company or its Subsidiaries in compliance with all requirements of applicable Laws and all requirements set forth in applicable Company Contracts. There is no liability for dividends accrued and unpaid by the Company or its Subsidiaries. Except as disclosed on Schedule 4.3: (a) no equity interests of the Company or any of its Subsidiaries are reserved for issuance; (b) there are no outstanding options, warrants, rights, calls, commitments, conversion rights, rights of exchange, subscriptions, claims of any character, agreements, obligations, convertible or exchangeable securities or other plans or commitments, contingent or otherwise, relating to the equity interests of the Company or any of its Subsidiaries other than as contemplated by this Agreement and (c) there are no legally binding agreements of the Company, any of its Subsidiaries, the Seller, or any other Person to purchase, redeem or otherwise acquire any equity interests of the Company or any of its Subsidiaries, or securities or obligations of any kind convertible into equity interests of the Company or any of its Subsidiaries.

Section 4.4 Subsidiaries. Schedule 4.4 sets forth a complete and correct list of each Subsidiary of the Company. The Company owns, directly or indirectly, all of the issued and outstanding equity interests of each of its Subsidiaries, free and clear of all Liens other than Liens related to the Closing Date Indebtedness and limitations imposed by federal and state securities Laws. Except as set forth on Schedule 4.4, neither the Company nor any of its Subsidiaries owns, directly or indirectly, any capital stock or other equities, securities or interests in any other corporation or in any limited liability company, partnership, joint venture or other entity.

Section 4.5 Absence of Restrictions and Conflicts. The execution, delivery and performance of this Agreement and the Company Ancillary Documents, the consummation of the transactions contemplated hereby and thereby, and the fulfillment of and compliance with the terms and conditions hereof and thereof, do not or will not (as the case may be), with the passing of time or the giving of notice or both, violate or conflict with in any material respect, constitute a material breach of or a material default under, result in the loss of any material benefit under, permit the acceleration of any material obligation under or create in any party the right to terminate, modify or cancel in any material respect, (a) any material term or provision of the charter documents of the Company or any of its Subsidiaries, (b) except as indicated on Schedule 4.14(a), any Company Contract, (c) any material judgment, decree or order of any Governmental Entity to which the Company or any of its Subsidiaries is a party or to the Seller's Knowledge, by which the Company, any of its Subsidiaries or any of their respective properties are bound, or (d) any material Law or arbitration award applicable to the Company or any of its

Subsidiaries. No material consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required with respect to the Company or any of its Subsidiaries in connection with the execution, delivery or performance of this Agreement or the Company Ancillary Documents or the consummation of the transactions contemplated hereby or thereby, except as required by the HSR Act or as required by an agreement with a Governmental Entity regarding natural gas storage facilities as indicated on Schedule 4.14(a).

Section 4.6 Real Property.

(a) Schedule 4.6(a) sets forth a correct and complete list of the Owned Real Property and the Leased Real Property.

(b) Schedule 4.6(b) sets forth a correct and complete list of the Company-Titled Oil and Gas Leases.

(c) Schedule 4.6(c) sets forth a correct and complete list of Gas Storage Leases owned by the Company or its Subsidiaries.

(d) Schedule 4.6(d) sets forth a correct and complete list of the Wells.

(e) Except as set forth in Schedule 4.6(a), Schedule 4.6(b) and Schedule 4.6(c) the Company owns or leases no other real property interests or mineral interests.

(f) Each of Worsham-Steed and Hill-Lake is a "storer" as defined under Tex. Nat. Res. Code Ann. § 91.173(6).

(g) To the Knowledge of the Company, there are no preferential rights to purchase or similar rights or restrictions on assignment, including requirements for consents from third parties to assignment, affecting any Company-Titled Oil and Gas Lease or the Wells that would be applicable to the transactions contemplated hereby.

Section 4.7 Condition of Equipment. The equipment owned or leased by the Company or its Subsidiaries, including equipment or used in connection with the Company-Titled Oil and Gas Leases, the Wells, and the Facilities is, taken as a whole, in a condition that is reasonably adequate, subject to normal wear and tear, for normal operations or use in the Ordinary Course in accordance with standard industry practice in the areas in which such equipment is operated or used, except to the extent the same would not individually or in the aggregate have a Material Adverse Effect.

Section 4.8 Prepayments; Hedging; Calls. Except as set forth in Schedule 4.8:

(a) neither the Company nor any of its Subsidiaries has any outstanding obligations for the delivery of Hydrocarbons attributable to any of the Company-Titled Oil and Gas Leases in the future on account of prepayment, advance payment, take-or-pay or similar obligations without then or thereafter being entitled to receive full value therefore at the prevailing market price at the time of delivery;

(b) neither the Company nor any of its Subsidiaries is bound by any futures, hedge, swap, collar, put, call, floor, cap, option or other contract that is intended to benefit from, relate to or reduce or eliminate the risk of fluctuations in the price of commodities, including Hydrocarbons, interest rates, currencies or securities (each, a "Hedging Transaction"); and

(c) no Person has any call upon, option to purchase or similar right to purchase any portion of the Hydrocarbons from the Company-Titled Oil and Gas Leases at a price less than the prevailing market price at the time of delivery.

Section 4.9 Financial Statements. Complete and accurate copies of the Financial Statements have been made available to the Purchaser. The Financial Statements have been prepared from, and are in accordance with, the books and records of the Company and its Subsidiaries, which books and records have been maintained on a basis consistent with the past practice of the Company and its Subsidiaries. Each balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material respects the consolidated financial position of the Company and its Subsidiaries as of the date of each such balance sheet (subject, in the case of the Unaudited Financial Statements, to normal year-end and quarter-end adjustments and the absence of notes to such statements), and each statement of income and cash flows included in the Financial Statements (including the related notes and schedules) fairly presents in all material respects the consolidated results of operations and changes in cash flows, as the case may be, of the Company and its Subsidiaries for the periods set forth therein, in each case in accordance with GAAP, consistently applied during the periods involved (except as expressly noted therein or on Schedule 4.9 and subject, in the case of the Unaudited Financial Statements, to normal year-end and quarter-end adjustments and the absence of notes to such statements).

Section 4.10 No Undisclosed Liabilities. Except as set forth in the Financial Statements or Schedule 4.10, neither the Company nor any of its Subsidiaries has any material liabilities or obligations of the type required to be disclosed in the Financial Statements in accordance with GAAP, except for (a) liabilities and obligations incurred since March 31, 2009 in the Ordinary Course, (b) liabilities and obligations disclosed in this Agreement (or its schedules), or (c) liabilities or obligations which, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 4.11 Absence of Certain Changes. Since March 31, 2009, the Company and its Subsidiaries have operated their business in the Ordinary Course and, except as set forth in Schedule 4.11, there has not been (a) any Material Adverse Effect, (b) any material change by the Company in its accounting methods, principles or practices other than as required by GAAP, (c) any sale or other disposition of any material assets of the Company or its Subsidiaries, or (d) any acquisition, including by merger or consolidation, of any material assets.

Section 4.12 Legal Proceedings. Except as set forth on Schedule 4.12, there is no investigation (to the Knowledge of Seller), suit, action, claim, arbitration, mediation or proceeding pending, relating to, involving or, to the Knowledge of the Seller, threatened against the Company, any of its Subsidiaries or any property of any thereof. Neither the Company nor any of its Subsidiaries is subject to any judgment, decree, injunction, rule or order of any court or

arbitration panel. Neither the Company nor any of its Subsidiaries is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act of 1938, as amended.

Section 4.13 Compliance with Law. Except as set forth on Schedule 4.13, the Company and its Subsidiaries are in material compliance with all applicable Laws (other than (a) the Code, Taxes and ERISA and rules and regulations and orders of Governmental Entities related thereto, which are governed solely by Sections 4.15 and 4.17, respectively, and (b) Environmental Laws, which are governed solely by Section 4.20). Except as set forth on Schedule 4.13, neither the Company nor any of its Subsidiaries has been charged with, has received written notice that it is under investigation with respect to, or, to the Knowledge of the Seller, is otherwise now under investigation with respect to, a material violation of any applicable Law.

Section 4.14 Company Contracts.

(a) Schedule 4.14(a) sets forth a complete and correct list of each of the following contracts to which the Company or any of its Subsidiaries is a party (the contracts that meet the descriptions in this Section 4.14 being collectively, the "Company Contracts"):

(i) all bonds, debentures, notes, loans, credit or loan agreements or loan commitments, letter-of-credit facilities, security agreements, mortgages, indentures, guarantees or other contracts evidencing or governing indebtedness for borrowed money of the Company or any of its Subsidiaries;

(ii) all leases or licenses involving any personal properties or assets (whether tangible or intangible), which involve an annual commitment or payment of more than $100,000 individually by the Company or any of its Subsidiaries, except as is provided in Section 4.14(a)(iv);

(iii) all contracts and agreements that limit or restrict the Company or any of its Subsidiaries from (A) engaging in any business in any jurisdiction, (B) freely setting prices for its products, services or technologies (including most favored customer pricing provisions) or (B) soliciting potential employees, consultants, contractors or other suppliers or customers;

(iv) all contracts (other than a lease relating to the Leased Real Property or a Company-Titled Oil and Gas Lease or Gas Storage Lease) for capital expenditures or the acquisition or construction of fixed assets requiring the payment by the Company or any of its Subsidiaries of an amount in excess of $250,000;

(v) any employment, consulting (other than an agreement with an independent professional advisor), severance or similar agreement that provides for annual base compensation of $100,000 or more;

(vi) all Company Benefit Plans and any trust agreement or other funding arrangement related thereto;

(vii) all contracts with any agent, distributor or representative that are not terminable without penalty on ninety (90) days' or less notice;

(viii) all joint venture or partnership contracts and all other similar contracts providing for the sharing of any profits between or among the co-venturers or partners or participating members (other than subcontracting contracts and joint marketing agreements);

(ix) any contract outside the Ordinary Course in which the officers, directors, employees or shareholders of the Company or its Subsidiaries or any member of their immediate families is directly or indirectly interested (whether as a party or otherwise);

(x) any gas, crude oil or liquids storage, sales, purchase or marketing agreement, other than any such agreement that can be terminated by the Company or any of its Subsidiaries without penalty, upon not more than thirty (30) days' notice;

(xi) any agreement for the sale of any material asset (other than sales in the Ordinary Course);

(xii) any arrangement providing for any posting of cash collateral or requiring a cash deposit in an amount in excess of $5,000 and in connection with any indebtedness of the Company or any of its Subsidiaries;

(xiii) any agreement for the future acquisition of seismic or geographical data that requires aggregate future payments in excess of $100,000;

(xiv) any agreement relating to a Hedging Transaction existing as of the date hereof pursuant to which active confirmations have been executed under or in connection with such Hedging Transactions;

(xv) any agreement with respect to the acquisition, directly or indirectly (by merger, purchase of capital stock or other equity interests of another Person or otherwise), by the Company of another business pursuant to which the Company or any of its Subsidiaries has any contingent payment obligation (such as pursuant to an earn-out or deferred purchase price arrangement or non-competition arrangement);

(xvi) any outstanding agreement of guaranty, surety or indemnification, direct or indirect, by the Company or any of its Subsidiaries, in an amount in excess of $250,000;

(xvii) any agreement with the Seller or any of its Affiliates, other than the Company and its Subsidiaries, (for purposes of this clause xviii only, the term Affiliates shall exclude the Company and any of its Subsidiaries);

(xviii) any contracts or agreement, including license agreement, for material Intellectual Property currently used in the conduct of the business; and

(xix) any other existing contract, agreement or commitment (other than those described in subsections (i) through (xx) of this Section 4.14(a) and other than those pursuant to which neither the Company nor any of its Subsidiaries has any obligations after the date hereof), in each case, involving an annual commitment or annual payment of more than $250,000 individually during any calendar year beginning on January 1, 2009 but excluding from any of clauses (i) through and including (xxi) any Contracts relating to any Company-Titled Real Property or Company-Titled Oil and Gas Leases.

(b) The Seller has provided to the Purchaser correct and complete copies of all Company Contracts, instruments constituting Company-Titled Real Property and Company-Titled Oil and Gas Leases. The Company Contracts, instruments constituting Company-Titled Real Property and Company-Titled Oil and Gas Leases are legal, valid, binding and enforceable in all material respects in accordance with their respective terms with respect to the Company or any of its Subsidiaries, as applicable, and, to the Knowledge of the Seller, each other party to such Company Contracts, instruments constituting Company-Titled Real Property and Company-Titled Oil and Gas Leases. There is no existing material default or material breach of the Company or any of its Subsidiaries, as applicable, under any Company Contract, instruments constituting Company-Titled Real Property and Company-Titled Oil and Gas Leases, and, to the Knowledge of the Seller, there is no material default with respect to any third party to any Company Contract, instruments constituting Company-Titled Real Property and Company-Titled Oil and Gas Leases described in Section 4.14(a). Schedule 4.14(a) identifies with an asterisk each Company Contract, instruments constituting Company-Titled Real Property and Company-Titled Oil and Gas Leases set forth therein that requires the consent of or notice to the other party thereto to avoid any material breach, material default or material violation of such contract, agreement or other instrument in connection with the transactions contemplated hereby.

Section 4.15 Tax Returns; Taxes. Except as set forth on Schedule 4.15:

(a) The Company and each of its Subsidiaries have timely filed or caused to be timely filed all Tax Returns to the extent required to be filed under applicable Law taking into account applicable extension periods, and neither the Company nor any of its Subsidiaries is currently the beneficiary of any extension of time within which to file a material Tax Return. The Company and its Subsidiaries have made available to Purchaser correct and complete copies of all material Tax Returns and examination reports of, and any deficiencies assessed against or agreed to by, the Company or any of its Subsidiaries as disclosed in Schedule 4.15(a).

(b) All Taxes that are due and payable by the Company or any of its Subsidiaries have been paid in full or are properly accrued on the balance sheets included in the Financial Statements. Neither the Company nor any of its Subsidiaries

has any liability for unpaid Taxes accruing after March 31, 2009 except for Taxes arising in the Ordinary Course subsequent to March 31, 2009.

(c) All Tax Returns filed by the Company and its Subsidiaries are correct and complete in all material respects and have been prepared in compliance with all applicable Laws.

(d) There are no Liens (other than Permitted Liens) on any of the assets of the Company or any of its Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax.

(e) No taxing authority in a jurisdiction where the Company or any of its Subsidiaries does not file Tax Returns has claimed in writing that the Company or any of its Subsidiaries is or may be subject to taxation by that jurisdiction.

(f) The Company and each of its Subsidiaries have withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, leased employee, independent contractor, creditor, stockholder, or other third party.

(g) No foreign, federal, state, or local Tax audits or administrative or judicial Tax proceedings are pending or being conducted with respect to the Company or any of its Subsidiaries.

(h) Neither the Company nor any of its Subsidiaries is currently subject to any waiver of a statute of limitations with respect to Taxes or any extension of time with respect to the assessment of Taxes.

(i) Neither the Company nor any of its Subsidiaries is a party to or bound by any Tax allocation or sharing agreement.

(j) Neither the Company nor any of its Subsidiaries (i) has been a member of an affiliated group filing a consolidated federal income Tax return in any taxable year (other than the affiliated group that includes only the Seller and its Subsidiaries as of the date of this Agreement and, for taxable years beginning after March 31, 2009, also includes as the common parent corporation GAStorage Funding, Inc., a Delaware corporation, that beneficially owns stock of the Seller and no other assets) or (ii) has liability for the Taxes of any Person (other than the Company or one of its Subsidiaries) under Treasury Regulation section 1.1502-6 or any similar provision of state, local, or foreign Law, as a transferee or successor or by contract, other than immaterial contracts entered into in the Ordinary Course.

(k) Except for those Subsidiaries that are to be converted into limited liability companies pursuant to the LLC Conversions, the Company and each of its Subsidiaries have been properly treated as partnerships, or have been disregarded, for federal income tax purposes at all times since their formation.

Section 4.16 Officers. Schedule 4.16 contains a correct and complete list of all of the officers of the Company and each of its Subsidiaries.

Section 4.17 Company Benefit Plans. Each Company Benefit Plan is identified on Schedule 4.17, and the Company has made available a correct and complete copy of each such plan (and the related trust, if any) to the Purchaser together with the three most recent Form 5500 reports filed with respect to such plan with any Governmental Entity (including audited financial statements, if any) and the most recent determination and/or opinion letter with respect to a Company Benefit Plan, if applicable, and all pending applications for rulings, determinations and/or opinions with respect to any Company Benefit Plan. No Company Benefit Plan is subject to Title IV of ERISA, and no Company Benefit Plan is described in Section 413(c) of the Code or Section 3(40) of ERISA. The terms of each Company Benefit Plan as currently in effect that purports to be qualified under Section 401 (a) of the Code and any trust which is a part of any such Company Benefit Plan are subject to a favorable determination letter or opinion letter from the U.S. Internal Revenue Service and no event or circumstance exists that has affected or is likely to adversely affect such qualification. The terms of each other Company Benefit Plan satisfy the requirements of applicable Laws (including, ERISA and the Code) in all material respects. Each Company Benefit Plan that is a "nonqualified deferred compensation plan" (as defined for purposes of Section 409A(d)(1) of the Code) has (i) been maintained and operated since January 1, 2007 in good faith compliance with Section 409A of the Code and all applicable guidance promulgated thereunder so as to avoid any Taxes, penalty or interest under Section 409A of the Code and, as to any such plan in existence prior to January 1, 2007, has not been "materially modified" (within the meaning of IRS Notice 2005-1) at any time after October 3, 2004, and (ii) since January 1, 2009, been in documentary and operational compliance with Section 409A of the Code and all applicable guidance promulgated thereunder. The Company and each Subsidiary has timely satisfied all reporting and disclosure obligations under applicable Laws (including, ERISA and the Code) with respect to the Company Benefit Plans. Neither the Company nor an ERISA Affiliate has any liability under any Employee Benefit Plan other than a Company Benefit Plan. Except as set forth on Schedule 4.17, neither the Company nor any Subsidiary has engaged, nor to the Knowledge of the Seller, has any other fiduciary or administrator engaged, in any prohibited transactions (as described in Section 406 of ERISA or Section 4975 of the Code) with respect to any Company Benefit Plan which have not been corrected in full or with respect to which any Tax or penalty is due. The Company and each of its Subsidiaries has made full and timely payment of all material amounts which are required to be paid as contributions or as premium payments to or in connection with each Company Benefit Plan. No unfunded liabilities exist with respect to any Company Benefit Plan other than as accrued on the Financial Statements and as required to be recorded as a current liability in accordance with GAAP. No material proceeding or claim is pending or, to the Knowledge of the Seller, threatened with regard to any Company Benefit Plan other than routine claims for benefits. No legally binding commitments have been made by the Seller, the Company or any of its Subsidiaries to improve or otherwise amend any Company Benefit Plan except as required by applicable Law. No Company Benefit Plan is currently under examination or audit by any Governmental Entity and, to the Knowledge of the Seller, no such examination or audit is threatened. Except as set forth on Schedule 4.17, neither the Company, nor any of its Subsidiaries has any liabilities, directly or indirectly, with respect to any plan, fund, program, policy, agreement, arrangement or scheme maintained under the Laws of a jurisdiction outside the United States of America pursuant to which a Person provides compensation or benefits. No

Company Benefit Plan provides for benefits described in Section 3(1) of ERISA following a termination of employment except as required under Part 6 of Title I of ERISA. There is no contract, agreement, plan or arrangement with any Person which provides for any payment to any employee by the Company or any of its Subsidiaries, which payment would fail to be deductible by the Company or any of its Subsidiaries by reason of Section 280G of the Code or which would exceed any applicable deduction limits under Section 404 of the Code.

Section 4.18 Labor Relations. Except as set forth on Schedule 4.18, neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement, contract or legally binding commitment to any trade union or employee organization in respect of or affecting employees, or is currently engaged in any negotiation with any trade union or employee organization.

Section 4.19 Insurance Policies. Schedule 4.19 sets forth a complete and accurate list of all material insurance policies and held or issued specifically on behalf of and for the benefit of the Company and its Subsidiaries in connection with their respective performance of the Business. To the Seller's Knowledge, the Company and its Subsidiaries have all of the insurance policies required in connection with the operation of their respective Businesses as currently conducted. The Company has made available to the Purchaser complete and accurate copies of all material insurance policies relating to the Company and its Subsidiaries that are currently in effect. With respect to each such insurance policy, neither the Company nor any Subsidiary or, to the Knowledge of the Seller, any other party to the policy is in material breach or default thereunder (including with respect to the payment of premiums or the giving of notice) and, to the Knowledge of the Seller, there has been no occurrence or event which, with the giving of notice or the lapse of time, would constitute such a material breach or default or would permit termination, modification or acceleration under the policy.

Section 4.20 Environmental Matters.

(a) To the Company's Knowledge, except as disclosed on Schedule 4.20(a):

(i) the Company and each of its Subsidiaries possess all material permits, approvals, registrations, and emissions allowances required of them under Environmental Laws, all of which are scheduled on Schedule 4.20(a) and Schedule 4.23 and are in full force and effect and not subject to any proceeding seeking to revoke or limit them in all material respects, except in each case where the failure to possess or maintain would not reasonably be expected to have a Material Adverse Effect;

(ii) The Company and each of its Subsidiaries are in compliance in all material respects with all Environmental Laws, except where the failure to comply would not reasonably be expected to have a Material Adverse Effect;

(iii) Neither the Company nor any of its Subsidiaries has received written notice of actual or threatened liability or any information request under CERCLA or any similar foreign, state or local Law from any Governmental

Entity or any third party that would reasonably be expected to have a Material Adverse Effect;

(iv) neither the Company nor any of its Subsidiaries has entered into or agreed to enter into any consent decree or any order pursuant to any Environmental Law or relating to Hazardous Materials, and neither the Company nor any of its Subsidiaries is a party to any judgment, decree or judicial or administrative order pursuant to any applicable Environmental Law or relating to Hazardous Materials, except in each case where the failure to possess or maintain would not reasonably be expected to have a Material Adverse Effect;

(v) neither the Company nor any of its Subsidiaries is subject to any pending, or to the Seller's Knowledge, threatened claim or proceeding pursuant to any Environmental Law or relating to Hazardous Materials that would reasonably be expected to have a Material Adverse Effect; and

(vi) neither the Company nor any of its Subsidiaries has Released any Hazardous Materials in a manner that could reasonably be expected to result in any reporting, investigation, or cleanup obligation under any Environmental Law nor, to the Seller's Knowledge, has any such Release occurred on any property or facility currently owned, operated, or leased by them, except in each case where the failure to possess or maintain would not reasonably be expected to have a Material Adverse Effect;

(b) the Company has made available to the Purchaser complete copies of all environmental site assessments, compliance audits or remediation studies in the Company's possession that (i) were initiated by, conducted on behalf of, or received by the Company since January 1, 2005 (ii) related to any business of the Company or its Subsidiaries and (iii) set forth facts or conditions that would reasonably be expected to have a Material Adverse Effect; and

(c) Notwithstanding any other provision of this Agreement, this Section 4.20 sets forth the Company's and sole and exclusive representation and warranty with respect to Environmental Laws, Hazardous Materials and other environmental matters.

Section 4.21 Intellectual Property. The Company and its Subsidiaries own or license, or otherwise have the right to use, all Intellectual Property currently used in the conduct of their businesses. To the Seller's Knowledge, the Company and its Subsidiaries' use of Intellectual Property does not infringe on the rights of any Person, and no Person is infringing on any right of the Company or any of its Subsidiaries with respect to any such Intellectual Property. No claims are pending or, to the Company's Knowledge, threatened in writing that allege that the Company or any of its Subsidiaries are infringing or otherwise adversely affecting the rights of any Person with regarding to any Intellectual Property.

Section 4.22 Brokers, Finders and Investment Bankers. Except as set forth on Schedule 4.22, neither the Company, any of its Subsidiaries, nor any officer, member, director or employee of the Company or any of its Subsidiaries has employed any broker, finder, investment

banker, consultant, advisor or legal counsel or has any liability for any investment banking fees, financial advisory fees, brokerage fees, finders' fees, or consultant, advisory or legal fees in connection with the transactions contemplated hereby, the process conducted by the Seller to sell the Company, in whole or in part, or the Facilities, or any title or regulatory curative measures related to the Facilities.

Section 4.23 Permits. The Company and each of its Subsidiaries (i) possess all material permits, franchises and other authorizations necessary to conduct their respective businesses as currently conducted and (ii) are in compliance with all such permits, franchises and other authorizations, in each case except where the failure to have or be in compliance with any such permits, franchises or other authorizations would not reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries has received any notice of any suspension or cancellation of any of such permits, franchises or authorizations, except where such suspension or cancellation would not reasonably be expected to have a Material Adverse Effect. A list of all material permits, licenses, franchises, and other authorizations (including amendments thereto) is set forth in Schedule 4.23 (the "Permits").

Section 4.24 Personal Property. The Company and each of its Subsidiaries have good and valid title to, or good and valid leasehold title to, the Tangible Personal Property and inventory included in the assets of the Company and its Subsidiaries and described as being owned or leased by the Company and each of its Subsidiaries on Schedule 4.24, in each case, free and clear of all Liens (except for Permitted Liens).

Section 4.25 Representations and Warranties Regarding the Seller.

(a) *Organization.* The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) *Authority.* The Seller has the right, power, and capacity to execute and deliver this Agreement and the Company Ancillary Documents to which it is a party and to perform its obligations thereunder and to consummate the transactions contemplated thereby. The execution and delivery of this Agreement and the Company Ancillary Documents by the Seller, the performance by the Seller of its obligations hereunder and thereunder, and the consummation of the transactions provided for herein and therein have been duly and validly authorized by all necessary corporate action on the part of the Seller. As of the Closing Date, this Agreement shall be duly executed and delivered by the Seller and shall constitute the valid and binding agreements of the Seller, enforceable against the Seller in accordance with their respective terms, except as such enforceability (i) may be limited by bankruptcy, insolvency, moratorium or other similar Laws affecting or relating to the enforcement of creditor's rights generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

(c) *Absence of Restrictions and Conflicts.* The execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and thereby, and the fulfillment of and compliance with the terms and conditions hereof and thereof, do not or will not (as the case may be), with the passing of time or

the giving of notice or both, violate or conflict with in any material respect, constitute a material breach of or a material default under, permit the acceleration of any material obligation under or create in any party the right to terminate, modify or cancel in any material respect, (i) any material term or provisions of the charter documents of the Seller, (ii) any material contract to which the Seller is a party, (iii) any material judgment, decree or order of any Governmental Entity to which the Seller is a party, or (iv) any material Law or arbitration award applicable to the Seller. The Seller's execution and delivery of this Agreement and the Company Ancillary Documents to which it is a party and the performance by the Seller of its obligations hereunder will not result in the creation or imposition of any Lien (other than a Permitted Lien) upon any of the assets owned by the Seller.

(d) *Title to Units*. The Seller owns, holds of record and is the sole beneficial and record owner of the Units free and clear of all Liens and restrictions on transfer other than (i) those arising pursuant to this Agreement or applicable securities Laws or (ii) for Taxes not yet due or delinquent or (iii) Liens securing Closing Debt Indebtedness.

(e) *Legal Proceedings*. Except as disclosed on Schedule 4.25(e), there is no suit, action, claim, arbitration, mediation or proceeding pending, relating to, involving or, to the Knowledge of the Seller, threatened against Seller or any of its Affiliates which (i) seeks an order restraining, enjoining or otherwise prohibiting or making illegal any of the transaction contemplated by this Agreement or (ii) would reasonably be expected to result in a material adverse effect on the Seller's ability to perform its obligations hereunder.

Section 4.26 DISCLAIMER OF ADDITIONAL REPRESENTATIONS AND WARRANTIES. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY, THE SELLER SHALL NOT BE DEEMED TO HAVE MADE TO THE PURCHASER ANY REPRESENTATION OR WARRANTY OTHER THAN AS EXPRESSLY MADE IN THIS ARTICLE IV OR THE SCHEDULES ACCOMPANYING ARTICLE IV. EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE IV, THE SELLER DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, PROJECTION, FORECAST, STATEMENT, OR INFORMATION MADE, COMMUNICATED OR FURNISHED (ORALLY OR IN WRITING) TO THE PURCHASER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION OR ADVICE THAT MAY HAVE BEEN PROVIDED BY ANY DIRECTOR, OFFICER, EMPLOYEE, AGENT, CONSULTANT OR REPRESENTATIVE OF THE COMPANY OR ITS AFFILIATES). THE SELLER MAKES NO REPRESENTATION OR WARRANTY REGARDING THE PROBABLE SUCCESS OF THE COMPANY.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby severally represents and warrants to the Seller as of the date hereof and as of the Closing Date:

Section 5.1 Organization. Each of Alinda I and Alinda II is (a) a limited liability partnership duly organized, validly existing and in good standing under the laws of the State of Delaware and (b) has all requisite limited partnership power and authority to own, lease and operate its properties and to carry on its business as now being conducted, and (c) has delivered to the Company true, correct and complete copies of its respective organizational and governing documents as in effect on the date hereof and as proposed to be in effect immediately prior to the Closing Date.

Section 5.2 Authorization. Each Purchaser has full limited partnership company power and authority to execute and deliver this Agreement and the Purchaser Ancillary Documents, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Purchaser Ancillary Documents by the Purchaser, the performance by the Purchaser of its obligations hereunder and thereunder, and the consummation of the transactions provided for herein and therein have been duly and validly authorized by all necessary limited partnership action on the part of the Purchaser. This Agreement has been and, as of the Closing Date, the Purchaser Ancillary Documents shall be, duly executed and delivered by the Purchaser and do or shall, as the case may be, constitute the valid and binding agreements of the Purchaser, enforceable against the Purchaser in accordance with their respective terms.

Section 5.3 Absence of Restrictions and Conflicts. The execution, delivery and performance of this Agreement and the Purchaser Ancillary Documents, the consummation of the transactions contemplated hereby and thereby and the fulfillment of, and compliance with, the terms and conditions hereof and thereof do not or shall not (as the case may be), with the passing of time or the giving of notice or both, violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, or permit the acceleration of any obligation under, (a) any term or provision of the charter documents of the Purchaser, (b) any contract to which the Purchaser is a party, (c) any judgment, decree or order of any Governmental Entity to which the Purchaser is a party or by which the Purchaser or any of its properties is bound or (d) any Law applicable to the Purchaser. No material consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required with respect to the Purchaser in connection with the execution, delivery or performance of this Agreement or the documents, instruments or agreements contemplated hereby or the consummation of the transactions contemplated hereby or thereby, except as required by the HSR Act.

Section 5.4 Sufficient Funds; Solvency.

(a) Concurrently with the execution of this Agreement, the Purchaser has delivered to the Seller a complete and accurate copy of the executed Equity Contribution Letter from each of the Sponsors, pursuant to which the Sponsors have committed to invest in the Purchaser the amounts set forth in the Equity Contribution

Letter, subject to the terms and conditions set forth therein (the "Financing"). The Equity Contribution Letter provides, and will continue to provide, that (i) the Seller is a third-party beneficiary thereof and is entitled to enforce the Equity Contribution Letter and (ii) the Equity Contribution Letter may not be amended without the prior written consent of the Seller. Except as set forth in the Equity Contribution Letter, there are no conditions precedent or other contingencies related to the respective obligations of the Sponsors to consummate the Financing. Neither Purchaser has any reason to believe that any of the conditions to the Financing set forth in the Equity Contribution Letter will not be satisfied or that the Financing will not be made available to the Purchaser on the Closing Date. There are no other agreements, side letters or arrangements that would permit the Sponsors to reduce the amount of the Financing or that could otherwise affect the availability of the Financing. The Equity Contribution Letter has been duly executed and delivered by, and is a legal, valid and binding obligation of each of the Sponsors. The Equity Contribution Letter is in full force and effect and has not been amended or otherwise modified in any respect, and the respective commitments and proposals of the Sponsors contained therein have not been withdrawn, rescinded or terminated in any respect. No event has occurred which, with or without notice, lapse of time or both, would constitute a default or breach on the part of either Purchaser or any of the Sponsors, under the Equity Contribution Letter. No commitment fees or other fees were required to be paid under the Equity Contribution Letter on or prior to the date hereof. Subject to its terms and conditions, the Financing, when funded in accordance with the Equity Contribution Letter, will provide the Purchaser with cash proceeds on the Closing Date sufficient to pay the Purchase Price and the fees and expenses of the Purchaser related to the Financing and the transactions contemplated hereby. Each Purchaser acknowledges and agrees that its obligations to consummate the transactions contemplated hereby are not contingent upon its ability to obtain any third party financing. In addition, for the avoidance of doubt, the Purchaser acknowledges and agrees that the existence of any conditions contained in the Equity Contribution Letter shall not constitute, nor be construed to constitute, a condition to the consummation of the transactions contemplated by this Agreement.

(b) No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of the Purchaser, the Company or any Subsidiary.

Section 5.5 Reliance. The Purchaser has not relied on nor is it relying on any statement, representation or warranty, either express or implied, concerning the Company, any of its Subsidiaries or its equity holders other than those expressly made in Article IV or the Schedules accompanying Article IV.

Section 5.6 Securities Act. The Purchaser is acquiring the Units solely for the purpose of investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act of 1933, as amended (the "Securities Act"). The Purchaser acknowledges that the Units are not registered under the Securities Act of 1933 or any applicable state or foreign securities law, and that the Units may not be transferred or sold except pursuant

to an effective registration statement under the Securities Act of 1933 or an applicable exemption therefrom and pursuant to state or foreign securities laws and regulations, as applicable.

Section 5.7 Litigation. There is no suit, action, claim, arbitration, mediation or proceeding pending, relating to, involving or, to the knowledge of the Purchaser, threatened against the Purchaser or any of its assets that would reasonably be expected to (a) materially and adversely affect the transactions contemplated by this Agreement or (b) impair the ability of the Purchaser to perform in all material respects their obligations under this Agreement.

Section 5.8 DISCLAIMER OF ADDITIONAL REPRESENTATIONS AND WARRANTIES. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY, THE PURCHASER SHALL NOT BE DEEMED TO HAVE MADE TO THE SELLER ANY REPRESENTATION OR WARRANTY OTHER THAN AS EXPRESSLY MADE IN THIS ARTICLE V. EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE V, THE PURCHASER DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, STATEMENT, OR INFORMATION MADE, COMMUNICATED OR FURNISHED (ORALLY OR IN WRITING) TO THE SELLER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION OR ADVICE THAT MAY HAVE BEEN PROVIDED BY ANY DIRECTOR, OFFICER, EMPLOYEE, AGENT, CONSULTANT OR REPRESENTATIVE OF THE PURCHASER OR ITS AFFILIATES).

ARTICLE VI
CERTAIN COVENANTS AND AGREEMENTS

Section 6.1 Conduct of Business by the Company. For the period commencing on the date hereof and ending on the Closing Date, except as expressly contemplated by this Agreement, or set forth on Schedule 6.1, or otherwise consented to in advance in writing by the Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed):

(a) the Seller shall cause the Company and its Subsidiaries not to:

(i) except as required to consummate the transactions contemplated hereby and as described on Schedule 6.1, amend its organizational documents;

(ii) issue, transfer, sell or deliver equity interests (or options or other securities convertible into or exchangeable or exercisable for, with or without additional consideration, such equity interests);

(iii) split, combine or reclassify any equity interests or declare, set aside or pay any dividends or make any other distributions (whether in cash, stock or other property) in respect of such equity interests;

(iv) issue, sell, create or authorize any class or series or any other of its securities, or issue, grant or create any warrants, obligations, subscriptions, options, convertible securities, or other commitments to issue any securities that are potentially exchangeable for, or convertible into, equity interests;

(v) except as required pursuant to any contract (including the Company Benefit Plans or the certificate of formation of the Company), redeem, purchase or otherwise acquire for any consideration any equity interests or securities carrying the right to acquire or which are convertible into or exchangeable or exercisable for, with or without additional consideration, such equity interests;

(vi) incur any indebtedness or guarantee any indebtedness except in the Ordinary Course;

(vii) make any acquisition or disposition of assets of any Person except acquisitions or dispositions of inventory and equipment in the Ordinary Course;

(viii) make any capital expenditure in excess of $250,000.

(ix) merge or consolidate with or acquire any corporation or other entity (other than any of its Subsidiaries);

(x) other than entering into contracts or obtaining either surety bonds or letters of credit in the Ordinary Course (A) create, grant, assume or suffer to be incurred any Lien of any kind on any of its properties or assets other than Permitted Liens (including, Liens created pursuant to or in connection with the Closing Indebtedness, (B) incur any liability or obligation of the type required to be disclosed in accordance with GAAP, except liabilities and obligations incurred in the Ordinary Course or (C) make any commitment for any capital expenditure to be made on or following the date hereof other than capital expenditures that are not materially in excess of those forecasted in the Company's current operating budget;

(xi) enter into, amend, supplement or modify any Company Contract, except in the Ordinary Course;

(xii) dispose of or permit to lapse any right to the use of any Intellectual Property of any Company or any of its Subsidiaries which is material to the business of the Company and its Subsidiaries taken as a whole, or dispose of or disclose to any Person, any material trade secret, formula, process, design, technology or know-how of any Company or any of its Subsidiaries not heretofore a matter of public knowledge;

(xiii) increase in any manner the base compensation of, or enter into any new bonus or incentive agreement or arrangement with respect to the Company or any of its Affiliates, employees, officers, directors or consultants;

(xiv) except as required by Law, adopt, amend or terminate any Company Benefit Plan or increase the benefits provided under any Company Benefit Plan or enter into any collective bargaining agreement;

(xv) make or change any material election relating to Taxes, change any annual accounting period, adopt or change any accounting method, file any amended material Tax Return, enter into any closing agreement, settle any material Tax claim or assessment relating to the Company or any of its Subsidiaries, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to the Company or any of its Subsidiaries, or take any other similar action relating to the filing of any Tax Return or the determination or payment of any Tax;

(xvi) change any of its accounting methods;

(xvii) change or alter any insurance coverage;

(xviii) initiate any litigation, action, suit, proceeding, claim or arbitration, settle or agree to settle any litigation, action, suit, proceeding, claim or arbitration or terminate, waive or release any material right or claim; or

(xix) commit, authorize or agree to do or do, as applicable, any of the foregoing; and

(b) The Seller shall cause the Company and each of its Subsidiaries to:

(i) conduct its business in the Ordinary Course;

(ii) use commercially reasonable efforts to preserve intact the goodwill and business organization of the Company and each of its Subsidiaries, keep the officers and employees of the Company and each of its Subsidiaries available to the Purchaser, subject to employee terminations in the Ordinary Course, and preserve the relationships and goodwill of the Company and each of its Subsidiaries with customers, distributors, suppliers, employees and other Persons having business relations with the Company or any of its Subsidiaries; and

(iii) maintain its existence and good standing in its jurisdiction of organization and in each jurisdiction in which the ownership or leasing of its property or the conduct of its business requires such qualification.

Section 6.2 Inspection and Access to Information.

(a) During the period commencing on the date hereof and ending on the Closing Date, the Seller shall cause the Company and its Subsidiaries and their respective officers, directors, employees, counsel, auditors and agents will, upon reasonable advance notice from the Purchaser, provide the Purchaser and its accountants, counsel and other authorized representatives full access, during normal business hours, without unreasonably interfering with the Business, to any and all of its premises, executive officers, properties, contracts, commitments, books, records and other information (including Tax Returns filed and those in preparation) and shall cause the Company's officers to furnish to the Purchaser and its authorized representatives,

promptly upon request therefor, any and all available financial, technical and operating data and other information pertaining to the Company or any of its Subsidiaries.

(b) The Seller shall cause the Company and each of its Subsidiaries to keep correct and complete books of accounts and other records related to the ownership and operation of the Business in accordance with GAAP. All such books and records may be inspected by the Purchaser at any time upon reasonable notice, during reasonable business hours, without unreasonably interfering with the Business.

Notwithstanding the foregoing, (a) this Section 6.2 shall not be construed as granting Purchaser or its representatives access to the Company-Titled Real Property for purposes of performing any environmental testing without the prior written approval of the Company, in its sole discretion, and (b) the Purchaser shall not (i) contact any suppliers to or customers of the Company without the prior written consent of the Company or (ii) conduct any subsurface environmental investigation or similar "Phase II" environmental due diligence with respect to any properties of the Company or its Subsidiaries.

Section 6.3 Notices of Certain Events. Each Party shall promptly notify the other of any written notice or other communication received by such Party from any Governmental Entity in connection with the transactions contemplated hereby.

Section 6.4 No Solicitation of Transactions. The Seller shall not, and shall cause its respective Affiliates not to, directly or indirectly, through any officer, director, manager or agent of any of them or otherwise, initiate, solicit or encourage (including by way of furnishing non-public information or assistance), continue or enter into negotiations or discussions of any type, directly or indirectly, or enter into a confidentiality agreement, letter of intent or purchase agreement, merger agreement or other similar agreement with any Person other than the Purchaser with respect to a sale of all or any portion of the assets of the Company or any of its Subsidiaries, or a merger, consolidation, business combination, sale of all or any substantial portion of the equity interests of the Company or any of its Subsidiaries, or the liquidation or similar extraordinary transaction with respect to the Company or any of its Subsidiaries. In addition, the Seller shall not undertake any transaction with itself or any Affiliate that would in any way impair or delay the performance by the Seller of any of its obligations under this Agreement.

Section 6.5 Reasonable Efforts; Further Assurances; Cooperation. Subject to the other provisions hereof, each Party shall use its reasonable, good faith efforts to perform its obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable Law to obtain all consents required as described on Schedule 4.14(a) and Schedule 5.3 and all regulatory approvals and to satisfy all conditions to its obligations hereunder and to cause the transactions contemplated herein to be effected as soon as practicable, but in any event on or prior to the Expiration Date, in accordance with the terms hereof and shall cooperate fully with each other Party and its officers, directors, employees, agents, counsel, accountants and other designees in connection with any step required to be taken as a part of its obligations hereunder, including the following:

(a) Each Party promptly shall make all filings and submissions and shall take all other actions necessary, proper or advisable under applicable Laws to obtain any required approval of any Governmental Entity with jurisdiction over the transactions contemplated hereby. Each Party shall furnish all information required for any application or other filing to be made pursuant to any applicable Law in connection with the transactions contemplated hereby, including all necessary filings and notifications required under the HSR Act. Each of the Parties shall cooperate with the other in promptly filing any other necessary applications, reports or other documents with any Governmental Entity having jurisdiction with respect to this Agreement and the transactions contemplated hereby, and in seeking necessary consultation with and prompt favorable action by such Governmental Entity. Each Party will (i) promptly notify the other Party of any written communication to the notified Party from any Governmental Entity and, subject to applicable Law, if practicable, permit the other Party to review in advance any proposed written communication to any such Governmental Entity and incorporate the other Party's reasonable comments, and (ii) not agree to participate in any substantive meeting or discussion with any such Governmental Entity in respect of any filing, investigation or inquiry concerning this Agreement or the transactions contemplated hereunder unless it consults with the other Party in advance and, to the extent permitted by such Governmental Entity, gives the other Party the opportunity to attend. Notwithstanding any provision of this Agreement to the contrary, neither Party shall be required under the terms of this Agreement to dispose of or hold separate all or any portion of the businesses or assets of the Purchaser, the Company, its Subsidiaries, or any of their respective Affiliates, in order to remedy or otherwise address the concerns (whether or not formally expressed) of any Governmental Entity under any antitrust statute or regulation.

(b) In the event any claim, action, suit, investigation or other proceeding by any Governmental Entity or other Person is commenced that questions the validity or legality of the transactions contemplated hereby or seeks damages in connection therewith, the Parties shall (i) cooperate and use all reasonable efforts to defend against such claim, action, suit, investigation or other proceeding, (ii) in the event an injunction or other order is issued in any such action, suit or other proceeding, use all reasonable efforts to have such injunction or other order lifted, and (iii) cooperate reasonably regarding any other impediment to the consummation of the transactions contemplated hereby.

(c) The Purchaser, on the one hand, and the Seller, on the other hand, shall give prompt notice to the other Party of (i) the occurrence, or failure to occur, of any event that the occurrence or failure of which would be likely to result in the failure to satisfy any condition specified in Article VII and (ii) any failure of the Seller or the Purchaser, as the case may be, to comply with or satisfy in all material respects any covenant, condition or agreement to be complied with or satisfied by any of them hereunder.

Section 6.6 Public Announcements.

(a) No announcement or circular in connection with the existence or the subject matter of this Agreement or of any agreement executed in relation to the transactions contemplated hereby shall be made or issued by or on behalf of a Party or any of its Affiliates without the prior written approval of the other Party (which approval will not be unreasonably withheld or delayed). This shall not affect any announcement or circular required by law or any regulatory body or the rules of any recognized stock exchange on which the shares of a Party or its parent undertaking are listed; provided, however, that where there is an obligation for a Party or its parent undertaking to make an announcement or issue a circular, such Party (acting on its own account or, on behalf of its parent undertaking) shall consult with the other Party insofar as is reasonably practicable before complying with such an obligation.

(b) Subject to Sections 6.6(a) and 6.6(c), each Party shall treat as strictly confidential and not disclose or use any information: (i) relating to the negotiations in relation to, or the existence or provisions of this Agreement or any other agreement executed in relation to the transactions contemplated hereby; or (ii) relating to the business, financial or other affairs (including future plans and targets) of the other Party which it has received or obtained as a result of entering into or negotiating this Agreement or any other agreement executed in relation to the transaction contemplated hereby.

(c) Section 6.6(a) shall not prohibit disclosure or use of any information if and to the extent the disclosure or use is required by Law (including securities Laws) or any Governmental Authority.

Section 6.7 Supplements to Schedules. From time to time up to the Closing, the Seller shall supplement or amend the Schedules that it has delivered with respect to any matter first existing or occurring following the date hereof that (a) if existing or occurring at or prior to the date hereof, would have been required to be set forth or described in the Schedules, or (b) is necessary to correct any information in the Schedules that has been rendered materially inaccurate thereby. If a supplement or amendment of any Schedule discloses matters that make the satisfaction of the condition specified in Section 7.2(a) impossible, then the Purchaser shall have the right by notice to the Company within three (3) days after receipt of such supplement or amendment to terminate this Agreement, with such termination being the Purchaser's sole and exclusive remedy relating to the matters set forth in such supplement or amendment. Subject to the immediately preceding sentence, each supplement or amendment of any Schedule will be effective to cure and correct for all purposes (including, but not limited to Sections 7.2(a) and 10.1(a)) any breach of any representation, warranty or covenant relating to such Schedule not having been read at all times as so supplemented or amended.

Section 6.8 Employees. Effective as of the Closing Date, the Purchaser shall offer to employ each of the employees of the Seller that the Purchaser reasonably determines are necessary for the continued operation of the Business, as currently conducted, and the Seller shall use reasonable best efforts to cooperate with the Purchaser to cause such employees of Seller to accept such offer of employment with the Purchaser or the Company, as applicable.

Section 6.9 Company Benefit Plans.

(a) Seller effective as of the Closing Date shall establish a plan which is in all material respects the mirror image of each Employee Benefit Plan of Seller (each a "Seller Plan") which is listed on Schedule 6.9(a) (each such mirror image plan a "Post-Closing Company Benefit Plan"), the Company shall adopt each such Post-Closing Company Benefit Plan effective as of the Closing and Seller shall effect a transfer of assets and liabilities from each Seller Plan to the corresponding Post-Closing Company Benefit Plan with respect to the participants in each Seller Plan who are employed by the Company on the Closing Date and such participants' dependants; provided, if a Seller Plan is insured in whole or in part, Seller and Purchaser agree that the action called for under this Section 6.9(a) shall be subject to the consent of the insurance company and shall cooperate in undertaking to secure such consent. Seller agrees that the representations made under Section 4.17 shall apply and be true with respect to each Seller Plan to the same extent that such representations would have applied and been true if such Seller Plan had been a Company Benefit Plan.

