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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' MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF SECOND AMENDED JOINT PLAN OF REORGANIZATION OF ARCAPITA BANK B.S.C.(c) AND RELATED DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued**)**

Page

TABLE OF CONTENTS
(continued**)**

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Rules

PRELIMINARY STATEMENT

1. Arcapita Bank is a Shari'ah-compliant investment bank based in the Kingdom of Bahrain. The decision to file the Chapter 11 Cases (and the related Provisional Liquidation proceeding for Arcapita Investment Holdings Limited filed in the Cayman Islands) required a great deal of trust in the ability of the Debtors to utilize the Bankruptcy Code and the jurisdiction of this Court to facilitate the resolution of a complicated multinational legal and business structure involving financial instruments that have very infrequently been addressed by U.S. bankruptcy courts. That trust has not been misplaced.

2. More than 1,200 Creditors holding in excess of $2.7 billion in Claims have voted to accept the Plan.[1] These Creditors hold more than 97% in amount (99% in number) of the Claims that voted with respect to the Arcapita Bank Plan and 100% (in both number and amount) of the Claims that voted with respect to the AIHL Plan. The Plan is expressly supported by the Creditors' Committee, the Joint Provisional Liquidators of AIHL, and the Ad Hoc Group of AIHL Creditors. Further, the Plan's provisions related to AIHL have already been approved by the Grand Court of the Cayman Islands.

3. The Plan is the product of months of negotiations with key Creditor constituencies, represents the best possible outcome in these Chapter 11 Cases, and is essentially unopposed. No Creditors filed an outright objection to the Plan, a mere four Creditors filed "Limited Objections" to the Plan, and two Creditors filed a "Reservation of Rights" with respect

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[1] References to the "Plan" are references to the Debtors' *Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 1036], as the same may be amended, modified, and/or supplemented prior to the Confirmation Hearing. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

to the Plan. Only ten Creditors even voted to reject the Plan. All of the opposition to the Plan has either been resolved or should be overruled on the merits. In addition, and as explained in detail below, the Plan satisfies the requirements for confirmation set forth in section 1129 of title 11 of the United States Code. Accordingly, the Debtors, with the support of Creditors' Committee, the Joint Provisional Liquidators of AIHL and the Ad Hoc Group of AIHL Creditors, submit that the Plan should be confirmed.

I. BACKGROUND

A. General Background of the Chapter 11 Cases

4. On March 19, 2012 (the "***Petition Date***"), Arcapita Bank B.S.C.(c) ("***Arcapita Bank***") and five of its affiliates[2] commenced cases under chapter 11 of the Bankruptcy Code. On April 30, 2012, Falcon Gas Storage Co., Inc. ("***Falcon***") commenced a case under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On April 5, 2012, the United States Trustee for Region 2 appointed the Official Committee of Unsecured Creditors in the Chapter 11 Cases (the "***Committee***") [Docket. No. 60] pursuant to sections 1102(a) and (b) of the Bankruptcy Code.

6. The Debtors respectfully refer the Court to (i) the Plan; (ii) the Disclosure Statement; (iii) the *Declaration of Henry A. Thompson in Support of the Debtors' Chapter 11 Petitions and First Day Motions and in Accordance with Local Rule 1007-2* [Docket. No. 6] (the

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[2] The other Debtor affiliates are Arcapita Investment Holdings Limited ("***AIHL***"), AEID II Holdings Limited ("***AEID II***"), RailInvest Holdings Limited ("***RailInvest***"), WindTurbine Holdings Limited ("***WindTurbine***"), and Arcapita LT Holdings Limited ("***ALTHL***").

"***Thompson Declaration***"); (iv) the *Declaration of Henry Thompson in Support of Confirmation of the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "***Thompson Declaration***"), filed contemporaneously herewith; (v) the *Declaration of Matthew Kvarda in Support of Confirmation of the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "***Kvarda Declaration***"), filed contemporaneously herewith; (vi) the *Declaration of Bernard Douton in Support of Confirmation of the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "***Douton Declaration***"), filed contemporaneously herewith; (vii) the *Amended Declaration of Jeffrey S. Stein of the Garden City Group, Inc. Certifying the Methodology for the Tabulation of Votes on and Results of Voting With Respect to the Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 1193] (the "***GCG Tabulation Declaration***"); (viii) *the Declaration of Jeffrey S. Stein of the Garden City Group, Inc. Certifying the Tabulation of Shareholder Acknowledgment and Assignments Pursuant to the Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*; and (ix) the entire record of the Chapter 11 Cases for an overview of the Debtors and all other relevant facts that may bear on confirmation of the Plan.