(b) Prior to the Closing Date, the Seller shall cause the Company and each of its Subsidiaries, as applicable, to make all required contributions and pay all premiums required under each Company Benefit Plan, including any employer matching and profit sharing contributions, which are due on or before the Closing Date.

(c) The Seller shall cause the Company to accrue as current liabilities on the Final Closing Statement all bonuses which are accrued but unpaid as of the Closing Date.

(d) Nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person (including, without limitation, any current or former employee, director, officer or service provider of the Company or any of its Subsidiaries, any participant in any Post Closing Company Benefit Plans, or in each case, any dependent or beneficiary thereof) any right, benefit or remedy of any nature whatsoever. Notwithstanding the foregoing, nothing contained herein, whether expressed or implied, shall (i) be treated as an amendment or modification of any Post-Closing Company Benefit Plan, (ii) limit the right of the Purchaser or the Company or any of its Subsidiaries to amend, terminate, or otherwise modify any Post-Closing Company Benefit Plan, as applicable, following the Closing, or (iii) be deemed to be a guarantee of employment for any employee of the Seller or its Subsidiaries following the Closing or be deemed to restrict the right of the Purchaser or the Company or any of its Subsidiaries to terminate the employment of any employee of the Seller or its Subsidiaries following the Closing.

Section 6.10 Tax Matters.

(a) Tax Periods Ending on or Before the Closing Date. The Purchaser shall cause the Company to prepare or cause to be prepared and file or cause to be filed all Tax Returns of the Company and each of its Subsidiaries for all periods ending on or

prior to the Closing Date which are filed after the Closing Date. The Seller shall reimburse the Purchaser for Taxes of the Company and its Subsidiaries with respect to all taxable periods ending on or before the Closing Date within ten (10) days after payment by the Purchaser or the Company or any of its Subsidiaries of such Taxes.

(b) Tax Periods Beginning Before and Ending After the Closing Date. The Purchaser shall cause the Company to prepare or cause to be prepared and file or cause to be filed any Tax Returns of the Company and each of its Subsidiaries for Tax periods which begin before the Closing Date and end after the Closing Date. The Seller shall reimburse the Purchaser for an amount equal to the portion of such Taxes which relates to the portion of such Taxable period ending on and including the Closing Date within ten (10) days after payment by the Purchaser, the Company or any of its Subsidiaries for any such Taxes. For purposes of this Section 6.10(b), in the case of any Taxes that are imposed on a periodic basis and are payable for a Taxable period that includes (but does not end on) the Closing Date, the portion of such Tax which relates to the portion of such Taxable period ending on and including the Closing Date shall (i) in the case of any Taxes other than Taxes based upon or related to income, receipts, margin, profits or similar measure be deemed to be the amount of such Tax for the entire Taxable period multiplied by a fraction the numerator of which is the number of days in the Taxable period ending on and including the Closing Date and the denominator of which is the number of days in the entire Taxable period, and (ii) in the case of any Tax based upon or related to income, receipts, margin, profits or similar measure be deemed equal to the amount which would be payable if the relevant Taxable period ended on and included the Closing Date. Any credits relating to a Taxable period that begins before and ends after the Closing Date shall be taken into account as though the relevant Taxable period ended on the Closing Date.

(c) Preparation of Tax Returns. The Purchaser shall use its reasonable efforts to provide the Seller with copies of any Tax Returns to be filed by the Company pursuant to Sections 6.10(a) and (b) at least fifteen (15) days prior to the due date thereof (giving effect to any extensions thereto) or, if required to be filed within fifteen (15) days after the Closing Date, as soon as possible following the Closing Date. The Seller shall have the right to review such Tax Returns prior to the filing of such Tax Returns. If the Seller disputes any amount shown to be due on such Tax Returns, the Purchaser shall cause such Tax Return to be filed as prepared and Purchaser and the Seller shall consult and attempt to resolve in good faith any issues arising as a result of the review of such Tax Returns. If the Parties are unable to resolve any dispute within thirty (30) days after Seller's receipt of such Tax Returns, such dispute shall be resolved by the Arbitrator (as selected under the procedure described in Section 3.5(e) if not previously selected), which shall resolve any issue in dispute as promptly as practicable and in accordance with the procedures and subject to provisions regarding the decision of the Arbitrator set forth in Section 3.5(e). The determination by Arbitrator shall be final, conclusive and binding on the parties. The fees, costs and expenses of the Arbitrator shall be paid in the same manner as in Section 3.5(e).

(d) Audits. The Purchaser shall notify the Seller of the commencement of any audit or other examination by any Governmental Entity relating to the liability of

the Company or any Subsidiary for Taxes for any pre-closing period. Unless Seller receives notification under Section 10.3, the Seller shall only have the right to be informed with respect to any audit or other examination, if and to the extent the result of such audit or other examination could impose additional Tax liability with respect to periods prior to the Closing Date.

(e) Cooperation on Tax Matters. The Purchaser, the Company and its Subsidiaries, and the Seller shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns, pursuant to this Section 6.10 or otherwise, and any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information that are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

(f) Certain Taxes and Fees. All transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with the consummation of the transactions contemplated by this Agreement shall be paid one-half (1/2) by the Purchaser and (1/2) by the Seller.

(g) Tax Sharing Agreements. All Tax sharing agreements or similar agreements with respect to or involving the Company and its Subsidiaries shall be terminated as of the Closing Date and, after the Closing Date, the Company and its Subsidiaries shall not be bound thereby or have any liability thereunder.

(h) LLC Conversions. No later than five (5) days after the date of this Agreement, each of the following Subsidiaries shall have converted into, or shall have been merged with and into, a limited liability company in the jurisdiction of its organization that is disregarded for federal income Tax purposes: Worsham-Steed GP, Inc.; Falcon Gas Limited, Inc.; Falcon Minerals GP, Inc.; and Hill-Lake GP, Inc. (such transactions, the "LLC Conversions"). The Seller shall cause the Company and its Subsidiaries to take all actions necessary so that, for U.S. federal income Tax purposes, the LLC Conversions occurring pursuant to this Section 6.10(h) shall result in the converted entities becoming disregarded pursuant to Treas. Reg. § 301.7701-3, and such LLC Conversions shall be treated as tax-free complete liquidations governed by Sections 332 and 337 of the Code.

Section 6.11 Directors' and Officers' Indemnification.

(a) The Purchaser agrees that (i) the governing documents of the Company and its Subsidiaries immediately after the Closing shall contain provisions with respect to indemnification, exculpation from liability and advancement of expenses that are at least as favorable to the beneficiaries of such provisions as those provisions that are set forth in the governing documents of the Company and its Subsidiaries, respectively, on the date of this Agreement, which provisions shall not be amended, repealed or

otherwise modified for a period of six (6) years following the Closing in any manner that would adversely affect the rights thereunder of Persons who at or prior to the Closing were directors, officers, employees or agents of the Company or any of its Subsidiaries, unless such modification is required by Law and (ii) all rights to indemnification as provided in any indemnification agreements with any current or former directors, officers and employees of the Company or any of its Subsidiaries as in effect as of the date hereof with respect to matters occurring at or prior to the Closing shall survive the Closing.

(b) The Parties agree that the Company (or a third party at the direction of the Purchaser) will pay at the Closing an amount sufficient to enable the Company to purchase "tail" coverage for a period of six (6) years following the Closing Date under the directors and officers liability insurance policy of the Company, as in effect on the Closing Date. The aggregate amount necessary to purchase such "tail" coverage shall be referred to as the "D&O Tail Premium."

(c) In the event the Purchaser or the Company or any of their respective Subsidiaries, successors or assigns (i) consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, the Purchaser shall use its reasonable best efforts to ensure that proper provisions shall be made so that the successors and assigns of the Purchaser, the Company or their respective subsidiaries (as applicable) assume the obligations set forth in this Section 6.11.

(d) This Section 6.11, which shall survive the Closing and shall continue for the periods specified herein, is intended to benefit any Person or entity referenced in this Section 6.11 or indemnified hereunder, each of whom may enforce the provisions of this Section 6.11 (whether or not parties to this Agreement).

(e) Notwithstanding any provision in this Agreement or the insurance policies contemplated by this Section 6.11, no provision of this Agreement or indemnification right in such policies shall limit in any way the right of any Purchaser Indemnified Party or the obligation of the Company under Article X. Further, the foregoing covenants relating to indemnification rights provided by the Company shall not apply to (i) any claim or matter that relates to a willful or intentional breach of a representation, warranty or covenant made by the Company in connection with this Agreement or transactions contemplated hereby or (ii) any claim based on a claim for indemnification made by a Purchaser Indemnified Person pursuant to Article X.

Section 6.12 Alinda Capital Call. Upon the first Business Day after the Falcon Conditions Notice Date, the Purchaser shall request that the Alinda Guarantors make the requisite capital call necessary to fully satisfy and discharge the Purchaser's payment obligations set forth in Section 8.3(a). The Purchaser shall notify the Seller when such capital call has been made.

Section 6.13 Falcon Receivable and Falcon Payable. Prior to the Closing, the Seller shall extinguish, or cause to be paid in full, the Falcon Receivable and the Falcon Payable.

Section 6.14 No Solicitation of Employees; No-Hire of Employees. .

(a) The Seller shall not, and shall cause its Affiliates not to, directly or indirectly, (i) during the period commencing on the date hereof and continuing until three (3) years after the Closing Date (the "***No-Hire Period***"), hire (as an employee, consultant or otherwise) any person that is an employee of the Company or any of its Subsidiaries immediately after the Closing Date who is not in a secretarial, administrative and clerical role (a "***Protected Person***") or (ii) during the period commencing on the date hereof and continuing until five years after the Closing Date (the "***No-Solicitation Period***"), contact, approach or solicit for the purpose of offering employment to or hiring (whether as an employee, consultant, agent, independent contractor or otherwise) any Protected Person.

(b) Notwithstanding the foregoing, the Parties agree that the provisions of Section 6.14 shall not prohibit during the No-Hire Period or the No-Solicitation Period (i) the hiring of a Protected Person who ceases to be employed by the Company or any of its Affiliates or (ii) solicitation by way of general advertising, including general solicitations in any local, regional or national newspapers or other publications or circulars or on internet sites.

(c) The Parties agree that the restraints created by the covenants in this Section 6.14 are no greater than necessary to protect the legitimate interests of the Purchaser and the Company, and, because damages would be an inadequate remedy, that a Person seeking to enforce this Section 6.14 shall be entitled to seek specific performance and injunctive relief as remedies for any breach thereof. Furthermore, the Seller agrees that such covenants do not hinder, or otherwise cause hardship to, the Seller or its Affiliates with respect to finding other employees. Similarly, Seller agrees that Purchaser's and the Company's need for the protection afforded by the covenants of this Section 6.14 is not outweighed by either the hardship to Seller or its Affiliates or any public interest. The existence of any claim or cause of action of the Purchaser or the Company against the Seller.

Section 6.15 Office Lease. Prior to the Closing, the Seller shall have assigned the Office Lease to a Subsidiary of the Company (the "Subsidiary Lessee"), and the Subsidiary Lessee will assume all obligations and liabilities under the Office Lease. Additionally, prior to Closing, Seller shall attempt to obtain a release by TPG-San Felipe Plaza, L.P. (or the applicable landlord under the Office Lease) for its obligations or liabilities accruing following the Closing Date ("Seller Lease Release"). The Purchaser shall indemnify and hold harmless the Seller from, against, and in respect of, any and all claims, liabilities, obligations, damages, losses, costs, expenses, penalties, fines and judgments (at equity or at law, including statutory and common) and damages caused by the Subsidiary referenced in the previous sentence arising under the Office Lease following Closing ("Post-Closing Lease Indemnity"). After the Closing, if the Seller was unable to secure the Seller Lease Release, Purchaser will use commercially reasonable efforts to continue to assist Seller in its effort to obtain such release, but (i) Purchaser or

Subsidiary shall not be required obtain such release on Seller's behalf or expend any money in connection with such efforts and/or (ii) unless and until such release is obtained from the landlord under the Office Lease, none of Purchaser, Subsidiary nor any subsequent assignee or sublessee of the lessee's interest in the Office Lease shall expand, extend or renew the Office Lease or to modify the Office Lease in any manner which could increase the liability of Seller thereunder. For the avoidance of doubt, the Post-Closing Lease Indemnity provided by the Purchaser and described above shall survive Closing for so long as the Office Lease remains in effect.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.1 Conditions to Each Party's Obligations. The respective obligations of each Party to effect the transactions contemplated hereby shall be subject to the following conditions:

(a) HSR Act. The expiration or termination of the waiting period applicable to the consummation of the transactions contemplated by this Agreement under the HSR Act.

(b) Injunction. There shall be no effective injunction, writ or preliminary restraining order or any order of any nature issued by a Governmental Entity of competent jurisdiction to the effect that the transactions contemplated by this Agreement may not be consummated as provided herein, no proceeding or lawsuit shall have been commenced by any Governmental Entity for the purpose of obtaining any such injunction, writ or preliminary restraining order and no written notice shall have been received from any Governmental Entity or third party indicating an intent to restrain, prevent, materially delay or restructure the transactions contemplated hereby.

(c) Governmental Consents. All consents, approvals, orders or authorizations of, or registrations, declarations or filings with, all Governmental Entities required in connection with the execution, delivery or performance hereof shall have been obtained or made.

Section 7.2 Conditions to Obligations of the Purchaser. The obligations of the Purchaser to consummate the transactions contemplated hereby shall be subject to the fulfillment at or prior to the Closing of each of the following additional conditions:

(a) Representations and Warranties. Each of the representations and warranties of the Seller contained in this Agreement shall be true and correct as though made on and as of the Closing Date (other than such representations and warranties that expressly address matters only as of a certain date, which need only be true and correct as of such certain date) without giving effect to the words "material", "material adverse effect" or "Material Adverse Effect", except where such failures to be so true and correct could not, individually or in the aggregate, reasonably be expected to have (i) a Material Adverse Effect or (ii) a material adverse effect on the ability of the Seller to perform its obligations hereunder.

(b) Performance of Obligations of the Seller and Company. Each of the Seller and the Company shall have performed in all material respects all covenants and agreements required to be performed by it hereunder at or prior to the Closing.

(c) No Material Adverse Effect. Between the date hereof and the Closing Date, there shall not have occurred any Material Adverse Effect.

(d) Consents. The Seller shall have obtained required consents or waivers, including with respect to each Company Contract identified with an asterisk on Schedule 4.14(a), and provided Purchaser evidence thereof in form reasonably satisfactory to the Purchaser of the third parties to those Company Contracts set forth on Exhibit 7.2(d), and all such consents and waivers shall be in full force and effect.

(e) Closing Date Indebtedness: Release of Liens. The Seller shall have delivered to the Purchaser (i) evidence of the termination of all Hedging Transactions to which the Company or any of its Subsidiaries is a party and the return of all collateral or margin posted thereunder or otherwise in connection therewith (the "Hedging Close-Out Documents"); provided, however, that the Seller shall have no obligation to terminate any Hedging Transaction if the Purchaser does not repay the Closing Date Indebtedness and (ii) payoff letters ("Payoff Letters") and releases of lien ("Releases of Lien") from each lender to the Closing Date Indebtedness and all other indebtedness of the Company or any of its Subsidiaries other than accounts payable arising in the Ordinary Course.

(f) Closing Date Certificate and Closing Date Expense Statement. The Seller shall have delivered to the Purchaser the Closing Date Certificate and Closing Date Expense Statement at least five (5) Business Days prior to the Closing Date.

(g) Ancillary Documents. The Seller shall have delivered, or caused to be delivered, to the Purchaser the documents listed in Section 8.2.

Section 7.3 Conditions to Obligations of the Seller. The obligations of the Seller to consummate the transactions contemplated hereby shall be subject to the fulfillment at or prior to the Closing of each of the following additional conditions:

(a) Representations and Warranties. Each of the representations and warranties of the Purchaser contained in this Agreement shall be true and correct on and as of the Closing Date as thought made on and as of the Closing Date (other than such representations and warranties that expressly address matters only as of a certain date, which need only be true and correct as of such certain date) without giving effect to the words "material", "material adverse effect" or "Material Adverse Effect", except where such failures to be so true and correct could not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Purchaser to perform its obligations hereunder.

(b) Performance of Obligations of the Purchaser. The Purchaser shall have performed in all material respects all covenants and agreements required to be performed by it hereunder at or prior to the Closing.

(c) Ancillary Documents. The Purchaser shall have delivered, or caused to be delivered, to the Purchaser the documents listed in Section 8.3.

Section 7.4 Closing. Neither the Seller nor the Purchaser may rely, either as a basis for not consummating the transactions contemplated hereby or terminating this Agreement, on the failure of any condition set forth in this Article VII to be satisfied if such failure was caused by such Party's failure to comply with any provision of this Agreement.

ARTICLE VIII
CLOSING

Section 8.1 Closing. Subject to the satisfaction or waiver of the conditions set forth in Article VII that are contemplated to be satisfied prior to the Closing Date, the Closing shall occur on the third (3rd) Business Day after the satisfaction or waiver of the conditions set forth in Article VII, or on such other date as the Parties may agree in writing; provided, however, that the Closing shall not occur less than eleven (11) Business Days after the Seller's delivery of the Falcon Conditions Delivery Notice. The Closing shall take place at the offices of King & Spalding LLP located at 1100 Louisiana Suite 4000, Houston, Texas, 77002 or at such other place as the Parties may agree in writing.

Section 8.2 Seller Closing Deliveries. At the Closing, the Seller shall deliver, or cause to be delivered, to the Purchaser the following:

(a) a certificate executed by the Seller as to compliance with the conditions set forth in Section 7.1 and Sections 7.2(a) and (b);

(b) the organizational documents and minute books of the Company and each of its Subsidiaries;

(c) the Payoff Letters and the Releases of Liens;

(d) the Hedging Close-Out Documents, if applicable;

(e) the Guaranty Agreement;

(f) a certificate from the Seller to the effect that the Seller is not a "foreign person" under Treasury Regulation section 1-1445-2(b)(2); and

(g) all other documents required to be entered into by the Seller pursuant to this Agreement.

Section 8.3 Purchaser Closing Deliveries. At the Closing, the Purchaser shall deliver, or cause to be delivered, to the Seller the following:

(a) the portion of the Purchase Price to be paid at Closing pursuant to Section 3.3;

(b) the payments to be paid at Closing pursuant to Section 3.4;

(c) a certificate of an authorized officer of the Purchaser as to compliance with the conditions set forth in Section 7.1 and Sections 7.3(a) and (b); and

(d) all other documents required to be entered into or delivered by the Purchaser at or prior to the Closing pursuant hereto.

ARTICLE IX
TERMINATION

Section 9.1 Termination. This Agreement may be terminated:

(a) in writing by mutual consent of the Parties;

(b) by written notice from the Seller to the Purchaser, in the event the Purchaser (i) fails to perform in any material respect any of its agreements contained herein required to be performed by it at or prior to the Closing or (ii) materially breaches any of its representations and warranties contained herein, which failure or breach is not cured within fifteen (15) days following the Seller having notified the Purchaser of its intent to terminate this Agreement pursuant to this Section 9.1(b);

(c) by written notice from the Purchaser to the Seller, in the event the Seller (i) fails to perform in any material respect any of its agreements contained herein required to be performed by it at or prior to the Closing or (ii) materially breaches any of its representations and warranties contained herein, which failure or breach is not cured within fifteen (15) days following the Purchaser having notified the Seller of its intent to terminate this Agreement pursuant to this Section 9.1(c); or

(d) by written notice from the Seller to the Purchaser or the Purchaser to the Seller, as the case may be, in the event the Closing has not occurred within the later of (i) forty-five (45) days after the date of this Agreement (the "Expiration Date") or (ii) the expiration of any cure periods under Sections 9.1(b) or 9.1(c), in each case for any reason other than delay or nonperformance of the Party seeking such termination.

Section 9.2 Specific Performance and Other Remedies. Each of the Seller and the Purchaser acknowledges and agrees that the other Party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached. Accordingly, each of the Seller and the Purchaser agrees that the other Party shall be entitled to seek an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof, this being in addition to any other remedies to which such other Party is entitled at law or equity, without any obligation to post any bond or other security as a prerequisite to obtaining equitable relief. If a court of competent jurisdiction has declined to specifically enforce the obligations of the Purchaser to consummate the transactions contemplated hereunder pursuant to a claim for specific performance brought against the Purchaser pursuant to this Section 9.2, then the Seller may pursue any other remedy available to it at law or in equity, including monetary damages (which the Parties agree may not be limited to

reimbursement of expenses or out-of-pocket costs and may take into account relevant matters, including other transaction opportunities and the time value of money).

Section 9.3 Effect of Termination.

(a) In the event that (i) all of the conditions to Closing in Sections 7.1 and 7.3 are satisfied, (ii) the Purchaser notifies the Seller in writing that it is prepared to close all of the transactions contemplated by this Agreement in the manner set forth in ARTICLE VIII, (iii) the Seller then refuses to close the transactions contemplated by this Agreement and such refusal is a breach of the Seller's obligations under this Agreement, and (iv) the Purchaser terminates this Agreement pursuant to Section 9.1(c), then the Purchaser may elect as liquidated damages (in lieu of the remedy of specific performance set forth in Section 9.2 and all other remedies available to the Purchaser set forth in this Agreement or otherwise) an amount of immediately available funds equal to Ten Million Dollars ($10,000,000) to be paid by the Seller to the Purchaser. The Parties acknowledge and agree that (i) the rights of the Purchaser under this Section 9.3(a) shall not be affected by any prior and unsuccessful attempt by the Purchaser to obtain an equitable remedy for specific performance under Section 9.2 and (ii) the time period specified in Section 9.1(d) shall be tolled and shall not run until forty-five (45) days after the entry of a final determination by a court of competent jurisdiction with respect to any claim by the Purchaser for specific performance or other equitable remedy under Section 9.2.

(b) The provisions for payment of liquidated damages in this Section 9.3 have been included because, in the event of termination of this Agreement as described in Section 9.3(a), the actual damages to be incurred by the Purchaser are reasonably expected to approximate the amount of liquidated damages set forth in this Section 9.3 and because the actual amount of such damages would be difficult, if not impossible, to measure precisely.

(c) For purposes of clarification, the Purchaser shall not be entitled to seek, enforce or otherwise pursue any remedy available to it under this Section 9.3 at any time prior to valid termination of this Agreement pursuant to ARTICLE IX.

(d) Notwithstanding anything to the contrary herein, the obligations of the Parties under the Confidentiality Agreement and Section 6.6, Section 10.8, Section 11.1, Section 11.5, Section 11.6, Section 11.11, Section 11.13, and this Section 9.3 shall survive the Termination Date.

ARTICLE X
INDEMNIFICATION

Section 10.1 Indemnification Obligations of the Seller. Subject to the other provisions of this Article X, after the Closing Date, the Seller shall indemnify, defend and hold harmless the Purchaser Indemnified Parties from, against, and in respect of, any and all claims, liabilities, obligations, damages, losses, costs, expenses, penalties, fines and judgments (at equity or at law,

including statutory and common) and damages (including amounts paid in settlement, costs of investigation and reasonable attorneys' fees and expenses) arising out of or relating to:

(a) any breach or inaccuracy of any representation or warranty made by the Seller in this Agreement or the Company Ancillary Documents; provided, however, that the Purchaser shall not be entitled to indemnification or any other damages with respect to any breach of any representation or warranty related to the Company-Titled Real Property and the Company-Titled Oil and Gas Leases set forth in Section 4.6(a) through (e), Section 4.14 or any provision of this Agreement relating to the status or condition of the title to the Company-Titled Real Property and the Company-Titled Oil and Gas Leases, except for claims based on fraud, gross negligence or willful misconduct of the Seller in connection with the disclosure relating to such breach;

(b) any breach of any covenant, agreement or undertaking made by the Seller in this Agreement; and

(c) the Closing Date Indebtedness and the Transaction Expenses, in each case to the extent not paid in connection with the Closing.

(d) Any items identified on Schedules 4.10, 4.12, 4.13, and 4.20(a).

The claims, liabilities, obligations, losses, damages, costs, expenses, penalties, fines and judgments of the Purchaser Indemnified Parties described in this Section 10.1 as to which the Purchaser Indemnified Parties are entitled to indemnification are collectively referred to as "Purchaser Losses." For the avoidance of doubt, the Parties agree that claims, liabilities, obligations, losses, damages, costs, expenses, penalties, fines and judgments related to any breach or inaccuracy of any representation and warranty set forth in Section 4.6(a) through (e) or for any other claim relating to the condition of title to any of the Company-Titled Real Property (other than claims based on fraud, gross negligence or willful misconduct of the Seller in connection with the disclosure relating to any such breach), shall not constitute "Purchaser Losses," and the Seller shall not be liable therefore and, except for claims based on Seller's breach of any such representation or warranty as a result of fraud, gross negligence or willful misconduct in connection with the disclosure relating to any such breach, the Purchaser is assuming all risk for all costs incurred by the Purchaser related to any such breach or inaccuracy.

Section 10.2 Indemnification Obligations of the Purchaser. The Purchaser shall indemnify and hold harmless the Seller from, against and in respect of any and all claims, liabilities, obligations, losses, damages, costs, expenses, penalties, fines and judgments (at equity or at law, including statutory and common) and damages (including amounts paid in settlement, costs of investigation and reasonable attorneys' fees and expenses) arising out of or relating to:

(a) any breach or inaccuracy of any representation or warranty made by the Purchaser in this Agreement or in any Purchaser Ancillary Document;

(b) any breach of any covenant, agreement or undertaking made by the Purchaser in this Agreement or in any Purchaser Ancillary Document; and

(c) any liability or obligation related to or arising from the post-Closing operations of the Company and its Subsidiaries.

The claims, liabilities, obligations, losses, damages, costs, expenses, penalties, fines and judgments of the Seller Indemnified Parties described in this Section 10.2 as to which the Seller Indemnified Parties are entitled to indemnification are collectively referred to as "Seller Losses."

Section 10.3 Indemnification Procedure.

(a) Promptly following receipt by an Indemnified Party of notice by a third party (including any Governmental Entity) of any claim, complaint or the commencement of any audit, investigation, action or proceeding with respect to which such Indemnified Party may be entitled to receive payment from the other Party for any Purchaser Loss or any Seller Loss (as the case may be) in accordance with this Article X, such Indemnified Party shall notify the Purchaser or the Seller, as the case may be (the "Indemnifying Party"), promptly following the Indemnified Party's receipt of such complaint or of notice of the commencement of such audit, investigation, action or proceeding; provided, however, that the failure to so notify the Indemnifying Party shall relieve the Indemnifying Party from liability hereunder with respect to such claim only if, and only to the extent that, such failure to so notify the Indemnifying Party materially prejudices the Indemnifying Party with respect to such claim. The Indemnifying Party shall have the right, upon written notice delivered to the Indemnified Party within thirty (30) days thereafter, to assume the defense of such audit, investigation, action or proceeding, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of the fees and disbursements of such counsel; provided, however, that an Indemnifying Party will not be entitled to assume the defense of any audit, investigation, action or proceeding if such claim, based on the remedy being sought, could result in criminal liability of, or equitable remedies against, the Indemnified Party. In the event, however, that the Indemnifying Party declines or fails to assume the defense of the audit, investigation, action or proceeding on the terms provided above or to employ counsel reasonably satisfactory to the Indemnified Party, in either case within such thirty (30)-day period, or if the Indemnifying Party is not entitled to assume the defense of the audit, investigation, action or proceeding in accordance with the preceding sentence, then the Indemnifying Party shall pay the reasonable fees and disbursements of counsel for the Indemnified Party as incurred; provided, however, that the Indemnifying Party shall not be required to pay the fees and disbursements of more than one counsel for all Indemnified Parties in any jurisdiction in any single audit, investigation, action or proceeding. In any audit, investigation, action or proceeding for which indemnification is being sought hereunder, the Indemnified Party or the Indemnifying Party, whichever is not assuming the defense of such action, shall have the right to participate in such matter and to retain its own counsel at such Party's own expense. The Indemnifying Party or the Indemnified Party (as the case may be) shall at all times use reasonable efforts to keep the Indemnifying Party or Indemnified Party (as the case may be) reasonably apprised of the status of the defense of any matter the defense of which it is maintaining and to cooperate in good faith with each other with respect to the defense of any such matter.

(b) No Indemnified Party may settle or compromise any claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder without the prior written consent of the Indemnifying Party, unless such settlement, compromise or consent includes an unconditional release of the Indemnifying Party and its officers, directors, employees and Affiliates from all liability arising out of such claim. An Indemnifying Party may not, without the prior written consent of the Indemnified Party, settle or compromise any claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder unless such settlement, compromise or consent (i) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of the Indemnified Party and (ii) does not contain any equitable order, judgment or term that in any manner affects, restrains or interferes with the business of the Indemnified Party or any of the Indemnified Party's Affiliates.

(c) In the event an Indemnified Party claims a right to payment pursuant hereto, such Indemnified Party shall send written notice of such claim to the appropriate Indemnifying Party. Such notice shall specify the basis for such claim. The failure by any Indemnified Party to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability that it may have to such Indemnified Party with respect to any claim made pursuant to this Section 10.3(c), it being understood that notices for claims in respect of a breach of a representation or warranty must be delivered prior to the expiration of the survival period for such representation or warranty under Section 10.4. In the event the Indemnifying Party disputes its liability with respect to such claim, as promptly as possible, such Indemnified Party and the appropriate Indemnifying Party shall establish the merits and amount of such claim (by mutual agreement, litigation or otherwise) and, within five (5) Business Days following the final determination of the merits and amount, if any, of such claim, the Indemnifying Party shall pay to the Indemnified Party in immediately available funds an amount equal to such claim as determined hereunder.

Section 10.4 Claims Period. The Claims Period for indemnity claims under Sections 10.1(a) and 10.2(a) shall begin on the Closing Date and terminate on the date that is eighteen (18) months from the Closing Date (the "Claims Period Expiration Date"); provided, that with respect to Purchaser Losses arising under Section 10.1(a) with respect to any breach or inaccuracy of any representation or warranty in Section 4.1 (Organization), Section 4.2 (Authorization), Section 4.3 (Capitalization), Section 4.15 (Tax Returns; Taxes), Section 4.17 (Company Benefit Plans), Section 4.22 (Brokers), and Section 4.25 (Regarding the Seller) (collectively, the "Fundamental Representations"), the Claims Period shall continue until the expiration of any applicable statutes of limitations (after giving effect to any extensions or waivers thereof) plus sixty (60) days.

Section 10.5 Liability Limits.

(a) For purposes of Section 10.1, Section 10.2 and this Section 10.5, (i) a breach of a representation or warranty shall be deemed to exist either if such representation or warranty is actually inaccurate or breached or would have been inaccurate or breached if such representation had not contained any limitation or

qualification as to materiality, material adverse effect, Material Adverse Effect (which instead will be read as adverse effect or change) or similar language and (ii) the amount of Purchaser Losses or Seller Losses, as applicable, in respect of any breach of a representation or warranty, including any breach resulting from the application of clause (i), shall be determined without any limitation or qualification as to materiality, material adverse effect, Material Adverse Effect (which instead will be read as adverse effect or change) or similar language.

(b) Notwithstanding anything to the contrary set forth herein, the Purchaser Indemnified Parties shall not make a claim for indemnification under this Article X for Purchaser Losses unless and until the aggregate amount of such Purchaser Losses exceeds 1% of Purchase Price (the "Purchaser Basket"), in which event the Purchaser Indemnified Parties may only claim indemnification for Purchaser Losses exceeding the Purchaser Basket; provided, that any claims for indemnification for Purchaser Losses arising from (i) breaches of Fundamental Representations or (ii) claims for indemnity under Sections 10.1(b), (c) and (d) shall not be subject to the Purchaser Basket. The total aggregate amount of liability for Purchaser Losses shall be limited to Fifty-Two Million Dollars ($52,000,000) except in the case of Purchaser Losses arising from breaches of Fundamental Representations. The amount of Purchaser Losses otherwise payable to the Purchaser Indemnified Parties pursuant to this Article X shall be net of any insurance proceeds received by the Purchaser Indemnified Parties directly resulting from such Purchaser Losses. No liability shall attach to the Seller in respect of any claim if (i) such claim would not have arisen but for a change in legislation or accounting policies made after the Closing Date or a change in interpretation of the Law as determined by a court or pursuant to an administrative rule-making decision or (ii) such liability was reflected as a liability in the calculation of the Closing Date Net Working Capital.

Section 10.6 Investigations. The representations and warranties of each of the Parties set forth in this Agreement, subject to the express exceptions thereto, shall not be affected by any information furnished to, or any investigation or audit conducted before or after the Closing Date by, any of the Parties or their respective representatives in connection with the transactions contemplated hereby. In order to preserve the benefit of the bargain otherwise represented by this Agreement, each Party shall be entitled to rely upon the representations, warranties, covenants and agreements of the other Party set forth herein notwithstanding any investigation or audit conducted or any knowledge acquired (or capable of being acquired) before or after the Closing Date or the decision of any Party to complete the Closing. The right to indemnification or other remedy based on any of the representations, warranties, covenants or agreements in this Agreement shall not be affected by any investigation or audit conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant, or agreement.

Section 10.7 Exclusive Remedy. The Parties agree that, excluding any claim for injunctive or other equitable relief, the indemnification provisions of this Article X are intended to provide the sole and exclusive remedy as to all claims either the Seller, on the one hand, and the Purchaser, on the other hand, may incur arising from or relating to this Agreement and the

agreements and documents contemplated hereby and the transactions contemplated hereby and thereby. In furtherance of the foregoing, the Parties hereby waive, to the fullest extent permitted by applicable Law, any and all other rights, claims and causes of action (including rights of contribution, if any) known or unknown, foreseen or unforeseen, which exist or may arise in the future, that they may have arising under or based upon any federal, state or local Law (including relating to environmental or securities Law, common Law or otherwise). The Parties hereby waive and release any and all tort claims and causes of action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any tort claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement).

Section 10.8 No Consequential Damages. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NO PARTY NOR ANY OF ITS AFFILIATES SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, OR LOST PROFITS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE AND WHETHER OR NOT ARISING FROM THE OTHER PARTY'S OR ANY OF ITS AFFILIATES' SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT; PROVIDED, HOWEVER, IN NO EVENT SHALL THIS SECTION 10.8 BE A LIMITATION ON (I) ANY OBLIGATION WITH RESPECT TO A THIRD PARTY CLAIM RELATING TO SUCH OBLIGATION, OR (II) ANY PARTY'S OBLIGATIONS PURSUANT TO SECTION 9.3.

Section 10.9 Treatment of Indemnity Payments. All payments made pursuant to Section 10.1 and Section 10.2 shall be deemed adjustments to the Purchase Price for Tax purposes.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered, or if sent by United States certified mail, return receipt requested, postage prepaid, shall be deemed duly given on delivery by United States Postal Service, or if sent by facsimile or receipted overnight courier services shall be deemed duly given on the Business Day received if received prior to 5:00 p.m. local time or on the following Business Day if received after 5:00 p.m. local time or on a non-Business Day, addressed to the respective parties hereto as follows:

To the Purchaser, and, after Closing, the Company	c/o Alinda Capital Partners LLC 150 East 58th Street 39th Floor New York, NY 10155 Facsimile: (212) 656-1294 Telephone: (212) 838-6400 Attention: Sanjay Khettry

with a copy to:

c/o Alinda Capital Partners LLC
150 East 58th Street
39th Floor
New York, NY 10155
Facsimile: (212) 214-0678
Telephone: (212) 838-6400
Attention: General Counsel

To the Seller and the Performance Guarantor:

5847 San Felipe, Suite 3050
c/o Arcapita
75 Fourteenth Street
24th Floor
Atlanta, GA 30309
Facsimile: (409) 920-9011
Telephone: (404) 920-9008
Attention: Brian R. McCabe

with a copy to:

King & Spalding
1180 Peachtree Street
Atlanta, GA 30309
Facsimile: (404) 572-5100
Telephone: (404) 572-4600
Attention: Raymond E. Baltz, Jr.

or to such other representative or at such other address as such Person may furnish to the other parties in writing.

Section 11.2 Schedules and Exhibits. The Schedules and Exhibits are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full herein.

Section 11.3 Assignment; Successors in Interest. Prior to the Closing, no assignment or transfer by any Party of such Party's rights and obligations hereunder shall be made except with the prior written consent of the other Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns, and any reference to a Party shall also be a reference to the successors and permitted assigns thereof.

Section 11.4 Captions. The titles, captions and table of contents contained herein are inserted herein only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

Section 11.5 Controlling Law; Amendment. This Agreement shall be governed by and construed and enforced in accordance with the internal Laws of the State of New York without reference to its choice of law rules. This Agreement may not be amended, modified or supplemented except by written agreement of the Parties.

Section 11.6 Submission to Jurisdiction; Waiver of Jury Trial.

(a) Each party agrees that any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement shall be brought or otherwise commenced exclusively in any state or federal court located in the State of New York. Each party thereto:

(i) expressly and irrevocably consents and submits to the jurisdiction of each state and federal court located in the State of New York (and each appellate court located in the State of New York) in connection with any such legal proceeding, including to enforce any settlement, order or award;

(ii) consents to service of process in any such proceeding in any manner permitted by the laws of the State of New York, and agrees that service of process by registered or certified mail, return receipt requested, at its address specified pursuant to Section 11.1 is reasonably calculated to give actual notice;

(iii) agrees that each state and federal court located in the State of New York shall be deemed to be a convenient forum;

(iv) waives and agrees not to assert (by way of motion, as a defense or otherwise), in any such legal proceeding commenced in any state or federal court located in the State of New York, any claim that such party is not subject personally to the jurisdiction of such court, that such legal proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this Agreement or the subject matter hereof or thereof may not be enforced in or by such court; and

(v) agrees to the entry of an order to enforce any resolution, settlement, order or award made pursuant to this Section by the state and federal courts located in the State of New York and in connection therewith hereby waives, and agrees not to assert by way of motion, as a defense, or otherwise, any claim that such resolution, settlement, order or award is inconsistent with or violative of the laws or public policy of the laws of the State of New York or any other jurisdiction.

(b) In the event of any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement, the prevailing party shall be entitled to payment by the non-prevailing party of all costs and expenses

(including reasonable attorneys' fees) incurred by the prevailing party, including any costs and expenses incurred in connection with any challenge to the jurisdiction or the convenience or propriety of venue of proceedings before any state or federal court located in the State of New York.

(c) EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

Section 11.7 Severability. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Law, each Party hereby waives any provision of Law that renders any such provision prohibited or unenforceable in any respect.

Section 11.8 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms hereof to produce or account for more than one of such counterparts.

Section 11.9 Enforcement of Certain Rights. Except as set forth in Section 6.11, nothing expressed or implied herein is intended, or shall be construed, to confer upon or give any Person other than the Parties, and their successors or permitted assigns, any right, remedy, obligation or liability under or by reason of this Agreement, or result in such Person being deemed a third-party beneficiary hereof.

Section 11.10 Waiver. Any agreement on the part of a Party to any extension or waiver of any provision hereof shall be valid only if set forth in an instrument in writing signed on behalf of such Party. A waiver by a Party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

Section 11.11 Integration. This Agreement, the Guaranty Agreement, the Alinda Guaranty Agreement, and the documents executed pursuant hereto supersede all negotiations, agreements and understandings among the Parties with respect to the subject matter hereof (except for that certain Confidentiality Agreement, dated as of December 2, 2009 by and between the Purchaser and the Seller) and constitute the entire agreement among the Parties with respect thereto.

Section 11.12 Cooperation Following the Closing. Following the Closing, each Party shall deliver to the other Parties such further information and documents and shall execute and deliver to the other Parties such further instruments and agreements as any other Party shall

reasonably request to consummate or confirm the transactions provided for herein, to accomplish the purpose hereof or to assure to any other Party the benefits hereof.

Section 11.13 Transaction Costs. Except as otherwise expressly provided in this Agreement, (a) each of the Purchaser and the Seller shall pay its own fees, costs and expenses incurred in connection herewith and the transactions contemplated hereby, including the fees, costs and expenses of its financial advisors, accountants and counsel, and (b) the fees, costs and expenses of the Company incurred in connection herewith and the transactions contemplated hereby shall be paid for pursuant to Section 3.4(b) if the Closing occurs (to the extent not paid prior to the Closing) and by the Company if the Closing does not occur and this Agreement is terminated; provided, that each of the Purchaser and the Seller shall pay fifty percent 50% of the total filing fees related to any filings made pursuant to the HSR Act.

Section 11.14 Several Liability. The Parties agree that the obligations and liabilities of each Purchaser hereunder are several and not joint obligations and liabilities and Seller shall not have any recourse as to any Affiliate of any Purchaser other than pursuant to the Equity Contribution Letter.

Section 11.15 Services Agreement. Upon the Closing, the Services Agreement by and between the Company and the Seller dated December 20, 2006, as amended and restated by such parties effective June 30, 2009, shall be deemed to be terminated and all obligations and liabilities of the Company thereunder shall be deemed to be extinguished and discharged.

Section 11.16 MoBay Services Agreement. Prior to Closing, each Purchaser shall negotiate in good faith with the Seller for a management services agreement between the Company and the Seller pursuant to which the Company will provide limited, non-executive administrative services to MoBay Storage Holdings, LLC and the Seller for a term commencing on the Closing Date and ending forty-five (45) days thereafter.

* * * * * *

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed, as of the date first above written.

FALCON GAS STORAGE COMPANY, INC.

By: _____
Name: BRIAN R. MCCABE
Title: DIRECTOR

ALINDA NATURAL GAS STORAGE I, L.P.

By: _____
Name: _____
Title: _____

ALINDA NATURAL GAS STORAGE II, L.P.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed, as of the date first above written.

FALCON GAS STORAGE COMPANY, INC.

By: _____
Name: _____
Title: _____

ALINDA NATURAL GAS STORAGE I, L.P.

By: Alinda Gas Storage I GP, LLC, its general partner
By: Alinda Capital Partners LLC, its sole member

By: _____
Name: Christopher W. Beale
Title: Managing Member

ALINDA NATURAL GAS STORAGE II, L.P.

By: Alinda Gas Storage II GP, LLC, its general partner
By: Alinda Capital Partners LLC, its sole member

By: _____
Name: Christopher W. Beale
Title: Managing Member

EXHIBIT 2

Purchase Amendment

FIRST AMENDMENT TO PURCHASE AGREEMENT

This **FIRST AMENDMENT TO PURCHASE AGREEMENT** (this "Amendment") is entered into as of the 1st day of April 2010 by and between Falcon Gas Storage Company, Inc., a Delaware corporation (the "Seller"), and Alinda Natural Gas Storage I, L.P., a Delaware limited partnership ("Alinda I") and Alinda Natural Gas Storage II, L.P., a Delaware limited partnership ("Alinda II", and, together with Alinda I, each a "Purchaser" and, collectively, the "Purchaser").

RECITALS

WHEREAS, pursuant to that certain Purchase Agreement dated as of March 15, 2010 by and between the Seller and the Purchaser (the "Purchase Agreement"), the Purchaser, provided that certain conditions are satisfied prior to the Closing (as defined in the Purchase Agreement), shall acquire from the Seller all of the outstanding equity interests of NorTex Gas Storage Company, LLC, a Delaware limited liability company; and

WHEREAS, the Purchaser and the Seller wish to amend certain provisions of the Purchase Agreement in accordance with Section 11.5 of the Purchase Agreement.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Purchaser and the Seller hereby agree as follows:

ARTICLE 1

AMENDMENT

Section 1.1. **Definitions; Incorporation by Reference**. All capitalized terms used herein but not defined herein shall have the meanings assigned to such terms in the Purchase Agreement. The provisions of Section 11.1 through Section 11.14 of the Purchase Agreement are hereby incorporated by reference and made a part hereof for all purposes.

Section 1.2. **Additional Definitions**. The Purchase Agreement is hereby amended by inserting the following definitions in appropriate alphabetical order into Section 1.1 of the Purchase Agreement.

"Escrowed Amount" means $70,000,000, including interest thereon in accordance with the terms of the Escrow Agreement less any reduction to such amount in accordance with Section 3.7(b) of this Agreement.

"Hopper Claim" means (i) John M. Hopper, et. al vs. Asim Zafar, et. al, styled 2010-19789 and filed on March 29, 2010 in the district court of Harris County, Texas, (ii) John M. Hopper et. al vs. Asim Zafar, et. al, styled Cause No. CV1041822 and filed on March 29, 2010 in the district court of Eastland County, Texas, (iii) the facts and circumstances underlying such

matters, (iv) any and all relief sought by any party in such matters, and (v) any and all cross- or counter-claims asserted in such matters and the facts and circumstances underlying the same.

"Lis Pendens" means, collectively, (i) that certain Notice of Lis Pendens filed on March 29, 2010 in Jack County, Texas, styled Cause No. CV1041822 and executed, subscribed and sworn to by John M. Hopper and (ii) that certain Notice of Lis Pendens filed on March 29, 2010 in Eastland County, Texas and styled Cause No. CV0141822 and executed, subscribed and sworn to by John M. Hopper.

Section 1.3. **Additional Other Definitions**. The Purchase Agreement is hereby amended by inserting the following definitional cross references into Section 1.1 of the Purchase Agreement.

Term	Section
Escrow Agent	3.3(b)
Escrow Agreement	3.3(b)
Escrow Breakage Trigger	3.7(a)
Expense Notice	3.7(b)
Expense Dispute Notice	3.7(b)
Final Decision	3.7(c)
Pre-Breakage Losses	3.7(a)(x)

Section 1.4. **Amendment to Schedule 4.12**. Schedule 4.12 of the Purchase Agreement is hereby amended to insert (i) the Hopper Claim as the fourth item listed on Schedule 4.12 of the Purchase Agreement and (ii) the Lis Pendens as the fifth item listed on Schedule 4.12 of the Purchase Agreement.

Section 1.5. **Amendment to Schedule 4.25(e)**. Schedule 4.25(e) of the Purchase Agreement is hereby amended to insert (i) the Hopper Claim as the first item listed on Schedule 4.25(e) of the Purchase Agreement and (ii) the Lis Pendens as the second item listed on Schedule 4.25(e) of the Purchase Agreement.

Section 1.6. **Payment of Purchase Price and Escrow Arrangement**. Section 3.3 of the Purchase Agreement is hereby amended in its entirety so that it is deleted and replaced with the following:

Section 3.3 Payment of Purchase Price; Escrowed Amount.

(a) On the Closing Date, the Purchaser shall pay or cause to be paid to the Seller an amount equal to the Purchase Price (utilizing, as the adjustments, the amounts set forth in the Closing Date Certificate) less $70,000,000.

(b) As soon as reasonably practicable after an escrow agreement that is reasonably acceptable to the Seller and the Purchaser and is in compliance with Section 3.7 of this Agreement (the "Escrow Agreement") has been executed, the Purchaser shall pay to the escrow agent under the Escrow Agreement (the "Escrow Agent") $70,000,000. The Escrowed Amount shall be subject to release from escrow under the Escrow Agreement to the Purchaser and the Seller in accordance with Section 3.7 of the Purchase Agreement. The Parties shall treat the full amount placed in escrow as consideration received by the Seller at the Closing for U.S. federal income Tax purposes) among the assets of the Company and its Subsidiaries in accordance with Section 1060 of the Code and the Treasury Regulations thereunder (and any similar provision of state, local or non-U.S. law, as appropriate).

Section 1.7. **Release of Escrowed Amount**. Article III of the Purchase Agreement is hereby amended so that the following provision is inserted as Section 3.7 of the Purchase Agreement.

Section 3.7 Release of Escrowed Amount.

(a) Upon the earlier to occur of one of the following events or series of events, as applicable (the "Escrow Breakage Trigger"): (i) a final non-appealable order of each court of competent jurisdiction with respect to the Hopper Claim or (ii) (A) an agreed dismissal with prejudice of the Hopper Claim with respect to the Company and its Subsidiaries, (B) a complete release by all of the Participants under the Hopper Claim of the Company and its Subsidiaries and each Purchaser and each Purchaser's respective Affiliates of the Hopper Claim and (C) the final non-appealable release or expungement of the Lis Pendens, the Purchaser and the Seller shall deliver to the Escrow Agent joint instructions to disburse the balance of the Escrowed Amount as follows:

(x) first, the Escrowed Amount shall be paid by the Escrow Agent to the Purchaser in an amount equal to all out-of-pocket costs, expenses, penalties and fines incurred or paid by the Company or any of its Subsidiaries, any Purchaser or any Affiliates of any Purchaser that arise from the Hopper Claim or the Lis Pendens, including damages paid or payable to the plaintiffs in the Hopper Claim (collectively, the "Pre-Breakage Losses") and for which the Purchaser has not already been reimbursed pursuant to Section 3.7(b); and

(y) second, after giving effect to any reductions under Section 3.7(a)(x), the balance of the Escrowed Amount shall be paid by the Escrow Agent to the Seller.

(b) From time to time on any date that is on or prior to the Escrow Breakage Trigger, any Purchaser may deliver to the Escrow Agent and the Seller a written notice (an "Expense Notice")

specifying in reasonable detail the nature and the amount of any Pre-Breakage Losses incurred by the Company or any of its Subsidiaries, any Purchaser or any Affiliates of any Purchaser. If the Seller gives a written notice to the Escrow Agent and the Purchaser disputing any Pre-Breakage Losses (an "Expense Dispute Notice") within ten (10) Business Days following receipt by the Escrow Agent of the applicable Expense Notice regarding such Pre-Breakage Losses, such Pre-Breakage Losses shall be resolved pursuant to Section 3.7(c) of this Agreement. If no Expense Dispute Notice is received by the Escrow Agent within such ten (10) Business Day period, then the amount of such Pre-Breakage Losses claimed in the applicable Expense Notice shall be deemed finally determined and, at the end of such ten (10) Business Day period, the Escrow Agent shall pay to the Purchaser the amount of such Pre-Breakage Losses set forth in the Expense Notice from (and only to the extent of) the Escrowed Amount.

(c) If an Expense Dispute Notice is received by the Escrow Agent as provided in Section 3.7(b) of this Agreement, the Escrow Agent shall not make any payment from the Escrow Account until it has received (i) joint written instructions from the Purchaser and the Seller or (ii) a notification from the Purchaser of a final decision, order, judgment or decree of an arbitrator or court of competent jurisdiction establishing the validity and amount of the applicable Pre-Breakage Losses (a "Final Decision"), which notification shall attach a copy of such Final Decision.

(d) The amount of any disbursement to the Purchaser shall be the amount set forth in the Expense Notice if there shall not have been an Expense Dispute Notice or, if there shall have been an Expense Dispute Notice, (i) the amount specified in the joint written instructions of the Purchaser and the Seller or (ii) the amount of Pre-Breakage Losses set forth in the Final Decision.

(d) Within five (5) Business Days after the end of each calendar quarter, the Escrow Agent shall pay to the Seller out of the Escrow Funds an amount equal to forty percent (40%) of the investment income earned or the Escrow Fund with respect to such calendar quarter.

(e) Unless otherwise stated, all payments by the Escrow Agent to either the Purchaser or the Seller pursuant to the Escrow Agreement shall be made within five (5) Business Days after receipt by the Escrow Agent of a joint written instruction or the Final Decision.

(f) From and after the Closing, the Seller may provide to the Purchaser additional information that will clearly demonstrate that the actual potential exposure related to the Hopper Claim and the Lis Pendens is less than $70,000,000. Upon receipt of such additional information, the Parties shall negotiate in good faith regarding an appropriate reduction, if any, in the Escrowed Amount to reflect the Purchaser's increased comfort level with respect to such a lesser potential exposure. To the extent that the Parties agree in writing to such an appropriate reduction, the Purchaser and the Seller shall deliver to the Escrow Agent joint instructions to disburse to the Seller an amount equal to such appropriate reduction and, after giving effect to such disbursement, the balance of the Escrowed Amount shall be subject to disbursement in accordance with Sections 3.7.

Section 1.8. **Estimated Closing Cash**. The definition of "Estimated Closing Cash" contained in Section 3.5(a) of the Purchase Agreement is hereby amended in its entirety so that it is deleted and replaced with the following:

"Estimated Closing Cash" means $0.00.

Section 1.9. **Suez Letter-of-Credit Facility**. Notwithstanding anything to the contrary contained in the Purchase Agreement, the Purchaser agrees that the Seller shall be entitled to terminate that certain Worsham-Steed Gas Storage, LP Letter of Credit more particularly described as item number 7 on Schedule 4.14(a) of the Purchase Agreement prior to the Closing, and that such termination shall not, by itself, cause the Seller to breach any of its representations, warranties, covenants, and agreements contained in the Purchase Agreement.

Section 1.10. **Company Benefit Plans**. Section 6.9(a) of the Purchase Agreement is hereby amended in its entirety so that it is deleted and replaced with the following:

(a) Each Employee Benefit Plan of Seller which is listed on Schedule 6.9(a) shall be referred to in this Section 6.9(a) as a "Seller Plan". Seller shall establish a plan, effective as of the Closing Date, which is in all material respects the mirror image of the following Seller Plans: the 401(k) Plan and the Flexible Spending Account Plan (each such mirror image plan a "Post-Closing Company Benefit Plan"). The Company shall adopt each such Post-Closing Company Benefit Plan effective as of the Closing, and Seller shall effect a transfer of assets and liabilities to each Post-Closing Company Benefit Plan from the corresponding Seller Plan with respect to the participants in each corresponding Seller Plan who are employed by the Company on the Closing Date and such participants' dependants. With respect to all Seller Plans listed on Schedule 6.9(a), other than the Post-Closing Company Benefit Plans, Seller shall transfer to the Company and the Company shall assume such Seller Plans effective as of the Closing Date. The Seller and the Purchaser agree that if a Seller Plan is insured in whole or in part, the action called for under this Section 6.9(a) shall be subject to the consent of the insurance company and shall cooperate in undertaking to secure such consent. The Seller agrees that the representations made under Section 4.17 shall apply and be true with respect to each Seller Plan to the same extent that such representations would have applied and been true if such Seller Plan had been a Company Benefit Plan.

Section 1.11. **Payment of Purchase Price**. Section 8.3(a) of the Purchase Agreement is hereby amended in its entirety so that it is deleted and replaced with the following:

(a) the portion of the Purchase Price to be paid by the Purchaser at Closing pursuant to Section 3.3(a).

Section 1.12. **Minimum Cash Reserve**. Article XI of the Purchase Agreement is hereby amended to insert the following provision as Section 11.17 of the Purchase Agreement.

Section 11.17 Minimum Cash Reserve. From and after the Closing, the Seller will maintain no less than $6,500,000.00 in cash (i) that is not subject to any liens, claims or other

encumbrances (ii) in bank accounts located in the United States until the occurrence of the Escrow Breakage Trigger.

Section 1.13. **Cooperation with respect to the Hopper Claim**. Article XI of the Purchase Agreement is hereby amended to insert the following provision as Section 11.18 of the Purchase Agreement:

Section 11.18 Cooperation with Respect to the Hopper Claim. The Seller and the Purchaser shall, and the Purchaser shall cause the Company and the Subsidiaries to, use reasonable good faith efforts to cooperate with each other in defending the Hopper Claims and the Lis Pendens, except that none of the Purchaser, the Company or the Subsidiaries shall be required to participate in any claims to seek any affirmative relief.

Section 1.14. **Release**.

(a) The Seller and the Guarantor hereby release the Company, the Subsidiaries and the Purchaser Indemnified Parties (the "Released Parties") from any and all claims, liabilities, obligations, damages, losses, costs, and expenses of any and every character (whether known or unknown, liquidated or unliquidated, absolute or contingent, acknowledged or disputed, direct or indirect), at law or in equity, of whatsoever kind or nature, whether heretofore or hereafter accruing, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties prior to and including March 31, 2010 that in any way directly or indirectly arise out of or in any way are connected to (i) the Hopper Claim or the Lis Pendens and (ii) the preparation and negotiation of this Amendment (collectively, the "Released Claims").

(b) The Seller and the Guarantor hereby agree not to commence, join in, prosecute, or participate in any suit, claim, action or other proceeding in a position that is (i) adverse to any of the Released Parties and (ii) related to or arising out of the Released Claims.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed, as of the date first above written.

FALCON GAS STORAGE COMPANY, INC.

By: _____
Brian McCabe
Director

ALINDA NATURAL GAS STORAGE I, L.P.

By: _____
Name: _____
Title: _____

ALINDA NATURAL GAS STORAGE II, L.P.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed, as of the date first above written.

FALCON GAS STORAGE COMPANY, INC.

By: _____
Name: _____
Title: _____

ALINDA NATURAL GAS STORAGE I, L.P.

By: Alinda Gas Storage I GP, LLC, its general partner
By: Alinda Capital Partners LLC, its sole member

By: _____
Name: Christopher W. Beale
Title: Managing Member

ALINDA NATURAL GAS STORAGE II, L.P.

By: Alinda Gas Storage II GP, LLC, its general partner
By: Alinda Capital Partners LLC, its sole member

By: _____
Name: Christopher W. Beale
Title: Managing Member

Solely for purposes of Section 1.13 of this Amendment:

ARCAPITA BANK, B.S.C.(c)

By: _____
Name: HENRY THOMPSON
Title: EXECUTIVE DIRECTOR

EXHIBIT 3

Escrow Agreement

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of April 1, 2010 (this "Agreement"), is made and entered into by and among Alinda Natural Gas Storage I, L.P., a Delaware limited partnership, and Alinda Natural Gas Storage II, L.P., a Delaware limited partnership (collectively, the "Purchaser"), Falcon Gas Storage Company, Inc., a Delaware corporation (the "Seller"), and HSBC Bank USA, National Association, a national banking association organized and existing under the laws of the United States, as escrow agent (the "Escrow Agent"). Capitalized terms used in this Agreement but not otherwise defined have the meanings ascribed to such terms in the Purchase Agreement (as defined below).

WHEREAS, pursuant to that certain Purchase Agreement, dated as of March 15, 2010, as amended on April 1, 2010, by and among the Purchaser and the Seller (as amended, the "Purchase Agreement"), the Purchaser will purchase, and the Seller will sell, all of the issued and outstanding interests in NorTex Gas Storage Company, LLC, a Delaware limited liability company (the "Company"); and

WHEREAS, the Purchaser has agreed to deposit funds with the Escrow Agent, which funds will be distributed in accordance with this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the parties, intending to be legally bound, hereby agree as set forth above and as follows:

Section 1. Establishment of Escrow Account. This Agreement shall establish and maintain on behalf of the Purchaser and the Seller a non-interest bearing trust account (the "Escrow Account") to which there shall be immediately credited and held the amounts received by the Escrow Agent from the Purchaser in accordance with Section 2 of this Agreement. The funds credited to the Escrow Account shall be applied and disbursed only as provided in this Agreement. The Escrow Agent shall, to the extent required by law, segregate the funds credited to the Escrow Account from its other funds held as an agent or in trust.

Section 2. Deposits to the Escrow Account; Investment; Statements.

(a) In accordance with Section 3.3(b) of the Purchase Agreement, the Purchaser shall deposit with the Escrow Agent by wire transfer of immediately available funds Seventy Million Dollars (US$70,000,000) (such amount as may be reduced by any disbursements made pursuant to this Agreement, the "Escrow Fund") to the following account (or to such other account as the Escrow Agent shall notify the Purchaser and the Seller in writing):

HSBC Bank USA, National Association
452 Fifth Avenue
New York, NY
ABA # 021001088

Acct Name: Corporate Trust Administration Account
Account No.: 002-60016-1
Ref: 10-881562

(b) The Escrow Agent shall confirm in writing to the Purchaser and the Seller the deposit received by it pursuant to this Section 2 and the amount of such cash deposit.

(c) The Escrow Agent shall invest and reinvest the Escrow Fund in accordance with the Investment Direction Letter dated as of the date of this Agreement (as the same may be updated or amended by the joint written instructions of the Seller and the Purchaser from time to time), signed by the Seller and HSBC Bank USA, National Association, the form of which is attached as Exhibit A (the "Investment Direction Letter"). Each of the investments made by the Escrow Agent pursuant to the Investment Direction Letter and this Section 2(c) shall be made in the name of the Seller. None of the Escrow Agent, the Purchaser, or the Seller shall be liable to any other party hereto for any losses resulting from the sale or depreciation in the market value of any such investments, other than as a result of Escrow Agent's gross negligence or willful misconduct.

(d) Any investment income earned on the Escrow Fund shall be collected and reinvested by the Escrow Agent and shall constitute part of the Escrow Fund.

(e) The Escrow Fund (and any investment income earned thereon) will not be available to set off any obligations that the Purchaser or the Seller owe to the Escrow Agent in any capacity, except as expressly provided in this Agreement.

(f) The Escrow Agent shall provide the Seller and the Purchaser with a quarterly statement of the amounts in the Escrow Account and investment income thereon in accordance with the notice provisions set forth in Section 9 of this Agreement.

Section 3. Distributions from the Escrow Account. The Escrow Fund (and any investment income earned thereon) shall be withdrawn by the Escrow Agent and transferred only in accordance with Section 3.7 of the Purchase Agreement.

Section 4. Termination of Escrow Account and Escrow Agreement. The Escrow Account and this Agreement shall terminate upon the earlier to occur of (a) the written agreement of the Purchaser and the Seller or (b) the disbursement of all amounts in the Escrow Account pursuant to the terms of this Agreement. The Purchaser and the Seller may agree in writing that, in connection with the termination of this Agreement, the full amount of the Escrow Fund (including any investment income earned thereon) shall be distributed to the Seller.

Section 5. Escrow Agent.

(a) The Purchaser and the Seller agree to pay, promptly upon request therefore, the Escrow Agent for its services as the Escrow Agent hereunder in accordance with Schedule A attached hereto, and to reimburse the Escrow Agent for all expenses of, or disbursements incurred by, the Escrow Agent in the performance of its duties hereunder,

including the reasonable fees, expenses and disbursements of counsel to the Escrow Agent. All of the compensation and reimbursement obligations set forth in this Section 5(a) shall be payable fifty percent (50%) by the Purchaser and fifty percent (50%) by the Seller upon demand by the Escrow Agent. The obligations of the Purchaser and the Seller under this Section 5(a) shall survive any termination of this Agreement and the resignation or removal of the Escrow Agent. If payment by the Purchaser or the Seller is not received by the Escrow Agent sixty (60) days from the date of the Escrow Agent's invoice, the Escrow Agent is authorized to, and may, disburse to itself from the Escrow Fund, from time to time, the amount of any compensation and reimbursement of out-of-pocket expenses due and payable hereunder; provided, that, if any amounts otherwise payable by the Purchaser or the Seller to the Escrow Agent are disbursed to the Escrow Agent from the Escrow Fund, the Purchaser or the Seller, as applicable, shall promptly redeposit such amounts into the Escrow Fund. If any such amounts are unpaid and outstanding by the Seller when a distribution of any portion of the Escrow Fund to the Seller in accordance with Section 3 of this Agreement is made by the Escrow Agent, the Escrow Agent shall withhold such amount from the distribution due to Seller. The Escrow Agent shall notify the Purchaser and the Seller of any disbursement from the Escrow Fund to itself in respect of any compensation or reimbursement hereunder and shall furnish to the Purchaser and the Seller copies of all related invoices and other statements.

(b) The Escrow Agent shall have a lien upon the Escrow Account for any costs, expenses and fees that may arise hereunder and may retain that portion of the Escrow Account equal to such unpaid amounts until all such costs, expenses and fees have been paid.

(c) The agreements set forth in this Section 5 shall survive the resignation or removal of the Escrow Agent, the termination of this Agreement and the payment of all amounts hereunder.

Section 6. Rights, Duties and Immunities of the Escrow Agent. Acceptance by the Escrow Agent of its duties under this Agreement is subject to the following terms and conditions, which all parties hereto hereby agree shall govern and control the rights, duties and immunities of the Escrow Agent:

(a) The duties and obligations of the Escrow Agent shall be determined solely by the express provisions of this Agreement, and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set out in this Agreement. The Escrow Agent shall not be required to inquire as to the performance or observation of any obligation, term or condition of any agreement or arrangement by the Purchaser or the Seller. The Escrow Agent is not a party to, and is not bound by, any agreement or other document out of which this Agreement may arise, including but not limited to the Purchase Agreement. The Escrow Agent shall be under no liability to any party hereto by reason of any failure on the part of any party or any maker, guarantor, endorser or other signatory of any document or any other person to perform such Person's obligations under any such document. The Escrow Agent shall not be bound by any waiver, modification, termination or rescission of this Agreement or any of the terms hereof, unless evidenced by a writing delivered to the Escrow Agent signed by the proper party or parties and, if the duties or rights of the Escrow Agent are affected, unless the Escrow Agent has given its prior written consent thereto. This Agreement shall not be deemed to

create a fiduciary relationship between the parties hereto under state or federal law.

(b) The Escrow Agent shall not be responsible in any manner for the validity or sufficiency of this Agreement or of any property delivered hereunder, or for the value or collectibility of any note, check or other instrument, if any, so delivered, or for any representations made or obligations assumed by any party other than the Escrow Agent. Nothing herein contained shall be deemed to obligate the Escrow Agent to deliver any cash, instruments, documents or any other property referred to herein, unless the same shall have first been received by the Escrow Agent pursuant to this Agreement.

(c) The Purchaser and the Seller jointly and severally agree to reimburse and indemnify the Escrow Agent for, and hold it harmless against, any loss, liability, damage or expense, including but not limited to legal counsel fees, incurred without gross negligence or willful misconduct on the part of the Escrow Agent, arising out of or in conjunction with its acceptance of, or the performance of its duties and obligations under, this Agreement, as well as the costs and expenses of defending against any claim or liability arising out of or relating to this Agreement.

(d) The Purchaser and the Seller shall deliver to the Escrow Agent a list of authorized signatories, as set forth in the attached Schedule B attached hereto, with respect to any notice, certificate, instrument, demand, request, direction, instruction, waiver, receipt, consent or other document or communication required or permitted to be furnished to the Escrow Agent hereunder, and the Escrow Agent shall be entitled to rely on such list with respect to any party hereto until a new list is furnished by such party to the Escrow Agent. The Escrow Agent shall be fully protected in acting on and relying upon any written notice direction, request, waiver, consent, receipt or other paper or document which the Escrow Agent in good faith believes to have been signed and presented by the proper party or parties.

Furthermore, in the event funds transfer instructions are given (other than in writing at the time of execution of this Agreement), whether in writing, by fax or otherwise, the Escrow Agent is authorized to seek confirmation of such instructions by telephone call-back to the person or persons designated on Schedule C attached hereto, and the Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons so designated. The persons and telephone numbers designated for such call-backs may be changed only in a writing actually received by the Escrow Agent.

(e) The Escrow Agent shall not be liable for any error of judgment, or for any act done or step taken or omitted by it in good faith or for any mistake in act or law, or for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct.

(f) The Escrow Agent may seek the advice of legal counsel in the event of any dispute or question as to the construction of any of the provisions of this Agreement or its duties hereunder, and it shall incur no liability and shall be fully protected in respect of any action taken, omitted or suffered by it in good faith in accordance with the advice or opinion of such counsel.

(g) The parties hereto agree that, should any dispute arise with respect to the payment, ownership or right of possession of the Escrow Fund, or should the Escrow Agent be unsure as to its duties or rights hereunder, the Escrow Agent is authorized and directed to retain in its possession, without liability to anyone, except for its gross negligence or willful misconduct, all or any part of the Escrow Fund until such dispute shall have been settled in accordance with this Agreement, and a notice executed jointly by the parties to the dispute or their authorized representatives shall have been delivered to the Escrow Agent setting forth the resolution of the dispute. The Escrow Agent shall be under no duty whatsoever to institute, defend or partake in such proceedings.

(h) The agreements set forth in this Section 6 shall survive the resignation or removal of the Escrow Agent, the termination of this Agreement and the payment of all amounts hereunder.

(i) The Escrow Agent shall never be required to use or advance its own funds or otherwise incur personal financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

(j) In no event shall the Escrow Agent be liable, directly or indirectly, for any special, indirect or consequential damages, even if the Escrow Agent has been advised of the possibility of such damages.

Section 7. Resignation of the Escrow Agent.

(a) The Escrow Agent shall have the right to resign upon sixty (60) days' prior written notice to the Purchaser and the Seller. In the event of such resignation, the Purchaser and the Seller shall appoint a successor escrow agent hereunder by delivering to the Escrow Agent a written notice of such appointment. Upon receipt of such notice, the Escrow Agent shall deliver to the designated successor escrow agent all money and other property held hereunder and shall thereupon be released and discharged from any and all further responsibilities whatsoever under this Agreement; provided, that the Escrow Agent shall not be deprived of its compensation earned prior to such time. If the Purchaser and the Seller cannot agree upon a successor escrow agent prior to the effective date of the Escrow Agent's resignation, the Escrow Agent may (i) deposit any funds held by it with any bank having a minimum net worth of at least One Billion Dollars (US$1,000,000,000.00) and having an office within the State of New York, (ii) petition any court of competent jurisdiction (at the expense of the Purchaser) for the appointment of a successor escrow agent or (iii) deposit any funds held by it with a court of competent jurisdiction and thereafter have no further responsibilities or duties in connection therewith.

(b) If no successor escrow agent shall have been designated by the date specified in the Escrow Agent's notice, all obligations of the Escrow Agent hereunder shall nevertheless cease and terminate. The Escrow Agent's sole responsibility thereafter shall be to keep safely all property then held by it and to deliver the same to a person jointly designated by the other parties hereto or in accordance with the direction of a final order or judgment of a court of competent jurisdiction.

Section 8. **Ownership for Tax Purposes.** The Seller agrees that, for purposes of any Tax based on income, as among the Purchaser, the Escrow Agent and the Seller, the Seller will be treated as the owner of one hundred percent (100%) of the Escrow Account and will report all income, if any, that is earned on, or derived from, the Escrow Account as Seller's income in the taxable year or years in which such income is properly includible and pay any taxes attributable thereto . Notwithstanding anything to the contrary herein provided, the Escrow Agent shall have no duty to prepare or file any Tax Return with respect to the Escrow Fund or any income earned thereon.

Section 9. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered, or if sent by United States certified mail, return receipt requested, postage prepaid, shall be deemed duly given on delivery by United States Postal Service, or if sent by facsimile or receipted overnight courier services shall be deemed duly given on the Business Day received if received prior to 5:00 p.m. local time or on the following Business Day if received after 5:00 p.m. local time or on a non-Business Day, addressed to the respective parties hereto as follows:

If to the Seller, to:

Falcon Gas Storage Company, Inc.
5847 San Felipe, Suite 3050
Houston, Texas 77057
Attention: General Counsel
Facsimile: (713) 961-2676
Telephone: (713) 623-5904

with required simultaneous copy transmitted in like manner to:

Arcapita Inc.
Four Seasons Tower
24th Floor
75 Fourteenth Street
Atlanta, GA 30309
Attn: Brian R. McCabe
Facsimile: (404) 920-9011
Telephone: (404) 920-9008

and

King & Spalding
32nd Floor
1180 Peachtree Street
Atlanta, GA 30309
Attn: Raymond E. Baltz, Jr.

Facsimile: (404) 572-5100
Telephone: (404) 572-4600

If to the Purchaser, to:

c/o Alinda Capital Partners LLC
150 East 58th Street
39th Floor
New York, NY 10155
Attention: Sanjay Khettry
Facsimile: (212) 656-1294
Telephone: (212) 838-6400

with required simultaneous copy transmitted in like manner to:

c/o Alinda Capital Partners LLC
150 East 58th Street
39th Floor
New York, NY 10155
Attention: General Counsel
Facsimile: (212) 214-6078
Telephone: (212) 838-6400

If to the Escrow Agent, to:

HSBC Bank USA, National Association
452 Fifth Avenue
New York, New York 10018
Attention: Corporate Trust & Loan Agency
Facsimile: (212) 525-1300
Telephone: (212) 525-1316

or to such other representative or at such other address as such party may furnish to the other parties in writing.

Section 10. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, successors and assigns.

Section 11. Amendments. This Agreement may not be amended, modified or supplemented except by written agreement of the Seller and the Purchaser; provided, however, that if such amendments, modifications or supplements in any way amend the rights and obligations of the Escrow Agent hereunder, the written agreement of the Escrow Agent will also be required for any such amendment, modification or supplement.

Section 12. Governing Law. This Agreement (including any claim or controversy arising out of or relating to this Agreement) shall be governed by and construed and enforced in accordance with the internal laws of the State of New York applicable to contracts to be

performed entirely within the State of New York without reference to New York conflict of law principles (other than Section 5-1401 of the General Obligations Law).

Section 13. Interpretation. The headings of the sections contained in this Agreement are solely for convenience or reference and shall not affect the meaning or interpretation of this Agreement.

Section 14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 15. Consent to Jurisdiction. Each of the parties hereto hereby irrevocably agrees that any action, suit or proceedings against any of them by any of the other aforementioned parties with respect to this Agreement shall be brought before the exclusive jurisdiction of the federal courts located in the Borough of Manhattan in the State of New York, unless all the parties hereto agree in writing to any other jurisdiction. Each of the parties hereto hereby submits to such exclusive jurisdiction.

Section 16. Severability. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Law, each party hereto hereby waives any provision of Law that renders any such provision prohibited or unenforceable in any respect.

Section 17. Schedules and Exhibits. The Schedules and Exhibits are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full herein.

Section 18. Entire Agreement. This Agreement and the Purchase Agreement, as applicable hereunder, constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all negotiations, agreements and understandings of the parties hereto with respect to such subject matter.

Section 19. Limitation on Liability. The Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control. such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes, terrorist attacks or other disasters.

Section 20. Third Parties. Nothing in this Agreement shall confer any rights upon any person or entity other than the parties hereto and the Seller, and its successors, permitted assigns, heirs, executors, personal representatives, administrators and legal representatives.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and the year first above written.

ALINDA NATURAL GAS STORAGE I, L.P.

By: Alinda Gas Storage I GP, LLC, its general partner

By: Alinda Capital Partners LLC, its sole member

By: _____

Name: CHRISTOPHER W. BEALE

Title: MANAGING PARTNER

ALINDA NATURAL GAS STORAGE II, L.P.

By: Alinda Gas Storage II GP, LLC, its general partner

By: Alinda Capital Partners LLC, its sole member

By: _____

Name: CHRISTOPHER W. BEALE

Title: MANAGING PARTNER

FALCON GAS STORAGE COMPANY, INC.

By: _____

Name: _____

Title: _____

HSBC BANK USA, NATIONAL ASSOCIATION

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and the year first above written.

ALINDA NATURAL GAS STORAGE I, L.P.

By: _____
Name: _____
Title: _____

ALINDA NATURAL GAS STORAGE II, L.P.

By: _____
Name: _____
Title: _____

FALCON GAS STORAGE COMPANY, INC.

By: _____
Brian McCabe
Director

HSBC BANK USA, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

[K&S DRAFT 03/31/10]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and the year first above written.

ALINDA NATURAL GAS STORAGE I, L.P.

By: _____

Name: _____

Title: _____

ALINDA NATURAL GAS STORAGE II, L.P.

By: _____

Name: _____

Title: _____

FALCON GAS STORAGE COMPANY, INC.

By: _____

Name: _____

Title: _____

HSBC BANK USA, NATIONAL ASSOCIATION

By: _____

Name: FRANK J. GODINO

Title: Vice President

[Signature Page to Escrow Agreement]

EXHIBIT A

Investment Direction Letter

See attached.

SCHEDULE A

Fee Schedule

SCHEDULE B

Authorized Signatories

The Escrow Agent is authorized to accept instructions signed or believed by the Escrow Agent to be signed by the following on behalf of the Purchaser.

Christopher Beale — True Signature

Sanjay Khettry — True Signature

The Escrow Agent is authorized to accept instructions signed or believed by the Escrow Agent to be signed by the following on behalf of the Seller.

_____ — True Signature

_____ — True Signature

SCHEDULE B

Authorized Signatories

The Escrow Agent is authorized to accept instructions signed or believed by the Escrow Agent to be signed by the following on behalf of the Purchaser.

	True Signature
	True Signature

The Escrow Agent is authorized to accept instructions signed or believed by the Escrow Agent to be signed by the following on behalf of the Seller.

BRIAN P McCABE	True Signature
	True Signature

SCHEDULE C

HSBC 452 Fifth Avenue, New York, New York, 10018

Payment Order Authorization Form

Account Name: _____

_____

Account Number(s): _____

_____

By signing this form, the Purchaser authorizes the Authorized Contacts listed below to issue, amend and cancel payment orders on its behalf.

By: _____
(Signature of an Authorized Officer of the Purchaser)

Christopher Beale
(Print Name)

Title: MANAGING MEMBER OF GP OF PURCHASER Date: _____

Authorized Contacts

Name	Signature	Phone Number

By signing this form, the Seller authorizes the Authorized Contacts listed below to issue, amend and cancel payment orders on its behalf.

By: _____
(Signature of an Authorized Officer of the Seller)

_____
(Print Name)

Title: _____ Date: _____

Authorized Contacts

Name	Signature	Phone Number
BRIAN R MCCABE		(404) 920-9008

HSBC Bank USA, National Association

By signing this form, the Seller authorizes the Authorized Contacts listed below to issue, amend and cancel payment orders on its behalf.

By: _____
(Signature of an Authorized Officer of the Seller)

_____
(Print Name)

Title: _____ Date: _____

Authorized Contacts

Name	Signature	Phone Number
QAISAR M ZAMAN		+44 2078245616

HSBC Bank USA, National Association

EXHIBIT 4

Opinion Issued in the District Court Action

2 of 2 DOCUMENTS

TIDE NATURAL GAS STORAGE I, L.P. and TIDE NATURAL GAS STORAGE II, L.P., Plaintiffs/Counterclaim Defendants, -against- FALCON GAS STORAGE COMPANY, INC.;, Defendant/Counterclaim and Crossclaim Plaintiff, ARCAPITA BANK B.S.C.; and ARCAPITA, INC.; Defendants, and HSBC BANK USA, NATIONAL ASSOCIATION, Defendant/Crossclaim Defendant.

10 Civ. 5821

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2011 U.S. Dist. LEXIS 111532

September 28, 2011, Decided
September 29, 2011, Filed

SUBSEQUENT HISTORY: Reconsideration denied by *Tide Natural Gas Storage v. Falcon Gas Storage Co., 2012 U.S. Dist. LEXIS 63540 (S.D.N.Y., May 4, 2012)*

COUNSEL: [*1] For For Tide Natural Gas Storage I, LP, Plaintiff: Douglas A. Daniels, Linda R. Rovira, Stephen B. Crain, PRO HAC VICE, Bracewell & Giuliani, L.L.P., Houston, TX; Jeffrey Ian Wasserman, Marvin Robert Lange, Bracewell & Giuliani, L.L.P., New York, NY.

For Tide Natural Gas Storage II, LP, Plaintiff: Linda R. Rovira, PRO HAC VICE, Douglas A. Daniels, Bracewell & Giuliani, L.L.P., Houston, TX; Jeffrey Ian Wasserman, Marvin Robert Lange, Bracewell & Giuliani, L.L.P., New York, NY.

For Falcon Gas Storage Company, Inc., Arcapita Bank B.S.C., Arcapita, Inc., Defendants, Cross Claimants, Counter Claimants: C Brannon Robertson, PRO HAC VICE, King & Spalding LLP (TX), Houston, TX; Richard T. Marooney, Jr, King & Spalding LLP (NYC), New York, NY.

For HSBC Bank USA, National Association, Defendant, Cross Defendant: Pieter H.B. Van Tol, III, LEAD ATTORNEY, Hogan Lovells US LLP (nyc), New York, NY.

For Tide Natural Gas Storage I, LP, Tide Natural Gas Storage II, LP, Counter Defendants: Douglas A. Daniels, PRO HAC VICE, Jeffrey Ian Wasserman, Marvin Robert Lange, Bracewell & Giuliani, L.L.P., Houston, TX.

JUDGES: KIMBA M. WOOD, United States District Judge.

OPINION BY: KIMBA M. WOOD

OPINION

Opinion & Order

KIMBA M. WOOD, U.S.D.J.:

Plaintiffs/Counterclaim [*2] Defendants Tide Natural Gas Storage I, L.P. and Tide Natural Gas Storage II, L.P. (collectively, "Tide") bring this action against Defendant/Counterclaim/Crossclaim Plaintiff Falcon Gas Storage Company, Inc. ("Falcon") and Defendants Arcapita Bank, B.S.C.(c) and Arcapita, Inc. (together, "Arcapita"). Tide's claims--which sound in common law fraud, securities fraud, breach of warranty, and breach of contract--arise out of Tide's purchase of Falcon's interest in the NorTex Gas Storage Company, LLC ("NorTex").

Four motions are now before the Court. First, Falcon and Arcapita (collectively "Defendants") move for judgment on the pleadings dismissing Tide's Complaint, pursuant to *Federal Rule of Civil Procedure Rule 12(c).*

The remaining three motions relate to funds that are currently being held in escrow pursuant to the purchase agreements for NorTex. Tide, in the Fifth Cause of Ac-

tion of its Complaint, seeks a permanent injunction restraining the disbursement of the escrowed funds. Falcon and Arcapita move for partial summary judgment dismissing Tide's claim for a permanent injunction. Falcon has also filed a Counterclaim and Crossclaim, the First Cause of Action of which seeks a judgment [*3] declaring that Defendant HSBC Bank USA, National Association ("HSBC") must disburse the escrowed funds to Falcon. Falcon moves for partial summary judgment on this request for declaratory relief. Finally, Tide cross-moves for an order of attachment against the debts and property of Falcon and Arcapita, in the event that the escrowed funds are released.

For the reasons stated below, the Court (a) DENIES Falcon's and Arcapita's motion for judgment on the pleadings; (b) DENIES Falcon's and Arcapita's motion for partial summary judgment dismissing the Fifth Cause of Action of Tide's Complaint; (c) DENIES Falcon's motion for partial summary judgment on the First Cause of Action of its Counterclaim and Crossclaim; and (d) DENIES Tide's cross-motion for an order of attachment.

BACKGROUND

I. The Underlying Dispute[1]

> 1 Unless otherwise noted, the following facts are undisputed and are taken from the parties' *Local Rule 56.1* statements, affidavits, and other submissions. The Court construes all evidence in a light most favorable to the non-moving party, and draws all inferences in the non-moving party's favor. See, e.g., *Sledge v. Kooi, 564 F.3d 105, 108 (2d Cir. 2009).*

A. Tide's Purchase of NorTex

On [*4] March 15, 2010, Tide and Falcon entered into a Purchase Agreement in which Tide agreed to purchase Falcon's 100 percent interest in NorTex, an operator of two natural gas storage reservoirs in Texas for $515 million. (Compl. ¶¶ 12-13.) On March 29, 2010--two days before the NorTex acquisition was scheduled to close--a group of Falcon's minority shareholders filed lawsuits in Texas courts (collectively, the "Hopper Litigation") in an effort to stop the deal from closing. (Plaintiff's Response to Defendants' Statement of Undisputed and Material Facts Pursuant to *Rule 56.1* ("Pl.'s 56.1 Resp.") ¶ 15.) The Hopper Litigation plaintiffs also filed notices of *lis pendens* in Jack and Eastland Counties, in which the NorTex facilities (the "Facilities") are located. (Id. ¶ 18.)

In order to ensure that the NorTex deal would close despite the Hopper Litigation, the parties to the instant action entered into an amended Purchase Agreement ("Amended Agreement") and an Escrow Agreement (collectively, the "Agreements"). The parties designed the Escrow Agreement to protect Tide from any expenses or liability that might be incurred in connection with the Hopper Litigation. (Id. ¶¶ 24, 36.) The Escrow Agreement [*5] provided that $70 million of the purchase price (the "Escrowed Amount") would be placed into escrow with HSBC. (Id.)

Disbursement of the Escrowed Amount is governed by Section 3.7(a) of the Amended Agreement. That provision states that Tide and Falcon "shall deliver to [HSBC] joint instructions to disburse the balance of the Escrowed Amount" upon the occurrence of either one of the following "Escrow Breakage Triggers":

> (i) a final non-appealable order of each court of competent jurisdiction with respect to the Hopper Claim or
>
> (ii) (A) an agreed dismissal with prejudice of the Hopper Claim . . . ,
>
> (B) a complete release by all of the Participants under the Hopper Claim . . . , and
>
> (C) the final non-appealable release or expungement of the Lis Pendens . . . .

(Anderson Decl., Ex. B § 3.7(a).) With the foregoing agreements in place, and with the Escrowed Amount deposited at HSBC, the NorTex transaction closed on April 1, 2010. (Pl.'s 56.1 Resp. ¶ 35.)

On July 27, 2010, Falcon and the Hopper Litigation plaintiffs entered into a written settlement agreement. (Id. ¶ 39.) The actions were dismissed with prejudice when the Hopper Litigation plaintiffs filed nonsuits in each of the courts in which [*6] their actions were pending, and the court in Eastland County entered orders expunging the notices of *lis pendens*. (Id. ¶¶ 40, 42.)

On August 2, 2010, Tide filed this lawsuit against Falcon and Arcapita. (Dkt. No. 1.)

II. Procedural History

Tide's Complaint contains five claims for relief based on misstatements allegedly made by Falcon and Arcapita in connection with the sale of NorTex. (Compl. ¶¶ 10-11.) Tide states that Falcon made specific representations regarding the quantities and value of "pad gas"[2] contained in the storage facilities, the operating costs associated with the consumption of fuel in the facilities' operation, and the source of hydrocarbons extracted during the operation of NorTex's natural gas liquid extraction plants. (Id. at ¶ 14.) Tide states that, after

closing on the purchase of NorTex, it conducted engineering analyses that revealed a shortfall of billions of cubic feet of NorTex's pad gas. (Id. at ¶ 25.) Tide says that it also discovered that Falcon had neither recorded nor accounted for the fuel used to compress the gas for storage and that the consumption of fuel in that compression process had further depleted the quantities of gas within the facilities. [*7] (Id. at ¶ 27.) Finally, Tide states that it also learned that Falcon did not calculate or account for "shrinkage" in gas quantities resulting from the extraction of natural gas liquids from the storage facilities. (Id. at ¶ 30.) Tide estimates the combined economic impact of the gas shortfalls and omitted operating expenses at more than $70 million. (Id. at ¶¶ 37-39.)

2 Pad gas is the base amount of gas necessary to maintain storage field pressure and deliverability of the gas customers have stored in the facility.

Tide brings five claims for relief based on these misstatements. First, Tide alleges that Falcon and Arcapita fraudulently misrepresented material facts about the value of NorTex on which Tide relied in its decision to purchase the facility. Second, Tide alleges that Falcon breached express warranties that Falcon made in the Amended Agreement for NorTex. Third, Tide brings a breach of contract claim, on the ground that Falcon failed to deliver all of the assets represented in the Amended Agreement. Fourth, Tide claims that Falcon's misrepresentations violated *section 10* and *Rule 10b-5* of the Securities Exchange Act of 1934. Finally, Tide seeks a permanent injunction restraining [*8] HSBC from disbursing any funds from the Escrow Account, except pursuant to Section 3.7 of the Purchase Agreement.

Defendants Falcon and Arcapita answered Tide's Complaint, and Defendant Falcon filed a Counterclaim and Crossclaim (1) seeking a declaratory judgment ordering the disbursement of the funds in the Escrow Account and (2) alleging breach of contract by Tide. (See Defs.' Ans. & Countercl., Dkt. No. 6.) Tide asserted various affirmative defenses to Falcon's counterclaims, including that: (1) "Falcon's claims fail because [Falcon] is not entitled to enforce the provisions of agreements procured by fraud"; (2) "Falcon's claims fail because the fraud in the underlying transaction supersedes the obligations set forth in the Escrow and Purchase Agreements"; and (3) "Falcon's claims are barred because Tide is entitled to rescission of the Purchase Agreement." (See Pl.'s Ans. to Defs.' Countercl., Dkt. No. 29, ¶¶ 46, 48, 52.)

DISCUSSION

I. Defendants' Motion for Judgment on the Pleadings

A. Overview

Defendants move, pursuant to *Rule 12(c)*, for judgment on the pleadings dismissing Claims I through IV of Tide's Complaint. Defendants offer four main grounds on which they argue that the claims [*9] should be dismissed. First, Defendants note that, in the Amended Agreement, Tide expressly disclaims reliance on any representations or warranties outside of Section IV of the Amended Agreement. Defendants argue that Claims I through IV of the Complaint are not actionable because they are based on alleged misrepresentations that were not included in Article IV. Second, Defendants note that because the Amended Agreement limits Tide's remedies to actions for breach of the indemnity provisions, Tide's common law fraud claim should be dismissed. Third, Defendants contend that Tide failed to plead its federal securities fraud claims with the particularity required under applicable law. Finally, Defendants argue that Tide failed to support its common law fraud and securities fraud claims with adequate allegations of scienter.

B. *Rule 12(c)* Standard

In deciding a *Rule 12(c)* motion, courts "apply the same standard as that applicable to a motion under *Rule 12(b)(6)*." *Hayden v. Paterson, 594 F.3d 150, 160 (2d Cir. 2010)*. In order to survive a motion for judgment on the pleadings, a plaintiff must have pleaded sufficient factual allegations "to [*10] state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)*; *Desiano v. Warner-Lambert & Co., 467 F.3d 85, 89 (2d Cir. 2006)*. A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal, 556U.S.662 , 129 S.Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009)*. The Court must accept as true all well-pleaded factual allegations in the complaint, and "draw[ ] all inferences in the plaintiff's favor." *Allaire Corp. v. Okumus, 433 F.3d 248, 249-50 (2d Cir. 2006)* (quotations omitted).

In considering a motion to dismiss, a court may consider "any written instrument attached to [the complaint] as an exhibit or any statements or documents incorporated in it by reference." *Cortec Indus., Inc. v. Sum Holding L.P., 949 F.2d 42, 47 (2d Cir. 1991)*. In addition, a court may consider a particular document, which is integral to the claims at issue, of which the plaintiff has notice. *Yak v. Bank Brussels Lambert, 252 F.3d 127, 130-31 (2d Cir. 2001)*.

C. Discussion

1. Sections 4.26 and 5.5 Do Not Bar The Claims Asserted Here

Defendants first argue [*11] that Claims I through IV of Tide's Complaint must be dismissed because, in Sections 4.26 and 5.5 of the Amended Agreement, Tide disclaims reliance on any representations except those set forth in Article IV of the Amended Agreement. (Defs.' Mem. of Law in Support of Their Mot. for Judgment on the Pleadings ("Defs.' Mem.") at 10-14.) Section 4.26 of the Amended Agreement ("Section 4.26"), entitled "Disclaimer of Additional Representations and Warranties," provides, in pertinent part, that Falcon

> shall not be deemed to have made to [Tide] any representation or warranty other than as expressly made in this Article IV or the schedules accompanying Article IV. Except as expressly set forth in this Article IV, [Falcon] disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated or furnished . . . to [Tide] . . . .

(Declaration of Richard T. Marooney dated October 27, 2010 ("Marooney Decl.") Ex. 2 § 4.26 (emphasis added) (capitalization omitted).)[3] Section 5.5 of the Amended Agreement ("Section 5.5"), entitled "Reliance," provides that Tide "has not relied on, nor is it relying on any statement, representation [*12] or warranty, either express or implied, concerning [NorTex], . . . other than those expressly made in Article IV or the Schedules accompanying Article IV." (Id. § 5.5 (emphasis added).)

> 3 The Court considers the Amended Agreement and the Financial Statements referenced in Article IV of the Amended Agreement because they are integral to the Complaint and incorporated in it by reference, and they were documents that Tide had in its possession and upon which it relied in bringing suit. *Cortec Indus., 949 F.2d at 47*.

Tide, however, specifically alleges in its Complaint that it relied on two representations made by Defendants in Article IV. Tide states that it relied on representations in Section 4.9 of the Amended Agreement ("Section 4.9") regarding the accuracy of the Financial Statements Falcon provided in order to ascertain the value of the pad gas in the storage reservoirs and the cost of fuel used to operate the facilities. (Compl. ¶¶ 15, 20-21, 51-52.) Tide also states that it relied on representations in Section 4.11 of the Amended Agreement ("Section 4.11") that there had not been any disposition of material NorTex assets between March 31, 2009 and the closing. In its complaint, Tide [*13] alleges that both of those Article IV representations were false. (Compl. ¶¶ 15, 20-21, 51-52.)

a. Alleged Misrepresentation in Section 4.9

In pertinent part, Section 4.9 states:

> [e]ach balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material respects the consolidated financial position of [NorTex] and its Subsidiaries as of the date of each such balance sheet. . . .

(Marooney Decl. Ex. 2 § 4.9 (emphasis added).)[4]

> 4 "Financial Statements" is defined to include: (1) "the audited consolidated balance sheet of [NorTex] and its Subsidiaries as of March 31, 2009, the audited consolidated statements of income, members' equity and cash flows of [NorTex] and its Subsidiaries for the twelve (12)-month period then ended"; and (2) "the unaudited consolidated balance sheet of [NorTex] and its Subsidiaries as of December 31, 2009, the unaudited consolidated statements of income, members' equity and cash flows of [NorTex] and its Subsidiaries for the nine (9)-month period then ended." (Id. § 1.1.)

Tide alleges that Section 4.9 contains misrepresentations because, contrary to its terms, the [*14] Financial Statements (and related notes and schedules) do not "fairly present[ ] in all material respects the consolidated financial position of [NorTex] and its Subsidiaries . . . ." (Id. § 4.9.) Tide contends that at least two specific components of the Financial Statements render that representation false.

First, "Note A" to the Financial Statements as of March 31, 2009 states that NorTex "includes recoverable pad gas (cushion gas) as a component of [the] property and equipment [table in the financial statement] at historical cost." (Declaration of Sean Dolan dated September 9, 2010 ("Dolan Decl.") Ex. A at 7; Marooney Decl. Ex. 3 at 7.) Tide states that, immediately after closing on the purchase of NorTex, it discovered a shortfall in the quantities of pad and customer gas and that the Financial Statements therefore did not fairly present in all material respects NorTex's consolidated financial position. (Compl. ¶ 25.)

Second, the Financial Statements include "Facility operating expenses" as a component of "Operating Expenses." (Dolan Decl. Ex. A at 4; Marooney Decl. Ex. 3 at 4.) Tide states that Falcon failed to properly account for and record the fuel used to compress gas in the [*15] storage facilities and also omitted material information from the operating expenses listed on the balance sheet. (Compl. ¶ 27.)

Tide's allegations regarding misrepresentations in Section 4.9 are sufficient to state a plausible claim to relief that is not precluded by the terms of Sections 4.26 or 5.5 of the Amended Agreement.

b. Alleged Misrepresentation in Section 4.11

In pertinent part, Section 4.11 states that neither NorTex nor its subsidiaries experienced a "Material Adverse Effect,"[5] or a "disposition of any material assets" since March 31, 2009. (Dolan Decl. Ex. A § 4.11; Marooney Decl. Ex. 2 § 4.11)

> 5 "Material Adverse Effect" is defined as "any state of facts" that "is, or would [be] reasonably likely to be . . . materially adverse to the condition (financial or otherwise), business, results of operations, properties, assets or liabilities of [NorTex] and its Subsidiaries taken as a whole . . ." (Amended Agreement § 1.1.)

Tide contends that, contrary to the representation made in Section 4.11, NorTex experienced a change in material assets that adversely affected its financial condition during the relevant time period. (Compl. ¶¶ 32-36.) Defendants reply that Tide has failed [*16] to allege "any facts showing what the alleged 'Material Adverse Effect' actually is or how [Tide's] allegations fit within the definition of that term . . . ." (Defs.' Mem. at 13.)

Tide alleges particular facts giving rise to its claim. First, Tide alleges that, in early 2009, NorTex management communicated to Arcapita that the storage facilities were experiencing deliverability issues because of gas shortfalls. (Compl. ¶ 33.) Second, Tide alleges that, in October 2009, Falcon and Arcapita received an engineering report stating that either the gas inventory levels contained in the regulatory filings were inaccurate or that one of the storage facilities was losing gas. (Compl. ¶ 34.) Third, Tide alleges that, in late 2009 and early 2010, Falcon became aware that NorTex encountered further deliverability problems because of the shortfalls in pad gas. (Compl. ¶ 35.)

Defendants further contend that there exists no "benchmark" by which to establish whether the alleged shortfall in pad gas constitutes a "Material Adverse Effect," because the Purchase Agreement contains no representation regarding the amount or value of pad gas present in the Facilities. As previously discussed, the Amended [*17] Agreement defines "Material Adverse Effect" to include "any state of facts . . . that . . . is, or would [be] reasonably likely to be . . . adverse to the condition (financial or otherwise) . . . of [NorTex] . . . ." (Marooney Decl. Ex. 2 § 1.1 (emphasis added).) The facts alleged by Tide would constitute a state of facts likely to adversely affect the condition of NorTex. The Amended Agreement nowhere requires the satisfaction of any additional benchmarks.

Tide's allegations regarding misrepresentations in Section 4.11 are sufficient to state a plausible claim to relief that is not precluded by the terms of Sections 4.26 or 5.5 of the Amended Agreement.

2. Tide's Common Law Fraud Claim Is Not Barred By Section 10.7

Defendants contend that Section 10.7 of the Amended Agreement ("Section 10.7") bars Tide's common law fraud claim. Section 10.7, entitled "Exclusive Remedy," states that the contractual indemnification provisions of the Amended Agreement provide the exclusive remedy as to all claims relating to the sale. (Marooney Decl. Ex. 2 § 10.7.) Pursuant to Section 10.7, the parties purported to waive (1) "any and all other rights, claims and causes of action," and (2) "any and all tort [*18] claims and causes of action that may . . . relate to this Agreement (including any tort claim or cause of action . . . related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter this Agreement.)" (Id.)

New York courts enforce contractual waivers and exculpatory provisions such as those included in Section 10.7 of the Amended Agreement. See, e.g., *Metro. Life Ins. Co. v. Noble Lowndes Int'l, Inc., 84 N.Y.2d 430, 436, 643 N.E.2d 504, 618 N.Y.S.2d 882 (1994)*; *Kalisch-Jarcho, Inc. v. New York, 58 N.Y.2d 377, 384, 448 N.E.2d 413, 461 N.Y.S.2d 746 (1983)*; *Baidu, Inc. v. Register.com, Inc., 760 F. Supp. 2d 312, 317-18 (S.D.N.Y. 2010)*.

Nevertheless, "an exculpatory agreement, no matter how flat and unqualified its terms, will not exonerate a party from liability" for "willful or grossly negligent acts." *Kalisch-Jarcho, 58 N.Y.2d at 384-85*. See also *Turkish v. Kasenetz, 27 F.3d 23, 27-28 (2d Cir. 1994)* ("It is well settled that parties cannot use contractual limitation of liability clauses to shield themselves from liability for their own fraudulent conduct."); *Citibank, N.A. v. Itochu Int'l, Inc., No. 01 Civ. 6007, 2003 WL 1797847, at *2 (S.D.N.Y. Apr. 4, 2003)* (same). The New York Court of Appeals has [*19] emphasized that

> an exculpatory clause is unenforceable when, in contravention of acceptable notions of morality, the misconduct for which it would grant immunity smacks of intentional wrongdoing. This can be explicit, as when it is fraudulent, malicious or prompted by the sinister intention of one acting in bad faith. Or, when, as in gross negligence, it betokens a reckless indifference to the rights of others, it may be implicit.

Kalisch-Jarcho, Inc., 58 N.Y.2d at 385. Whether the challenged conduct rises to the level of "intentional wrongdoing" is a question of fact. See *David Gutter Furs v. Jewelers Prot. Servs., Ltd., 79 N.Y.2d 1027, 1028-29, 594 N.E.2d 924, 584 N.Y.S.2d 430 (1992)*; *Sommer v. Fed. Signal Corp., 79 N.Y.2d 540, 554, 593 N.E.2d 1365, 583 N.Y.S.2d 957 (1992)*; *Kalisch-Jarcho, Inc., 58 N.Y.2d at 384-385*.

Because Tide's Complaint is replete with allegations that Defendants engaged in intentional wrongdoing, the Court cannot dismiss Tide's common law fraud claim pursuant to Section 10.7.[6]

> 6 In a footnote, Defendants argue that Tide's common law fraud claim should also be dismissed as duplicative of its contract claim. (See Defs.' Mem. at 15 n.6.) As the Second Circuit has noted, a fraud claim may proceed in tandem with a contract claim where [*20] a defendant-seller allegedly misrepresented facts as to the present condition of its property, even though these facts were warranted in the parties' contract. *Merrill Lynch & Co. Inc. v. Allegheny Energy, Inc., 500 F.3d 171, 184 (2d Cir. 2007)* (citing *Jo Ann Homes at Bellmore, Inc. v. Dworetz, 25 N.Y.2d 112, 119-20, 250 N.E.2d 214, 302 N.Y.S.2d 799 (1969))*. That is, "New York distinguishes between a promissory statement of what will be done in the future that gives rise only to a breach of contract cause of action and a misrepresentation of a present fact that gives rise to a separate cause of action for fraudulent inducement." *Allegheny Energy, 500 F.3d at 184*.

3. Tide's Fraud Claims Are Sufficiently Pleaded

Falcon and Arcapita argue that Tide's common law fraud claim (First Cause of Action) and its federal securities fraud claim (Fourth Cause of Action) fall short of the pleading standards required by *Rule 9(b)* and the Private Securities Litigation Reform Act of 1995 ("PSLRA") *15 U.S.C. § 78u-4(b)*. (Defs.' Mem. at 16.)

a. Elements of the Claims

To state a claim for a violation of *Section 10(b)* of the Securities Exchange Act of 1934 and *Rule 10b-5*, "a plaintiff must plead that the defendant, in connection with the purchase [*21] or sale of securities, made a materially false statement or omitted a material fact, with scienter, and that the plaintiff's reliance on the defendant's action caused injury to the plaintiff." *Ganino v. Citizens Utils. Co., 228 F.3d 154, 161 (2d Cir. 2000)*.

The elements of common law fraud in New York are "essentially the same" as those that must be alleged to state a claim under *Section 10(b)* and *Rule 10b-5*. *In re Merrill Lynch Auction Rate Sec. Litig., No. 09 MD 2030, 2011 U.S. Dist. LEXIS 35363, 2011 WL 1330847, at *11 (S.D.N.Y. Mar. 29, 2011)* (quotations omitted) (noting that a plaintiff asserting a common law fraud claim must show: (1) a material representation or omission of fact; (2) made with knowledge of its falsity; (3) with scienter or an intent to defraud; (4) upon which the plaintiff reasonably relied; and (5) that such reliance caused damage to the plaintiff).

b. Heightened Pleading Standards

Rule 9(b) of the Federal Rules of Civil Procedure sets forth heightened pleading requirements for fraud claims: "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged [*22] generally." *Fed. R. Civ. P. 9(b)*; see also *In re Pfizer Inc. Sec. Litig., 584 F. Supp. 2d 621, 632-33 (S.D.N.Y. 2008)*. This standard requires plaintiffs to "(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent." *Rombach v. Chang, 355 F.3d 164, 170 (2d Cir. 2004)* (citations omitted).

Plaintiffs alleging violations of the federal securities laws must, in addition to the requirements of *Rule 9(b)*, meet the heightened pleading standards set forth in the PSLRA. In pertinent part, the PSLRA requires such plaintiffs to "state with particularity both the facts constituting the alleged [securities fraud] violation" and the other elements of the 10(b) cause of action. *Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 313, 127 S. Ct. 2499, 168 L. Ed. 2d 179 (2007)*. This standard requires plaintiffs to (1) specify each statement alleged to have been misleading and the reason or reasons why the statement is misleading, and (2) state with particularity facts giving rise to a "strong inference" that the defendant acted with the required state of mind. *15 U.S.C. § 78u-4(b)(1)-(2)*; [*23] *Teamsters Local 445 Freight*

Div. Pension Fund v. Dynex Cap., Inc., 531 F.3d 190, 194 (2d Cir. 2008).

c. The Scienter Element

Plaintiffs may establish an inference of fraudulent intent by alleging facts that, if true, would (1) demonstrate that defendants had both the motive and the opportunity to commit fraud or (2) constitute strong circumstantial evidence of the defendants' conscious misbehavior or recklessness. *Eternity Global Master Fund, Ltd. v. Morgan Guar. Trust Co., 375 F.3d 168, 187 (2d Cir. 2004).*

To qualify as "strong," an "inference of scienter must be more than merely plausible or reasonable--it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent." *Tellabs, Inc., 551 U.S. at 314*. The Tellabs Court framed the inquiry as follows: "When the allegations are accepted as true and taken collectively, would a reasonable person deem the inference of scienter at least as strong as any opposing inference?" *Id. at 326*.

The Second Circuit has summarized the foregoing by noting that the requisite "strong inference"

> may arise where the complaint sufficiently alleges that the defendants: (1) benefitted in a concrete and personal way from the purported [*24] fraud; (2) engaged in deliberately illegal behavior; (3) knew facts or had access to information suggesting that their public statements were not accurate; or (4) failed to check information they had a duty to monitor.

Dynex Cap., Inc., 531 F.3d at 194 (citing *Novak v. Kasaks, 216 F.3d 300, 311 (2d Cir. 2008)).*

d. Tide's Fraud Claims Are Pleaded With Particularity

Defendants contend that Tide's fraud claims should be dismissed because they are not pleaded with the particularity required by *Rule 9(b)* and the PSLRA. Specifically, Defendants argue that Tide has not (1) specified the statements that Tide alleges were fraudulent (Defs.' Mem. at 16-17); or (2) pleaded with particularity the falsity of the representations at issue (id. at 17; Defs.' Reply at 5).

As previously noted, the Complaint alleges with specificity that Sections 4.9 and 4.11 of the Amended Agreement contained fraudulent statements. (See Compl. ¶¶ 20-21, 51-52, 59, 66 (quoting from Sections 4.9 and 4.11).) Tide has specified statements in the Amended Agreement, identified Falcon as the party that made the statements, and explained what facts lead Tide to believe the statements were fraudulent. Tide has thus satisfied the [*25] requirements of *Rule 9(b)* with regard to its claims against Falcon.

Although the Complaint's allegations against Arcapita are not a model of clarity, the Complaint does contain specific allegations of misrepresentations made by the Arcapita entities (Compl. ¶¶ 14-18; 22-24; 27-28; 31-36.) For instance, the Complaint states that in January 2010 the Arcapita defendants, together with Falcon, provided Financial Statements for NorTex that contained inaccurate information regarding inventories of pad gas and operating expenses from fuel consumption. (Id. ¶¶ 15-16.) Similarly, the Complaint alleges that, in the course of due diligence, the Arcapita entities and Falcon together provided Tide with a specific memorandum entitled "NGL Material Balance & Shrink," a particular Microsoft Excel file, and a slide presentation entitled "Material Balance." (Id. ¶ 22.) Tide alleges specific facts indicating that Arcapita knew that these documents were inaccurate but nevertheless provided them in response to Tide's queries, with the expectation that Tide would rely on them. (Id. ¶¶ 22-23; 33-35.) Thus, the Complaint specifies false or deceptive statements it alleges were made by Arcapita and the contexts [*26] in which they were made, as well as the reasons why Tide believes they are false. The Complaint is sufficiently pleaded to give Arcapita notice of the claims with which they are charged with the particularity required by *Rule 9(b). Goldman v. Belden, 754 F.2d 1059, 1069-70 (2d Cir. 1985)* (finding the complaint specific enough that it "gives each defendant notice of precisely what he is charged with. No more is required by *Rule 9(b)*.").

In light of the foregoing, the Court finds that Tide has pleaded its fraud claims with regard to Falcon and Arcapita with the particularity required by *Rule 9(b).*

e. Tide Has Alleged Facts Giving Rise to a Strong Inference of Scienter

Defendants contend that Tide's common law fraud and federal securities fraud claims should be dismissed because they are not supported by allegations establishing scienter. However, Tide has alleged facts sufficient to give to the "strong inference" of scienter that is required.

First, Tide alleges that the Defendants were aware of the existence of "shortfalls" in, and depletions of, pad gas at NorTex's Facilities. Tide claims that, in early 2009, NorTex management advised Arcapita that the Facilities had "'deliverability issues' [*27] related to [pad] gas shortfalls." (Compl. ¶ 33.) Falcon and Arcapita allegedly declined to purchase additional pad gas to remedy the shortfalls. (Id.) According to Tide, Defendants instead

caused NorTex to enter into "park-and-loan" arrangements in which NorTex "borrowed" pad gas from other sources. (Id.) Such arrangements allegedly "concealed the depleted pad gas and did nothing to correct the inaccurate records, flawed processes, and shoddy operations and recordkeeping that led to the overstatement of the quantities and values of the pad gas and customer gas . . . ." (Id.) Tide also alleges that, in late 2009 and early 2010, Falcon management learned that NorTex "was encountering additional deliverability issues due specifically to shortfalls [in] and depletion of pad gas." (Id. ¶ 35.)

Second, Tide alleges that, in or around October 2009, Defendants received a report from Platt, Sparks & Associates, which made it clear that gas inventories reported in NorTex's regulatory filings were inaccurate, or that one of NorTex's Facilities was losing gas. (Id. ¶ 34.)

Third, Tide alleges that Defendants (1) failed to conduct "regular and consistent shut-in pressure testing and related volumetric [*28] calculations and measurements of the quantities of gas within the Storage Facilities," and thus (2) failed to ensure that NorTex's financial records were accurate. (Id. ¶ 71.) According to Tide, such failures "occurred during a period when deliverability problems indicated a critical need to perform these tests, calculations, and measurements[,] and to properly analyze and report the results." (Id.)

Defendants allegedly failed to account for the foregoing, known inaccuracies in the Financial Statements. (See, e.g., id. ¶¶ 33-35, 72.) Tide has alleged facts that, if true, would constitute strong circumstantial evidence of Defendants' conscious misbehavior or recklessness. See *Eternity Global Master Fund, Ltd., 375 F.3d at 187*. Accepted as true, Tide's allegations would give rise to the inference (1) that Defendants knew that the representations in Sections 4.9 and 4.11 of the Purchase Agreement were false, see *Novak, 216 F.3d at 311*; or (2) that Defendants acted recklessly, because they knew facts or had access to information suggesting that statements made in Sections 4.9 and 4.11 were not accurate. See id.

The Court finds that the resulting inference of scienter is "cogent and at least [*29] as compelling as any opposing inference of nonfraudulent intent." See *Tellabs, 551 U.S. at 314*. That is, when Tide's allegations are "accepted as true[,] and taken collectively," the Court concludes that a reasonable person would deem the inference of scienter at least as strong as any opposing inference. Id.; see also *Novak, 216 F.3d at 308*.

D. Summary

For the foregoing reasons, Defendants' motion for a judgment on the pleadings is DENIED.

II. Defendants' Motion for Summary Judgment

A. Defendants' Motion

Falcon and Arcapita answered Tide's Complaint and Falcon also filed a Counterclaim and Crossclaim. Falcon and Arcapita now move for partial summary judgment on two claims. (Dkt. No. 32.) First, Defendants move for summary judgment on Tide's Fifth Cause of Action, arguing that, as a matter of law, Tide is not entitled to a permanent injunction restraining the funds in the Escrow Account. Second, Defendants move for summary judgment on their first crossclaim, arguing that Falcon is entitled to the immediate disbursement of all funds remaining in the Escrow Account.

B. Summary Judgment Standard

Summary judgment must be granted where, based on the pleadings, the discovery and disclosure materials, [*30] and any affidavits, "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(a)*; see also *Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)*. "The role of the court in deciding a motion for summary judgment 'is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried, while resolving ambiguities and drawing reasonable inferences against the moving party.'" *Wilson v. Nw. Mut. Ins. Co., 625 F.3d 54, 59-60 (2d Cir. 2010)* (quoting *Knight v. U.S. Fire Ins. Co., 804 F.2d 9, 11 (2d Cir. 1986))*. A "genuine issue of material fact" exists if the evidence is such that a reasonable jury could find in favor of the non-moving party. *SCR Joint Venture L.P. v. Warshawsky, 559 F.3d 133, 137 (2d Cir. 2009)*. A "material" fact is one that might "affect the outcome of the suit under the governing law." Id. The moving party bears "the burden of demonstrating that no material fact exists." *Miner v. Clinton Cnty., N.Y., 541 F.3d 464, 471 (2d Cir. 2008)* (citing *McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 202 (2d Cir. 2007))*.

In determining whether summary judgment [*31] is appropriate, the Court must construe the evidence in a light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *Sledge v. Kooi, 564 F.3d 105, 108 (2d Cir. 2009)* (citing *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-50, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986))*. To avoid summary judgment, the non-moving party must show sufficient evidence to support a claimed factual dispute, such that a judge or jury is required to resolve differing versions of events. See *Kessler v. Westchester County Dep't of Soc. Servs., 461 F.3d 199, 206 (2d Cir. 2006)* (citing *Anderson, 477 U.S. at 248-49*). Where the non-moving party relies on an affirmative defense to defeat summary

judgment, that party must adduce evidence which--when viewed in a light most favorable to that party, and when drawing all reasonable inferences in that party's favor--"would permit judgment for the non-moving party on the basis of that defense." *Internet Law Library, Inc. v. Southridge Capital Mgmt., LLC, No. 01 Civ. 6600, 2005 U.S. Dist. LEXIS 32299, 2005 WL 3370542, at *4 (S.D.N.Y. Dec. 12, 2005)*; see also *WestRM-West Risk Mkts., Ltd. v. Lumbermens Mut. Cas. Co., 314 F. Supp. 2d 229, 232 (S.D.N.Y. 2004)*.

C. Tide's Fifth Cause of Action

In [*32] its Fifth Cause of Action, Tide seeks "a permanent injunction restraining Falcon and HSBC from disbursing any funds from the Escrow Account, except pursuant to the Expense Notices referenced in Section 3.7 of the Purchase Agreement." (Compl. ¶ 79.) Tide has not at this point moved for summary judgment on this, or any, claim and it is not clear from the Complaint whether Tide intends to seek injunctive relief during the litigation or only at its conclusion. Falcon and Arcapita, however, move for summary judgment arguing that Tide is not, as a matter of law, entitled to a permanent injunction.

The Defendants cite to Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Funding, Inc., in which the Supreme Court considered whether, in an action for money damages, a district court has the power to issue a preliminary injunction that prevents a defendant from transferring assets in which no lien or equitable interest is claimed. *527 U.S. 308, 310, 119 S. Ct. 1961, 144 L. Ed. 2d 319 (1999)*. The Court held that a district court lacks the authority to issue a preliminary injunction restraining a defendant's funds pending adjudication of a damages claim. *Id. at 333*. The significance of Grupo Mexicano was that the plaintiff in that [*33] case was seeking a preliminary injunction "that would render unlawful conduct that would otherwise be permissible, in order to protect the anticipated judgment of the court." *Id. at 315*.

Unless and until Tide moves for an injunction, Falcon's and Arcapita's motion for summary judgment is premature. The Court accordingly DENIES Defendants' motion for partial summary judgment dismissing Tide's Fifth Cause of Action.

D. Falcon's First Cause of Action

Falcon also moves for partial summary judgment on its request for declaratory relief as set forth in its Counterclaim and Crossclaim. Specifically, Falcon seeks a judgment declaring that HSBC "should disburse the escrow funds to Falcon in accordance with the parties' agreements." (Countercl. ¶ 3; see also id. ¶¶ 30-32.) Tide asserts that such agreements are not enforceable because they were procured by fraud.

1. Threshold Issues

The Court must resolve two threshold issues before considering whether Falcon is entitled to partial summary judgment on this claim.

First, the Court considers whether any provisions in the Agreements bar Tide's fraud-based affirmative defense. Second, the Court examines Falcon's contention that Tide's "further" performance [*34] under the Agreements cannot be excused, because Tide has already fully performed by paying the contractual purchase price for NorTex and the money in the Escrow Account. (See Defs.' Reply at 5-7.)

a. Waiver of Claims and Disclaimer of Representations

The Court first considers whether Tide may assert its fraud-based affirmative defense to performance of its obligations under the Amended Agreements. As in its motion for a judgment on the pleadings, Falcon again contends that Tide is precluded from raising any fraud-related arguments because (1) Tide waived its right to assert tort "claims and causes of action" in Section 10.7; and (2) the alleged misrepresentations are not actionable under Section 4.26, which bars a party from relying on representations extrinsic to Article IV of the Purchase Agreement ("Article IV"). The Court briefly reexamines each of Falcon's contentions.

Section 10.7 states that the contractual indemnification provisions of the Agreement provide the exclusive remedy as to all claims relating to the Agreement. (Declaration of Jeremiah J. Anderson dated August 31, 2010 ("Anderson Decl.") Ex. A § 10.7.) At issue now, however, is whether Falcon is entitled to summary judgment [*35] on its First Cause of Action, notwithstanding Tide's assertion of an affirmative defense. Section 10.7 does not, by its terms, waive any affirmative defenses, and Falcon does not argue otherwise. Section 10.7 includes "claims and causes of action," but an affirmative defense is not a claim but "a lineal descendent of the common law plea by way of 'confession and avoidance.'" 5 C. Wright & A. Miller, Federal Practice & Procedure § 1270 (3d ed.). The Court therefore finds that Section 10.7 does not bar Tide's affirmative defense.

Falcon similarly argues that Tide cannot, consistent with Section 4.26 of the Purchase Agreement, "allege a fraud claim" based on misrepresentations extrinsic to Article IV. (Defs.' SJ Reply at 8; see also Defs.' SJ Mem. at 10.) As previously discussed, Section 4.26 provides that Falcon "shall not be deemed to have made to [Tide] any representation or warranty other than as expressly made in this Article IV or the schedules accompanying

Article IV." (Anderson Decl. Ex. A § 4.26 (capitalization omitted).) Tide has submitted evidence in conjunction with this motion for summary judgment to further bolster its claims that statements in Sections 4.9 and 4.11 are [*36] false.

In its Rule 56.1 statements and accompanying declarations, Tide has submitted evidence to the effect that Defendants inflated the value of pad gas included in the Financial Statements by approximately $30 million. (Compl. ¶ 73; Pl.'s Counterstatement. ¶¶ 90-94, 102-04; Dolan Decl. ¶¶ 13-14, 22-24; id. Ex. A-F, G.) Tide has also submitted evidence to the effect that the Financial Statements failed to include the value of fuel burned as part of the "facility operating expenses," and that Defendants thus misstated such expenses by approximately $40 million. (Compl. ¶ 73; Pl.'s Counterstatement ¶¶ 95-101; Dolan Decl. ¶ 16; id. Ex. A; Declaration of Mike Gallup dated September 9, 2010 ("Gallup Decl.") ¶ 22.) The foregoing evidence gives rise to an issue of fact as to whether the representation contained in Section 4.9 that the Financial Statements fairly presented in all material respects the consolidated financial position of NorTex was fraudulent.

Tide also alleges that statements in Section 4.11 are false because NorTex did experience a material adverse effect between March 31, 2009 and the closing date. Tide offers evidence demonstrating that, in 2009 and early 2010, Falcon management [*37] became aware that NorTex was encountering deliverability issues due specifically to shortfalls and depletion of pad gas. (Gallup Decl. ¶ 39, Exs. U-V.) Tide alleges that Defendants did not disclose such issues to Tide. (Gallup Decl. ¶ 23.) Following its purchase of NorTex, Tide states that it learned that NorTex at that point had a shortfall in pad gas of over 6 billion cubic feet. (Id. ¶¶ 14-15.) NorTex cannot operate its business absent sufficient pad gas. (Id. ¶ 7.) The foregoing evidence raises an issue of fact as to whether, contrary to the representation expressly made in Section 4.11, NorTex experienced a "Material Adverse Effect" or a "disposition of any material assets" during the relevant time period.

In light of the foregoing, the Court finds that Sections 10.7 and 4.26 do not preclude Tide from offering evidence with respect to its fraud-based affirmative defense.

b. Remaining Performance

Falcon contends that Tide's further performance under the Agreements cannot be excused because Tide has already fully performed and the money in the Escrow Account belonged to Falcon as soon as the escrow conditions were met. (See Defs.' Reply at 5.)

Section 3 of the Escrow Agreement, entitled [*38] "Distributions from the Escrow Account," states that the Escrowed Amount "shall be . . . transferred only in accordance with Section 3.7 of the [Amended Agreement]." (Anderson Decl. Ex. C § 3.) Section 3.7 of the Amended Agreement provides that, upon the occurrence of either of the defined Escrow Breakage Triggers, the parties "shall deliver to [HSBC] joint instructions to disburse the balance of the Escrowed Amount . . . ." (Id. Ex. B § 3.7(a).) Tide acknowledges that the Escrow Breakage Triggers have been satisfied, (see Marooney Decl. Ex. 9; Conf. Tr. 4:12), but contends that Defendants' fraud excuses Tide from fully performing Section 3.7--i.e., from issuing joint instructions to HSBC to release the Escrowed Amount to Falcon.

Falcon disputes the contention that any non-ministerial obligation under the Agreements remains to be performed. (See Defs.' Reply at 7 n.6 ("The [Amended Agreement] does not give plaintiffs discretion in instructing the Escrow Agent.").) According to Falcon, "[w]hat entitles [it] to the release of the funds is not the joint instructions, but the satisfaction of the escrow conditions." (Defs.' Reply at 7.)

Under New York law, property in escrow should be released [*39] only after the conditions precedent are satisfied. See *In re Pan Trading Corp., S.A., 125 B.R. 869, 878 (Bankr. S.D.N.Y. 1991)* ("Only after the requisite conditions are satisfied, can an escrow be fully transferred to the grantee."). Courts are generally reluctant to override the clear terms of an escrow agreement. *Netherby Ltd. v. G.V. Licensing, Inc., No. 92-4239, 1995 U.S. Dist. LEXIS 11725, 1995 WL 491489, at *3 (S.D.N.Y. Aug. 17, 1995)* ("Because there are no reasons to override the clear terms of the amended escrow agreement, and because none of the conditions for release of the escrowed funds contained in that agreement have been met, plaintiff's motion [to compel release of escrowed funds] is denied."). In the case before the Court, however, the conditions for the release of the escrowed funds contained in the agreement have been met, creating a valid reason to override its terms. Nevertheless, Tide argues that fraud in the inducement of the contract means it should not be required to perform its obligations.

Because Tide claims that its remaining performance is excused by Falcon's fraud, the Court must determine whether Tide has presented specific facts related to that defense showing that there is a genuine [*40] issue of material fact.[7] See, e.g., *Internet Law Library, Inc., 2005 U.S. Dist. LEXIS 32299, 2005 WL 3370542, at *4*. The Court now turns to that inquiry.

7 Falcon cites to *Marriott Corp. v. Rogers & Wells, 81 A.D.2d 556, 438 N.Y.S.2d 330 (1st*

Dep't 1981), for the proposition that the Escrowed Amount "belonged to Falcon, subject only to the satisfaction of the escrow conditions." (Defs.' Reply at 6.) As the Court has noted, however, the escrow "conditions" here have not been satisfied. Marriott Corp. is inapposite for another reason: the party opposing the transfer of escrowed funds in that case did not raise an affirmative defense of fraud; indeed, there were no issues of fact warranting a denial of summary judgment in that case. *438 N.Y.S.2d at 331*.

3. Discussion

a. Applicable Law

Pursuant to New York law,[8] a party may not compel performance of an agreement that was induced by fraud. *Nat'l Union Fire Ins. Co. v. Turtur, 892 F.2d 199, 203 (2d Cir. 1989)* (citing cases).

8 The Purchase Agreement is governed by the laws of the State of New York. (Anderson Decl. Ex. A § 11.5.)

To withstand Defendants' motion for summary judgment based on a defense of fraudulent inducement, Tide must come forward with evidence that would allow a reasonable [*41] jury to find, by clear and convincing evidence,[9] that each of the elements of fraud has been satisfied. *SCNB Corp. Fin. Ltd. v. Schuster, 877 F. Supp. 820, 826 (S.D.N.Y. 1994)*. Accordingly, Tide must offer facts showing that there is a genuine issue for trial as to the following elements: (1) that Defendants made a representation, (2) as to a material fact, (3) which was false, (4) and known to be false by Defendants, (5) that was made for the purpose of inducing Tide to rely upon it, (6) that Tide "rightfully did so rely," (7) in ignorance of its falsity, (8) to Tide's injury. See *Cohen v. Koenig, 25 F.3d 1168, 1172 (2d Cir. 1994)*; *Internet Law Library, Inc., 2005 U.S. Dist. LEXIS 32299, 2005 WL 3370542, at *5*; *Cont'l Airlines, Inc. v. Lelakis, 943 F. Supp. 300, 305 (S.D.N.Y. 1996)*.

9 See *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)* ("[C]lear-and-convincing standard of proof should be taken into account in ruling on summary judgment motions"); *Glidepath Holding B.V. v. Spherion Corp., No. 04 Civ. 9758, 2010 U.S. Dist. LEXIS 33255, 2010 WL 1372553, at *5, (S.D.N.Y. Mar. 26, 2010)*.

b. Application of Law to Facts

In opposing the instant motion for partial summary judgment, Tide has adduced particularized evidence that would allow a [*42] reasonable jury to find, by clear and convincing evidence, that each of the elements of fraud has been satisfied. See *Schuster, 877 F. Supp. at 826*. As previously discussed, Tide has demonstrated that Falcon made two principal representations in Article IV of the Purchase Agreement that were allegedly false: (1) that "[c]omplete and accurate copies of the Financial Statements have been made available to [Tide]," and that "[e]ach balance sheet included in the Financial Statements (including the related notes and schedules) . . . fairly presents in all material respects the consolidated financial position of [NorTex]," (Anderson Decl. Ex. A § 4.9); and (2) that since March 31, 2009, NorTex has not experienced a "disposition of any material assets" or a "Material Adverse Effect," which is defined as "any state of facts" that is "materially adverse to the condition (financial or otherwise), business, results of operations, properties, assets or liabilities of [NorTex] . . . ." (Anderson Decl. Ex. A § 4.9, § 1.1.) These alleged misrepresentations, which related to the value of NorTex's current assets, were "plainly" material. See, e.g., *Cohen, 25 F.3d at 1172* (stating that defendant's alleged [*43] overstatements regarding net income and the value of current assets "plainly were representations as to material facts").

Tide has also proffered sufficient evidence to raise issues of fact as to whether the alleged misrepresentations were (1) known to be false by Falcon, and (2) made for the purpose of inducing Tide to rely on them. First, Tide presents evidence to the effect that, by 2009, both Falcon and Arcapita knew that there was a shortfall of pad gas at one of NorTex's Facilities and that Defendants discussed restating NorTex's Financial Statements to address this shortfall, but never did so. (Pl.'s 56.1 Counterstatement ¶¶ 133-35, 139-43; Gallup Decl. ¶¶ 37-39, Exs. U-V.) Second, the evidence permits a reasonable inference that Defendants made the alleged misrepresentations for the purpose of inducing Tide's reliance: Section 10.6 of the Purchase Agreement states that each party "shall be entitled to rely upon the representations, warranties, covenants and agreements of the other Party set forth herein . . . ." (Anderson Decl. Ex. A § 10.6.)

Finally, the proffered evidence creates triable issues as to whether Tide (1) reasonably relied on the alleged misrepresentations, (2) [*44] in ignorance of their falsity, and (3) to Tide's injury. Tide has submitted testimony to the effect that it relied on the alleged misrepresentations in ignorance of their falsity. (See, e.g., Dolan Decl. ¶ 39; Pl.'s 56.1 Counterstatement ¶ 161.) The reasonableness of reliance is ordinarily a question of fact left to a jury. *Glidepath Holding B.V., 2010 U.S. Dist. LEXIS 33255, 2010 WL 1372553, at *8*. Tide has also submitted evidence of the adverse consequences of De-

fendants' alleged fraud. (See Gallup Decl. ¶¶ 41-50; Pl.'s 56.1 Counterstatement ¶¶ 166-175.)

Because Tide has come forward with evidence that would allow a reasonable jury to find, by clear and convincing evidence, that each of the elements of fraud has been satisfied, Falcon is not, at least at this juncture, entitled to the declaratory relief it seeks.[10]

10 In light of this conclusion, the Court need not address whether Tide's further performance of the Purchase Agreement is excused by Defendants' alleged material breach of the Purchase Agreement. (See Pl.'s Opp. at 21-22.)

F. Summary

For the reasons stated above, the Court (1) DENIES Falcon's and Arcapita's motion for partial summary judgment dismissing Tide's Fifth Cause of Action; and (2) DENIES Falcon's [*45] and Arcapita's motion for partial summary judgment on the First Cause of Action of its Counterclaim. (Dkt. No. 32.)

III. Tide's Motion to Attach the Escrowed Funds

Tide cross-moves for an order of attachment "[i]n the event that this Court" grants Falcon's motion for partial summary judgment. (See Pl.'s Mem., Dkt. No. 77, at 2; see also Pl.'s Mem., Dkt. No. 38, at 24.)

Because the Court has denied Falcon's motion for partial summary judgment, Tide's motion for attachment is DENIED as moot. (Dkt. No. 82.)

IV. Conclusion

The Court has considered Defendants' remaining contentions and finds them to be without merit. For the reasons stated above, the Court (a) DENIES Defendants' motion for judgment on the pleadings (Dkt. No. 94); (b) DENIES Defendants' motion for partial summary judgment (Dkt. Entry No. 32.); and (c) DENIES Tide's cross-motion for an order of attachment (Dkt. No. 82).

By no later than October 28, 2011, the parties shall submit via ECF and facsimile a Joint Status Letter detailing how they intend to proceed, and whether they wish to be referred to a magistrate judge for settlement discussions. The parties shall attach to their Joint Status Letter a Scheduling Order that provides [*46] for this case to be tried no later than January 17, 2012.

SO ORDERED.

DATED: New York, New York

September 28, 2011

/s/ Kimba M. Wood

KIMBA M. WOOD

United States District Judge

EXHIBIT 5

Claim No. 295

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM

Name of Debtor (Check Only One):	Case No.		
☒ Arcapita Bank B.S.C.(c)	12-11076	☐ Windturbine Holdings Limited	12-11079
☐ Arcapita Investment Holdings Limited	12-11077	☐ AEID II Holdings Limited	12-11080
☐ Arcapita LT Holdings Limited	12-11078	☐ Railinvest Holdings Limited	12-11081
		☐ Falcon Gas Storage Company, Inc.	12-11790

NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Tide Natural Gas Storage II LP

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: *(If known)*

Filed on: _____

Name and address where notices should be sent:
Bracewell & Giuliani LLP
711 Louisiana St.
Houston, TX 77002
Attn: Trey Wood

Telephone number: (713) 223-2300
Email Address: Trey.Wood@bgllp.com

Name and address where payment should be sent (if different from above):
Tide Natural Gas Storage II LP
c/o Alinda Capital Partners LLC
150 East 58th St.
New York, NY 10155
Telephone number: Attn: General Counsel
Email Address:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

Your Claim is Scheduled As Follows:

THE GARDEN CITY GROUP, INC. AUG 29 2012

If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. (This scheduled amount of your claim may be an amendment to a previously scheduled amount.) If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claim against the Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is listed as any of DISPUTED, UNLIQUIDATED, or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. **Amount of Claim as of Date Case Filed:** $ 120,000,000.00 plus interest, fees and costs

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

☒ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

FILED - 00295
SDNY
ARCAPITA BANK B.S.C. (C)
12-11076 (SHL)

2. **Basis for Claim:** Fraud, Fraudulent Inducement, Breach of Warranty, Breach of Contract, Securities Violations
(See instruction #2)

3. **Last four digits of any number by which creditor identifies debtor:** _____ _____ _____ _____

3a. **Debtor may have scheduled account as:** _____ (See instruction #3a)

3b. **Uniform Claim Identifier (optional):** _____ (See instruction #3b)

4. **Secured Claim** (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☒ Other

Describe: Escrow Funds

Value of Property: $ 70,000,000.00

Annual Interest Rate _____ % ☐ Fixed or ☐ Variable (when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: $ _____

Basis for perfection: see attached addendum

Amount of Secured Claim: $ 70,000,000.00 plus interest

Amount Unsecured: $ 50,000,000.00

5. **Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.**

☐ Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).

☐ Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).

☐ Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)( ).

Amount entitled to priority: $ _____

*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. **Credits.** The amount of all payments on this claim has been credited for the purpose of making this proof of claim. *(See instruction #6)*

7. **Documents:** Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #7, and the definition of "redacted".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain: _____

8. **Signature:** (See instruction #8) Check the appropriate box.

☐ I am the creditor ☒ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: John Laxmi
Title: Secretary
Company: Tide Natural Gas Storage II LP

John Laxmi 8/27/2012
(Signature) (Date)

Address and telephone number (if different from notice address above):

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571. **Modified B10 (GCG) (12/11)**

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the Debtor, exceptions to these general rules may apply. The attorneys for the Debtors and their court-appointed claims agent, GCG, are not authorized and are not providing you with any legal advice.

PLEASE SEND YOUR ORIGINAL, COMPLETED CLAIM FORM AS FOLLOWS: **IF BY MAIL:** ATTN: ARCAPITA BANK B.S.C.(c), C/O GCG, P.O. BOX 9881 DUBLIN, OHIO 43017-5781. **IF BY HAND OR OVERNIGHT COURIER:** ATTN: ARCAPITA BANK B.S.C.(c), C/O GCG, 5151 BLAZER PARKWAY, STE A, DUBLIN, OH 43017. **ANY PROOF OF CLAIM SUBMITTED BY FACSIMILE OR EMAIL WILL NOT BE ACCEPTED.**

THE GENERAL BAR DATE IN THESE CHAPTER 11 CASES IS AUGUST 30, 2012 AT 5:00 P.M. (PREVAILING EASTERN TIME)
THE GOVERNMENTAL BAR DATE IN THESE CHAPTER 11 CASES IS SEPTEMBER 17, 2012 AT 5:00 P.M. (PREVAILING EASTERN TIME)

Items to be completed in Proof of Claim form

Bankruptcy Court Information:
All of these chapter 11 cases other than Falcon Gas Storage Company, Inc. were commenced on March 19, 2012. Falcon Gas Storage Company, Inc. filed its chapter 11 petition on April 30, 2012. You should select the Debtor against which you are asserting your claim from the list provided.

A SEPARATE PROOF OF CLAIM FORM MUST BE FILED AGAINST EACH DEBTOR.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. Please provide us with a valid email address. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to your claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the Debtor's account or other number used by the creditor to identify the Debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the Debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a):
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the Debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is the person, corporation, or other entity to whom the Debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. § 101 (10).

Claim
A claim is the creditor's right to receive payment for a debt owed by the Debtor on the date of the bankruptcy filing. See 11 U.S.C. § 101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the Debtor on the date of the bankruptcy filing. The creditor must file the form with GCG as described in the instructions above and in the Bar Date Notice.

Secured Claim Under 11 U.S.C. § 506 (a)
A secured claim is one backed by a lien on property of the Debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a Debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the Debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507 (a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

INFORMATION

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

Acknowledgment of Filing of Claim
To receive a date-stamped copy of your claim form, please provide a self-addressed stamped envelope and a copy of your proof of claim form when you submit the original to GCG.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the Debtor. These entities do not represent the bankruptcy court or the Debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

List of Debtors and Case Numbers

Indicate on the face of the Proof of Claim form the Debtor against which you assert a claim.
Choose only one Debtor for each Proof of Claim form.

Arcapita Bank B.S.C.(c) 12-11076
Arcapita Investment Holdings Limited 12-11077
Arcapita LT Holdings Limited 12-11078
Windturbine Holdings Limited 12-11079
AEID II Holdings Limited 12-11080
Railinvest Holdings Limited 12-11081
Falcon Gas Storage Company, Inc. 12-11790

BRACEWELL
&GIULIANI

Texas
New York
Washington, DC
Connecticut
Seattle
Dubai
London

Jason G. Cohen
Associate

713.221.1416 Office
800.404.3970 Fax

Jason.Cohen@bgllp.com

Bracewell & Giuliani LLP
711 Louisiana Street
Suite 2300
Houston, Texas
77002-2770

August 28, 2012

Arcapita Bank B.S.C.(c)
c/o GCG
5151 Blazer Parkway, Suite A
Dublin, Ohio 43017

Re: Tide Natural Gas Storage I LP and Tide Natural Gas Storage II LP - Proofs of Claim

Dear Arcapita Bank B.S.C.(c):

Enclosed please find the following proofs of claim for filing with original signatures:

1. Proof of Claim of Tide Natural Gas Storage I LP against Arcapita Bank B.S.C.(c), Case No. 12-11076.

2. Proof of Claim of Tide Natural Gas Storage II LP against Arcapita Bank B.S.C.(c), Case No. 12-11076.

3. Proof of Claim of Tide Natural Gas Storage I LP against Falcon Gas Storage Company, Inc., Case No. 12-11790.

4. Proof of Claim of Tide Natural Gas Storage II LP against Falcon Gas Storage Company, Inc., Case No. 12-11790.

Additionally, enclosed are copies of the above listed proofs of claim to be file stamped and returned to me as proof of receipt via the enclosed self-addressed stamped envelope.

Very truly yours,

Bracewell & Giuliani LLP

Jason G. Cohen

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	§	
	§	
	§	**Chapter 11**
ARCAPITA BANK B.S.C.(c), *et al.*,	§	
	§	**Case No. 12-11076-shl**
Debtors.	§	**Jointly Administered**
	§	
	§	
IN RE:	§	
	§	**Chapter 11**
FALCON GAS STORAGE CO., INC.	§	
	§	**Case No. 12-11790-shl**
Debtor.	§	**(Jointly Administered under**
	§	**Case No. 12-11076)**

ADDENDUM TO PROOFS OF CLAIM FILED BY TIDE NATURAL GAS STORAGE I LP AND TIDE NATURAL GAS STORAGE II LP

1. Claimant. Tide Natural Gas Storage I LP and Tide Natural Gas Storage II LP (together, "Tide") hereby files this addendum ("Addendum") to their proofs of claim (together, "Claim"). This Addendum and the attachments hereto are an integral part of Tide's Claim and are incorporated by reference into the Claim for all purposes.

2. Background of Claim. The Claim is based on the fraud, fraudulent inducement, breach of warranty, breach of contract, and securities violations of Falcon Gas Storage Co., Inc. and Arcapita Bank B.S.C.(c), as more specifically detailed in Tide's Complaint filed in the District Court for the Southern District of New York, which initiated Case No. 10-CIV-5821 (the "Complaint") (as attached to the Claim).

3. Amount of Claim (further detailed in the Complaint). The Claim is made in the amount of $120,000,000.00 plus interest, fees and costs.

4. Interest. Tide seeks all pre- and post-judgment interest related to the causes of action asserted in the Complaint to which Tide is entitled under applicable law. Tide also seeks all investment income earned upon the $70,000,000.00 currently in escrow.

5. Fees and Costs. Tide seeks its reasonable and necessary attorneys' fees and all court costs, as detailed in the Complaint.

6. Supporting Documents. The Claim is based upon the actions detailed in the Complaint.

7. Judgment. No judgment has been rendered on the Claim.

8. Credits. The amount of all prepetition payments and credits on the Claim have been credited and deducted for the purposes of making this Claim. Furthermore, Tide deposited $70,000,000.00 of the purchase price for the sale of NorTex Gas Storage Company, LLC into Escrow with HSBC Bank USA, N.A. as escrow agent. These funds remain in escrow and, because the Debtor has perpetrated a fraud upon Tide, as detailed in the Complaint, these funds remain the property of Tide. Upon return of the $70,000,000.00, Tide will provide a credit of $70,000,000.00 against its Claim.

9. Notices. All notices to PPL concerning this Claim should be sent to:

Tide Natural Gas Storage I LP
Tide Natural Gas Storage II LP
c/o Alinda Capital Partners LLC
150 East 58th St.
New York, NY 10155
Attn: General Counsel

Copies of all notices to Tide concerning this Claim should be sent to:

Bracewell & Giuliani LLP
711 Louisiana Street
Suite 2300
Houston, Texas 77002
Attn: Trey Wood

713.223.2300

10. Protective Filing/Amendments. This Claim is filed under compulsion of the bar date established in this case, and is filed to protect Tide from forfeiture of its claims. The execution and filing of this Claim are not (i) a waiver or release of any of Tide's rights against any entity or person liable for all or part of the Claim, (ii) a consent by Tide to the jurisdiction of this Court with respect to any proceeding commenced in this case against or otherwise involving Tide, (iii) a waiver of the right to withdraw the reference with respect to the subject matter of the Claim, any objection or other proceeding commenced with respect thereto or any other proceeding commenced in this case against or otherwise involving Tide, (iv) an election of remedy that waives or otherwise affects any other remedy, or (v) a waiver or release of any of Tide's rights against any third party.

11. Reservation of Rights. Tide expressly reserve its rights to (i) amend or supplement this Claim in any respect, (ii) file additional proofs of claim for claims not covered by this proof of claim, (iii) seek relief from the automatic stay to pursue Tide's Complaint currently pending in the District Court for the Southern District of New York, and (iv) seek withdrawal of the reference with regard to any complaint filed in the Bankruptcy Court for the Southern District of New York, including, but not limited to, the complaint filed by the Hopper Parties, which initiated Adversary Proceeding No. 12-0162.

JUDGE WOOD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIDE NATURAL GAS STORAGE I, LP and TIDE NATURAL GAS STORAGE II, LP, Plaintiffs, v. FALCON GAS STORAGE COMPANY, INC.; ARCAPITA BANK B.S.C.; ARCAPITA, INC.; and HSBC BANK USA, NATIONAL ASSOCIATION, Defendants.	10 CIV 5821 ECF CASE Civil Action No. **COMPLAINT**

Plaintiffs TIDE NATURAL GAS STORAGE I, LP and TIDE NATURAL GAS STORAGE II, LP (together, "Plaintiffs") for their Complaint against Defendants FALCON GAS STORAGE COMPANY, INC., ARCAPITA BANK B.S.C., ARCAPITA, INC., and nominal defendant HSBC BANK USA, NATIONAL ASSOCIATION ("HSBC") (collectively, "Defendants") allege as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction because certain claims asserted herein arise under § 10 of the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. § 78j(b)). Jurisdiction is conferred by § 27 of the Act (15 U.S.C. § 78aa). This Court has supplemental jurisdiction over all state law and other claims asserted herein pursuant to 28 U.S.C. § 1367.

2. This Court has personal jurisdiction over all parties to this action because all parties do business within the State of New York as the term "doing business" is understood in law, have the requisite "minimum contacts" with the State of New York as the term "minimum contacts" is understood in law, have purposefully availed themselves of the protections and benefits of the laws of the State of New York as required to establish *in personam* jurisdiction, or

have expressly consented to the jurisdiction of this Court and of the Courts of the State of New York. This Court's exercise of personal jurisdiction over all Defendants will not offend traditional notions of fair play and substantial justice.

3. Venue is proper in this district pursuant to § 27 of the Act (15 U.S.C. § 78aa) because Defendants transact business in this district. Venue is also authorized in this district under 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district. Venue is also proper in this district by agreement of the parties.

PARTIES

4. Plaintiff TIDE NATURAL GAS STORAGE I, LP is formerly known as Alinda Natural Gas Storage I, LP, and hereafter, together with Tide Natural Gas Storage II, LP (formerly Alinda Natural Gas Storage II, LP), shall be referred to as "Plaintiffs." Tide Natural Gas Storage I, LP is now and at all relevant times has been a limited partnership organized and existing under the laws of the State of Delaware.

5. Plaintiff TIDE NATURAL GAS STORAGE II, LP is formerly known as Alinda Natural Gas Storage II, LP, and hereafter, together with Tide Natural Gas Storage I, LP (formerly Alinda Natural Gas Storage I, LP), shall be referred to as "Plaintiffs." Tide Natural Gas Storage II, LP is now and at all relevant times has been a limited partnership organized and existing under the laws of the State of Delaware.

6. Defendant FALCON GAS STORAGE COMPANY, INC. (hereafter, "Falcon") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Atlanta, Georgia. Pursuant to Section 11.1 of the Purchase Agreement by and between Falcon and Plaintiffs, Falcon may be served with process via U.S.

certified mail, c/o Arcapita, at 75 Fourteenth Street, 24th Floor, Atlanta, Georgia, 30309, with a copy to Raymond E. Baltz, King & Spalding, 1180 Peachtree Street, Atlanta, Georgia, 30309.

7. Defendant ARCAPITA BANK B.S.C. (hereafter, together with Arcapita, Inc., "Arcapita") is a joint stock company incorporated in the Kingdom of Bahrain. Its principal place of business in the United States is 75 Fourteenth Street, 24th Floor, Atlanta, Georgia, 30309. Pursuant to Section 3.4 of the Guaranty Agreement between Arcapita Bank B.S.C. and Plaintiffs, Arcapita Bank B.S.C. may be served with process via U.S. certified mail, c/o Arcapita Inc., at 75 Fourteenth Street, 24th Floor, Atlanta, Georgia, 30309, attention Brian R. McCabe, with a copy to Raymond E. Baltz, King & Spalding, 1180 Peachtree Street, Atlanta, Georgia 30309.

8. Defendant ARCAPITA, INC. (hereafter, together with Arcapita Bank B.S.C., "Arcapita") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 75 Fourteenth Street, 24th Floor, Atlanta, Georgia 30309. Arcapita, Inc. does not have a registered agent for service of process in the State of New York. Arcapita, Inc. may be served with process pursuant to Federal Rule of Civil Procedure 4(h)(1) by delivering a copy to its registered agent, RL&F Service Corporation, One Rodney Square, 10th Floor, Wilmington, Delaware 19801.

9. Defendant HSBC BANK USA, NATIONAL ASSOCIATION, in its capacity as escrow agent ("HSBC"), is a national banking association. HSBC's principal place of business is 1800 Tysons Boulevard, Suite 50, McLean, Virginia 22102. HSBC may be served with process pursuant to Federal Rule of Civil Procedure 4(h)(1) by delivering a copy to its registered agent, Legal Processing, 12th Floor, One HSBC Center, Buffalo, New York 14203. HSBC is a nominal defendant in this matter; it has been named solely because injunctive relief is sought with respect

to certain funds that are in HSBC's possession as escrow agent pursuant to an agreement between the other parties.

FACTS

A. Overview of Case

10. This lawsuit arises out of Falcon's and its controlling affiliates' misrepresentations to Plaintiffs in connection with a half-billion dollar transaction for the sale of a natural gas storage business, NorTex Gas Storage Company, LLC ("NorTex"). Plaintiffs purchased the natural gas storage business on the strength of various material representations and warranties from Falcon and its affiliates, including representations about NorTex's business and the value of certain of NorTex's assets, in particular the amount of "pad gas" in the natural gas storage facilities, the operating costs associated with fuel consumption, and the source of hydrocarbons extracted during operation of NorTex's two natural gas liquid ("NGL") extraction plants. Plaintiffs have recently discovered not only that those representations and warranties were false, but that both Falcon and its controlling affiliates had actual knowledge of the falsity at the time Plaintiffs agreed to purchase NorTex.

11. The difference in value between the quantities of pad gas as represented and the quantities of pad gas actually present exceeds $30 million, and the implications of this shortfall and the mechanisms by which the shortfall was created has an impact on the economics of NorTex's gas storage business that far exceeds that amount. Plaintiffs therefore bring this action seeking, alternatively, money damages for the economic harm they have suffered, disgorgement of Falcon's unjust gains from the transaction, or rescission of the purchase and sale of NorTex. In addition, because the transaction was the product of a fraud, and because Falcon's controlling affiliates have demonstrated an intent to move certain proceeds from the purchase and sale beyond the jurisdictional reach of this Court, Plaintiffs further seek injunctive relief preventing

Falcon or its affiliates from removing certain escrowed proceeds of the sale from the escrow account where those funds are currently held.

B. Plaintiffs' Purchase Of NorTex

12. NorTex, formerly a subsidiary of Falcon, is in the business of storing and processing natural gas in and from two underground gas storage facilities located in northern Texas, sometimes referred to as the "Worsham-Steed Facility" and the "Hill-Lake Facility," respectively, and collectively referred to as the "Storage Facilities."[1]

13. In March 2010, Plaintiffs and Falcon entered into a Purchase Agreement ("the Purchase Agreement") whereby Plaintiffs agreed to purchase all of Falcon's interest in NorTex. Plaintiffs thereby acquired the entire gas storage business of NorTex, including NorTex's ownership in the Worsham-Steed and Hill-Lake entities and their respective ownership and operation of the Worsham-Steed and Hill-Lake Facilities. The transaction closed on April 1, 2010; at that time, Plaintiffs paid Falcon a total of $515 million for NorTex.[2]

C. Defendants' Specific Representations To Plaintiffs

14. During the course of negotiations and due diligence, Falcon and its controlling affiliate, Arcapita, provided Plaintiffs and their representatives with certain detailed and specific financial information regarding NorTex's operations and the value of the assets owned by NorTex and the Worsham-Steed and Hill-Lake entities. Among that information were certain

[1] Specifically, NorTex owns all the interests in two sets of subsidiaries: (1) Worsham-Steed GP, Inc. and Worsham-Steed Gas Storage, L.P. (together, "Worsham-Steed") and (2) Hill-Lake GP, Inc. and Hill-Lake Gas Storage, L.P. (together, "Hill-Lake"). The Worsham-Steed and Hill-Lake entities in turn own and operate the two underground natural gas storage facilities and related processing facilities.

[2] As noted below, $70 million of that purchase price was placed in escrow with Nominal Defendant HSBC pursuant to a First Amendment to Purchase Agreement dated April 1, 2010 ("the First Amendment") and an Escrow Agreement. That $70 million represents a material part of the consideration paid by Plaintiffs for the purchase of NorTex and is the subject of Plaintiffs' claims for injunctive relief and alternative claims for money damages or rescission as set out in more detail below.

specific representations regarding the quantities and value of "pad gas" contained in the respective Storage Facilities, the operating costs associated with the consumption of fuel in the operations of the respective Storage Facilities, and the source of hydrocarbons extracted during operation of NorTex's two NGL extraction plants.

15. For example, Falcon and Arcapita provided financial statements and related materials for fiscal year 2007 through 2009 containing inventory values for pad gas in the Storage Facilities that, taken together, represented there was a combined historical inventory value of $70,337,515 of pad gas in the two Storage Facilities as of March 31, 2009. Those representations were corroborated by a "management presentation" and supposed "pressure test data" that Falcon and Arcapita provided Plaintiffs in February 2010, in the process of due diligence for the purchase and sale of NorTex. Those documents represented that, based on actual pressure testing and engineering analysis, there were 4 billion cubic feet ("bcf") of pad gas in the Hill-Lake Facility and 10 bcf of pad gas in the Worsham-Steed Facility.

16. In addition, in February 2010, in connection with due diligence for the sale of NorTex, Falcon and Arcapita provided Plaintiffs with financial statements for Falcon's and NorTex's fiscal years from 2007 through 2009. In those financial statements, Falcon and Arcapita gave inaccurate information regarding operating expenses from fuel consumption in the operation of the Storage Facilities. In connection with those financial statements, Falcon and Arcapita instead represented that the fuel consumption from operations was offset by a phenomenon they described as "Btu enhancement"; essentially, they represented that native hydrocarbons in the Storage Facilities were enhancing the heating value of customer gas sufficient to offset the fuel consumed in operating the Storage Facilities. Falcon and Arcapita

also represented that the extraction of NGLs from within the Storage Facilities had no effect on the quantities of gas present in the Storage Facilities.

17. In the financial statements and purported pressure testing data, Falcon and Arcapita represented that they performed regular pressure tests and engineering measurements of the volume of pad gas in the Storage Facilities.

18. The financial statements, management presentations, and purported pressure test data were prepared by Falcon's representatives acting within the course and scope of their employment by Falcon and, on information and belief, by representatives of Arcapita acting within the course and scope of their employment by Arcapita.

19. "Pad gas" is of fundamental importance to the operation of a natural gas storage facility. "Pad gas" is the base amount of gas necessary to maintain storage field pressure and deliverability of the customers' gas stored in the facility. Without sufficient pad gas, the Storage Facilities would be unable to withdraw and deliver customer gas at levels required for services such as "firm storage service" ("FSS"), "load-following hourly balancing" ("LFHB"), and "park-and-loan" ("PAL") agreements with customers. In other words, the quantity of pad gas in the Storage Facilities is material information because, without sufficient pad gas in the Storage Facilities, NorTex cannot meet its obligations to its customers and cannot operate its gas storage business. Likewise, the information regarding fuel consumption and the source of hydrocarbons extracted during NGL facility operations is essential in accurately evaluating the economic value of NorTex and the assets it owns and operates and, thus, material to any potential purchaser.

20. In the Purchase Agreement, Falcon expressly represented and warranted that "each balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material

respects the consolidated financial position of the Company and its Subsidiaries as of the date of each such balance sheet . . . ."

21. Also in the Purchase Agreement, Falcon represented that neither NorTex nor its subsidiaries have experienced a "Material Adverse Effect . . . or other disposition of any material assets" since March 31, 2009.

22. In addition, in the course of due diligence, Plaintiffs inquired of Falcon regarding why Falcon's records did not show any change in value over time for the pad gas present in the Storage Facilities, and why there was no entry in the records for the cost, expense, or consumption of fuel consumed in the process of extracting natural gas liquids from the gas stored in the facilities. Falcon and Arcapita responded by referring Plaintiffs to a January 2010 memorandum with a subject of "NGL Material Balance & Shrink," a Microsoft Excel file, and a February 2010 "Material Balance" presentation which Falcon and Arcapita had caused to be provided in the due diligence "data room" and made available to Plaintiffs. That "Material Balance" presentation and the other associated information represented, in summary, that the consumption of pad gas as fuel in the storage and processing of gas contained in the Storage Facilities was offset by a phenomenon they described as "Btu enhancement." This information also represented that the source of hydrocarbons produced during NGL extraction facility operations was native fluids contained in the Storage Facilities, and not pad gas or customer gas being injected from gas pipelines for storage and later withdrawal.

23. Falcon and Arcapita made the foregoing representations in the course of due diligence regarding the sale of NorTex because they knew that potential buyers such as Plaintiffs would require information about the quantities and values of pad gas in the Storage Facilities, the source of compressor fuel and associated operating expense, and the source of hydrocarbons

produced during NGL extraction facility operations as material components in evaluating the gas storage assets and operations. Further, Falcon and Arcapita made these representations specifically in response to inquiries from Plaintiffs regarding the quantities of pad gas, the consumption of compressor fuel, and the extraction of hydrocarbons as NGLs, each as reflected in Falcon's records, knowing that Plaintiffs would rely on the information provided. Falcon and Arcapita made these representations intending that Plaintiffs would rely on them in proceeding with the purchase of NorTex.

24. Between March 15, 2010 and April 1, 2010, in reasonable reliance on these representations from Falcon and Arcapita regarding pad gas quantities, compressor fuel consumption, and the source of hydrocarbons produced during NGL extraction facility operations, Plaintiffs entered into the Purchase Agreement, the First Amendment, and the Escrow Agreement, and proceeded to close the purchase and sale of NorTex and pay over half a billion dollars to Falcon, including the $70 million escrow fund.

D. Defendants' Misrepresentations

25. In or around May 2010, after closing the purchase of NorTex, Plaintiffs conducted a shut-in pressure test on the Hill-Lake Facility. A proper engineering analysis of the results of Plaintiffs' test indicated a shortfall of both NorTex's pad gas as well as customer gas,[3] totaling approximately 4 bcf at the Hill-Lake Facility alone. Further investigation has indicated a likely shortfall of 6 bcf or more between the two Storage Facilities combined.

26. Since that time, Plaintiffs have been engaged in rigorous investigation into the root causes for the shortfalls in pad gas and customer gas. Plaintiffs have discovered that the shortfalls are the result of a number of shoddy and fraudulent practices by Falcon during its

[3] "Customer gas" is the amount of gas that customers have stored in the Storage Facilities as part of gas storage agreements with NorTex.

ownership and operation of NorTex and the Storage Facilities over a period at least two years preceding the closing of Plaintiffs' purchase of NorTex. The causes for the gas shortfalls are disturbing and indicative of gross neglect, if not outright deception, on the part of Falcon and Arcapita.

27. For example, Plaintiffs have learned that, during its operation of NorTex and the Storage Facilities, Falcon failed to properly account for and record fuel usage in compression of gas in the Storage Facilities, and that consumption of fuel in the compression operations actually drew upon and depleted the quantities of gas within the Storage Facilities to a degree that was not offset by Falcon's represented "Btu enhancement" theory. In reality, at the Hill-Lake Facility alone, fuel consumption represents over $3 million in annual operating expenses that were completely omitted from the financial statements Falcon and Arcapita provided to Plaintiffs. At the Worsham-Steed Facility, the figure is over $4 million annually. The combined economic impact of the omitted operating expenses associated with fuel consumed in the compression operations at the Hill-Lake and Worsham-Steed Facilities is over $40 million. This omitted financial data represents material information which Falcon and Arcapita knew and had a duty to disclose to Plaintiffs, and which would have significantly reduced the economic value Plaintiffs attributed to NorTex's business.

28. Further, Plaintiffs have discovered that the supposed "pressure test" data Falcon and Arcapita provided in due diligence was not actual pressure testing and engineering analysis as represented. Rather, the documents reflected mere "in-and-out" calculations derived from old, inaccurate baseline assumptions regarding "starting quantities" of pad gas in the two Storage Facilities and relied on inaccurate or incomplete in-and-out flows.

29. Plaintiffs have also discovered that Falcon did not properly monitor, record, or analyze the volume or composition of gas flows in and out of the Storage Facilities and related systems.

30. Plaintiffs have also learned that Falcon failed to properly calculate and account for "shrinkage" resulting from the extraction of NGLs from the gas within the Storage Facilities. "Shrinkage" refers to the amount of natural gas that is transformed into liquid products such as ethane, propane, and butane during processing of natural gas at NGL extraction plants such as exist at both the Hill-Lake and Worsham-Steed Facilities. In addition, the gas flows associated with NGL extraction operations were incorrectly portrayed in a materially different way in the Material Balance information provided to Plaintiffs by Falcon and Arcapita's representatives.

31. Plaintiffs have also learned that, contrary to Falcon's and Arcapita's representations in the 2007, 2008, and 2009 financial statements and elsewhere, Falcon failed to conduct regular and consistent shut-in pressure testing and related volumetric calculations and measurements of the quantities of gas within the Storage Facilities, and failed to conduct thorough and proper analyses of the results of those tests to ensure NorTex's financial records were accurate.

32. Plaintiffs have discovered that both Falcon and Arcapita knew of these problems, and therefore the falsity of the information, at the time they were making representations and warranties to Plaintiffs regarding NorTex's financial condition, the value and quantity of gas in the Storage Facilities, the source and cost of compressor fuel, the source of and economic value of hydrocarbons produced during NGL extraction facility operations, and the absence of materially adverse changes or events in the company's operations and assets.

33. Specifically, in early 2009, NorTex management communicated to Arcapita that the Storage Facilities had "deliverability issues" related to gas shortfalls. NorTex discussed with Falcon and Arcapita the possible purchase of additional pad gas to make up for the shortfalls and resolve the deliverability issues; Falcon and Arcapita rejected the purchase of additional pad gas. Instead, Falcon and Arcapita caused NorTex to enter into "park-and-loan" arrangements that, in essence, "borrowed" 1.5 bcf of gas to aid with immediate deliverability problems. This temporary "fix" concealed the depleted pad gas and did nothing to correct the inaccurate records, flawed processes, and shoddy operations and recordkeeping that led to the overstatement of the quantities and values of the pad gas and customer gas to begin with, thereby perpetuating the problem with the full knowledge of Falcon and Arcapita. Not surprising, none of that information was disclosed to Plaintiffs in the course of negotiation and due diligence for its half-billion-dollar purchase of NorTex.

34. Further, in or around October 2009, Falcon and, on information and belief, Arcapita, received a report from Platt, Sparks & Associates that attempted to correlate pressure readings from the Hill-Lake Facility with gas inventories reported in Hill-Lakes' regulatory filings. The information contained in the report made it clear that either the Hill-Lake Facility inventory levels contained in the regulatory filings were inaccurate or that the Hill-Lake Facility was losing gas. Again, Falcon and Arcapita failed to disclose that information to Plaintiffs in the course of negotiation and due diligence for its half-billion-dollar purchase of NorTex.

35. Plaintiffs have also discovered since closing the purchase of NorTex that, in late 2009 and early 2010, Falcon management became aware that NorTex was encountering additional deliverability issues due specifically to shortfalls and depletion of pad gas. Once

again, Falcon and Arcapita failed to disclose that information to Plaintiffs in the course of negotiation and due diligence for its half-billion-dollar purchase of NorTex.

36. This omitted financial data and other information represents material information which Falcon and Arcapita knew and had a duty to disclose to Plaintiffs, and which would have significantly reduced the economic value Plaintiffs attributed to NorTex's business.

E. Damage To Plaintiffs

37. As a result of Falcon's and Arcapita's misrepresentations, Plaintiffs have purchased and now own NorTex and its gas storage operations, but find themselves owning far less than they bargained for and far less than what was represented. In the immediate term, Plaintiffs (through NorTex) have been forced to mitigate further losses by implementing a program to strategically and opportunistically purchase approximately 4 bcf of gas to make up for the shortfall in pad gas and customer gas at the Hill-Lake Facility and ensure continued compliance with customer contracts. At current market prices, the loss to Plaintiffs as a result of having to cover these gas shortfalls is approximately $20 million, and Plaintiffs believe in reasonable probability the future costs to cover such shortfalls at the combined Storage Facilities will exceed an additional $10 million.

38. Further, as a result of Falcon's and Arcapita's misrepresentations regarding the source and cost of fuel consumed in the compression of gas at the Storage Facilities, Plaintiffs will incur additional, unbargained-for annual operating expenses that were completely omitted from the financial statements Falcon and Arcapita provided to Plaintiffs. Specifically, at the Hill-Lake Facility alone, fuel consumption represents over $3 million in annual operating expenses, expenses that were omitted from the financial statements provided by Falcon and Arcapita and relied upon by Plaintiffs. At the Worsham-Steed Facility, the figure is over $4 million annually. The undisclosed operating expenses associated with fuel consumed in the

compression operations of the combined Storage Facilities have an economic impact of over $40 million on the value of the assets Plaintiffs purchased.

39. Moreover, Plaintiffs have also suffered significant economic losses in connection with the extraction of NGLs from the gas in the Hill-Lake Facility and possibly the Worsham-Steed Facility. It was represented to the Plaintiffs that NGLs extracted at the gas storage facilities came from native fluids contained in the Storage Facilities, and not pad gas or customer gas being injected from gas pipelines for storage and later withdrawal. Plaintiffs have determined that a significant portion of the NGLs extracted from the Hill-Lake Facility, primarily ethane, actually come from customer gas being injected for storage. Economic losses to the Plaintiffs include the cost of customer gas shrinkage that has not been reflected on the income statement; severance and royalties paid on NGLs coming from that shrinkage; and unattractive revised economics for continued extraction plant operation. For the Hill-Lake NGL extraction plant alone, economic value will be reduced by over $3 million just due to customer gas shrinkage. If the combined impact of shrinkage and unaccounted for compressor fuel use renders the NGL extraction plant uneconomic to operate, the total reduction in economic value will be over $15 million. The Worsham-Steed NGL extraction plant could have similar, or even higher reductions in economic value.

40. In short, Plaintiffs have been deceived into spending over a half-billion dollars for NorTex and materially defrauded and harmed as a direct result of Falcon's and Arcapita's misrepresentations and material omissions of facts regarding NorTex's assets and operations.

FIRST CAUSE OF ACTION

(Fraud/Fraudulent Inducement)

41. Plaintiffs hereby re-allege and incorporate by reference the allegations and facts contained in the foregoing paragraphs.

42. During the course of negotiations between Plaintiffs and Falcon, Falcon and its controlling affiliate, Arcapita, made specific, material representations regarding NorTex's operations and the quantities and value of pad gas contained in the Storage Facilities owned by NorTex. Falcon and Arcapita knew that such information would be essential in valuing NorTex's gas storage assets and operations because pad gas is of fundamental importance to the operation of a natural gas storage facility, and because the information regarding the costs associated with NorTex's operations materially impacts the value of NorTex and its assets.

43. Falcon and Arcapita made the above representations during Plaintiffs' evaluation of and due diligence regarding the purchase of NorTex and in response to specific inquiries from Plaintiffs regarding the quantities of pad gas and consumption of compressor fuel reflected in Falcon's records, intending and knowing that Plaintiffs would rely on the information provided. Plaintiffs did, in fact, reasonably rely on the representations from Falcon and Arcapita regarding pad gas, certain operational costs, and the source of hydrocarbons extracted in the operation of NorTex's NGL business, and were induced to enter into the Purchase Agreement, the First Amendment, and the Escrow Agreement on the basis of these representations.

44. Falcon and Arcapita's representations regarding NorTex's operations and the quantities and value of the pad gas contained in the Storage Facilities were false. Preliminary results indicate a shortfall of approximately 4 bcf of gas at the Hill-Lake Facility alone and likely 6 bcf or more at the two Storage Facilities combined. Further, Plaintiffs have discovered material, undisclosed information regarding fuel consumption and NorTex's NGL operations that significantly affect the value of NorTex and its assets.

45. Both Falcon and Arcapita knew of the gas shortfall and its root causes as early as 2008, well before the execution and negotiation of the Purchase Agreement. Falcon and

Arcapita had a duty to provide accurate information regarding NorTex's operations and the quantities and value of pad gas contained in the Storage Facilities—information that directly correlated to the value attached to those Storage Facilities—and to disclose the fact that the Storage Facilities were experiencing gas shortfalls as early as 2008.

46. Falcon and Arcapita's failure to provide accurate information deceived Plaintiffs into agreeing to contractual terms that they would not have otherwise agreed to had they been provided the true facts. Section 10.7 and Section 4.26 of the Purchase Agreement, and any other purported waivers of rights and claims, are invalid because they are a product of the fraud perpetrated upon Plaintiffs.

47. Thus, Falcon and Arcapita made certain material misrepresentations of existing facts which were false or omissions of material facts which it had a duty to disclose; Falcon and Arcapita either knew the misrepresentations were false or were reckless with respect to their falsity; the misrepresentations or omission were made for the purpose of inducing Plaintiffs to rely upon them; Plaintiffs did justifiably and reasonably rely on the misrepresentations and omissions; and Plaintiffs have been injured as a result of the material misrepresentations or omissions.

48. As a natural and probable result of, or as a proximate result of, the fraudulent conduct of Falcon and Arcapita, Plaintiffs were induced to enter into a transaction and have suffered economic damages. Plaintiffs therefore, pursuant to this fraud claim, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law. Further, and in the alternative, Plaintiffs seek disgorgement from Falcon and Arcapita of any monies obtained from Plaintiffs as a result of the fraud. Further, and in the alternative, Plaintiffs

seek rescission of the Purchase Agreement, the First Amendment, and the Escrow Agreement, and ask this Court to return the parties to their earlier positions as if no Agreement had existed.

SECOND CAUSE OF ACTION

(Breach of Express Warranty)

49. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

50. Falcon made certain express warranties and representations in connection with the Agreement.

51. In Section 4.9 of the Purchase Agreement, Falcon represented that "each balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material respects the consolidated financial position of the Company and its Subsidiaries as of the date of each such balance sheet . . . ." In light of the representations in Falcon's financial statements regarding the value of the pad gas in the Storage Facilities, the operating expenses (or purported lack thereof) related to operation of the Storage Facilities, and the fact that there was a material shortfall of pad gas and customer gas in the Storage Facilities, the representations and warranties in Section 4.9 of the Purchase Agreement proved to be false; Falcon (and through it, Arcapita) breached this representation and warranty and as a result Plaintiffs have suffered actual economic harm.

52. In Section 4.11 of the Purchase Agreement, Falcon represented that neither NorTex nor its subsidiaries have experienced a "Material Adverse Effect . . . or other disposition of any material assets" since March 31, 2009. In light of the quantities and value of the pad gas in issue, and in light of the fact that a significant portion of the shortfall in pad gas and customer gas occurred between March 31, 2009 and March 31, 2010, there clearly has been a "Material Adverse Effect" and/or a "disposition of material assets" after March 31, 2009. Thus, the

representations and warranties in Section 4.11 of the Purchase Agreement proved to be false; Falcon (and through it, Arcapita) breached this representation and warranty; and, as a result, Plaintiffs have suffered actual economic harm.

53. As detailed above, Falcon breached each of the foregoing express warranties and representations contained in the Purchase Agreement. Falcon made an assurance of the existence of a material fact upon which Plaintiffs relied; the assurance was false; and Plaintiffs were injured as a result of the breach of warranty. Section 10.1 of the Purchase Agreement expressly entitles Plaintiffs to indemnification for damages, including attorneys' fees, arising out of or relating to breach or inaccuracy of any representation or warranty made by Falcon. Arcapita absolutely, unconditionally, and irrevocably guaranteed any payment obligations under Section 10 of the Purchase Agreement, including Section 10.1, pursuant to the April 1, 2010 Guaranty Agreement between Arcapita and Plaintiffs.

54. As a natural and probable result of, or as a proximate result of, the breach of warranty by Falcon, Plaintiffs have suffered economic damages. Plaintiffs therefore, pursuant to this breach of express warranty claim, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law.

THIRD CAUSE OF ACTION

(Breach of Contract)

55. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

56. Pursuant to the Purchase Agreement and the First Amendment, Falcon agreed to deliver assets that contained specific quantities of pad gas and exhibited specific operational characteristics. Plaintiffs, in exchange, agreed to pay the purchase price. Although Plaintiffs fulfilled their duties under the Purchase Agreement and Second Amendment, Falcon materially

breached the contract because, in actuality, the assets that it sold contained less pad gas than it represented and was contemplated by the agreement of the parties. Further, the fuel consumption of the Storage Facilities' compressors and the resulting depletion of stored gas in the Storage Facilities is far greater than Plaintiffs bargained and paid for based on Falcon's and Arcapita's misrepresentations. Moreover, the source of hydrocarbons extracted during the operation of the Storage Facilities' NGL extraction facilities was misrepresented. The cost of this stored gas "shrinkage," combined with NGL extraction plant fuel use is so significant as to potentially render NGL extraction plant operations economically non-viable.

57. Thus, a valid contract existed between Plaintiffs and Falcon; Plaintiffs performed as required by the terms of the contract; Falcon materially breached the contract; and Plaintiffs have incurred damages as a result of Falcon's breach.

58. As a natural and probable result of, or as a proximate result of, the breach of contract by Falcon, Plaintiffs have suffered economic damages. Plaintiffs therefore, pursuant to this breach of contract claim, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law.

FOURTH CAUSE OF ACTION

(Violations of § 10 and Rule 10b-5 of the Securities Exchange Act of 1934)

59. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

60. The ownership interests and units of NorTex and/or its subsidiaries that Plaintiffs purchased under the Purchase Agreement were "securities" within the meaning of the Act. In connection with the sale of all outstanding ownership interests and units of NorTex to Plaintiffs, Falcon and Arcapita, sellers of those securities, made several material misstatements or omissions to Plaintiffs.

61. For example, Falcon and Arcapita provided financial statements and related materials for fiscal year 2007 through 2009 containing inventory values and historical cost assumptions for pad gas in the Storage Facilities that, taken together, represented there was a combined 14 bcf of pad gas in the two Storage Facilities as of March 31, 2009. Those representations were corroborated by a "management presentation" and supposed "pressure test data" that Falcon and Arcapita provided Plaintiffs in February 2010, in the process of due diligence for the purchase and sale of NorTex. Those documents also represented that, based on actual pressure testing and engineering analysis, there was 14 bcf of pad gas in the two Storage Facilities.

62. In addition, in February 2010, in connection with due diligence for the sale of NorTex, Falcon and Arcapita provided Plaintiffs with financial statements for Falcon's and NorTex's fiscal years from 2007 through 2009. Those financial statements, in conjunction with other data Falcon and Arcapita provided, indicated that there were no operating costs associated with the compressor fuel utilized in the operation of the Hill-Lake and Worsham-Steed Facilities. In support of their conclusions regarding the purported lack of operating expenses, Falcon and Arcapita represented that the fuel consumption from operations was offset by a phenomenon they described as "Btu enhancement"; essentially, they represented that native hydrocarbons in the Storage Facilities were enhancing the heating value of customer gas sufficient to offset the fuel consumed in operating the Storage Facilities.

63. Further, Falcon and Arcapita represented that the extraction of NGLs from the gas within the Storage Facilities had no affect on the quantities of gas present in the Storage Facilities.

64. In the financial statements and purported pressure testing data, Falcon and Arcapita represented that they performed regular pressure tests and engineering measurements of the volume of pad gas in the Storage Facilities.

65. The financial statements, management presentations, and purported pressure test data were prepared by Falcon's representatives acting within the course and scope of their employment by Falcon, and, on information and belief, by representatives of Arcapita acting within the course and scope of their employment by Arcapita.

66. Further, Falcon represented in the Purchase Agreement that: (1) "each balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material respects the consolidated financial position of the Company and its Subsidiaries as of the date of each such balance sheet"; and (2) that neither NorTex nor its subsidiaries have experienced a "Material Adverse Effect . . . or other disposition of any material assets" since March 31, 2009. Considering the fact that the Storage Facilities are missing more than 6 *billion* cubic feet of gas, the falsity of these representations is evident, as is the inaccuracy of the representations contained in the financial statements and related documents indicating that there was a combined 14 bcf of pad gas in the two Storage Facilities as of March 31, 2009.

67. Falcon and Arcapita made material misstatements and omissions in the context of Plaintiffs' due diligence regarding the purchase of NorTex, intending that Plaintiffs rely upon the information provided. In addition to the misstatements and omissions regarding the quantities and values of pad gas, Plaintiffs have learned that, during its operation of NorTex and the Storage Facilities, Falcon failed to properly account for and record fuel usage in compression of gas in the Storage Facilities, and that consumption of fuel in the compression operations actually

drew upon and depleted the quantities of gas within the Storage Facilities to a degree that was not offset by Falcon's represented "Btu enhancement" theory.

68. Further, Plaintiffs have discovered that the supposed "pressure test" data Falcon and Arcapita provided in due diligence was not actual pressure testing and engineering analysis as represented. Rather, the documents reflected mere "in-and-out" calculations derived from old, inaccurate baseline assumptions regarding "starting quantities" of pad gas in the two Storage Facilities.

69. Plaintiffs have also discovered that, contrary to assertions in the financial statements and related data, Falcon did not properly monitor, record, or analyze the volume or composition of gas flows in and out of the Storage Facilities and related systems.

70. Plaintiffs have also learned that Falcon incorrectly represented gas flows, and failed to make proper or adequate calculations or records of shrinkage resulting from the extraction of NGLs from the gas within the Storage Facilities, resulting in a material misstatement or omission.

71. Plaintiffs have also learned that, contrary to Falcon's and Arcapita's representations in the 2007, 2008, and 2009 financial statements and elsewhere, Falcon failed to conduct regular and consistent shut-in pressure testing and related volumetric calculations and measurements of the quantities of gas within the Storage Facilities, and failed to conduct thorough and proper analyses of the results of those tests to ensure NorTex's financial records were accurate. These failures occurred during a period when deliverability problems indicated a critical need to perform these tests, calculations, and measurements and to properly analyze and report the results.

72. Plaintiffs have discovered that both Falcon and Arcapita knew of these problems, and therefore the falsity of the information, at the time they were making representations and warranties to Plaintiffs regarding NorTex's financial condition, the value and quantity of gas in the Storage Facilities, and the absence of materially adverse changes or events in the company's operations and assets.

73. These material misstatements and omissions have caused Plaintiffs economic loss. As a result of Falcon's and Arcapita's misrepresentations, Plaintiffs (through NorTex) have been forced to mitigate further losses by implementing a program to strategically and opportunistically purchase approximately 4 bcf of gas to make up for the shortfall in pad gas and customer gas at the Hill-Lake Facility and ensure ongoing compliance with customer contracts. At current market prices, the loss to Plaintiffs as a result of having to cover these gas shortfalls is approximately $20 million, and Plaintiffs believe in reasonable probability the future costs to cover such shortfalls at the combined Storage Facilities will exceed an additional $10 million. Further, as a result of Falcon's and Arcapita's misrepresentations regarding the source and cost of fuel consumed in the compression of gas in the Storage Facilities, Plaintiffs will incur additional, unbargained-for annual operating expenses that were completely omitted from the financial statements Falcon and Arcapita provided to Plaintiffs. The undisclosed operating expenses associated with fuel consumed in the compression operations of the combined Storage Facilities have an economic impact of over $40 million on the value of the assets Plaintiffs purchased. Likewise, the undisclosed practice of extracting NGLs from stored gas rather than from native hydrocarbons present in the Storage Facilities has a material, adverse economic impact on the value of NorTex's NGL extraction business. Had the truth been revealed regarding the quantities and values of pad gas contained in the Storage Facilities, the operating costs associated with fuel

compression, and the impact of shrinkage on NorTex's NGL extraction operations, Plaintiffs would not have agreed to the purchase price ultimately reflected in the Purchase Agreement.

74. Thus, Falcon and Arcapita, sellers of securities, made material misstatements or omissions in connection with the sale of securities to Plaintiffs; Falcon and Arcapita knew the misstatements or omissions were false; Plaintiffs relied on the material misstatements or omissions; Plaintiffs suffered economic loss because of the material misstatements or omissions; and there is a causal connection between the material misstatements or omissions and Plaintiffs' economic loss.

75. As a natural and probable result of, or as a proximate result of, violations of § 10 of the Act and Rule 10b-5, Plaintiffs have suffered economic damages. Plaintiffs therefore, pursuant to this claim under § 10 of the Act and Rule 10b-5, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law.

FIFTH CAUSE OF ACTION

(Request for Injunctive Relief)

76. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

77. On April 1, 2010, Plaintiffs and Defendants Falcon and HSBC entered into an Escrow Agreement in connection with the purchase by Plaintiffs of all of the issued and outstanding interests in NorTex. Pursuant to the terms of the Escrow Agreement, Plaintiffs deposited $70 million with HSBC; HSBC, in turn, agreed to deposit the funds in an account (the "Escrow Account").

78. Plaintiffs seek the assistance of the equitable powers of this Court to assure that Defendants do not wrongfully collect an additional $70 million as a reward for their fraudulent and wrongful conduct and transfer those fraudulently obtained funds beyond the reach of this

Court and Plaintiffs. Falcon and Arcapita contend that they are entitled to the immediate release of the Escrow Account, and have stated their intent to pursue such release. Falcon and Arcapita claim that they are entitled to the $70 million currently held in the Escrow Account in connection with the fraudulent sale of NorTex to Plaintiffs, a sale in which Falcon and Arcapita misrepresented the value of the Storage Facilities owned by NorTex in order to induce payment of the purchase price. Plaintiffs have already paid over $500 million in exchange for assets whose value Falcon and Arcapita materially misrepresented and that are worth substantially less than the amount Plaintiffs were defrauded into paying. This Court must prevent the Falcon and Arcapita Defendants from collecting additional funds as an additional windfall for the fraud perpetrated upon Plaintiffs.

79. The release of the Escrow Account threatens immediate and irreparable harm to Plaintiffs that cannot be remedied at law. Thus, Plaintiffs seek a permanent injunction restraining Falcon and HSBC from disbursing any funds from the Escrow Account, except pursuant to the Expense Notices referenced in Section 3.7 of the Purchase Agreement. If this Court does not enter a permanent injunction as specified above, Plaintiffs will be irreparably damaged because the funds in the Escrow Account will be immediately released to Arcapita, a Bahrain bank, and removed from the jurisdiction of this Court. Thus, Falcon and Arcapita will be effectively rewarded for their fraudulent and wrongful conduct and Plaintiffs will have no recourse in connection with same.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand that judgment be entered against Defendants for:

(a) actual damages;

(b) a permanent injunction;

(c) in the alternative, disgorgement of any monies obtained from Plaintiffs as a result of fraud;

(d) in the alternative, rescission of the Purchase Agreement;

(e) reasonable and necessary attorneys' fees;

(f) court costs; and

(g) such other and further relief to which Plaintiffs are justly entitled.

Dated: New York, New York
August 2, 2010

BRACEWELL & GIULIANI LLP

By: _____

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Origin ID: EIXA

FedEx Express

J122012071603 25

Ship Date: 28AUG12
ActWgt: 0.5 LB
CAD: 103917639/WSXI2500

Delivery Address Bar Code

Ref # 001558.000013-03767
Invoice #
PO #
Dept #

SHIP TO: (404) 920-9000 BILL SENDER
Arcapita Bank B.S.C.(c)
c/o GCG
5151 Blazer Pkwy Ste A

Dublin, OH 43017

WED - 29 AUG A1
PRIORITY OVERNIGHT

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ASR
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OH-US
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515G2/0C34/AA44

FOLD on this line and place in shipping pouch with **bar code and delivery address** visible

1. Fold the first printed page in half and use as the shipping label.
2. Place the label in a waybill pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.
3. Keep the second page as a receipt for your records. The receipt contains the terms and conditions of shipping and information useful for tracking your package.

EXHIBIT 6

Claim No. 296

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM

Name of Debtor (Check Only One):

	Case No.		
☒ Arcapita Bank B.S.C.(c)	12-11076	☐ Windturbine Holdings Limited	12-11079
☐ Arcapita Investment Holdings Limited	12-11077	☐ AEID II Holdings Limited	12-11080
☐ Arcapita LT Holdings Limited	12-11078	☐ Railinvest Holdings Limited	12-11081
		☐ Falcon Gas Storage Company, Inc.	12-11790

NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Tide Natural Gas Storage I LP

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: *(If known)*

Filed on: _____

Name and address where notices should be sent:
Bracewell & Giuliani LLP
711 Louisiana St.
Houston, TX 77002
Attn: Trey Wood

Telephone number: (713) 223-2300
Email Address: Trey.Wood@bgllp.com

Name and address where payment should be sent (if different from above):
Tide Natural Gas Storage I LP
c/o Alinda Capital Partners LLC
150 East 58th St.
New York, NY 10155
Telephone number: Attn: General Counsel
Email Address:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

Your Claim is Scheduled As Follows:

THE GARDEN CITY GROUP, INC. AUG 29 2012

If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. (This scheduled amount of your claim may be an amendment to a previously scheduled amount.) If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claim against the Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is listed as any of DISPUTED, UNLIQUIDATED, or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

FILED - 00296
SDNY
ARCAPITA BANK B.S.C. (C)
12-11076 (SHL)

1. **Amount of Claim as of Date Case Filed:** $ 120,000,000.00 plus interest, fees and costs

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

☒ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. **Basis for Claim:** Fraud, Fraudulent Inducement, Breach of Warranty, Breach of Contract, Securities Violations
(See instruction #2)

3. **Last four digits of any number by which creditor identifies debtor:** _____ _____ _____ _____

3a. **Debtor may have scheduled account as:** _____ (See instruction #3a)

3b. **Uniform Claim Identifier (optional):** _____ (See instruction #3b)

4. **Secured Claim** (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☒ Other

Describe: Escrow Funds

Value of Property: $ 70,000,000.00

Annual Interest Rate _____ % ☐ Fixed or ☐ Variable
(when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: $ _____

Basis for perfection: see attached addendum

Amount of Secured Claim: $ 70,000,000.00 plus interest

Amount Unsecured: $ 50,000,000.00

5. **Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.**

☐ Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).

☐ Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).

☐ Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)( ).

Amount entitled to priority: $ _____

*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. **Credits.** The amount of all payments on this claim has been credited for the purpose of making this proof of claim. *(See instruction #6)*

7. **Documents:** Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #7, and the definition of "redacted".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain: _____

8. **Signature:** (See instruction #8) Check the appropriate box.

☐ I am the creditor ☒ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: John Laxmi
Title: Secretary
Company: Tide Natural Gas Storage I LP

John Laxmi (Signature) 8/27/2012 (Date)

Address and telephone number (if different from notice address above):

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571. **Modified B10 (GCG) (12/11)**

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the Debtor, exceptions to these general rules may apply. The attorneys for the Debtors and their court-appointed claims agent, GCG, are not authorized and are not providing you with any legal advice.

PLEASE SEND YOUR ORIGINAL, COMPLETED CLAIM FORM AS FOLLOWS: **IF BY MAIL:** ATTN: ARCAPITA BANK B.S.C.(c), C/O GCG, P.O. BOX 9881 DUBLIN, OHIO 43017-5781. **IF BY HAND OR OVERNIGHT COURIER:** ATTN: ARCAPITA BANK B.S.C.(c), C/O GCG, 5151 BLAZER PARKWAY, STE A, DUBLIN, OH 43017. **ANY PROOF OF CLAIM SUBMITTED BY FACSIMILE OR EMAIL WILL NOT BE ACCEPTED.**

THE GENERAL BAR DATE IN THESE CHAPTER 11 CASES IS AUGUST 30, 2012 AT 5:00 P.M. (PREVAILING EASTERN TIME)
THE GOVERNMENTAL BAR DATE IN THESE CHAPTER 11 CASES IS SEPTEMBER 17, 2012 AT 5:00 P.M. (PREVAILING EASTERN TIME)

Items to be completed in Proof of Claim form

Bankruptcy Court Information:
All of these chapter 11 cases other than Falcon Gas Storage Company, Inc. were commenced on March 19, 2012. Falcon Gas Storage Company, Inc. filed its chapter 11 petition on April 30, 2012. You should select the Debtor against which you are asserting your claim from the list provided.

A SEPARATE PROOF OF CLAIM FORM MUST BE FILED AGAINST EACH DEBTOR.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. Please provide us with a valid email address. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to your claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the Debtor's account or other number used by the creditor to identify the Debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the Debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a):
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the Debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is the person, corporation, or other entity to whom the Debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. § 101 (10).

Claim
A claim is the creditor's right to receive payment for a debt owed by the Debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the Debtor on the date of the bankruptcy filing. The creditor must file the form with GCG as described in the instructions above and in the Bar Date Notice.

Secured Claim Under 11 U.S.C. § 506 (a)
A secured claim is one backed by a lien on property of the Debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a Debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the Debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507 (a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

INFORMATION

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

Acknowledgment of Filing of Claim
To receive a date-stamped copy of your claim form, please provide a self-addressed stamped envelope and a copy of your proof of claim form when you submit the original to GCG.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the Debtor. These entities do not represent the bankruptcy court or the Debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

List of Debtors and Case Numbers

Indicate on the face of the Proof of Claim form the Debtor against which you assert a claim.
Choose only one Debtor for each Proof of Claim form.

Arcapita Bank B.S.C.(c) 12-11076
Arcapita Investment Holdings Limited 12-11077
Arcapita LT Holdings Limited 12-11078
Windturbine Holdings Limited 12-11079
AEID II Holdings Limited 12-11080
Railinvest Holdings Limited 12-11081
Falcon Gas Storage Company, Inc. 12-11790

BRACEWELL &GIULIANI

Texas
New York
Washington, DC
Connecticut
Seattle
Dubai
London

Jason G. Cohen
Associate

713.221.1416 Office
800.404.3970 Fax

Jason.Cohen@bgllp.com

Bracewell & Giuliani LLP
711 Louisiana Street
Suite 2300
Houston, Texas
77002-2770

August 28, 2012

Arcapita Bank B.S.C.(c)
c/o GCG
5151 Blazer Parkway, Suite A
Dublin, Ohio 43017

Re: Tide Natural Gas Storage I LP and Tide Natural Gas Storage II LP - Proofs of Claim

Dear Arcapita Bank B.S.C.(c):

Enclosed please find the following proofs of claim for filing with original signatures:

1. Proof of Claim of Tide Natural Gas Storage I LP against Arcapita Bank B.S.C.(c), Case No. 12-11076.

2. Proof of Claim of Tide Natural Gas Storage II LP against Arcapita Bank B.S.C.(c), Case No. 12-11076.

3. Proof of Claim of Tide Natural Gas Storage I LP against Falcon Gas Storage Company, Inc., Case No. 12-11790.

4. Proof of Claim of Tide Natural Gas Storage II LP against Falcon Gas Storage Company, Inc., Case No. 12-11790.

Additionally, enclosed are copies of the above listed proofs of claim to be file stamped and returned to me as proof of receipt via the enclosed self-addressed stamped envelope.

Very truly yours,

Bracewell & Giuliani LLP

Jason G. Cohen

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	§	
	§	
	§	**Chapter 11**
ARCAPITA BANK B.S.C.(c), *et al.*,	§	
	§	**Case No. 12-11076-shl**
Debtors.	§	**Jointly Administered**
	§	
	§	
IN RE:	§	
	§	**Chapter 11**
FALCON GAS STORAGE CO., INC.	§	
	§	**Case No. 12-11790-shl**
Debtor.	§	**(Jointly Administered under**
	§	**Case No. 12-11076)**

ADDENDUM TO PROOFS OF CLAIM FILED BY TIDE NATURAL GAS STORAGE I LP AND TIDE NATURAL GAS STORAGE II LP

1. Claimant. Tide Natural Gas Storage I LP and Tide Natural Gas Storage II LP (together, "Tide") hereby files this addendum ("Addendum") to their proofs of claim (together, "Claim"). This Addendum and the attachments hereto are an integral part of Tide's Claim and are incorporated by reference into the Claim for all purposes.

2. Background of Claim. The Claim is based on the fraud, fraudulent inducement, breach of warranty, breach of contract, and securities violations of Falcon Gas Storage Co., Inc. and Arcapita Bank B.S.C.(c), as more specifically detailed in Tide's Complaint filed in the District Court for the Southern District of New York, which initiated Case No. 10-CIV-5821 (the "Complaint") (as attached to the Claim).

3. Amount of Claim (further detailed in the Complaint). The Claim is made in the amount of $120,000,000.00 plus interest, fees and costs.

4. Interest. Tide seeks all pre- and post-judgment interest related to the causes of action asserted in the Complaint to which Tide is entitled under applicable law. Tide also seeks all investment income earned upon the $70,000,000.00 currently in escrow.

5. Fees and Costs. Tide seeks its reasonable and necessary attorneys' fees and all court costs, as detailed in the Complaint.

6. Supporting Documents. The Claim is based upon the actions detailed in the Complaint.

7. Judgment. No judgment has been rendered on the Claim.

8. Credits. The amount of all prepetition payments and credits on the Claim have been credited and deducted for the purposes of making this Claim. Furthermore, Tide deposited $70,000,000.00 of the purchase price for the sale of NorTex Gas Storage Company, LLC into Escrow with HSBC Bank USA, N.A. as escrow agent. These funds remain in escrow and, because the Debtor has perpetrated a fraud upon Tide, as detailed in the Complaint, these funds remain the property of Tide. Upon return of the $70,000,000.00, Tide will provide a credit of $70,000,000.00 against its Claim.

9. Notices. All notices to PPL concerning this Claim should be sent to:

Tide Natural Gas Storage I LP
Tide Natural Gas Storage II LP
c/o Alinda Capital Partners LLC
150 East 58th St.
New York, NY 10155
Attn: General Counsel

Copies of all notices to Tide concerning this Claim should be sent to:

Bracewell & Giuliani LLP
711 Louisiana Street
Suite 2300
Houston, Texas 77002
Attn: Trey Wood

713.223.2300

10. Protective Filing/Amendments. This Claim is filed under compulsion of the bar date established in this case, and is filed to protect Tide from forfeiture of its claims. The execution and filing of this Claim are not (i) a waiver or release of any of Tide's rights against any entity or person liable for all or part of the Claim, (ii) a consent by Tide to the jurisdiction of this Court with respect to any proceeding commenced in this case against or otherwise involving Tide, (iii) a waiver of the right to withdraw the reference with respect to the subject matter of the Claim, any objection or other proceeding commenced with respect thereto or any other proceeding commenced in this case against or otherwise involving Tide, (iv) an election of remedy that waives or otherwise affects any other remedy, or (v) a waiver or release of any of Tide's rights against any third party.

11. Reservation of Rights. Tide expressly reserve its rights to (i) amend or supplement this Claim in any respect, (ii) file additional proofs of claim for claims not covered by this proof of claim, (iii) seek relief from the automatic stay to pursue Tide's Complaint currently pending in the District Court for the Southern District of New York, and (iv) seek withdrawal of the reference with regard to any complaint filed in the Bankruptcy Court for the Southern District of New York, including, but not limited to, the complaint filed by the Hopper Parties, which initiated Adversary Proceeding No. 12-0162.

JUDGE WOOD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIDE NATURAL GAS STORAGE I, LP and TIDE NATURAL GAS STORAGE II, LP, Plaintiffs, v. FALCON GAS STORAGE COMPANY, INC.; ARCAPITA BANK B.S.C.; ARCAPITA, INC.; and HSBC BANK USA, NATIONAL ASSOCIATION, Defendants.	10 CIV 5821 ECF CASE Civil Action No. **COMPLAINT**

Plaintiffs TIDE NATURAL GAS STORAGE I, LP and TIDE NATURAL GAS STORAGE II, LP (together, "Plaintiffs") for their Complaint against Defendants FALCON GAS STORAGE COMPANY, INC., ARCAPITA BANK B.S.C., ARCAPITA, INC., and nominal defendant HSBC BANK USA, NATIONAL ASSOCIATION ("HSBC") (collectively, "Defendants") allege as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction because certain claims asserted herein arise under § 10 of the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. § 78j(b)). Jurisdiction is conferred by § 27 of the Act (15 U.S.C. § 78aa). This Court has supplemental jurisdiction over all state law and other claims asserted herein pursuant to 28 U.S.C. § 1367.

2. This Court has personal jurisdiction over all parties to this action because all parties do business within the State of New York as the term "doing business" is understood in law, have the requisite "minimum contacts" with the State of New York as the term "minimum contacts" is understood in law, have purposefully availed themselves of the protections and benefits of the laws of the State of New York as required to establish *in personam* jurisdiction, or

have expressly consented to the jurisdiction of this Court and of the Courts of the State of New York. This Court's exercise of personal jurisdiction over all Defendants will not offend traditional notions of fair play and substantial justice.

3. Venue is proper in this district pursuant to § 27 of the Act (15 U.S.C. § 78aa) because Defendants transact business in this district. Venue is also authorized in this district under 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district. Venue is also proper in this district by agreement of the parties.

PARTIES

4. Plaintiff TIDE NATURAL GAS STORAGE I, LP is formerly known as Alinda Natural Gas Storage I, LP, and hereafter, together with Tide Natural Gas Storage II, LP (formerly Alinda Natural Gas Storage II, LP), shall be referred to as "Plaintiffs." Tide Natural Gas Storage I, LP is now and at all relevant times has been a limited partnership organized and existing under the laws of the State of Delaware.

5. Plaintiff TIDE NATURAL GAS STORAGE II, LP is formerly known as Alinda Natural Gas Storage II, LP, and hereafter, together with Tide Natural Gas Storage I, LP (formerly Alinda Natural Gas Storage I, LP), shall be referred to as "Plaintiffs." Tide Natural Gas Storage II, LP is now and at all relevant times has been a limited partnership organized and existing under the laws of the State of Delaware.

6. Defendant FALCON GAS STORAGE COMPANY, INC. (hereafter, "Falcon") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Atlanta, Georgia. Pursuant to Section 11.1 of the Purchase Agreement by and between Falcon and Plaintiffs, Falcon may be served with process via U.S.

certified mail, c/o Arcapita, at 75 Fourteenth Street, 24th Floor, Atlanta, Georgia, 30309, with a copy to Raymond E. Baltz, King & Spalding, 1180 Peachtree Street, Atlanta, Georgia, 30309.

7. Defendant ARCAPITA BANK B.S.C. (hereafter, together with Arcapita, Inc., "Arcapita") is a joint stock company incorporated in the Kingdom of Bahrain. Its principal place of business in the United States is 75 Fourteenth Street, 24th Floor, Atlanta, Georgia, 30309. Pursuant to Section 3.4 of the Guaranty Agreement between Arcapita Bank B.S.C. and Plaintiffs, Arcapita Bank B.S.C. may be served with process via U.S. certified mail, c/o Arcapita Inc., at 75 Fourteenth Street, 24th Floor, Atlanta, Georgia, 30309, attention Brian R. McCabe, with a copy to Raymond E. Baltz, King & Spalding, 1180 Peachtree Street, Atlanta, Georgia 30309.

8. Defendant ARCAPITA, INC. (hereafter, together with Arcapita Bank B.S.C., "Arcapita") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 75 Fourteenth Street, 24th Floor, Atlanta, Georgia 30309. Arcapita, Inc. does not have a registered agent for service of process in the State of New York. Arcapita, Inc. may be served with process pursuant to Federal Rule of Civil Procedure 4(h)(1) by delivering a copy to its registered agent, RL&F Service Corporation, One Rodney Square, 10th Floor, Wilmington, Delaware 19801.

9. Defendant HSBC BANK USA, NATIONAL ASSOCIATION, in its capacity as escrow agent ("HSBC"), is a national banking association. HSBC's principal place of business is 1800 Tysons Boulevard, Suite 50, McLean, Virginia 22102. HSBC may be served with process pursuant to Federal Rule of Civil Procedure 4(h)(1) by delivering a copy to its registered agent, Legal Processing, 12th Floor, One HSBC Center, Buffalo, New York 14203. HSBC is a nominal defendant in this matter; it has been named solely because injunctive relief is sought with respect

to certain funds that are in HSBC's possession as escrow agent pursuant to an agreement between the other parties.

FACTS

A. Overview of Case

10. This lawsuit arises out of Falcon's and its controlling affiliates' misrepresentations to Plaintiffs in connection with a half-billion dollar transaction for the sale of a natural gas storage business, NorTex Gas Storage Company, LLC ("NorTex"). Plaintiffs purchased the natural gas storage business on the strength of various material representations and warranties from Falcon and its affiliates, including representations about NorTex's business and the value of certain of NorTex's assets, in particular the amount of "pad gas" in the natural gas storage facilities, the operating costs associated with fuel consumption, and the source of hydrocarbons extracted during operation of NorTex's two natural gas liquid ("NGL") extraction plants. Plaintiffs have recently discovered not only that those representations and warranties were false, but that both Falcon and its controlling affiliates had actual knowledge of the falsity at the time Plaintiffs agreed to purchase NorTex.

11. The difference in value between the quantities of pad gas as represented and the quantities of pad gas actually present exceeds $30 million, and the implications of this shortfall and the mechanisms by which the shortfall was created has an impact on the economics of NorTex's gas storage business that far exceeds that amount. Plaintiffs therefore bring this action seeking, alternatively, money damages for the economic harm they have suffered, disgorgement of Falcon's unjust gains from the transaction, or rescission of the purchase and sale of NorTex. In addition, because the transaction was the product of a fraud, and because Falcon's controlling affiliates have demonstrated an intent to move certain proceeds from the purchase and sale beyond the jurisdictional reach of this Court, Plaintiffs further seek injunctive relief preventing

Falcon or its affiliates from removing certain escrowed proceeds of the sale from the escrow account where those funds are currently held.

B. Plaintiffs' Purchase Of NorTex

12. NorTex, formerly a subsidiary of Falcon, is in the business of storing and processing natural gas in and from two underground gas storage facilities located in northern Texas, sometimes referred to as the "Worsham-Steed Facility" and the "Hill-Lake Facility," respectively, and collectively referred to as the "Storage Facilities."[1]

13. In March 2010, Plaintiffs and Falcon entered into a Purchase Agreement ("the Purchase Agreement") whereby Plaintiffs agreed to purchase all of Falcon's interest in NorTex. Plaintiffs thereby acquired the entire gas storage business of NorTex, including NorTex's ownership in the Worsham-Steed and Hill-Lake entities and their respective ownership and operation of the Worsham-Steed and Hill-Lake Facilities. The transaction closed on April 1, 2010; at that time, Plaintiffs paid Falcon a total of $515 million for NorTex.[2]

C. Defendants' Specific Representations To Plaintiffs

14. During the course of negotiations and due diligence, Falcon and its controlling affiliate, Arcapita, provided Plaintiffs and their representatives with certain detailed and specific financial information regarding NorTex's operations and the value of the assets owned by NorTex and the Worsham-Steed and Hill-Lake entities. Among that information were certain

[1] Specifically, NorTex owns all the interests in two sets of subsidiaries: (1) Worsham-Steed GP, Inc. and Worsham-Steed Gas Storage, L.P. (together, "Worsham-Steed") and (2) Hill-Lake GP, Inc. and Hill-Lake Gas Storage, L.P. (together, "Hill-Lake"). The Worsham-Steed and Hill-Lake entities in turn own and operate the two underground natural gas storage facilities and related processing facilities.

[2] As noted below, $70 million of that purchase price was placed in escrow with Nominal Defendant HSBC pursuant to a First Amendment to Purchase Agreement dated April 1, 2010 ("the First Amendment") and an Escrow Agreement. That $70 million represents a material part of the consideration paid by Plaintiffs for the purchase of NorTex and is the subject of Plaintiffs' claims for injunctive relief and alternative claims for money damages or rescission as set out in more detail below.

specific representations regarding the quantities and value of "pad gas" contained in the respective Storage Facilities, the operating costs associated with the consumption of fuel in the operations of the respective Storage Facilities, and the source of hydrocarbons extracted during operation of NorTex's two NGL extraction plants.

15. For example, Falcon and Arcapita provided financial statements and related materials for fiscal year 2007 through 2009 containing inventory values for pad gas in the Storage Facilities that, taken together, represented there was a combined historical inventory value of $70,337,515 of pad gas in the two Storage Facilities as of March 31, 2009. Those representations were corroborated by a "management presentation" and supposed "pressure test data" that Falcon and Arcapita provided Plaintiffs in February 2010, in the process of due diligence for the purchase and sale of NorTex. Those documents represented that, based on actual pressure testing and engineering analysis, there were 4 billion cubic feet ("bcf") of pad gas in the Hill-Lake Facility and 10 bcf of pad gas in the Worsham-Steed Facility.

16. In addition, in February 2010, in connection with due diligence for the sale of NorTex, Falcon and Arcapita provided Plaintiffs with financial statements for Falcon's and NorTex's fiscal years from 2007 through 2009. In those financial statements, Falcon and Arcapita gave inaccurate information regarding operating expenses from fuel consumption in the operation of the Storage Facilities. In connection with those financial statements, Falcon and Arcapita instead represented that the fuel consumption from operations was offset by a phenomenon they described as "Btu enhancement"; essentially, they represented that native hydrocarbons in the Storage Facilities were enhancing the heating value of customer gas sufficient to offset the fuel consumed in operating the Storage Facilities. Falcon and Arcapita

also represented that the extraction of NGLs from within the Storage Facilities had no effect on the quantities of gas present in the Storage Facilities.

17. In the financial statements and purported pressure testing data, Falcon and Arcapita represented that they performed regular pressure tests and engineering measurements of the volume of pad gas in the Storage Facilities.

18. The financial statements, management presentations, and purported pressure test data were prepared by Falcon's representatives acting within the course and scope of their employment by Falcon and, on information and belief, by representatives of Arcapita acting within the course and scope of their employment by Arcapita.

19. "Pad gas" is of fundamental importance to the operation of a natural gas storage facility. "Pad gas" is the base amount of gas necessary to maintain storage field pressure and deliverability of the customers' gas stored in the facility. Without sufficient pad gas, the Storage Facilities would be unable to withdraw and deliver customer gas at levels required for services such as "firm storage service" ("FSS"), "load-following hourly balancing" ("LFHB"), and "park-and-loan" ("PAL") agreements with customers. In other words, the quantity of pad gas in the Storage Facilities is material information because, without sufficient pad gas in the Storage Facilities, NorTex cannot meet its obligations to its customers and cannot operate its gas storage business. Likewise, the information regarding fuel consumption and the source of hydrocarbons extracted during NGL facility operations is essential in accurately evaluating the economic value of NorTex and the assets it owns and operates and, thus, material to any potential purchaser.

20. In the Purchase Agreement, Falcon expressly represented and warranted that "each balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material

respects the consolidated financial position of the Company and its Subsidiaries as of the date of each such balance sheet . . . ."

21. Also in the Purchase Agreement, Falcon represented that neither NorTex nor its subsidiaries have experienced a "Material Adverse Effect . . . or other disposition of any material assets" since March 31, 2009.

22. In addition, in the course of due diligence, Plaintiffs inquired of Falcon regarding why Falcon's records did not show any change in value over time for the pad gas present in the Storage Facilities, and why there was no entry in the records for the cost, expense, or consumption of fuel consumed in the process of extracting natural gas liquids from the gas stored in the facilities. Falcon and Arcapita responded by referring Plaintiffs to a January 2010 memorandum with a subject of "NGL Material Balance & Shrink," a Microsoft Excel file, and a February 2010 "Material Balance" presentation which Falcon and Arcapita had caused to be provided in the due diligence "data room" and made available to Plaintiffs. That "Material Balance" presentation and the other associated information represented, in summary, that the consumption of pad gas as fuel in the storage and processing of gas contained in the Storage Facilities was offset by a phenomenon they described as "Btu enhancement." This information also represented that the source of hydrocarbons produced during NGL extraction facility operations was native fluids contained in the Storage Facilities, and not pad gas or customer gas being injected from gas pipelines for storage and later withdrawal.

23. Falcon and Arcapita made the foregoing representations in the course of due diligence regarding the sale of NorTex because they knew that potential buyers such as Plaintiffs would require information about the quantities and values of pad gas in the Storage Facilities, the source of compressor fuel and associated operating expense, and the source of hydrocarbons

produced during NGL extraction facility operations as material components in evaluating the gas storage assets and operations. Further, Falcon and Arcapita made these representations specifically in response to inquiries from Plaintiffs regarding the quantities of pad gas, the consumption of compressor fuel, and the extraction of hydrocarbons as NGLs, each as reflected in Falcon's records, knowing that Plaintiffs would rely on the information provided. Falcon and Arcapita made these representations intending that Plaintiffs would rely on them in proceeding with the purchase of NorTex.

24. Between March 15, 2010 and April 1, 2010, in reasonable reliance on these representations from Falcon and Arcapita regarding pad gas quantities, compressor fuel consumption, and the source of hydrocarbons produced during NGL extraction facility operations, Plaintiffs entered into the Purchase Agreement, the First Amendment, and the Escrow Agreement, and proceeded to close the purchase and sale of NorTex and pay over half a billion dollars to Falcon, including the $70 million escrow fund.

D. Defendants' Misrepresentations

25. In or around May 2010, after closing the purchase of NorTex, Plaintiffs conducted a shut-in pressure test on the Hill-Lake Facility. A proper engineering analysis of the results of Plaintiffs' test indicated a shortfall of both NorTex's pad gas as well as customer gas,[3] totaling approximately 4 bcf at the Hill-Lake Facility alone. Further investigation has indicated a likely shortfall of 6 bcf or more between the two Storage Facilities combined.

26. Since that time, Plaintiffs have been engaged in rigorous investigation into the root causes for the shortfalls in pad gas and customer gas. Plaintiffs have discovered that the shortfalls are the result of a number of shoddy and fraudulent practices by Falcon during its

[3] "Customer gas" is the amount of gas that customers have stored in the Storage Facilities as part of gas storage agreements with NorTex.

ownership and operation of NorTex and the Storage Facilities over a period at least two years preceding the closing of Plaintiffs' purchase of NorTex. The causes for the gas shortfalls are disturbing and indicative of gross neglect, if not outright deception, on the part of Falcon and Arcapita.

27. For example, Plaintiffs have learned that, during its operation of NorTex and the Storage Facilities, Falcon failed to properly account for and record fuel usage in compression of gas in the Storage Facilities, and that consumption of fuel in the compression operations actually drew upon and depleted the quantities of gas within the Storage Facilities to a degree that was not offset by Falcon's represented "Btu enhancement" theory. In reality, at the Hill-Lake Facility alone, fuel consumption represents over $3 million in annual operating expenses that were completely omitted from the financial statements Falcon and Arcapita provided to Plaintiffs. At the Worsham-Steed Facility, the figure is over $4 million annually. The combined economic impact of the omitted operating expenses associated with fuel consumed in the compression operations at the Hill-Lake and Worsham-Steed Facilities is over $40 million. This omitted financial data represents material information which Falcon and Arcapita knew and had a duty to disclose to Plaintiffs, and which would have significantly reduced the economic value Plaintiffs attributed to NorTex's business.

28. Further, Plaintiffs have discovered that the supposed "pressure test" data Falcon and Arcapita provided in due diligence was not actual pressure testing and engineering analysis as represented. Rather, the documents reflected mere "in-and-out" calculations derived from old, inaccurate baseline assumptions regarding "starting quantities" of pad gas in the two Storage Facilities and relied on inaccurate or incomplete in-and-out flows.

29. Plaintiffs have also discovered that Falcon did not properly monitor, record, or analyze the volume or composition of gas flows in and out of the Storage Facilities and related systems.

30. Plaintiffs have also learned that Falcon failed to properly calculate and account for "shrinkage" resulting from the extraction of NGLs from the gas within the Storage Facilities. "Shrinkage" refers to the amount of natural gas that is transformed into liquid products such as ethane, propane, and butane during processing of natural gas at NGL extraction plants such as exist at both the Hill-Lake and Worsham-Steed Facilities. In addition, the gas flows associated with NGL extraction operations were incorrectly portrayed in a materially different way in the Material Balance information provided to Plaintiffs by Falcon and Arcapita's representatives.

31. Plaintiffs have also learned that, contrary to Falcon's and Arcapita's representations in the 2007, 2008, and 2009 financial statements and elsewhere, Falcon failed to conduct regular and consistent shut-in pressure testing and related volumetric calculations and measurements of the quantities of gas within the Storage Facilities, and failed to conduct thorough and proper analyses of the results of those tests to ensure NorTex's financial records were accurate.

32. Plaintiffs have discovered that both Falcon and Arcapita knew of these problems, and therefore the falsity of the information, at the time they were making representations and warranties to Plaintiffs regarding NorTex's financial condition, the value and quantity of gas in the Storage Facilities, the source and cost of compressor fuel, the source of and economic value of hydrocarbons produced during NGL extraction facility operations, and the absence of materially adverse changes or events in the company's operations and assets.

33. Specifically, in early 2009, NorTex management communicated to Arcapita that the Storage Facilities had "deliverability issues" related to gas shortfalls. NorTex discussed with Falcon and Arcapita the possible purchase of additional pad gas to make up for the shortfalls and resolve the deliverability issues; Falcon and Arcapita rejected the purchase of additional pad gas. Instead, Falcon and Arcapita caused NorTex to enter into "park-and-loan" arrangements that, in essence, "borrowed" 1.5 bcf of gas to aid with immediate deliverability problems. This temporary "fix" concealed the depleted pad gas and did nothing to correct the inaccurate records, flawed processes, and shoddy operations and recordkeeping that led to the overstatement of the quantities and values of the pad gas and customer gas to begin with, thereby perpetuating the problem with the full knowledge of Falcon and Arcapita. Not surprising, none of that information was disclosed to Plaintiffs in the course of negotiation and due diligence for its half-billion-dollar purchase of NorTex.

34. Further, in or around October 2009, Falcon and, on information and belief, Arcapita, received a report from Platt, Sparks & Associates that attempted to correlate pressure readings from the Hill-Lake Facility with gas inventories reported in Hill-Lakes' regulatory filings. The information contained in the report made it clear that either the Hill-Lake Facility inventory levels contained in the regulatory filings were inaccurate or that the Hill-Lake Facility was losing gas. Again, Falcon and Arcapita failed to disclose that information to Plaintiffs in the course of negotiation and due diligence for its half-billion-dollar purchase of NorTex.

35. Plaintiffs have also discovered since closing the purchase of NorTex that, in late 2009 and early 2010, Falcon management became aware that NorTex was encountering additional deliverability issues due specifically to shortfalls and depletion of pad gas. Once

again, Falcon and Arcapita failed to disclose that information to Plaintiffs in the course of negotiation and due diligence for its half-billion-dollar purchase of NorTex.

36. This omitted financial data and other information represents material information which Falcon and Arcapita knew and had a duty to disclose to Plaintiffs, and which would have significantly reduced the economic value Plaintiffs attributed to NorTex's business.

E. Damage To Plaintiffs

37. As a result of Falcon's and Arcapita's misrepresentations, Plaintiffs have purchased and now own NorTex and its gas storage operations, but find themselves owning far less than they bargained for and far less than what was represented. In the immediate term, Plaintiffs (through NorTex) have been forced to mitigate further losses by implementing a program to strategically and opportunistically purchase approximately 4 bcf of gas to make up for the shortfall in pad gas and customer gas at the Hill-Lake Facility and ensure continued compliance with customer contracts. At current market prices, the loss to Plaintiffs as a result of having to cover these gas shortfalls is approximately $20 million, and Plaintiffs believe in reasonable probability the future costs to cover such shortfalls at the combined Storage Facilities will exceed an additional $10 million.

38. Further, as a result of Falcon's and Arcapita's misrepresentations regarding the source and cost of fuel consumed in the compression of gas at the Storage Facilities, Plaintiffs will incur additional, unbargained-for annual operating expenses that were completely omitted from the financial statements Falcon and Arcapita provided to Plaintiffs. Specifically, at the Hill-Lake Facility alone, fuel consumption represents over $3 million in annual operating expenses, expenses that were omitted from the financial statements provided by Falcon and Arcapita and relied upon by Plaintiffs. At the Worsham-Steed Facility, the figure is over $4 million annually. The undisclosed operating expenses associated with fuel consumed in the

compression operations of the combined Storage Facilities have an economic impact of over $40 million on the value of the assets Plaintiffs purchased.

39. Moreover, Plaintiffs have also suffered significant economic losses in connection with the extraction of NGLs from the gas in the Hill-Lake Facility and possibly the Worsham-Steed Facility. It was represented to the Plaintiffs that NGLs extracted at the gas storage facilities came from native fluids contained in the Storage Facilities, and not pad gas or customer gas being injected from gas pipelines for storage and later withdrawal. Plaintiffs have determined that a significant portion of the NGLs extracted from the Hill-Lake Facility, primarily ethane, actually come from customer gas being injected for storage. Economic losses to the Plaintiffs include the cost of customer gas shrinkage that has not been reflected on the income statement; severance and royalties paid on NGLs coming from that shrinkage; and unattractive revised economics for continued extraction plant operation. For the Hill-Lake NGL extraction plant alone, economic value will be reduced by over $3 million just due to customer gas shrinkage. If the combined impact of shrinkage and unaccounted for compressor fuel use renders the NGL extraction plant uneconomic to operate, the total reduction in economic value will be over $15 million. The Worsham-Steed NGL extraction plant could have similar, or even higher reductions in economic value.

40. In short, Plaintiffs have been deceived into spending over a half-billion dollars for NorTex and materially defrauded and harmed as a direct result of Falcon's and Arcapita's misrepresentations and material omissions of facts regarding NorTex's assets and operations.

FIRST CAUSE OF ACTION

(Fraud/Fraudulent Inducement)

41. Plaintiffs hereby re-allege and incorporate by reference the allegations and facts contained in the foregoing paragraphs.

42. During the course of negotiations between Plaintiffs and Falcon, Falcon and its controlling affiliate, Arcapita, made specific, material representations regarding NorTex's operations and the quantities and value of pad gas contained in the Storage Facilities owned by NorTex. Falcon and Arcapita knew that such information would be essential in valuing NorTex's gas storage assets and operations because pad gas is of fundamental importance to the operation of a natural gas storage facility, and because the information regarding the costs associated with NorTex's operations materially impacts the value of NorTex and its assets.

43. Falcon and Arcapita made the above representations during Plaintiffs' evaluation of and due diligence regarding the purchase of NorTex and in response to specific inquiries from Plaintiffs regarding the quantities of pad gas and consumption of compressor fuel reflected in Falcon's records, intending and knowing that Plaintiffs would rely on the information provided. Plaintiffs did, in fact, reasonably rely on the representations from Falcon and Arcapita regarding pad gas, certain operational costs, and the source of hydrocarbons extracted in the operation of NorTex's NGL business, and were induced to enter into the Purchase Agreement, the First Amendment, and the Escrow Agreement on the basis of these representations.

44. Falcon and Arcapita's representations regarding NorTex's operations and the quantities and value of the pad gas contained in the Storage Facilities were false. Preliminary results indicate a shortfall of approximately 4 bcf of gas at the Hill-Lake Facility alone and likely 6 bcf or more at the two Storage Facilities combined. Further, Plaintiffs have discovered material, undisclosed information regarding fuel consumption and NorTex's NGL operations that significantly affect the value of NorTex and its assets.

45. Both Falcon and Arcapita knew of the gas shortfall and its root causes as early as 2008, well before the execution and negotiation of the Purchase Agreement. Falcon and

Arcapita had a duty to provide accurate information regarding NorTex's operations and the quantities and value of pad gas contained in the Storage Facilities—information that directly correlated to the value attached to those Storage Facilities—and to disclose the fact that the Storage Facilities were experiencing gas shortfalls as early as 2008.

46. Falcon and Arcapita's failure to provide accurate information deceived Plaintiffs into agreeing to contractual terms that they would not have otherwise agreed to had they been provided the true facts. Section 10.7 and Section 4.26 of the Purchase Agreement, and any other purported waivers of rights and claims, are invalid because they are a product of the fraud perpetrated upon Plaintiffs.

47. Thus, Falcon and Arcapita made certain material misrepresentations of existing facts which were false or omissions of material facts which it had a duty to disclose; Falcon and Arcapita either knew the misrepresentations were false or were reckless with respect to their falsity; the misrepresentations or omission were made for the purpose of inducing Plaintiffs to rely upon them; Plaintiffs did justifiably and reasonably rely on the misrepresentations and omissions; and Plaintiffs have been injured as a result of the material misrepresentations or omissions.

48. As a natural and probable result of, or as a proximate result of, the fraudulent conduct of Falcon and Arcapita, Plaintiffs were induced to enter into a transaction and have suffered economic damages. Plaintiffs therefore, pursuant to this fraud claim, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law. Further, and in the alternative, Plaintiffs seek disgorgement from Falcon and Arcapita of any monies obtained from Plaintiffs as a result of the fraud. Further, and in the alternative, Plaintiffs

seek rescission of the Purchase Agreement, the First Amendment, and the Escrow Agreement, and ask this Court to return the parties to their earlier positions as if no Agreement had existed.

SECOND CAUSE OF ACTION

(Breach of Express Warranty)

49. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

50. Falcon made certain express warranties and representations in connection with the Agreement.

51. In Section 4.9 of the Purchase Agreement, Falcon represented that "each balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material respects the consolidated financial position of the Company and its Subsidiaries as of the date of each such balance sheet . . . ." In light of the representations in Falcon's financial statements regarding the value of the pad gas in the Storage Facilities, the operating expenses (or purported lack thereof) related to operation of the Storage Facilities, and the fact that there was a material shortfall of pad gas and customer gas in the Storage Facilities, the representations and warranties in Section 4.9 of the Purchase Agreement proved to be false; Falcon (and through it, Arcapita) breached this representation and warranty and as a result Plaintiffs have suffered actual economic harm.

52. In Section 4.11 of the Purchase Agreement, Falcon represented that neither NorTex nor its subsidiaries have experienced a "Material Adverse Effect . . . or other disposition of any material assets" since March 31, 2009. In light of the quantities and value of the pad gas in issue, and in light of the fact that a significant portion of the shortfall in pad gas and customer gas occurred between March 31, 2009 and March 31, 2010, there clearly has been a "Material Adverse Effect" and/or a "disposition of material assets" after March 31, 2009. Thus, the

representations and warranties in Section 4.11 of the Purchase Agreement proved to be false; Falcon (and through it, Arcapita) breached this representation and warranty; and, as a result, Plaintiffs have suffered actual economic harm.

53. As detailed above, Falcon breached each of the foregoing express warranties and representations contained in the Purchase Agreement. Falcon made an assurance of the existence of a material fact upon which Plaintiffs relied; the assurance was false; and Plaintiffs were injured as a result of the breach of warranty. Section 10.1 of the Purchase Agreement expressly entitles Plaintiffs to indemnification for damages, including attorneys' fees, arising out of or relating to breach or inaccuracy of any representation or warranty made by Falcon. Arcapita absolutely, unconditionally, and irrevocably guaranteed any payment obligations under Section 10 of the Purchase Agreement, including Section 10.1, pursuant to the April 1, 2010 Guaranty Agreement between Arcapita and Plaintiffs.

54. As a natural and probable result of, or as a proximate result of, the breach of warranty by Falcon, Plaintiffs have suffered economic damages. Plaintiffs therefore, pursuant to this breach of express warranty claim, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law.

THIRD CAUSE OF ACTION

(Breach of Contract)

55. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

56. Pursuant to the Purchase Agreement and the First Amendment, Falcon agreed to deliver assets that contained specific quantities of pad gas and exhibited specific operational characteristics. Plaintiffs, in exchange, agreed to pay the purchase price. Although Plaintiffs fulfilled their duties under the Purchase Agreement and Second Amendment, Falcon materially

breached the contract because, in actuality, the assets that it sold contained less pad gas than it represented and was contemplated by the agreement of the parties. Further, the fuel consumption of the Storage Facilities' compressors and the resulting depletion of stored gas in the Storage Facilities is far greater than Plaintiffs bargained and paid for based on Falcon's and Arcapita's misrepresentations. Moreover, the source of hydrocarbons extracted during the operation of the Storage Facilities' NGL extraction facilities was misrepresented. The cost of this stored gas "shrinkage," combined with NGL extraction plant fuel use is so significant as to potentially render NGL extraction plant operations economically non-viable.

57. Thus, a valid contract existed between Plaintiffs and Falcon; Plaintiffs performed as required by the terms of the contract; Falcon materially breached the contract; and Plaintiffs have incurred damages as a result of Falcon's breach.

58. As a natural and probable result of, or as a proximate result of, the breach of contract by Falcon, Plaintiffs have suffered economic damages. Plaintiffs therefore, pursuant to this breach of contract claim, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law.

FOURTH CAUSE OF ACTION

(Violations of § 10 and Rule 10b-5 of the Securities Exchange Act of 1934)

59. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

60. The ownership interests and units of NorTex and/or its subsidiaries that Plaintiffs purchased under the Purchase Agreement were "securities" within the meaning of the Act. In connection with the sale of all outstanding ownership interests and units of NorTex to Plaintiffs, Falcon and Arcapita, sellers of those securities, made several material misstatements or omissions to Plaintiffs.

61. For example, Falcon and Arcapita provided financial statements and related materials for fiscal year 2007 through 2009 containing inventory values and historical cost assumptions for pad gas in the Storage Facilities that, taken together, represented there was a combined 14 bcf of pad gas in the two Storage Facilities as of March 31, 2009. Those representations were corroborated by a "management presentation" and supposed "pressure test data" that Falcon and Arcapita provided Plaintiffs in February 2010, in the process of due diligence for the purchase and sale of NorTex. Those documents also represented that, based on actual pressure testing and engineering analysis, there was 14 bcf of pad gas in the two Storage Facilities.

62. In addition, in February 2010, in connection with due diligence for the sale of NorTex, Falcon and Arcapita provided Plaintiffs with financial statements for Falcon's and NorTex's fiscal years from 2007 through 2009. Those financial statements, in conjunction with other data Falcon and Arcapita provided, indicated that there were no operating costs associated with the compressor fuel utilized in the operation of the Hill-Lake and Worsham-Steed Facilities. In support of their conclusions regarding the purported lack of operating expenses, Falcon and Arcapita represented that the fuel consumption from operations was offset by a phenomenon they described as "Btu enhancement"; essentially, they represented that native hydrocarbons in the Storage Facilities were enhancing the heating value of customer gas sufficient to offset the fuel consumed in operating the Storage Facilities.

63. Further, Falcon and Arcapita represented that the extraction of NGLs from the gas within the Storage Facilities had no affect on the quantities of gas present in the Storage Facilities.

64. In the financial statements and purported pressure testing data, Falcon and Arcapita represented that they performed regular pressure tests and engineering measurements of the volume of pad gas in the Storage Facilities.

65. The financial statements, management presentations, and purported pressure test data were prepared by Falcon's representatives acting within the course and scope of their employment by Falcon, and, on information and belief, by representatives of Arcapita acting within the course and scope of their employment by Arcapita.

66. Further, Falcon represented in the Purchase Agreement that: (1) "each balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material respects the consolidated financial position of the Company and its Subsidiaries as of the date of each such balance sheet"; and (2) that neither NorTex nor its subsidiaries have experienced a "Material Adverse Effect . . . or other disposition of any material assets" since March 31, 2009. Considering the fact that the Storage Facilities are missing more than 6 *billion* cubic feet of gas, the falsity of these representations is evident, as is the inaccuracy of the representations contained in the financial statements and related documents indicating that there was a combined 14 bcf of pad gas in the two Storage Facilities as of March 31, 2009.

67. Falcon and Arcapita made material misstatements and omissions in the context of Plaintiffs' due diligence regarding the purchase of NorTex, intending that Plaintiffs rely upon the information provided. In addition to the misstatements and omissions regarding the quantities and values of pad gas, Plaintiffs have learned that, during its operation of NorTex and the Storage Facilities, Falcon failed to properly account for and record fuel usage in compression of gas in the Storage Facilities, and that consumption of fuel in the compression operations actually

drew upon and depleted the quantities of gas within the Storage Facilities to a degree that was not offset by Falcon's represented "Btu enhancement" theory.

68. Further, Plaintiffs have discovered that the supposed "pressure test" data Falcon and Arcapita provided in due diligence was not actual pressure testing and engineering analysis as represented. Rather, the documents reflected mere "in-and-out" calculations derived from old, inaccurate baseline assumptions regarding "starting quantities" of pad gas in the two Storage Facilities.

69. Plaintiffs have also discovered that, contrary to assertions in the financial statements and related data, Falcon did not properly monitor, record, or analyze the volume or composition of gas flows in and out of the Storage Facilities and related systems.

70. Plaintiffs have also learned that Falcon incorrectly represented gas flows, and failed to make proper or adequate calculations or records of shrinkage resulting from the extraction of NGLs from the gas within the Storage Facilities, resulting in a material misstatement or omission.

71. Plaintiffs have also learned that, contrary to Falcon's and Arcapita's representations in the 2007, 2008, and 2009 financial statements and elsewhere, Falcon failed to conduct regular and consistent shut-in pressure testing and related volumetric calculations and measurements of the quantities of gas within the Storage Facilities, and failed to conduct thorough and proper analyses of the results of those tests to ensure NorTex's financial records were accurate. These failures occurred during a period when deliverability problems indicated a critical need to perform these tests, calculations, and measurements and to properly analyze and report the results.

72. Plaintiffs have discovered that both Falcon and Arcapita knew of these problems, and therefore the falsity of the information, at the time they were making representations and warranties to Plaintiffs regarding NorTex's financial condition, the value and quantity of gas in the Storage Facilities, and the absence of materially adverse changes or events in the company's operations and assets.

73. These material misstatements and omissions have caused Plaintiffs economic loss. As a result of Falcon's and Arcapita's misrepresentations, Plaintiffs (through NorTex) have been forced to mitigate further losses by implementing a program to strategically and opportunistically purchase approximately 4 bcf of gas to make up for the shortfall in pad gas and customer gas at the Hill-Lake Facility and ensure ongoing compliance with customer contracts. At current market prices, the loss to Plaintiffs as a result of having to cover these gas shortfalls is approximately $20 million, and Plaintiffs believe in reasonable probability the future costs to cover such shortfalls at the combined Storage Facilities will exceed an additional $10 million. Further, as a result of Falcon's and Arcapita's misrepresentations regarding the source and cost of fuel consumed in the compression of gas in the Storage Facilities, Plaintiffs will incur additional, unbargained-for annual operating expenses that were completely omitted from the financial statements Falcon and Arcapita provided to Plaintiffs. The undisclosed operating expenses associated with fuel consumed in the compression operations of the combined Storage Facilities have an economic impact of over $40 million on the value of the assets Plaintiffs purchased. Likewise, the undisclosed practice of extracting NGLs from stored gas rather than from native hydrocarbons present in the Storage Facilities has a material, adverse economic impact on the value of NorTex's NGL extraction business. Had the truth been revealed regarding the quantities and values of pad gas contained in the Storage Facilities, the operating costs associated with fuel

compression, and the impact of shrinkage on NorTex's NGL extraction operations, Plaintiffs would not have agreed to the purchase price ultimately reflected in the Purchase Agreement.

74. Thus, Falcon and Arcapita, sellers of securities, made material misstatements or omissions in connection with the sale of securities to Plaintiffs; Falcon and Arcapita knew the misstatements or omissions were false; Plaintiffs relied on the material misstatements or omissions; Plaintiffs suffered economic loss because of the material misstatements or omissions; and there is a causal connection between the material misstatements or omissions and Plaintiffs' economic loss.

75. As a natural and probable result of, or as a proximate result of, violations of § 10 of the Act and Rule 10b-5, Plaintiffs have suffered economic damages. Plaintiffs therefore, pursuant to this claim under § 10 of the Act and Rule 10b-5, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law.

FIFTH CAUSE OF ACTION

(Request for Injunctive Relief)

76. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

77. On April 1, 2010, Plaintiffs and Defendants Falcon and HSBC entered into an Escrow Agreement in connection with the purchase by Plaintiffs of all of the issued and outstanding interests in NorTex. Pursuant to the terms of the Escrow Agreement, Plaintiffs deposited $70 million with HSBC; HSBC, in turn, agreed to deposit the funds in an account (the "Escrow Account").

78. Plaintiffs seek the assistance of the equitable powers of this Court to assure that Defendants do not wrongfully collect an additional $70 million as a reward for their fraudulent and wrongful conduct and transfer those fraudulently obtained funds beyond the reach of this

Court and Plaintiffs. Falcon and Arcapita contend that they are entitled to the immediate release of the Escrow Account, and have stated their intent to pursue such release. Falcon and Arcapita claim that they are entitled to the $70 million currently held in the Escrow Account in connection with the fraudulent sale of NorTex to Plaintiffs, a sale in which Falcon and Arcapita misrepresented the value of the Storage Facilities owned by NorTex in order to induce payment of the purchase price. Plaintiffs have already paid over $500 million in exchange for assets whose value Falcon and Arcapita materially misrepresented and that are worth substantially less than the amount Plaintiffs were defrauded into paying. This Court must prevent the Falcon and Arcapita Defendants from collecting additional funds as an additional windfall for the fraud perpetrated upon Plaintiffs.

79. The release of the Escrow Account threatens immediate and irreparable harm to Plaintiffs that cannot be remedied at law. Thus, Plaintiffs seek a permanent injunction restraining Falcon and HSBC from disbursing any funds from the Escrow Account, except pursuant to the Expense Notices referenced in Section 3.7 of the Purchase Agreement. If this Court does not enter a permanent injunction as specified above, Plaintiffs will be irreparably damaged because the funds in the Escrow Account will be immediately released to Arcapita, a Bahrain bank, and removed from the jurisdiction of this Court. Thus, Falcon and Arcapita will be effectively rewarded for their fraudulent and wrongful conduct and Plaintiffs will have no recourse in connection with same.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand that judgment be entered against Defendants for:

(a) actual damages;

(b) a permanent injunction;

(c) in the alternative, disgorgement of any monies obtained from Plaintiffs as a result of fraud;

(d) in the alternative, rescission of the Purchase Agreement;

(e) reasonable and necessary attorneys' fees;

(f) court costs; and

(g) such other and further relief to which Plaintiffs are justly entitled.

Dated: New York, New York
August 2, 2010

BRACEWELL & GIULIANI LLP

By: _____

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Origin ID: EIXA

FedEx Express

J122012071603 25

Ship Date: 28AUG12
ActWgt: 0.5 LB
CAD: 103917639/WSXI2500

Delivery Address Bar Code

Ref # 001558.000013-03767
Invoice #
PO #
Dept #

SHIP TO: (404) 920-9000 BILL SENDER
Arcapita Bank B.S.C.(c)
c/o GCG
5151 Blazer Pkwy Ste A

Dublin, OH 43017

WED - 29 AUG A1
PRIORITY OVERNIGHT

TRK# 0201 **7988 3989 2941**

ASR
43017
OH-US
LCK

XX CMHA

515G2/OC34/AA44

FOLD on this line and place in shipping pouch with **bar code and delivery address** visible

1. Fold the first printed page in half and use as the shipping label.
2. Place the label in a waybill pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.
3. Keep the second page as a receipt for your records. The receipt contains the terms and conditions of shipping and information useful for tracking your package.

EXHIBIT 7

Claim No. 297

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM

Name of Debtor (Check Only One):

	Case No.		
☐ Arcapita Bank B.S.C.(c)	12-11076	☐ Windturbine Holdings Limited	12-11079
☐ Arcapita Investment Holdings Limited	12-11077	☐ AEID II Holdings Limited	12-11080
☐ Arcapita LT Holdings Limited	12-11078	☐ Railinvest Holdings Limited	12-11081
		☒ Falcon Gas Storage Company, Inc.	12-11790

NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Tide Natural Gas Storage II LP

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: *(If known)*

Filed on: _____

Name and address where notices should be sent:
Bracewell & Giuliani LLP
711 Louisiana St.
Houston, TX 77002
Attn: Trey Wood

Telephone number: (713) 223-2300
Email Address: Trey.Wood@bgllp.com

Name and address where payment should be sent (if different from above):
Tide Natural Gas Storage II LP
c/o Alinda Capital Partners LLC
150 East 58th St.
New York, NY 10155
Attn: General Counsel
Telephone number:
Email Address:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

Your Claim is Scheduled As Follows:

THE GARDEN CITY GROUP, INC. AUG 29 2012

If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. (This scheduled amount of your claim may be an amendment to a previously scheduled amount.) If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claim against the Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is listed as any of DISPUTED, UNLIQUIDATED, or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

FILED - 00297
SDNY
ARCAPITA BANK B.S.C. (C)
12-11076 (SHL)

1. **Amount of Claim as of Date Case Filed:** $ 120,000,000.00 plus interest, fees and costs

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

☒ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. **Basis for Claim:** Fraud, Fraudulent Inducement, Breach of Warranty, Breach of Contract, Securities Violations
(See instruction #2)

3. **Last four digits of any number by which creditor identifies debtor:** _____ _____ _____ _____

3a. **Debtor may have scheduled account as:** _____ (See instruction #3a)

3b. **Uniform Claim Identifier (optional):** _____ (See instruction #3b)

4. **Secured Claim** (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☒ Other

Describe: Escrow Funds

Value of Property: $ 70,000,000.00

Annual Interest Rate _____ % ☐ Fixed or ☐ Variable (when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: $ _____

Basis for perfection: see attached addendum

Amount of Secured Claim: $ 70,000,000.00 plus interest

Amount Unsecured: $ 50,000,000.00

5. **Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.**

☐ Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).

☐ Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).

☐ Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)( ).

Amount entitled to priority: $ _____

*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. **Credits.** The amount of all payments on this claim has been credited for the purpose of making this proof of claim. *(See instruction #6)*

7. **Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #7, and the definition of "redacted".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain: _____

8. **Signature:** (See instruction #8) Check the appropriate box.

☐ I am the creditor ☒ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: John Laxmi

Title: Secretary

Company: Tide Natural Gas Storage II LP

John Laxmi 8/27/2012

(Signature) (Date)

Address and telephone number (if different from notice address above):

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571. **Modified B10 (GCG) (12/11)**

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the Debtor, exceptions to these general rules may apply. The attorneys for the Debtors and their court-appointed claims agent, GCG, are not authorized and are not providing you with any legal advice.

PLEASE SEND YOUR ORIGINAL, COMPLETED CLAIM FORM AS FOLLOWS: **IF BY MAIL:** ATTN: ARCAPITA BANK B.S.C.(c), C/O GCG, P.O. BOX 9881 DUBLIN, OHIO 43017-5781. **IF BY HAND OR OVERNIGHT COURIER:** ATTN: ARCAPITA BANK B.S.C.(c), C/O GCG, 5151 BLAZER PARKWAY, STE A, DUBLIN, OH 43017. **ANY PROOF OF CLAIM SUBMITTED BY FACSIMILE OR EMAIL WILL NOT BE ACCEPTED.**

THE GENERAL BAR DATE IN THESE CHAPTER 11 CASES IS AUGUST 30, 2012 AT 5:00 P.M. (PREVAILING EASTERN TIME)
THE GOVERNMENTAL BAR DATE IN THESE CHAPTER 11 CASES IS SEPTEMBER 17, 2012 AT 5:00 P.M. (PREVAILING EASTERN TIME)

Items to be completed in Proof of Claim form

Bankruptcy Court Information:
All of these chapter 11 cases other than Falcon Gas Storage Company, Inc. were commenced on March 19, 2012. Falcon Gas Storage Company, Inc. filed its chapter 11 petition on April 30, 2012. You should select the Debtor against which you are asserting your claim from the list provided.

A SEPARATE PROOF OF CLAIM FORM MUST BE FILED AGAINST EACH DEBTOR.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. Please provide us with a valid email address. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to your claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the Debtor's account or other number used by the creditor to identify the Debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the Debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a):
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the Debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is the person, corporation, or other entity to whom the Debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. § 101 (10).

Claim
A claim is the creditor's right to receive payment for a debt owed by the Debtor on the date of the bankruptcy filing. See 11 U.S.C. § 101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the Debtor on the date of the bankruptcy filing. The creditor must file the form with GCG as described in the instructions above and in the Bar Date Notice.

Secured Claim Under 11 U.S.C. § 506 (a)
A secured claim is one backed by a lien on property of the Debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a Debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the Debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507 (a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

INFORMATION

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

Acknowledgment of Filing of Claim
To receive a date-stamped copy of your claim form, please provide a self-addressed stamped envelope and a copy of your proof of claim form when you submit the original to GCG.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the Debtor. These entities do not represent the bankruptcy court or the Debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

List of Debtors and Case Numbers

Indicate on the face of the Proof of Claim form the Debtor against which you assert a claim.
Choose only one Debtor for each Proof of Claim form.

Arcapita Bank B.S.C.(c) 12-11076
Arcapita Investment Holdings Limited 12-11077
Arcapita LT Holdings Limited 12-11078
Windturbine Holdings Limited 12-11079
AEID II Holdings Limited 12-11080
Railinvest Holdings Limited 12-11081
Falcon Gas Storage Company, Inc. 12-11790

BRACEWELL
&GIULIANI

Texas
New York
Washington, DC
Connecticut
Seattle
Dubai
London

Jason G. Cohen
Associate

713.221.1416 Office
800.404.3970 Fax

Jason.Cohen@bgllp com

Bracewell & Giuliani LLP
711 Louisiana Street
Suite 2300
Houston, Texas
77002-2770

August 28, 2012

Arcapita Bank B.S.C.(c)
c/o GCG
5151 Blazer Parkway, Suite A
Dublin, Ohio 43017

Re: Tide Natural Gas Storage I LP and Tide Natural Gas Storage II LP - Proofs of Claim

Dear Arcapita Bank B.S.C.(c):

Enclosed please find the following proofs of claim for filing with original signatures:

1. Proof of Claim of Tide Natural Gas Storage I LP against Arcapita Bank B.S.C.(c), Case No. 12-11076.

2. Proof of Claim of Tide Natural Gas Storage II LP against Arcapita Bank B.S.C.(c), Case No. 12-11076.

3. Proof of Claim of Tide Natural Gas Storage I LP against Falcon Gas Storage Company, Inc., Case No. 12-11790.

4. Proof of Claim of Tide Natural Gas Storage II LP against Falcon Gas Storage Company, Inc., Case No. 12-11790.

Additionally, enclosed are copies of the above listed proofs of claim to be file stamped and returned to me as proof of receipt via the enclosed self-addressed stamped envelope.

Very truly yours,

Bracewell & Giuliani LLP

Jason G. Cohen

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	§	
	§	
	§	**Chapter 11**
ARCAPITA BANK B.S.C.(c), *et al.*,	§	
	§	**Case No. 12-11076-shl**
Debtors.	§	**Jointly Administered**
	§	
	§	
IN RE:	§	
	§	**Chapter 11**
FALCON GAS STORAGE CO., INC.	§	
	§	**Case No. 12-11790-shl**
Debtor.	§	**(Jointly Administered under**
	§	**Case No. 12-11076)**

ADDENDUM TO PROOFS OF CLAIM FILED BY TIDE NATURAL GAS STORAGE I LP AND TIDE NATURAL GAS STORAGE II LP

1. Claimant. Tide Natural Gas Storage I LP and Tide Natural Gas Storage II LP (together, "Tide") hereby files this addendum ("Addendum") to their proofs of claim (together, "Claim"). This Addendum and the attachments hereto are an integral part of Tide's Claim and are incorporated by reference into the Claim for all purposes.

2. Background of Claim. The Claim is based on the fraud, fraudulent inducement, breach of warranty, breach of contract, and securities violations of Falcon Gas Storage Co., Inc. and Arcapita Bank B.S.C.(c), as more specifically detailed in Tide's Complaint filed in the District Court for the Southern District of New York, which initiated Case No. 10-CIV-5821 (the "Complaint") (as attached to the Claim).

3. Amount of Claim (further detailed in the Complaint). The Claim is made in the amount of $120,000,000.00 plus interest, fees and costs.

4. Interest. Tide seeks all pre- and post-judgment interest related to the causes of action asserted in the Complaint to which Tide is entitled under applicable law. Tide also seeks all investment income earned upon the $70,000,000.00 currently in escrow.

5. Fees and Costs. Tide seeks its reasonable and necessary attorneys' fees and all court costs, as detailed in the Complaint.

6. Supporting Documents. The Claim is based upon the actions detailed in the Complaint.

7. Judgment. No judgment has been rendered on the Claim.

8. Credits. The amount of all prepetition payments and credits on the Claim have been credited and deducted for the purposes of making this Claim. Furthermore, Tide deposited $70,000,000.00 of the purchase price for the sale of NorTex Gas Storage Company, LLC into Escrow with HSBC Bank USA, N.A. as escrow agent. These funds remain in escrow and, because the Debtor has perpetrated a fraud upon Tide, as detailed in the Complaint, these funds remain the property of Tide. Upon return of the $70,000,000.00, Tide will provide a credit of $70,000,000.00 against its Claim.

9. Notices. All notices to PPL concerning this Claim should be sent to:

Tide Natural Gas Storage I LP
Tide Natural Gas Storage II LP
c/o Alinda Capital Partners LLC
150 East 58th St.
New York, NY 10155
Attn: General Counsel

Copies of all notices to Tide concerning this Claim should be sent to:

Bracewell & Giuliani LLP
711 Louisiana Street
Suite 2300
Houston, Texas 77002
Attn: Trey Wood

713.223.2300

10. Protective Filing/Amendments. This Claim is filed under compulsion of the bar date established in this case, and is filed to protect Tide from forfeiture of its claims. The execution and filing of this Claim are not (i) a waiver or release of any of Tide's rights against any entity or person liable for all or part of the Claim, (ii) a consent by Tide to the jurisdiction of this Court with respect to any proceeding commenced in this case against or otherwise involving Tide, (iii) a waiver of the right to withdraw the reference with respect to the subject matter of the Claim, any objection or other proceeding commenced with respect thereto or any other proceeding commenced in this case against or otherwise involving Tide, (iv) an election of remedy that waives or otherwise affects any other remedy, or (v) a waiver or release of any of Tide's rights against any third party.

11. Reservation of Rights. Tide expressly reserve its rights to (i) amend or supplement this Claim in any respect, (ii) file additional proofs of claim for claims not covered by this proof of claim, (iii) seek relief from the automatic stay to pursue Tide's Complaint currently pending in the District Court for the Southern District of New York, and (iv) seek withdrawal of the reference with regard to any complaint filed in the Bankruptcy Court for the Southern District of New York, including, but not limited to, the complaint filed by the Hopper Parties, which initiated Adversary Proceeding No. 12-0162.

JUDGE WOOD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIDE NATURAL GAS STORAGE I, LP and TIDE NATURAL GAS STORAGE II, LP, Plaintiffs, v. FALCON GAS STORAGE COMPANY, INC.; ARCAPITA BANK B.S.C.; ARCAPITA, INC.; and HSBC BANK USA, NATIONAL ASSOCIATION, Defendants.	10 CIV 5821 ECF CASE Civil Action No. **COMPLAINT**

Plaintiffs TIDE NATURAL GAS STORAGE I, LP and TIDE NATURAL GAS STORAGE II, LP (together, "Plaintiffs") for their Complaint against Defendants FALCON GAS STORAGE COMPANY, INC., ARCAPITA BANK B.S.C., ARCAPITA, INC., and nominal defendant HSBC BANK USA, NATIONAL ASSOCIATION ("HSBC") (collectively, "Defendants") allege as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction because certain claims asserted herein arise under § 10 of the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. § 78j(b)). Jurisdiction is conferred by § 27 of the Act (15 U.S.C. § 78aa). This Court has supplemental jurisdiction over all state law and other claims asserted herein pursuant to 28 U.S.C. § 1367.

2. This Court has personal jurisdiction over all parties to this action because all parties do business within the State of New York as the term "doing business" is understood in law, have the requisite "minimum contacts" with the State of New York as the term "minimum contacts" is understood in law, have purposefully availed themselves of the protections and benefits of the laws of the State of New York as required to establish *in personam* jurisdiction, or

have expressly consented to the jurisdiction of this Court and of the Courts of the State of New York. This Court's exercise of personal jurisdiction over all Defendants will not offend traditional notions of fair play and substantial justice.

3. Venue is proper in this district pursuant to § 27 of the Act (15 U.S.C. § 78aa) because Defendants transact business in this district. Venue is also authorized in this district under 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district. Venue is also proper in this district by agreement of the parties.

PARTIES

4. Plaintiff TIDE NATURAL GAS STORAGE I, LP is formerly known as Alinda Natural Gas Storage I, LP, and hereafter, together with Tide Natural Gas Storage II, LP (formerly Alinda Natural Gas Storage II, LP), shall be referred to as "Plaintiffs." Tide Natural Gas Storage I, LP is now and at all relevant times has been a limited partnership organized and existing under the laws of the State of Delaware.

5. Plaintiff TIDE NATURAL GAS STORAGE II, LP is formerly known as Alinda Natural Gas Storage II, LP, and hereafter, together with Tide Natural Gas Storage I, LP (formerly Alinda Natural Gas Storage I, LP), shall be referred to as "Plaintiffs." Tide Natural Gas Storage II, LP is now and at all relevant times has been a limited partnership organized and existing under the laws of the State of Delaware.

6. Defendant FALCON GAS STORAGE COMPANY, INC. (hereafter, "Falcon") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Atlanta, Georgia. Pursuant to Section 11.1 of the Purchase Agreement by and between Falcon and Plaintiffs, Falcon may be served with process via U.S.

certified mail, c/o Arcapita, at 75 Fourteenth Street, 24th Floor, Atlanta, Georgia, 30309, with a copy to Raymond E. Baltz, King & Spalding, 1180 Peachtree Street, Atlanta, Georgia, 30309.

7. Defendant ARCAPITA BANK B.S.C. (hereafter, together with Arcapita, Inc., "Arcapita") is a joint stock company incorporated in the Kingdom of Bahrain. Its principal place of business in the United States is 75 Fourteenth Street, 24th Floor, Atlanta, Georgia, 30309. Pursuant to Section 3.4 of the Guaranty Agreement between Arcapita Bank B.S.C. and Plaintiffs, Arcapita Bank B.S.C. may be served with process via U.S. certified mail, c/o Arcapita Inc., at 75 Fourteenth Street, 24th Floor, Atlanta, Georgia, 30309, attention Brian R. McCabe, with a copy to Raymond E. Baltz, King & Spalding, 1180 Peachtree Street, Atlanta, Georgia 30309.

8. Defendant ARCAPITA, INC. (hereafter, together with Arcapita Bank B.S.C., "Arcapita") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 75 Fourteenth Street, 24th Floor, Atlanta, Georgia 30309. Arcapita, Inc. does not have a registered agent for service of process in the State of New York. Arcapita, Inc. may be served with process pursuant to Federal Rule of Civil Procedure 4(h)(1) by delivering a copy to its registered agent, RL&F Service Corporation, One Rodney Square, 10th Floor, Wilmington, Delaware 19801.

9. Defendant HSBC BANK USA, NATIONAL ASSOCIATION, in its capacity as escrow agent ("HSBC"), is a national banking association. HSBC's principal place of business is 1800 Tysons Boulevard, Suite 50, McLean, Virginia 22102. HSBC may be served with process pursuant to Federal Rule of Civil Procedure 4(h)(1) by delivering a copy to its registered agent, Legal Processing, 12th Floor, One HSBC Center, Buffalo, New York 14203. HSBC is a nominal defendant in this matter; it has been named solely because injunctive relief is sought with respect

to certain funds that are in HSBC's possession as escrow agent pursuant to an agreement between the other parties.

FACTS

A. Overview of Case

10. This lawsuit arises out of Falcon's and its controlling affiliates' misrepresentations to Plaintiffs in connection with a half-billion dollar transaction for the sale of a natural gas storage business, NorTex Gas Storage Company, LLC ("NorTex"). Plaintiffs purchased the natural gas storage business on the strength of various material representations and warranties from Falcon and its affiliates, including representations about NorTex's business and the value of certain of NorTex's assets, in particular the amount of "pad gas" in the natural gas storage facilities, the operating costs associated with fuel consumption, and the source of hydrocarbons extracted during operation of NorTex's two natural gas liquid ("NGL") extraction plants. Plaintiffs have recently discovered not only that those representations and warranties were false, but that both Falcon and its controlling affiliates had actual knowledge of the falsity at the time Plaintiffs agreed to purchase NorTex.

11. The difference in value between the quantities of pad gas as represented and the quantities of pad gas actually present exceeds $30 million, and the implications of this shortfall and the mechanisms by which the shortfall was created has an impact on the economics of NorTex's gas storage business that far exceeds that amount. Plaintiffs therefore bring this action seeking, alternatively, money damages for the economic harm they have suffered, disgorgement of Falcon's unjust gains from the transaction, or rescission of the purchase and sale of NorTex. In addition, because the transaction was the product of a fraud, and because Falcon's controlling affiliates have demonstrated an intent to move certain proceeds from the purchase and sale beyond the jurisdictional reach of this Court, Plaintiffs further seek injunctive relief preventing

Falcon or its affiliates from removing certain escrowed proceeds of the sale from the escrow account where those funds are currently held.

B. Plaintiffs' Purchase Of NorTex

12. NorTex, formerly a subsidiary of Falcon, is in the business of storing and processing natural gas in and from two underground gas storage facilities located in northern Texas, sometimes referred to as the "Worsham-Steed Facility" and the "Hill-Lake Facility," respectively, and collectively referred to as the "Storage Facilities."[1]

13. In March 2010, Plaintiffs and Falcon entered into a Purchase Agreement ("the Purchase Agreement") whereby Plaintiffs agreed to purchase all of Falcon's interest in NorTex. Plaintiffs thereby acquired the entire gas storage business of NorTex, including NorTex's ownership in the Worsham-Steed and Hill-Lake entities and their respective ownership and operation of the Worsham-Steed and Hill-Lake Facilities. The transaction closed on April 1, 2010; at that time, Plaintiffs paid Falcon a total of $515 million for NorTex.[2]

C. Defendants' Specific Representations To Plaintiffs

14. During the course of negotiations and due diligence, Falcon and its controlling affiliate, Arcapita, provided Plaintiffs and their representatives with certain detailed and specific financial information regarding NorTex's operations and the value of the assets owned by NorTex and the Worsham-Steed and Hill-Lake entities. Among that information were certain

[1] Specifically, NorTex owns all the interests in two sets of subsidiaries: (1) Worsham-Steed GP, Inc. and Worsham-Steed Gas Storage, L.P. (together, "Worsham-Steed") and (2) Hill-Lake GP, Inc. and Hill-Lake Gas Storage, L.P. (together, "Hill-Lake"). The Worsham-Steed and Hill-Lake entities in turn own and operate the two underground natural gas storage facilities and related processing facilities.

[2] As noted below, $70 million of that purchase price was placed in escrow with Nominal Defendant HSBC pursuant to a First Amendment to Purchase Agreement dated April 1, 2010 ("the First Amendment") and an Escrow Agreement. That $70 million represents a material part of the consideration paid by Plaintiffs for the purchase of NorTex and is the subject of Plaintiffs' claims for injunctive relief and alternative claims for money damages or rescission as set out in more detail below.

specific representations regarding the quantities and value of "pad gas" contained in the respective Storage Facilities, the operating costs associated with the consumption of fuel in the operations of the respective Storage Facilities, and the source of hydrocarbons extracted during operation of NorTex's two NGL extraction plants.

15. For example, Falcon and Arcapita provided financial statements and related materials for fiscal year 2007 through 2009 containing inventory values for pad gas in the Storage Facilities that, taken together, represented there was a combined historical inventory value of $70,337,515 of pad gas in the two Storage Facilities as of March 31, 2009. Those representations were corroborated by a "management presentation" and supposed "pressure test data" that Falcon and Arcapita provided Plaintiffs in February 2010, in the process of due diligence for the purchase and sale of NorTex. Those documents represented that, based on actual pressure testing and engineering analysis, there were 4 billion cubic feet ("bcf") of pad gas in the Hill-Lake Facility and 10 bcf of pad gas in the Worsham-Steed Facility.

16. In addition, in February 2010, in connection with due diligence for the sale of NorTex, Falcon and Arcapita provided Plaintiffs with financial statements for Falcon's and NorTex's fiscal years from 2007 through 2009. In those financial statements, Falcon and Arcapita gave inaccurate information regarding operating expenses from fuel consumption in the operation of the Storage Facilities. In connection with those financial statements, Falcon and Arcapita instead represented that the fuel consumption from operations was offset by a phenomenon they described as "Btu enhancement"; essentially, they represented that native hydrocarbons in the Storage Facilities were enhancing the heating value of customer gas sufficient to offset the fuel consumed in operating the Storage Facilities. Falcon and Arcapita

also represented that the extraction of NGLs from within the Storage Facilities had no effect on the quantities of gas present in the Storage Facilities.

17. In the financial statements and purported pressure testing data, Falcon and Arcapita represented that they performed regular pressure tests and engineering measurements of the volume of pad gas in the Storage Facilities.

18. The financial statements, management presentations, and purported pressure test data were prepared by Falcon's representatives acting within the course and scope of their employment by Falcon and, on information and belief, by representatives of Arcapita acting within the course and scope of their employment by Arcapita.

19. "Pad gas" is of fundamental importance to the operation of a natural gas storage facility. "Pad gas" is the base amount of gas necessary to maintain storage field pressure and deliverability of the customers' gas stored in the facility. Without sufficient pad gas, the Storage Facilities would be unable to withdraw and deliver customer gas at levels required for services such as "firm storage service" ("FSS"), "load-following hourly balancing" ("LFHB"), and "park-and-loan" ("PAL") agreements with customers. In other words, the quantity of pad gas in the Storage Facilities is material information because, without sufficient pad gas in the Storage Facilities, NorTex cannot meet its obligations to its customers and cannot operate its gas storage business. Likewise, the information regarding fuel consumption and the source of hydrocarbons extracted during NGL facility operations is essential in accurately evaluating the economic value of NorTex and the assets it owns and operates and, thus, material to any potential purchaser.

20. In the Purchase Agreement, Falcon expressly represented and warranted that "each balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material

respects the consolidated financial position of the Company and its Subsidiaries as of the date of each such balance sheet . . . ."

21. Also in the Purchase Agreement, Falcon represented that neither NorTex nor its subsidiaries have experienced a "Material Adverse Effect . . . or other disposition of any material assets" since March 31, 2009.

22. In addition, in the course of due diligence, Plaintiffs inquired of Falcon regarding why Falcon's records did not show any change in value over time for the pad gas present in the Storage Facilities, and why there was no entry in the records for the cost, expense, or consumption of fuel consumed in the process of extracting natural gas liquids from the gas stored in the facilities. Falcon and Arcapita responded by referring Plaintiffs to a January 2010 memorandum with a subject of "NGL Material Balance & Shrink," a Microsoft Excel file, and a February 2010 "Material Balance" presentation which Falcon and Arcapita had caused to be provided in the due diligence "data room" and made available to Plaintiffs. That "Material Balance" presentation and the other associated information represented, in summary, that the consumption of pad gas as fuel in the storage and processing of gas contained in the Storage Facilities was offset by a phenomenon they described as "Btu enhancement." This information also represented that the source of hydrocarbons produced during NGL extraction facility operations was native fluids contained in the Storage Facilities, and not pad gas or customer gas being injected from gas pipelines for storage and later withdrawal.

23. Falcon and Arcapita made the foregoing representations in the course of due diligence regarding the sale of NorTex because they knew that potential buyers such as Plaintiffs would require information about the quantities and values of pad gas in the Storage Facilities, the source of compressor fuel and associated operating expense, and the source of hydrocarbons

produced during NGL extraction facility operations as material components in evaluating the gas storage assets and operations. Further, Falcon and Arcapita made these representations specifically in response to inquiries from Plaintiffs regarding the quantities of pad gas, the consumption of compressor fuel, and the extraction of hydrocarbons as NGLs, each as reflected in Falcon's records, knowing that Plaintiffs would rely on the information provided. Falcon and Arcapita made these representations intending that Plaintiffs would rely on them in proceeding with the purchase of NorTex.

24. Between March 15, 2010 and April 1, 2010, in reasonable reliance on these representations from Falcon and Arcapita regarding pad gas quantities, compressor fuel consumption, and the source of hydrocarbons produced during NGL extraction facility operations, Plaintiffs entered into the Purchase Agreement, the First Amendment, and the Escrow Agreement, and proceeded to close the purchase and sale of NorTex and pay over half a billion dollars to Falcon, including the $70 million escrow fund.

D. Defendants' Misrepresentations

25. In or around May 2010, after closing the purchase of NorTex, Plaintiffs conducted a shut-in pressure test on the Hill-Lake Facility. A proper engineering analysis of the results of Plaintiffs' test indicated a shortfall of both NorTex's pad gas as well as customer gas,[3] totaling approximately 4 bcf at the Hill-Lake Facility alone. Further investigation has indicated a likely shortfall of 6 bcf or more between the two Storage Facilities combined.

26. Since that time, Plaintiffs have been engaged in rigorous investigation into the root causes for the shortfalls in pad gas and customer gas. Plaintiffs have discovered that the shortfalls are the result of a number of shoddy and fraudulent practices by Falcon during its

[3] "Customer gas" is the amount of gas that customers have stored in the Storage Facilities as part of gas storage agreements with NorTex.

ownership and operation of NorTex and the Storage Facilities over a period at least two years preceding the closing of Plaintiffs' purchase of NorTex. The causes for the gas shortfalls are disturbing and indicative of gross neglect, if not outright deception, on the part of Falcon and Arcapita.

27. For example, Plaintiffs have learned that, during its operation of NorTex and the Storage Facilities, Falcon failed to properly account for and record fuel usage in compression of gas in the Storage Facilities, and that consumption of fuel in the compression operations actually drew upon and depleted the quantities of gas within the Storage Facilities to a degree that was not offset by Falcon's represented "Btu enhancement" theory. In reality, at the Hill-Lake Facility alone, fuel consumption represents over $3 million in annual operating expenses that were completely omitted from the financial statements Falcon and Arcapita provided to Plaintiffs. At the Worsham-Steed Facility, the figure is over $4 million annually. The combined economic impact of the omitted operating expenses associated with fuel consumed in the compression operations at the Hill-Lake and Worsham-Steed Facilities is over $40 million. This omitted financial data represents material information which Falcon and Arcapita knew and had a duty to disclose to Plaintiffs, and which would have significantly reduced the economic value Plaintiffs attributed to NorTex's business.

28. Further, Plaintiffs have discovered that the supposed "pressure test" data Falcon and Arcapita provided in due diligence was not actual pressure testing and engineering analysis as represented. Rather, the documents reflected mere "in-and-out" calculations derived from old, inaccurate baseline assumptions regarding "starting quantities" of pad gas in the two Storage Facilities and relied on inaccurate or incomplete in-and-out flows.

29. Plaintiffs have also discovered that Falcon did not properly monitor, record, or analyze the volume or composition of gas flows in and out of the Storage Facilities and related systems.

30. Plaintiffs have also learned that Falcon failed to properly calculate and account for "shrinkage" resulting from the extraction of NGLs from the gas within the Storage Facilities. "Shrinkage" refers to the amount of natural gas that is transformed into liquid products such as ethane, propane, and butane during processing of natural gas at NGL extraction plants such as exist at both the Hill-Lake and Worsham-Steed Facilities. In addition, the gas flows associated with NGL extraction operations were incorrectly portrayed in a materially different way in the Material Balance information provided to Plaintiffs by Falcon and Arcapita's representatives.

31. Plaintiffs have also learned that, contrary to Falcon's and Arcapita's representations in the 2007, 2008, and 2009 financial statements and elsewhere, Falcon failed to conduct regular and consistent shut-in pressure testing and related volumetric calculations and measurements of the quantities of gas within the Storage Facilities, and failed to conduct thorough and proper analyses of the results of those tests to ensure NorTex's financial records were accurate.

32. Plaintiffs have discovered that both Falcon and Arcapita knew of these problems, and therefore the falsity of the information, at the time they were making representations and warranties to Plaintiffs regarding NorTex's financial condition, the value and quantity of gas in the Storage Facilities, the source and cost of compressor fuel, the source of and economic value of hydrocarbons produced during NGL extraction facility operations, and the absence of materially adverse changes or events in the company's operations and assets.

33. Specifically, in early 2009, NorTex management communicated to Arcapita that the Storage Facilities had "deliverability issues" related to gas shortfalls. NorTex discussed with Falcon and Arcapita the possible purchase of additional pad gas to make up for the shortfalls and resolve the deliverability issues; Falcon and Arcapita rejected the purchase of additional pad gas. Instead, Falcon and Arcapita caused NorTex to enter into "park-and-loan" arrangements that, in essence, "borrowed" 1.5 bcf of gas to aid with immediate deliverability problems. This temporary "fix" concealed the depleted pad gas and did nothing to correct the inaccurate records, flawed processes, and shoddy operations and recordkeeping that led to the overstatement of the quantities and values of the pad gas and customer gas to begin with, thereby perpetuating the problem with the full knowledge of Falcon and Arcapita. Not surprising, none of that information was disclosed to Plaintiffs in the course of negotiation and due diligence for its half-billion-dollar purchase of NorTex.

34. Further, in or around October 2009, Falcon and, on information and belief, Arcapita, received a report from Platt, Sparks & Associates that attempted to correlate pressure readings from the Hill-Lake Facility with gas inventories reported in Hill-Lakes' regulatory filings. The information contained in the report made it clear that either the Hill-Lake Facility inventory levels contained in the regulatory filings were inaccurate or that the Hill-Lake Facility was losing gas. Again, Falcon and Arcapita failed to disclose that information to Plaintiffs in the course of negotiation and due diligence for its half-billion-dollar purchase of NorTex.

35. Plaintiffs have also discovered since closing the purchase of NorTex that, in late 2009 and early 2010, Falcon management became aware that NorTex was encountering additional deliverability issues due specifically to shortfalls and depletion of pad gas. Once

again, Falcon and Arcapita failed to disclose that information to Plaintiffs in the course of negotiation and due diligence for its half-billion-dollar purchase of NorTex.

36. This omitted financial data and other information represents material information which Falcon and Arcapita knew and had a duty to disclose to Plaintiffs, and which would have significantly reduced the economic value Plaintiffs attributed to NorTex's business.

E. Damage To Plaintiffs

37. As a result of Falcon's and Arcapita's misrepresentations, Plaintiffs have purchased and now own NorTex and its gas storage operations, but find themselves owning far less than they bargained for and far less than what was represented. In the immediate term, Plaintiffs (through NorTex) have been forced to mitigate further losses by implementing a program to strategically and opportunistically purchase approximately 4 bcf of gas to make up for the shortfall in pad gas and customer gas at the Hill-Lake Facility and ensure continued compliance with customer contracts. At current market prices, the loss to Plaintiffs as a result of having to cover these gas shortfalls is approximately $20 million, and Plaintiffs believe in reasonable probability the future costs to cover such shortfalls at the combined Storage Facilities will exceed an additional $10 million.

38. Further, as a result of Falcon's and Arcapita's misrepresentations regarding the source and cost of fuel consumed in the compression of gas at the Storage Facilities, Plaintiffs will incur additional, unbargained-for annual operating expenses that were completely omitted from the financial statements Falcon and Arcapita provided to Plaintiffs. Specifically, at the Hill-Lake Facility alone, fuel consumption represents over $3 million in annual operating expenses, expenses that were omitted from the financial statements provided by Falcon and Arcapita and relied upon by Plaintiffs. At the Worsham-Steed Facility, the figure is over $4 million annually. The undisclosed operating expenses associated with fuel consumed in the

compression operations of the combined Storage Facilities have an economic impact of over $40 million on the value of the assets Plaintiffs purchased.

39. Moreover, Plaintiffs have also suffered significant economic losses in connection with the extraction of NGLs from the gas in the Hill-Lake Facility and possibly the Worsham-Steed Facility. It was represented to the Plaintiffs that NGLs extracted at the gas storage facilities came from native fluids contained in the Storage Facilities, and not pad gas or customer gas being injected from gas pipelines for storage and later withdrawal. Plaintiffs have determined that a significant portion of the NGLs extracted from the Hill-Lake Facility, primarily ethane, actually come from customer gas being injected for storage. Economic losses to the Plaintiffs include the cost of customer gas shrinkage that has not been reflected on the income statement; severance and royalties paid on NGLs coming from that shrinkage; and unattractive revised economics for continued extraction plant operation. For the Hill-Lake NGL extraction plant alone, economic value will be reduced by over $3 million just due to customer gas shrinkage. If the combined impact of shrinkage and unaccounted for compressor fuel use renders the NGL extraction plant uneconomic to operate, the total reduction in economic value will be over $15 million. The Worsham-Steed NGL extraction plant could have similar, or even higher reductions in economic value.

40. In short, Plaintiffs have been deceived into spending over a half-billion dollars for NorTex and materially defrauded and harmed as a direct result of Falcon's and Arcapita's misrepresentations and material omissions of facts regarding NorTex's assets and operations.

FIRST CAUSE OF ACTION

(Fraud/Fraudulent Inducement)

41. Plaintiffs hereby re-allege and incorporate by reference the allegations and facts contained in the foregoing paragraphs.

42. During the course of negotiations between Plaintiffs and Falcon, Falcon and its controlling affiliate, Arcapita, made specific, material representations regarding NorTex's operations and the quantities and value of pad gas contained in the Storage Facilities owned by NorTex. Falcon and Arcapita knew that such information would be essential in valuing NorTex's gas storage assets and operations because pad gas is of fundamental importance to the operation of a natural gas storage facility, and because the information regarding the costs associated with NorTex's operations materially impacts the value of NorTex and its assets.

43. Falcon and Arcapita made the above representations during Plaintiffs' evaluation of and due diligence regarding the purchase of NorTex and in response to specific inquiries from Plaintiffs regarding the quantities of pad gas and consumption of compressor fuel reflected in Falcon's records, intending and knowing that Plaintiffs would rely on the information provided. Plaintiffs did, in fact, reasonably rely on the representations from Falcon and Arcapita regarding pad gas, certain operational costs, and the source of hydrocarbons extracted in the operation of NorTex's NGL business, and were induced to enter into the Purchase Agreement, the First Amendment, and the Escrow Agreement on the basis of these representations.

44. Falcon and Arcapita's representations regarding NorTex's operations and the quantities and value of the pad gas contained in the Storage Facilities were false. Preliminary results indicate a shortfall of approximately 4 bcf of gas at the Hill-Lake Facility alone and likely 6 bcf or more at the two Storage Facilities combined. Further, Plaintiffs have discovered material, undisclosed information regarding fuel consumption and NorTex's NGL operations that significantly affect the value of NorTex and its assets.

45. Both Falcon and Arcapita knew of the gas shortfall and its root causes as early as 2008, well before the execution and negotiation of the Purchase Agreement. Falcon and

Arcapita had a duty to provide accurate information regarding NorTex's operations and the quantities and value of pad gas contained in the Storage Facilities—information that directly correlated to the value attached to those Storage Facilities—and to disclose the fact that the Storage Facilities were experiencing gas shortfalls as early as 2008.

46. Falcon and Arcapita's failure to provide accurate information deceived Plaintiffs into agreeing to contractual terms that they would not have otherwise agreed to had they been provided the true facts. Section 10.7 and Section 4.26 of the Purchase Agreement, and any other purported waivers of rights and claims, are invalid because they are a product of the fraud perpetrated upon Plaintiffs.

47. Thus, Falcon and Arcapita made certain material misrepresentations of existing facts which were false or omissions of material facts which it had a duty to disclose; Falcon and Arcapita either knew the misrepresentations were false or were reckless with respect to their falsity; the misrepresentations or omission were made for the purpose of inducing Plaintiffs to rely upon them; Plaintiffs did justifiably and reasonably rely on the misrepresentations and omissions; and Plaintiffs have been injured as a result of the material misrepresentations or omissions.

48. As a natural and probable result of, or as a proximate result of, the fraudulent conduct of Falcon and Arcapita, Plaintiffs were induced to enter into a transaction and have suffered economic damages. Plaintiffs therefore, pursuant to this fraud claim, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law. Further, and in the alternative, Plaintiffs seek disgorgement from Falcon and Arcapita of any monies obtained from Plaintiffs as a result of the fraud. Further, and in the alternative, Plaintiffs

seek rescission of the Purchase Agreement, the First Amendment, and the Escrow Agreement, and ask this Court to return the parties to their earlier positions as if no Agreement had existed.

SECOND CAUSE OF ACTION

(Breach of Express Warranty)

49. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

50. Falcon made certain express warranties and representations in connection with the Agreement.

51. In Section 4.9 of the Purchase Agreement, Falcon represented that "each balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material respects the consolidated financial position of the Company and its Subsidiaries as of the date of each such balance sheet . . . ." In light of the representations in Falcon's financial statements regarding the value of the pad gas in the Storage Facilities, the operating expenses (or purported lack thereof) related to operation of the Storage Facilities, and the fact that there was a material shortfall of pad gas and customer gas in the Storage Facilities, the representations and warranties in Section 4.9 of the Purchase Agreement proved to be false; Falcon (and through it, Arcapita) breached this representation and warranty and as a result Plaintiffs have suffered actual economic harm.

52. In Section 4.11 of the Purchase Agreement, Falcon represented that neither NorTex nor its subsidiaries have experienced a "Material Adverse Effect . . . or other disposition of any material assets" since March 31, 2009. In light of the quantities and value of the pad gas in issue, and in light of the fact that a significant portion of the shortfall in pad gas and customer gas occurred between March 31, 2009 and March 31, 2010, there clearly has been a "Material Adverse Effect" and/or a "disposition of material assets" after March 31, 2009. Thus, the

representations and warranties in Section 4.11 of the Purchase Agreement proved to be false; Falcon (and through it, Arcapita) breached this representation and warranty; and, as a result, Plaintiffs have suffered actual economic harm.

53. As detailed above, Falcon breached each of the foregoing express warranties and representations contained in the Purchase Agreement. Falcon made an assurance of the existence of a material fact upon which Plaintiffs relied; the assurance was false; and Plaintiffs were injured as a result of the breach of warranty. Section 10.1 of the Purchase Agreement expressly entitles Plaintiffs to indemnification for damages, including attorneys' fees, arising out of or relating to breach or inaccuracy of any representation or warranty made by Falcon. Arcapita absolutely, unconditionally, and irrevocably guaranteed any payment obligations under Section 10 of the Purchase Agreement, including Section 10.1, pursuant to the April 1, 2010 Guaranty Agreement between Arcapita and Plaintiffs.

54. As a natural and probable result of, or as a proximate result of, the breach of warranty by Falcon, Plaintiffs have suffered economic damages. Plaintiffs therefore, pursuant to this breach of express warranty claim, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law.

THIRD CAUSE OF ACTION

(Breach of Contract)

55. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

56. Pursuant to the Purchase Agreement and the First Amendment, Falcon agreed to deliver assets that contained specific quantities of pad gas and exhibited specific operational characteristics. Plaintiffs, in exchange, agreed to pay the purchase price. Although Plaintiffs fulfilled their duties under the Purchase Agreement and Second Amendment, Falcon materially

breached the contract because, in actuality, the assets that it sold contained less pad gas than it represented and was contemplated by the agreement of the parties. Further, the fuel consumption of the Storage Facilities' compressors and the resulting depletion of stored gas in the Storage Facilities is far greater than Plaintiffs bargained and paid for based on Falcon's and Arcapita's misrepresentations. Moreover, the source of hydrocarbons extracted during the operation of the Storage Facilities' NGL extraction facilities was misrepresented. The cost of this stored gas "shrinkage," combined with NGL extraction plant fuel use is so significant as to potentially render NGL extraction plant operations economically non-viable.

57. Thus, a valid contract existed between Plaintiffs and Falcon; Plaintiffs performed as required by the terms of the contract; Falcon materially breached the contract; and Plaintiffs have incurred damages as a result of Falcon's breach.

58. As a natural and probable result of, or as a proximate result of, the breach of contract by Falcon, Plaintiffs have suffered economic damages. Plaintiffs therefore, pursuant to this breach of contract claim, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law.

FOURTH CAUSE OF ACTION

(Violations of § 10 and Rule 10b-5 of the Securities Exchange Act of 1934)

59. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

60. The ownership interests and units of NorTex and/or its subsidiaries that Plaintiffs purchased under the Purchase Agreement were "securities" within the meaning of the Act. In connection with the sale of all outstanding ownership interests and units of NorTex to Plaintiffs, Falcon and Arcapita, sellers of those securities, made several material misstatements or omissions to Plaintiffs.

61. For example, Falcon and Arcapita provided financial statements and related materials for fiscal year 2007 through 2009 containing inventory values and historical cost assumptions for pad gas in the Storage Facilities that, taken together, represented there was a combined 14 bcf of pad gas in the two Storage Facilities as of March 31, 2009. Those representations were corroborated by a "management presentation" and supposed "pressure test data" that Falcon and Arcapita provided Plaintiffs in February 2010, in the process of due diligence for the purchase and sale of NorTex. Those documents also represented that, based on actual pressure testing and engineering analysis, there was 14 bcf of pad gas in the two Storage Facilities.

62. In addition, in February 2010, in connection with due diligence for the sale of NorTex, Falcon and Arcapita provided Plaintiffs with financial statements for Falcon's and NorTex's fiscal years from 2007 through 2009. Those financial statements, in conjunction with other data Falcon and Arcapita provided, indicated that there were no operating costs associated with the compressor fuel utilized in the operation of the Hill-Lake and Worsham-Steed Facilities. In support of their conclusions regarding the purported lack of operating expenses, Falcon and Arcapita represented that the fuel consumption from operations was offset by a phenomenon they described as "Btu enhancement"; essentially, they represented that native hydrocarbons in the Storage Facilities were enhancing the heating value of customer gas sufficient to offset the fuel consumed in operating the Storage Facilities.

63. Further, Falcon and Arcapita represented that the extraction of NGLs from the gas within the Storage Facilities had no affect on the quantities of gas present in the Storage Facilities.

64. In the financial statements and purported pressure testing data, Falcon and Arcapita represented that they performed regular pressure tests and engineering measurements of the volume of pad gas in the Storage Facilities.

65. The financial statements, management presentations, and purported pressure test data were prepared by Falcon's representatives acting within the course and scope of their employment by Falcon, and, on information and belief, by representatives of Arcapita acting within the course and scope of their employment by Arcapita.

66. Further, Falcon represented in the Purchase Agreement that: (1) "each balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material respects the consolidated financial position of the Company and its Subsidiaries as of the date of each such balance sheet"; and (2) that neither NorTex nor its subsidiaries have experienced a "Material Adverse Effect . . . or other disposition of any material assets" since March 31, 2009. Considering the fact that the Storage Facilities are missing more than 6 *billion* cubic feet of gas, the falsity of these representations is evident, as is the inaccuracy of the representations contained in the financial statements and related documents indicating that there was a combined 14 bcf of pad gas in the two Storage Facilities as of March 31, 2009.

67. Falcon and Arcapita made material misstatements and omissions in the context of Plaintiffs' due diligence regarding the purchase of NorTex, intending that Plaintiffs rely upon the information provided. In addition to the misstatements and omissions regarding the quantities and values of pad gas, Plaintiffs have learned that, during its operation of NorTex and the Storage Facilities, Falcon failed to properly account for and record fuel usage in compression of gas in the Storage Facilities, and that consumption of fuel in the compression operations actually

drew upon and depleted the quantities of gas within the Storage Facilities to a degree that was not offset by Falcon's represented "Btu enhancement" theory.

68. Further, Plaintiffs have discovered that the supposed "pressure test" data Falcon and Arcapita provided in due diligence was not actual pressure testing and engineering analysis as represented. Rather, the documents reflected mere "in-and-out" calculations derived from old, inaccurate baseline assumptions regarding "starting quantities" of pad gas in the two Storage Facilities.

69. Plaintiffs have also discovered that, contrary to assertions in the financial statements and related data, Falcon did not properly monitor, record, or analyze the volume or composition of gas flows in and out of the Storage Facilities and related systems.

70. Plaintiffs have also learned that Falcon incorrectly represented gas flows, and failed to make proper or adequate calculations or records of shrinkage resulting from the extraction of NGLs from the gas within the Storage Facilities, resulting in a material misstatement or omission.

71. Plaintiffs have also learned that, contrary to Falcon's and Arcapita's representations in the 2007, 2008, and 2009 financial statements and elsewhere, Falcon failed to conduct regular and consistent shut-in pressure testing and related volumetric calculations and measurements of the quantities of gas within the Storage Facilities, and failed to conduct thorough and proper analyses of the results of those tests to ensure NorTex's financial records were accurate. These failures occurred during a period when deliverability problems indicated a critical need to perform these tests, calculations, and measurements and to properly analyze and report the results.

72. Plaintiffs have discovered that both Falcon and Arcapita knew of these problems, and therefore the falsity of the information, at the time they were making representations and warranties to Plaintiffs regarding NorTex's financial condition, the value and quantity of gas in the Storage Facilities, and the absence of materially adverse changes or events in the company's operations and assets.

73. These material misstatements and omissions have caused Plaintiffs economic loss. As a result of Falcon's and Arcapita's misrepresentations, Plaintiffs (through NorTex) have been forced to mitigate further losses by implementing a program to strategically and opportunistically purchase approximately 4 bcf of gas to make up for the shortfall in pad gas and customer gas at the Hill-Lake Facility and ensure ongoing compliance with customer contracts. At current market prices, the loss to Plaintiffs as a result of having to cover these gas shortfalls is approximately $20 million, and Plaintiffs believe in reasonable probability the future costs to cover such shortfalls at the combined Storage Facilities will exceed an additional $10 million. Further, as a result of Falcon's and Arcapita's misrepresentations regarding the source and cost of fuel consumed in the compression of gas in the Storage Facilities, Plaintiffs will incur additional, unbargained-for annual operating expenses that were completely omitted from the financial statements Falcon and Arcapita provided to Plaintiffs. The undisclosed operating expenses associated with fuel consumed in the compression operations of the combined Storage Facilities have an economic impact of over $40 million on the value of the assets Plaintiffs purchased. Likewise, the undisclosed practice of extracting NGLs from stored gas rather than from native hydrocarbons present in the Storage Facilities has a material, adverse economic impact on the value of NorTex's NGL extraction business. Had the truth been revealed regarding the quantities and values of pad gas contained in the Storage Facilities, the operating costs associated with fuel

compression, and the impact of shrinkage on NorTex's NGL extraction operations, Plaintiffs would not have agreed to the purchase price ultimately reflected in the Purchase Agreement.

74. Thus, Falcon and Arcapita, sellers of securities, made material misstatements or omissions in connection with the sale of securities to Plaintiffs; Falcon and Arcapita knew the misstatements or omissions were false; Plaintiffs relied on the material misstatements or omissions; Plaintiffs suffered economic loss because of the material misstatements or omissions; and there is a causal connection between the material misstatements or omissions and Plaintiffs' economic loss.

75. As a natural and probable result of, or as a proximate result of, violations of § 10 of the Act and Rule 10b-5, Plaintiffs have suffered economic damages. Plaintiffs therefore, pursuant to this claim under § 10 of the Act and Rule 10b-5, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law.

FIFTH CAUSE OF ACTION

(Request for Injunctive Relief)

76. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

77. On April 1, 2010, Plaintiffs and Defendants Falcon and HSBC entered into an Escrow Agreement in connection with the purchase by Plaintiffs of all of the issued and outstanding interests in NorTex. Pursuant to the terms of the Escrow Agreement, Plaintiffs deposited $70 million with HSBC; HSBC, in turn, agreed to deposit the funds in an account (the "Escrow Account").

78. Plaintiffs seek the assistance of the equitable powers of this Court to assure that Defendants do not wrongfully collect an additional $70 million as a reward for their fraudulent and wrongful conduct and transfer those fraudulently obtained funds beyond the reach of this

Court and Plaintiffs. Falcon and Arcapita contend that they are entitled to the immediate release of the Escrow Account, and have stated their intent to pursue such release. Falcon and Arcapita claim that they are entitled to the $70 million currently held in the Escrow Account in connection with the fraudulent sale of NorTex to Plaintiffs, a sale in which Falcon and Arcapita misrepresented the value of the Storage Facilities owned by NorTex in order to induce payment of the purchase price. Plaintiffs have already paid over $500 million in exchange for assets whose value Falcon and Arcapita materially misrepresented and that are worth substantially less than the amount Plaintiffs were defrauded into paying. This Court must prevent the Falcon and Arcapita Defendants from collecting additional funds as an additional windfall for the fraud perpetrated upon Plaintiffs.

79. The release of the Escrow Account threatens immediate and irreparable harm to Plaintiffs that cannot be remedied at law. Thus, Plaintiffs seek a permanent injunction restraining Falcon and HSBC from disbursing any funds from the Escrow Account, except pursuant to the Expense Notices referenced in Section 3.7 of the Purchase Agreement. If this Court does not enter a permanent injunction as specified above, Plaintiffs will be irreparably damaged because the funds in the Escrow Account will be immediately released to Arcapita, a Bahrain bank, and removed from the jurisdiction of this Court. Thus, Falcon and Arcapita will be effectively rewarded for their fraudulent and wrongful conduct and Plaintiffs will have no recourse in connection with same.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand that judgment be entered against Defendants for:

(a) actual damages;

(b) a permanent injunction;

(c) in the alternative, disgorgement of any monies obtained from Plaintiffs as a result of fraud;

(d) in the alternative, rescission of the Purchase Agreement;

(e) reasonable and necessary attorneys' fees;

(f) court costs; and

(g) such other and further relief to which Plaintiffs are justly entitled.

Dated: New York, New York
August 2, 2010

BRACEWELL & GIULIANI LLP

By: _____

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Origin ID: EIXA

FedEx Express

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Ship Date: 28AUG12
ActWgt: 0.5 LB
CAD: 103917639/WSXI2500

Delivery Address Bar Code

SHIP TO: (404) 920-9000 BILL SENDER
Arcapita Bank B.S.C.(c)
c/o GCG
5151 Blazer Pkwy Ste A

Ref # 001558.000013-03767
Invoice #
PO #
Dept #

Dublin, OH 43017

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PRIORITY OVERNIGHT

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FOLD on this line and place in shipping pouch with bar code and delivery address visible

1. Fold the first printed page in half and use as the shipping label.
2. Place the label in a waybill pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.
3. Keep the second page as a receipt for your records. The receipt contains the terms and conditions of shipping and information useful for tracking your package.

EXHIBIT 8

Claim No. 298

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM

Name of Debtor (Check Only One):	Case No.		
☐ Arcapita Bank B.S.C.(c)	12-11076	☐ Windturbine Holdings Limited	12-11079
☐ Arcapita Investment Holdings Limited	12-11077	☐ AEID II Holdings Limited	12-11080
☐ Arcapita IT Holdings Limited	12-11078	☐ Railinvest Holdings Limited	12-11081
		☒ Falcon Gas Storage Company, Inc.	12-11790

NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Tide Natural Gas Storage I LP

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number:

(If known)

Filed on: _____

Name and address where notices should be sent:
Bracewell & Giuliani LLP
711 Louisiana St.
Houston, TX 77002
Attn: Trey Wood

Telephone number: (713) 223-2300
Email Address: Trey.Wood@bgllp.com

Name and address where payment should be sent (if different from above):
Tide Natural Gas Storage I LP
c/o Alinda Capital Partners LLC
150 East 58th St.
New York, NY 10155
Telephone number: Attn: General Counsel
Email Address:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

Your Claim is Scheduled As Follows:

THE GARDEN CITY GROUP, INC. AUG 29 2012

If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. (This scheduled amount of your claim may be an amendment to a previously scheduled amount.) If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claim against the Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is listed as any of DISPUTED, UNLIQUIDATED, or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

FILED - 00298
SDNY
ARCAPITA BANK B.S.C. (C)
12-11076 (SHL)

1. **Amount of Claim as of Date Case Filed:** $ 120,000,000.00 plus interest, fees and costs

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

☒ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. **Basis for Claim:** Fraud, Fraudulent Inducement, Breach of Warranty, Breach of Contract, Securities Violations
(See instruction #2)

3. **Last four digits of any number by which creditor identifies debtor:** _____ _____ _____ _____

3a. **Debtor may have scheduled account as:** _____ (See instruction #3a)

3b. **Uniform Claim Identifier (optional):** _____ (See instruction #3b)

4. **Secured Claim** (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☒ Other

Describe: Escrow Funds

Value of Property: $ 70,000,000.00

Annual Interest Rate _____ % ☐ Fixed or ☐ Variable (when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: $ _____

Basis for perfection: see attached addendum

Amount of Secured Claim: $ 70,000,000.00 plus interest

Amount Unsecured: $ 50,000,000.00

5. **Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.**

☐ Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).

☐ Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).

☐ Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)( ).

Amount entitled to priority: $ _____

*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. **Credits.** The amount of all payments on this claim has been credited for the purpose of making this proof of claim. *(See instruction #6)*

7. **Documents:** Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #7, and the definition of "redacted".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain: _____

8. **Signature:** (See instruction #8) Check the appropriate box.

☐ I am the creditor ☒ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: John Laxmi
Title: Secretary
Company: Tide Natural Gas Storage I LP

John Laxmi 8/27/2012
(Signature) (Date)

Address and telephone number (if different from notice address above):

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571. **Modified B10 (GCG) (12/11)**

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the Debtor, exceptions to these general rules may apply. The attorneys for the Debtors and their court-appointed claims agent, GCG, are not authorized and are not providing you with any legal advice.

PLEASE SEND YOUR ORIGINAL, COMPLETED CLAIM FORM AS FOLLOWS: **IF BY MAIL: ATTN: ARCAPITA BANK B.S.C.(c), C/O GCG, P.O. BOX 9881 DUBLIN, OHIO 43017-5781. IF BY HAND OR OVERNIGHT COURIER: ATTN: ARCAPITA BANK B.S.C.(c), C/O GCG, 5151 BLAZER PARKWAY, STE A, DUBLIN, OH 43017. ANY PROOF OF CLAIM SUBMITTED BY FACSIMILE OR EMAIL WILL NOT BE ACCEPTED.**

THE GENERAL BAR DATE IN THESE CHAPTER 11 CASES IS AUGUST 30, 2012 AT 5:00 P.M. (PREVAILING EASTERN TIME)
THE GOVERNMENTAL BAR DATE IN THESE CHAPTER 11 CASES IS SEPTEMBER 17, 2012 AT 5:00 P.M. (PREVAILING EASTERN TIME)

Items to be completed in Proof of Claim form

Bankruptcy Court Information:
All of these chapter 11 cases other than Falcon Gas Storage Company, Inc. were commenced on March 19, 2012. Falcon Gas Storage Company, Inc. filed its chapter 11 petition on April 30, 2012. You should select the Debtor against which you are asserting your claim from the list provided.

A SEPARATE PROOF OF CLAIM FORM MUST BE FILED AGAINST EACH DEBTOR.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. Please provide us with a valid email address. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to your claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the Debtor's account or other number used by the creditor to identify the Debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the Debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a):
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the Debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is the person, corporation, or other entity to whom the Debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. § 101 (10).

Claim
A claim is the creditor's right to receive payment for a debt owed by the Debtor on the date of the bankruptcy filing. See 11 U.S.C. § 101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the Debtor on the date of the bankruptcy filing. The creditor must file the form with GCG as described in the instructions above and in the Bar Date Notice.

Secured Claim Under 11 U.S.C. § 506 (a)
A secured claim is one backed by a lien on property of the Debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a Debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the Debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507 (a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

INFORMATION

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

Acknowledgment of Filing of Claim
To receive a date-stamped copy of your claim form, please provide a self-addressed stamped envelope and a copy of your proof of claim form when you submit the original to GCG.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the Debtor. These entities do not represent the bankruptcy court or the Debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

List of Debtors and Case Numbers

Indicate on the face of the Proof of Claim form the Debtor against which you assert a claim.
Choose only one Debtor for each Proof of Claim form.

Arcapita Bank B.S.C.(c) 12-11076
Arcapita Investment Holdings Limited 12-11077
Arcapita LT Holdings Limited 12-11078
Windturbine Holdings Limited 12-11079
AEID II Holdings Limited 12-11080
Railinvest Holdings Limited 12-11081
Falcon Gas Storage Company, Inc. 12-11790

BRACEWELL
&GIULIANI

Texas
New York
Washington, DC
Connecticut
Seattle
Dubai
London

Jason G. Cohen
Associate

713.221.1416 Office
800.404.3970 Fax

Jason.Cohen@bgllp com

Bracewell & Giuliani LLP
711 Louisiana Street
Suite 2300
Houston, Texas
77002-2770

August 28, 2012

Arcapita Bank B.S.C.(c)
c/o GCG
5151 Blazer Parkway, Suite A
Dublin, Ohio 43017

Re: Tide Natural Gas Storage I LP and Tide Natural Gas Storage II LP - Proofs of Claim

Dear Arcapita Bank B.S.C.(c):

Enclosed please find the following proofs of claim for filing with original signatures:

1. Proof of Claim of Tide Natural Gas Storage I LP against Arcapita Bank B.S.C.(c), Case No. 12-11076.

2. Proof of Claim of Tide Natural Gas Storage II LP against Arcapita Bank B.S.C.(c), Case No. 12-11076.

3. Proof of Claim of Tide Natural Gas Storage I LP against Falcon Gas Storage Company, Inc., Case No. 12-11790.

4. Proof of Claim of Tide Natural Gas Storage II LP against Falcon Gas Storage Company, Inc., Case No. 12-11790.

Additionally, enclosed are copies of the above listed proofs of claim to be file stamped and returned to me as proof of receipt via the enclosed self-addressed stamped envelope.

Very truly yours,

Bracewell & Giuliani LLP

Jason G. Cohen

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	§	
	§	
	§	**Chapter 11**
ARCAPITA BANK B.S.C.(c), *et al.*,	§	
	§	**Case No. 12-11076-shl**
Debtors.	§	**Jointly Administered**
	§	
	§	
IN RE:	§	
	§	**Chapter 11**
FALCON GAS STORAGE CO., INC.	§	
	§	**Case No. 12-11790-shl**
Debtor.	§	**(Jointly Administered under**
	§	**Case No. 12-11076)**

ADDENDUM TO PROOFS OF CLAIM FILED BY TIDE NATURAL GAS STORAGE I LP AND TIDE NATURAL GAS STORAGE II LP

1. Claimant. Tide Natural Gas Storage I LP and Tide Natural Gas Storage II LP (together, "Tide") hereby files this addendum ("Addendum") to their proofs of claim (together, "Claim"). This Addendum and the attachments hereto are an integral part of Tide's Claim and are incorporated by reference into the Claim for all purposes.

2. Background of Claim. The Claim is based on the fraud, fraudulent inducement, breach of warranty, breach of contract, and securities violations of Falcon Gas Storage Co., Inc. and Arcapita Bank B.S.C.(c), as more specifically detailed in Tide's Complaint filed in the District Court for the Southern District of New York, which initiated Case No. 10-CIV-5821 (the "Complaint") (as attached to the Claim).

3. Amount of Claim (further detailed in the Complaint). The Claim is made in the amount of $120,000,000.00 plus interest, fees and costs.

4. Interest. Tide seeks all pre- and post-judgment interest related to the causes of action asserted in the Complaint to which Tide is entitled under applicable law. Tide also seeks all investment income earned upon the $70,000,000.00 currently in escrow.

5. Fees and Costs. Tide seeks its reasonable and necessary attorneys' fees and all court costs, as detailed in the Complaint.

6. Supporting Documents. The Claim is based upon the actions detailed in the Complaint.

7. Judgment. No judgment has been rendered on the Claim.

8. Credits. The amount of all prepetition payments and credits on the Claim have been credited and deducted for the purposes of making this Claim. Furthermore, Tide deposited $70,000,000.00 of the purchase price for the sale of NorTex Gas Storage Company, LLC into Escrow with HSBC Bank USA, N.A. as escrow agent. These funds remain in escrow and, because the Debtor has perpetrated a fraud upon Tide, as detailed in the Complaint, these funds remain the property of Tide. Upon return of the $70,000,000.00, Tide will provide a credit of $70,000,000.00 against its Claim.

9. Notices. All notices to PPL concerning this Claim should be sent to:

Tide Natural Gas Storage I LP
Tide Natural Gas Storage II LP
c/o Alinda Capital Partners LLC
150 East 58th St.
New York, NY 10155
Attn: General Counsel

Copies of all notices to Tide concerning this Claim should be sent to:

Bracewell & Giuliani LLP
711 Louisiana Street
Suite 2300
Houston, Texas 77002
Attn: Trey Wood

713.223.2300

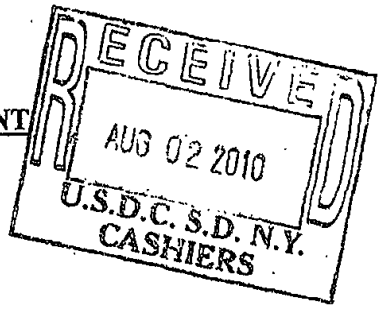
10. Protective Filing/Amendments. This Claim is filed under compulsion of the bar date established in this case, and is filed to protect Tide from forfeiture of its claims. The execution and filing of this Claim are not (i) a waiver or release of any of Tide's rights against any entity or person liable for all or part of the Claim, (ii) a consent by Tide to the jurisdiction of this Court with respect to any proceeding commenced in this case against or otherwise involving Tide, (iii) a waiver of the right to withdraw the reference with respect to the subject matter of the Claim, any objection or other proceeding commenced with respect thereto or any other proceeding commenced in this case against or otherwise involving Tide, (iv) an election of remedy that waives or otherwise affects any other remedy, or (v) a waiver or release of any of Tide's rights against any third party.

11. Reservation of Rights. Tide expressly reserve its rights to (i) amend or supplement this Claim in any respect, (ii) file additional proofs of claim for claims not covered by this proof of claim, (iii) seek relief from the automatic stay to pursue Tide's Complaint currently pending in the District Court for the Southern District of New York, and (iv) seek withdrawal of the reference with regard to any complaint filed in the Bankruptcy Court for the Southern District of New York, including, but not limited to, the complaint filed by the Hopper Parties, which initiated Adversary Proceeding No. 12-0162.

JUDGE WOOD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIDE NATURAL GAS STORAGE I, LP and TIDE NATURAL GAS STORAGE II, LP, Plaintiffs, v. FALCON GAS STORAGE COMPANY, INC.; ARCAPITA BANK B.S.C.; ARCAPITA, INC.; and HSBC BANK USA, NATIONAL ASSOCIATION, Defendants.	10 CIV 5821 ECF CASE Civil Action No. **COMPLAINT**



Plaintiffs TIDE NATURAL GAS STORAGE I, LP and TIDE NATURAL GAS STORAGE II, LP (together, "Plaintiffs") for their Complaint against Defendants FALCON GAS STORAGE COMPANY, INC., ARCAPITA BANK B.S.C., ARCAPITA, INC., and nominal defendant HSBC BANK USA, NATIONAL ASSOCIATION ("HSBC") (collectively, "Defendants") allege as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction because certain claims asserted herein arise under § 10 of the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. § 78j(b)). Jurisdiction is conferred by § 27 of the Act (15 U.S.C. § 78aa). This Court has supplemental jurisdiction over all state law and other claims asserted herein pursuant to 28 U.S.C. § 1367.

2. This Court has personal jurisdiction over all parties to this action because all parties do business within the State of New York as the term "doing business" is understood in law, have the requisite "minimum contacts" with the State of New York as the term "minimum contacts" is understood in law, have purposefully availed themselves of the protections and benefits of the laws of the State of New York as required to establish *in personam* jurisdiction, or

have expressly consented to the jurisdiction of this Court and of the Courts of the State of New York. This Court's exercise of personal jurisdiction over all Defendants will not offend traditional notions of fair play and substantial justice.

3. Venue is proper in this district pursuant to § 27 of the Act (15 U.S.C. § 78aa) because Defendants transact business in this district. Venue is also authorized in this district under 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district. Venue is also proper in this district by agreement of the parties.

PARTIES

4. Plaintiff TIDE NATURAL GAS STORAGE I, LP is formerly known as Alinda Natural Gas Storage I, LP, and hereafter, together with Tide Natural Gas Storage II, LP (formerly Alinda Natural Gas Storage II, LP), shall be referred to as "Plaintiffs." Tide Natural Gas Storage I, LP is now and at all relevant times has been a limited partnership organized and existing under the laws of the State of Delaware.

5. Plaintiff TIDE NATURAL GAS STORAGE II, LP is formerly known as Alinda Natural Gas Storage II, LP, and hereafter, together with Tide Natural Gas Storage I, LP (formerly Alinda Natural Gas Storage I, LP), shall be referred to as "Plaintiffs." Tide Natural Gas Storage II, LP is now and at all relevant times has been a limited partnership organized and existing under the laws of the State of Delaware.

6. Defendant FALCON GAS STORAGE COMPANY, INC. (hereafter, "Falcon") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Atlanta, Georgia. Pursuant to Section 11.1 of the Purchase Agreement by and between Falcon and Plaintiffs, Falcon may be served with process via U.S.

certified mail, c/o Arcapita, at 75 Fourteenth Street, 24th Floor, Atlanta, Georgia, 30309, with a copy to Raymond E. Baltz, King & Spalding, 1180 Peachtree Street, Atlanta, Georgia, 30309.

7. Defendant ARCAPITA BANK B.S.C. (hereafter, together with Arcapita, Inc., "Arcapita") is a joint stock company incorporated in the Kingdom of Bahrain. Its principal place of business in the United States is 75 Fourteenth Street, 24th Floor, Atlanta, Georgia, 30309. Pursuant to Section 3.4 of the Guaranty Agreement between Arcapita Bank B.S.C. and Plaintiffs, Arcapita Bank B.S.C. may be served with process via U.S. certified mail, c/o Arcapita Inc., at 75 Fourteenth Street, 24th Floor, Atlanta, Georgia, 30309, attention Brian R. McCabe, with a copy to Raymond E. Baltz, King & Spalding, 1180 Peachtree Street, Atlanta, Georgia 30309.

8. Defendant ARCAPITA, INC. (hereafter, together with Arcapita Bank B.S.C., "Arcapita") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 75 Fourteenth Street, 24th Floor, Atlanta, Georgia 30309. Arcapita, Inc. does not have a registered agent for service of process in the State of New York. Arcapita, Inc. may be served with process pursuant to Federal Rule of Civil Procedure 4(h)(1) by delivering a copy to its registered agent, RL&F Service Corporation, One Rodney Square, 10th Floor, Wilmington, Delaware 19801.

9. Defendant HSBC BANK USA, NATIONAL ASSOCIATION, in its capacity as escrow agent ("HSBC"), is a national banking association. HSBC's principal place of business is 1800 Tysons Boulevard, Suite 50, McLean, Virginia 22102. HSBC may be served with process pursuant to Federal Rule of Civil Procedure 4(h)(1) by delivering a copy to its registered agent, Legal Processing, 12th Floor, One HSBC Center, Buffalo, New York 14203. HSBC is a nominal defendant in this matter; it has been named solely because injunctive relief is sought with respect

to certain funds that are in HSBC's possession as escrow agent pursuant to an agreement between the other parties.

FACTS

A. Overview of Case

10. This lawsuit arises out of Falcon's and its controlling affiliates' misrepresentations to Plaintiffs in connection with a half-billion dollar transaction for the sale of a natural gas storage business, NorTex Gas Storage Company, LLC ("NorTex"). Plaintiffs purchased the natural gas storage business on the strength of various material representations and warranties from Falcon and its affiliates, including representations about NorTex's business and the value of certain of NorTex's assets, in particular the amount of "pad gas" in the natural gas storage facilities, the operating costs associated with fuel consumption, and the source of hydrocarbons extracted during operation of NorTex's two natural gas liquid ("NGL") extraction plants. Plaintiffs have recently discovered not only that those representations and warranties were false, but that both Falcon and its controlling affiliates had actual knowledge of the falsity at the time Plaintiffs agreed to purchase NorTex.

11. The difference in value between the quantities of pad gas as represented and the quantities of pad gas actually present exceeds $30 million, and the implications of this shortfall and the mechanisms by which the shortfall was created has an impact on the economics of NorTex's gas storage business that far exceeds that amount. Plaintiffs therefore bring this action seeking, alternatively, money damages for the economic harm they have suffered, disgorgement of Falcon's unjust gains from the transaction, or rescission of the purchase and sale of NorTex. In addition, because the transaction was the product of a fraud, and because Falcon's controlling affiliates have demonstrated an intent to move certain proceeds from the purchase and sale beyond the jurisdictional reach of this Court, Plaintiffs further seek injunctive relief preventing

Falcon or its affiliates from removing certain escrowed proceeds of the sale from the escrow account where those funds are currently held.

B. Plaintiffs' Purchase Of NorTex

12. NorTex, formerly a subsidiary of Falcon, is in the business of storing and processing natural gas in and from two underground gas storage facilities located in northern Texas, sometimes referred to as the "Worsham-Steed Facility" and the "Hill-Lake Facility," respectively, and collectively referred to as the "Storage Facilities."[1]

13. In March 2010, Plaintiffs and Falcon entered into a Purchase Agreement ("the Purchase Agreement") whereby Plaintiffs agreed to purchase all of Falcon's interest in NorTex. Plaintiffs thereby acquired the entire gas storage business of NorTex, including NorTex's ownership in the Worsham-Steed and Hill-Lake entities and their respective ownership and operation of the Worsham-Steed and Hill-Lake Facilities. The transaction closed on April 1, 2010; at that time, Plaintiffs paid Falcon a total of $515 million for NorTex.[2]

C. Defendants' Specific Representations To Plaintiffs

14. During the course of negotiations and due diligence, Falcon and its controlling affiliate, Arcapita, provided Plaintiffs and their representatives with certain detailed and specific financial information regarding NorTex's operations and the value of the assets owned by NorTex and the Worsham-Steed and Hill-Lake entities. Among that information were certain

[1] Specifically, NorTex owns all the interests in two sets of subsidiaries: (1) Worsham-Steed GP, Inc. and Worsham-Steed Gas Storage, L.P. (together, "Worsham-Steed") and (2) Hill-Lake GP, Inc. and Hill-Lake Gas Storage, L.P. (together, "Hill-Lake"). The Worsham-Steed and Hill-Lake entities in turn own and operate the two underground natural gas storage facilities and related processing facilities.

[2] As noted below, $70 million of that purchase price was placed in escrow with Nominal Defendant HSBC pursuant to a First Amendment to Purchase Agreement dated April 1, 2010 ("the First Amendment") and an Escrow Agreement. That $70 million represents a material part of the consideration paid by Plaintiffs for the purchase of NorTex and is the subject of Plaintiffs' claims for injunctive relief and alternative claims for money damages or rescission as set out in more detail below.

specific representations regarding the quantities and value of "pad gas" contained in the respective Storage Facilities, the operating costs associated with the consumption of fuel in the operations of the respective Storage Facilities, and the source of hydrocarbons extracted during operation of NorTex's two NGL extraction plants.

15. For example, Falcon and Arcapita provided financial statements and related materials for fiscal year 2007 through 2009 containing inventory values for pad gas in the Storage Facilities that, taken together, represented there was a combined historical inventory value of $70,337,515 of pad gas in the two Storage Facilities as of March 31, 2009. Those representations were corroborated by a "management presentation" and supposed "pressure test data" that Falcon and Arcapita provided Plaintiffs in February 2010, in the process of due diligence for the purchase and sale of NorTex. Those documents represented that, based on actual pressure testing and engineering analysis, there were 4 billion cubic feet ("bcf") of pad gas in the Hill-Lake Facility and 10 bcf of pad gas in the Worsham-Steed Facility.

16. In addition, in February 2010, in connection with due diligence for the sale of NorTex, Falcon and Arcapita provided Plaintiffs with financial statements for Falcon's and NorTex's fiscal years from 2007 through 2009. In those financial statements, Falcon and Arcapita gave inaccurate information regarding operating expenses from fuel consumption in the operation of the Storage Facilities. In connection with those financial statements, Falcon and Arcapita instead represented that the fuel consumption from operations was offset by a phenomenon they described as "Btu enhancement"; essentially, they represented that native hydrocarbons in the Storage Facilities were enhancing the heating value of customer gas sufficient to offset the fuel consumed in operating the Storage Facilities. Falcon and Arcapita

also represented that the extraction of NGLs from within the Storage Facilities had no effect on the quantities of gas present in the Storage Facilities.

17. In the financial statements and purported pressure testing data, Falcon and Arcapita represented that they performed regular pressure tests and engineering measurements of the volume of pad gas in the Storage Facilities.

18. The financial statements, management presentations, and purported pressure test data were prepared by Falcon's representatives acting within the course and scope of their employment by Falcon and, on information and belief, by representatives of Arcapita acting within the course and scope of their employment by Arcapita.

19. "Pad gas" is of fundamental importance to the operation of a natural gas storage facility. "Pad gas" is the base amount of gas necessary to maintain storage field pressure and deliverability of the customers' gas stored in the facility. Without sufficient pad gas, the Storage Facilities would be unable to withdraw and deliver customer gas at levels required for services such as "firm storage service" ("FSS"), "load-following hourly balancing" ("LFHB"), and "park-and-loan" ("PAL") agreements with customers. In other words, the quantity of pad gas in the Storage Facilities is material information because, without sufficient pad gas in the Storage Facilities, NorTex cannot meet its obligations to its customers and cannot operate its gas storage business. Likewise, the information regarding fuel consumption and the source of hydrocarbons extracted during NGL facility operations is essential in accurately evaluating the economic value of NorTex and the assets it owns and operates and, thus, material to any potential purchaser.

20. In the Purchase Agreement, Falcon expressly represented and warranted that "each balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material

respects the consolidated financial position of the Company and its Subsidiaries as of the date of each such balance sheet . . . ."

21. Also in the Purchase Agreement, Falcon represented that neither NorTex nor its subsidiaries have experienced a "Material Adverse Effect . . . or other disposition of any material assets" since March 31, 2009.

22. In addition, in the course of due diligence, Plaintiffs inquired of Falcon regarding why Falcon's records did not show any change in value over time for the pad gas present in the Storage Facilities, and why there was no entry in the records for the cost, expense, or consumption of fuel consumed in the process of extracting natural gas liquids from the gas stored in the facilities. Falcon and Arcapita responded by referring Plaintiffs to a January 2010 memorandum with a subject of "NGL Material Balance & Shrink," a Microsoft Excel file, and a February 2010 "Material Balance" presentation which Falcon and Arcapita had caused to be provided in the due diligence "data room" and made available to Plaintiffs. That "Material Balance" presentation and the other associated information represented, in summary, that the consumption of pad gas as fuel in the storage and processing of gas contained in the Storage Facilities was offset by a phenomenon they described as "Btu enhancement." This information also represented that the source of hydrocarbons produced during NGL extraction facility operations was native fluids contained in the Storage Facilities, and not pad gas or customer gas being injected from gas pipelines for storage and later withdrawal.

23. Falcon and Arcapita made the foregoing representations in the course of due diligence regarding the sale of NorTex because they knew that potential buyers such as Plaintiffs would require information about the quantities and values of pad gas in the Storage Facilities, the source of compressor fuel and associated operating expense, and the source of hydrocarbons

produced during NGL extraction facility operations as material components in evaluating the gas storage assets and operations. Further, Falcon and Arcapita made these representations specifically in response to inquiries from Plaintiffs regarding the quantities of pad gas, the consumption of compressor fuel, and the extraction of hydrocarbons as NGLs, each as reflected in Falcon's records, knowing that Plaintiffs would rely on the information provided. Falcon and Arcapita made these representations intending that Plaintiffs would rely on them in proceeding with the purchase of NorTex.

24. Between March 15, 2010 and April 1, 2010, in reasonable reliance on these representations from Falcon and Arcapita regarding pad gas quantities, compressor fuel consumption, and the source of hydrocarbons produced during NGL extraction facility operations, Plaintiffs entered into the Purchase Agreement, the First Amendment, and the Escrow Agreement, and proceeded to close the purchase and sale of NorTex and pay over half a billion dollars to Falcon, including the $70 million escrow fund.

D. Defendants' Misrepresentations

25. In or around May 2010, after closing the purchase of NorTex, Plaintiffs conducted a shut-in pressure test on the Hill-Lake Facility. A proper engineering analysis of the results of Plaintiffs' test indicated a shortfall of both NorTex's pad gas as well as customer gas,[3] totaling approximately 4 bcf at the Hill-Lake Facility alone. Further investigation has indicated a likely shortfall of 6 bcf or more between the two Storage Facilities combined.

26. Since that time, Plaintiffs have been engaged in rigorous investigation into the root causes for the shortfalls in pad gas and customer gas. Plaintiffs have discovered that the shortfalls are the result of a number of shoddy and fraudulent practices by Falcon during its

[3] "Customer gas" is the amount of gas that customers have stored in the Storage Facilities as part of gas storage agreements with NorTex.

ownership and operation of NorTex and the Storage Facilities over a period at least two years preceding the closing of Plaintiffs' purchase of NorTex. The causes for the gas shortfalls are disturbing and indicative of gross neglect, if not outright deception, on the part of Falcon and Arcapita.

27. For example, Plaintiffs have learned that, during its operation of NorTex and the Storage Facilities, Falcon failed to properly account for and record fuel usage in compression of gas in the Storage Facilities, and that consumption of fuel in the compression operations actually drew upon and depleted the quantities of gas within the Storage Facilities to a degree that was not offset by Falcon's represented "Btu enhancement" theory. In reality, at the Hill-Lake Facility alone, fuel consumption represents over $3 million in annual operating expenses that were completely omitted from the financial statements Falcon and Arcapita provided to Plaintiffs. At the Worsham-Steed Facility, the figure is over $4 million annually. The combined economic impact of the omitted operating expenses associated with fuel consumed in the compression operations at the Hill-Lake and Worsham-Steed Facilities is over $40 million. This omitted financial data represents material information which Falcon and Arcapita knew and had a duty to disclose to Plaintiffs, and which would have significantly reduced the economic value Plaintiffs attributed to NorTex's business.

28. Further, Plaintiffs have discovered that the supposed "pressure test" data Falcon and Arcapita provided in due diligence was not actual pressure testing and engineering analysis as represented. Rather, the documents reflected mere "in-and-out" calculations derived from old, inaccurate baseline assumptions regarding "starting quantities" of pad gas in the two Storage Facilities and relied on inaccurate or incomplete in-and-out flows.

29. Plaintiffs have also discovered that Falcon did not properly monitor, record, or analyze the volume or composition of gas flows in and out of the Storage Facilities and related systems.

30. Plaintiffs have also learned that Falcon failed to properly calculate and account for "shrinkage" resulting from the extraction of NGLs from the gas within the Storage Facilities. "Shrinkage" refers to the amount of natural gas that is transformed into liquid products such as ethane, propane, and butane during processing of natural gas at NGL extraction plants such as exist at both the Hill-Lake and Worsham-Steed Facilities. In addition, the gas flows associated with NGL extraction operations were incorrectly portrayed in a materially different way in the Material Balance information provided to Plaintiffs by Falcon and Arcapita's representatives.

31. Plaintiffs have also learned that, contrary to Falcon's and Arcapita's representations in the 2007, 2008, and 2009 financial statements and elsewhere, Falcon failed to conduct regular and consistent shut-in pressure testing and related volumetric calculations and measurements of the quantities of gas within the Storage Facilities, and failed to conduct thorough and proper analyses of the results of those tests to ensure NorTex's financial records were accurate.

32. Plaintiffs have discovered that both Falcon and Arcapita knew of these problems, and therefore the falsity of the information, at the time they were making representations and warranties to Plaintiffs regarding NorTex's financial condition, the value and quantity of gas in the Storage Facilities, the source and cost of compressor fuel, the source of and economic value of hydrocarbons produced during NGL extraction facility operations, and the absence of materially adverse changes or events in the company's operations and assets.

33. Specifically, in early 2009, NorTex management communicated to Arcapita that the Storage Facilities had "deliverability issues" related to gas shortfalls. NorTex discussed with Falcon and Arcapita the possible purchase of additional pad gas to make up for the shortfalls and resolve the deliverability issues; Falcon and Arcapita rejected the purchase of additional pad gas. Instead, Falcon and Arcapita caused NorTex to enter into "park-and-loan" arrangements that, in essence, "borrowed" 1.5 bcf of gas to aid with immediate deliverability problems. This temporary "fix" concealed the depleted pad gas and did nothing to correct the inaccurate records, flawed processes, and shoddy operations and recordkeeping that led to the overstatement of the quantities and values of the pad gas and customer gas to begin with, thereby perpetuating the problem with the full knowledge of Falcon and Arcapita. Not surprising, none of that information was disclosed to Plaintiffs in the course of negotiation and due diligence for its half-billion-dollar purchase of NorTex.

34. Further, in or around October 2009, Falcon and, on information and belief, Arcapita, received a report from Platt, Sparks & Associates that attempted to correlate pressure readings from the Hill-Lake Facility with gas inventories reported in Hill-Lakes' regulatory filings. The information contained in the report made it clear that either the Hill-Lake Facility inventory levels contained in the regulatory filings were inaccurate or that the Hill-Lake Facility was losing gas. Again, Falcon and Arcapita failed to disclose that information to Plaintiffs in the course of negotiation and due diligence for its half-billion-dollar purchase of NorTex.

35. Plaintiffs have also discovered since closing the purchase of NorTex that, in late 2009 and early 2010, Falcon management became aware that NorTex was encountering additional deliverability issues due specifically to shortfalls and depletion of pad gas. Once

again, Falcon and Arcapita failed to disclose that information to Plaintiffs in the course of negotiation and due diligence for its half-billion-dollar purchase of NorTex.

36. This omitted financial data and other information represents material information which Falcon and Arcapita knew and had a duty to disclose to Plaintiffs, and which would have significantly reduced the economic value Plaintiffs attributed to NorTex's business.

E. Damage To Plaintiffs

37. As a result of Falcon's and Arcapita's misrepresentations, Plaintiffs have purchased and now own NorTex and its gas storage operations, but find themselves owning far less than they bargained for and far less than what was represented. In the immediate term, Plaintiffs (through NorTex) have been forced to mitigate further losses by implementing a program to strategically and opportunistically purchase approximately 4 bcf of gas to make up for the shortfall in pad gas and customer gas at the Hill-Lake Facility and ensure continued compliance with customer contracts. At current market prices, the loss to Plaintiffs as a result of having to cover these gas shortfalls is approximately $20 million, and Plaintiffs believe in reasonable probability the future costs to cover such shortfalls at the combined Storage Facilities will exceed an additional $10 million.

38. Further, as a result of Falcon's and Arcapita's misrepresentations regarding the source and cost of fuel consumed in the compression of gas at the Storage Facilities, Plaintiffs will incur additional, unbargained-for annual operating expenses that were completely omitted from the financial statements Falcon and Arcapita provided to Plaintiffs. Specifically, at the Hill-Lake Facility alone, fuel consumption represents over $3 million in annual operating expenses, expenses that were omitted from the financial statements provided by Falcon and Arcapita and relied upon by Plaintiffs. At the Worsham-Steed Facility, the figure is over $4 million annually. The undisclosed operating expenses associated with fuel consumed in the

compression operations of the combined Storage Facilities have an economic impact of over $40 million on the value of the assets Plaintiffs purchased.

39. Moreover, Plaintiffs have also suffered significant economic losses in connection with the extraction of NGLs from the gas in the Hill-Lake Facility and possibly the Worsham-Steed Facility. It was represented to the Plaintiffs that NGLs extracted at the gas storage facilities came from native fluids contained in the Storage Facilities, and not pad gas or customer gas being injected from gas pipelines for storage and later withdrawal. Plaintiffs have determined that a significant portion of the NGLs extracted from the Hill-Lake Facility, primarily ethane, actually come from customer gas being injected for storage. Economic losses to the Plaintiffs include the cost of customer gas shrinkage that has not been reflected on the income statement; severance and royalties paid on NGLs coming from that shrinkage; and unattractive revised economics for continued extraction plant operation. For the Hill-Lake NGL extraction plant alone, economic value will be reduced by over $3 million just due to customer gas shrinkage. If the combined impact of shrinkage and unaccounted for compressor fuel use renders the NGL extraction plant uneconomic to operate, the total reduction in economic value will be over $15 million. The Worsham-Steed NGL extraction plant could have similar, or even higher reductions in economic value.

40. In short, Plaintiffs have been deceived into spending over a half-billion dollars for NorTex and materially defrauded and harmed as a direct result of Falcon's and Arcapita's misrepresentations and material omissions of facts regarding NorTex's assets and operations.

FIRST CAUSE OF ACTION

(Fraud/Fraudulent Inducement)

41. Plaintiffs hereby re-allege and incorporate by reference the allegations and facts contained in the foregoing paragraphs.

42. During the course of negotiations between Plaintiffs and Falcon, Falcon and its controlling affiliate, Arcapita, made specific, material representations regarding NorTex's operations and the quantities and value of pad gas contained in the Storage Facilities owned by NorTex. Falcon and Arcapita knew that such information would be essential in valuing NorTex's gas storage assets and operations because pad gas is of fundamental importance to the operation of a natural gas storage facility, and because the information regarding the costs associated with NorTex's operations materially impacts the value of NorTex and its assets.

43. Falcon and Arcapita made the above representations during Plaintiffs' evaluation of and due diligence regarding the purchase of NorTex and in response to specific inquiries from Plaintiffs regarding the quantities of pad gas and consumption of compressor fuel reflected in Falcon's records, intending and knowing that Plaintiffs would rely on the information provided. Plaintiffs did, in fact, reasonably rely on the representations from Falcon and Arcapita regarding pad gas, certain operational costs, and the source of hydrocarbons extracted in the operation of NorTex's NGL business, and were induced to enter into the Purchase Agreement, the First Amendment, and the Escrow Agreement on the basis of these representations.

44. Falcon and Arcapita's representations regarding NorTex's operations and the quantities and value of the pad gas contained in the Storage Facilities were false. Preliminary results indicate a shortfall of approximately 4 bcf of gas at the Hill-Lake Facility alone and likely 6 bcf or more at the two Storage Facilities combined. Further, Plaintiffs have discovered material, undisclosed information regarding fuel consumption and NorTex's NGL operations that significantly affect the value of NorTex and its assets.

45. Both Falcon and Arcapita knew of the gas shortfall and its root causes as early as 2008, well before the execution and negotiation of the Purchase Agreement. Falcon and

Arcapita had a duty to provide accurate information regarding NorTex's operations and the quantities and value of pad gas contained in the Storage Facilities—information that directly correlated to the value attached to those Storage Facilities—and to disclose the fact that the Storage Facilities were experiencing gas shortfalls as early as 2008.

46. Falcon and Arcapita's failure to provide accurate information deceived Plaintiffs into agreeing to contractual terms that they would not have otherwise agreed to had they been provided the true facts. Section 10.7 and Section 4.26 of the Purchase Agreement, and any other purported waivers of rights and claims, are invalid because they are a product of the fraud perpetrated upon Plaintiffs.

47. Thus, Falcon and Arcapita made certain material misrepresentations of existing facts which were false or omissions of material facts which it had a duty to disclose; Falcon and Arcapita either knew the misrepresentations were false or were reckless with respect to their falsity; the misrepresentations or omission were made for the purpose of inducing Plaintiffs to rely upon them; Plaintiffs did justifiably and reasonably rely on the misrepresentations and omissions; and Plaintiffs have been injured as a result of the material misrepresentations or omissions.

48. As a natural and probable result of, or as a proximate result of, the fraudulent conduct of Falcon and Arcapita, Plaintiffs were induced to enter into a transaction and have suffered economic damages. Plaintiffs therefore, pursuant to this fraud claim, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law. Further, and in the alternative, Plaintiffs seek disgorgement from Falcon and Arcapita of any monies obtained from Plaintiffs as a result of the fraud. Further, and in the alternative, Plaintiffs

seek rescission of the Purchase Agreement, the First Amendment, and the Escrow Agreement, and ask this Court to return the parties to their earlier positions as if no Agreement had existed.

SECOND CAUSE OF ACTION

(Breach of Express Warranty)

49. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

50. Falcon made certain express warranties and representations in connection with the Agreement.

51. In Section 4.9 of the Purchase Agreement, Falcon represented that "each balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material respects the consolidated financial position of the Company and its Subsidiaries as of the date of each such balance sheet . . . ." In light of the representations in Falcon's financial statements regarding the value of the pad gas in the Storage Facilities, the operating expenses (or purported lack thereof) related to operation of the Storage Facilities, and the fact that there was a material shortfall of pad gas and customer gas in the Storage Facilities, the representations and warranties in Section 4.9 of the Purchase Agreement proved to be false; Falcon (and through it, Arcapita) breached this representation and warranty and as a result Plaintiffs have suffered actual economic harm.

52. In Section 4.11 of the Purchase Agreement, Falcon represented that neither NorTex nor its subsidiaries have experienced a "Material Adverse Effect . . . or other disposition of any material assets" since March 31, 2009. In light of the quantities and value of the pad gas in issue, and in light of the fact that a significant portion of the shortfall in pad gas and customer gas occurred between March 31, 2009 and March 31, 2010, there clearly has been a "Material Adverse Effect" and/or a "disposition of material assets" after March 31, 2009. Thus, the

representations and warranties in Section 4.11 of the Purchase Agreement proved to be false; Falcon (and through it, Arcapita) breached this representation and warranty; and, as a result, Plaintiffs have suffered actual economic harm.

53. As detailed above, Falcon breached each of the foregoing express warranties and representations contained in the Purchase Agreement. Falcon made an assurance of the existence of a material fact upon which Plaintiffs relied; the assurance was false; and Plaintiffs were injured as a result of the breach of warranty. Section 10.1 of the Purchase Agreement expressly entitles Plaintiffs to indemnification for damages, including attorneys' fees, arising out of or relating to breach or inaccuracy of any representation or warranty made by Falcon. Arcapita absolutely, unconditionally, and irrevocably guaranteed any payment obligations under Section 10 of the Purchase Agreement, including Section 10.1, pursuant to the April 1, 2010 Guaranty Agreement between Arcapita and Plaintiffs.

54. As a natural and probable result of, or as a proximate result of, the breach of warranty by Falcon, Plaintiffs have suffered economic damages. Plaintiffs therefore, pursuant to this breach of express warranty claim, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law.

THIRD CAUSE OF ACTION

(Breach of Contract)

55. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

56. Pursuant to the Purchase Agreement and the First Amendment, Falcon agreed to deliver assets that contained specific quantities of pad gas and exhibited specific operational characteristics. Plaintiffs, in exchange, agreed to pay the purchase price. Although Plaintiffs fulfilled their duties under the Purchase Agreement and Second Amendment, Falcon materially

breached the contract because, in actuality, the assets that it sold contained less pad gas than it represented and was contemplated by the agreement of the parties. Further, the fuel consumption of the Storage Facilities' compressors and the resulting depletion of stored gas in the Storage Facilities is far greater than Plaintiffs bargained and paid for based on Falcon's and Arcapita's misrepresentations. Moreover, the source of hydrocarbons extracted during the operation of the Storage Facilities' NGL extraction facilities was misrepresented. The cost of this stored gas "shrinkage," combined with NGL extraction plant fuel use is so significant as to potentially render NGL extraction plant operations economically non-viable.

57. Thus, a valid contract existed between Plaintiffs and Falcon; Plaintiffs performed as required by the terms of the contract; Falcon materially breached the contract; and Plaintiffs have incurred damages as a result of Falcon's breach.

58. As a natural and probable result of, or as a proximate result of, the breach of contract by Falcon, Plaintiffs have suffered economic damages. Plaintiffs therefore, pursuant to this breach of contract claim, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law.

FOURTH CAUSE OF ACTION

(Violations of § 10 and Rule 10b-5 of the Securities Exchange Act of 1934)

59. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

60. The ownership interests and units of NorTex and/or its subsidiaries that Plaintiffs purchased under the Purchase Agreement were "securities" within the meaning of the Act. In connection with the sale of all outstanding ownership interests and units of NorTex to Plaintiffs, Falcon and Arcapita, sellers of those securities, made several material misstatements or omissions to Plaintiffs.

61. For example, Falcon and Arcapita provided financial statements and related materials for fiscal year 2007 through 2009 containing inventory values and historical cost assumptions for pad gas in the Storage Facilities that, taken together, represented there was a combined 14 bcf of pad gas in the two Storage Facilities as of March 31, 2009. Those representations were corroborated by a "management presentation" and supposed "pressure test data" that Falcon and Arcapita provided Plaintiffs in February 2010, in the process of due diligence for the purchase and sale of NorTex. Those documents also represented that, based on actual pressure testing and engineering analysis, there was 14 bcf of pad gas in the two Storage Facilities.

62. In addition, in February 2010, in connection with due diligence for the sale of NorTex, Falcon and Arcapita provided Plaintiffs with financial statements for Falcon's and NorTex's fiscal years from 2007 through 2009. Those financial statements, in conjunction with other data Falcon and Arcapita provided, indicated that there were no operating costs associated with the compressor fuel utilized in the operation of the Hill-Lake and Worsham-Steed Facilities. In support of their conclusions regarding the purported lack of operating expenses, Falcon and Arcapita represented that the fuel consumption from operations was offset by a phenomenon they described as "Btu enhancement"; essentially, they represented that native hydrocarbons in the Storage Facilities were enhancing the heating value of customer gas sufficient to offset the fuel consumed in operating the Storage Facilities.

63. Further, Falcon and Arcapita represented that the extraction of NGLs from the gas within the Storage Facilities had no affect on the quantities of gas present in the Storage Facilities.

64. In the financial statements and purported pressure testing data, Falcon and Arcapita represented that they performed regular pressure tests and engineering measurements of the volume of pad gas in the Storage Facilities.

65. The financial statements, management presentations, and purported pressure test data were prepared by Falcon's representatives acting within the course and scope of their employment by Falcon, and, on information and belief, by representatives of Arcapita acting within the course and scope of their employment by Arcapita.

66. Further, Falcon represented in the Purchase Agreement that: (1) "each balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material respects the consolidated financial position of the Company and its Subsidiaries as of the date of each such balance sheet"; and (2) that neither NorTex nor its subsidiaries have experienced a "Material Adverse Effect . . . or other disposition of any material assets" since March 31, 2009. Considering the fact that the Storage Facilities are missing more than 6 *billion* cubic feet of gas, the falsity of these representations is evident, as is the inaccuracy of the representations contained in the financial statements and related documents indicating that there was a combined 14 bcf of pad gas in the two Storage Facilities as of March 31, 2009.

67. Falcon and Arcapita made material misstatements and omissions in the context of Plaintiffs' due diligence regarding the purchase of NorTex, intending that Plaintiffs rely upon the information provided. In addition to the misstatements and omissions regarding the quantities and values of pad gas, Plaintiffs have learned that, during its operation of NorTex and the Storage Facilities, Falcon failed to properly account for and record fuel usage in compression of gas in the Storage Facilities, and that consumption of fuel in the compression operations actually

drew upon and depleted the quantities of gas within the Storage Facilities to a degree that was not offset by Falcon's represented "Btu enhancement" theory.

68. Further, Plaintiffs have discovered that the supposed "pressure test" data Falcon and Arcapita provided in due diligence was not actual pressure testing and engineering analysis as represented. Rather, the documents reflected mere "in-and-out" calculations derived from old, inaccurate baseline assumptions regarding "starting quantities" of pad gas in the two Storage Facilities.

69. Plaintiffs have also discovered that, contrary to assertions in the financial statements and related data, Falcon did not properly monitor, record, or analyze the volume or composition of gas flows in and out of the Storage Facilities and related systems.

70. Plaintiffs have also learned that Falcon incorrectly represented gas flows, and failed to make proper or adequate calculations or records of shrinkage resulting from the extraction of NGLs from the gas within the Storage Facilities, resulting in a material misstatement or omission.

71. Plaintiffs have also learned that, contrary to Falcon's and Arcapita's representations in the 2007, 2008, and 2009 financial statements and elsewhere, Falcon failed to conduct regular and consistent shut-in pressure testing and related volumetric calculations and measurements of the quantities of gas within the Storage Facilities, and failed to conduct thorough and proper analyses of the results of those tests to ensure NorTex's financial records were accurate. These failures occurred during a period when deliverability problems indicated a critical need to perform these tests, calculations, and measurements and to properly analyze and report the results.

72. Plaintiffs have discovered that both Falcon and Arcapita knew of these problems, and therefore the falsity of the information, at the time they were making representations and warranties to Plaintiffs regarding NorTex's financial condition, the value and quantity of gas in the Storage Facilities, and the absence of materially adverse changes or events in the company's operations and assets.

73. These material misstatements and omissions have caused Plaintiffs economic loss. As a result of Falcon's and Arcapita's misrepresentations, Plaintiffs (through NorTex) have been forced to mitigate further losses by implementing a program to strategically and opportunistically purchase approximately 4 bcf of gas to make up for the shortfall in pad gas and customer gas at the Hill-Lake Facility and ensure ongoing compliance with customer contracts. At current market prices, the loss to Plaintiffs as a result of having to cover these gas shortfalls is approximately $20 million, and Plaintiffs believe in reasonable probability the future costs to cover such shortfalls at the combined Storage Facilities will exceed an additional $10 million. Further, as a result of Falcon's and Arcapita's misrepresentations regarding the source and cost of fuel consumed in the compression of gas in the Storage Facilities, Plaintiffs will incur additional, unbargained-for annual operating expenses that were completely omitted from the financial statements Falcon and Arcapita provided to Plaintiffs. The undisclosed operating expenses associated with fuel consumed in the compression operations of the combined Storage Facilities have an economic impact of over $40 million on the value of the assets Plaintiffs purchased. Likewise, the undisclosed practice of extracting NGLs from stored gas rather than from native hydrocarbons present in the Storage Facilities has a material, adverse economic impact on the value of NorTex's NGL extraction business. Had the truth been revealed regarding the quantities and values of pad gas contained in the Storage Facilities, the operating costs associated with fuel

compression, and the impact of shrinkage on NorTex's NGL extraction operations, Plaintiffs would not have agreed to the purchase price ultimately reflected in the Purchase Agreement.

74. Thus, Falcon and Arcapita, sellers of securities, made material misstatements or omissions in connection with the sale of securities to Plaintiffs; Falcon and Arcapita knew the misstatements or omissions were false; Plaintiffs relied on the material misstatements or omissions; Plaintiffs suffered economic loss because of the material misstatements or omissions; and there is a causal connection between the material misstatements or omissions and Plaintiffs' economic loss.

75. As a natural and probable result of, or as a proximate result of, violations of § 10 of the Act and Rule 10b-5, Plaintiffs have suffered economic damages. Plaintiffs therefore, pursuant to this claim under § 10 of the Act and Rule 10b-5, seek damages, including attorneys' fees, plus all prejudgment and post-judgment interest allowed by law.

FIFTH CAUSE OF ACTION

(Request for Injunctive Relief)

76. Plaintiffs hereby re-allege and incorporate by reference the facts and allegations contained in the foregoing paragraphs.

77. On April 1, 2010, Plaintiffs and Defendants Falcon and HSBC entered into an Escrow Agreement in connection with the purchase by Plaintiffs of all of the issued and outstanding interests in NorTex. Pursuant to the terms of the Escrow Agreement, Plaintiffs deposited $70 million with HSBC; HSBC, in turn, agreed to deposit the funds in an account (the "Escrow Account").

78. Plaintiffs seek the assistance of the equitable powers of this Court to assure that Defendants do not wrongfully collect an additional $70 million as a reward for their fraudulent and wrongful conduct and transfer those fraudulently obtained funds beyond the reach of this

Court and Plaintiffs. Falcon and Arcapita contend that they are entitled to the immediate release of the Escrow Account, and have stated their intent to pursue such release. Falcon and Arcapita claim that they are entitled to the $70 million currently held in the Escrow Account in connection with the fraudulent sale of NorTex to Plaintiffs, a sale in which Falcon and Arcapita misrepresented the value of the Storage Facilities owned by NorTex in order to induce payment of the purchase price. Plaintiffs have already paid over $500 million in exchange for assets whose value Falcon and Arcapita materially misrepresented and that are worth substantially less than the amount Plaintiffs were defrauded into paying. This Court must prevent the Falcon and Arcapita Defendants from collecting additional funds as an additional windfall for the fraud perpetrated upon Plaintiffs.

79. The release of the Escrow Account threatens immediate and irreparable harm to Plaintiffs that cannot be remedied at law. Thus, Plaintiffs seek a permanent injunction restraining Falcon and HSBC from disbursing any funds from the Escrow Account, except pursuant to the Expense Notices referenced in Section 3.7 of the Purchase Agreement. If this Court does not enter a permanent injunction as specified above, Plaintiffs will be irreparably damaged because the funds in the Escrow Account will be immediately released to Arcapita, a Bahrain bank, and removed from the jurisdiction of this Court. Thus, Falcon and Arcapita will be effectively rewarded for their fraudulent and wrongful conduct and Plaintiffs will have no recourse in connection with same.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand that judgment be entered against Defendants for:

(a) actual damages;

(b) a permanent injunction;

(c) in the alternative, disgorgement of any monies obtained from Plaintiffs as a result of fraud;

(d) in the alternative, rescission of the Purchase Agreement;

(e) reasonable and necessary attorneys' fees;

(f) court costs; and

(g) such other and further relief to which Plaintiffs are justly entitled.

Dated: New York, New York
August 2, 2010

BRACEWELL & GIULIANI LLP

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