B. Overview of the Plan

7. The Plan constitutes a separate chapter 11 Subplan for each of the Debtors. Each Debtor's separate chapter 11 Subplan is designated by a letter (from (a) to (g)). The Plan represents a compromise and settlement of various significant Claims against the Debtors and resolves complex intercompany issues among the Debtors, the Debtors' portfolio companies and

third-party investors. The Plan provides for the orderly sale of the Debtors' investments at a time and price that maximizes recoveries for Claimants and third-party investors, and it establishes an orderly process through which Distributions can be made. An overview of the Plan's implementation provisions can be found on pages 123 through 128 of the Disclosure Statement.

C. Solicitation of the Plan

8. On February 8, 2013, the Debtors filed a motion to approve their solicitation procedures [Docket No. 828] (the "***Solicitation Procedures Motion***"). By an order entered April 26, 2013 [Docket No. 1045] (the "***Disclosure Statement Approval Order***"), the Court approved the Disclosure Statement and solicitation procedures with respect to voting on the Plan.

9. As required by the Disclosure Statement Approval Order, on or before May 2, 2013, the Debtors, through their noticing and claims agent, GCG, Inc. ("***GCG***"), timely mailed to Holders of Claims and Interests entitled to vote on the Plan, a Solicitation Package containing (a) written notice of (i) the Court's approval of the Disclosure Statement, (ii) the deadline for voting on the Plan, (iii) the date of the hearing to consider Confirmation of the Plan (the "***Confirmation Hearing***"), and (iv) the deadline and procedures for filing objections to the Confirmation of the Plan; (b) the Plan (either by paper copy or in "pdf" format on a CD-ROM); (c) the Disclosure Statement (either by paper copy or in "pdf" format on a CD-ROM), including all exhibits thereto; (d) the appropriate Ballot, along with Ballot Instructions and a return envelope; and (e) a statement in support of the Plan issued by the Committee. *See* Docket No. 1076. In addition, GCG timely mailed to Holders of Interests in Class 9(a) (i) a copy of the Confirmation Hearing Notice, (ii) the Notice to Holders of Equity Interests in Arcapita Bank B.S.C.(c), (iii) the

Notice of Non-voting Status, and (iv) a Customized Shareholder Acknowledgment and Assignment ("***SAA***"). *See id.* In addition, notice of the Confirmation Hearing was published in (i) *The Wall Street Journal (Global Edition)* on May 6, 2013 (*see* Docket No. 1136) and (ii) *The Financial Times*, on May 6, 2013 (*see* Docket No. 1135).

10. Pursuant to the Disclosure Statement Approval Order, Ballots were required to be submitted to GCG no later than 12:00 p.m., prevailing U.S. Eastern Time, on May 30, 2013 (the "***Voting Deadline***").

D. Ballot Tabulation

11. The Plan has been accepted by the overwhelming majority of Holders that voted in the Impaired Classes, and each such Class, with the technical exception of Classes 8(a) and 8(g) discussed below, is an accepting Class under the provisions of section 1126 of the Bankruptcy Code. The only significant rejecting votes, which aggregate to $50 million, were both submitted by Tide (as defined below). While the Debtors agreed that the Tide Claims would be temporarily allowed for voting purposes only at $50 million in Classes 8(a) and 8(g), as the Court well knows, the Debtors believe that the Tide Claims actually have a value of $0 and are properly classified in Classes 10(a) and 10(g) in any event. *See Debtors' Memorandum of Law in Support of Subordination of the Tide Claims Pursuant to the Confirmation of the Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 1108]. Because the Tide Claims were temporarily allowed for voting purposes in the amount of $50 million in Class 8(a), the Class formally rejected the Plan even though all of the 63 other Creditors in Class 8(a) that voted on the Plan voted in favor of the Plan. These Creditors hold more than $59 million in Class 8(a) Subordinated Claims. If the Tide Claims are

properly classified in Classes 10(a) and 10(g) and/or finally allowed at $0 (or, in the case of Class 8(a), any amount less than approximately $29 million), each Class of Claims and Interests that was entitled to vote on the Plan would have overwhelmingly voted to accept the Plan.[3] Even if Tide's Claims are included in Classes 8(a) and 8(g) (causing those Classes to reject the Plan), the Plan can still be confirmed for the reasons set forth in Section II.P, below. The detailed voting results are as follows:

Arcapita Bank B.S.C.(c) – Subclass "a"								
	Accepting				Rejecting			
Class	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount
2	1	100%	$96,690,971.25	100%	0	0.00%	$0.00	0.00%
4	31	100%	$772,695,491.71	100%	0	0.00%	$0.00	0.00%
5	590	98.50%	$1,027,775,896.69	99.08%	9	1.50%	$9,538,903.79	0.92%
6	475	100%	$15,504,443.93	100%	0	0.00%	$0.00	0.00%
7	99	100%	$733,398,224.29	100%	0	0.00%	$0.00	0.00%
8	63	96.92%	$59,237,178.00	54.23%	2[4]	3.08%	$50,000,000.00	45.77%

Arcapita Investment Holdings Limited – Subclass "b"								
	Accepting				Rejecting			
Class	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount
2	1	100%	$96,690,971.25	100%	0	0.00%	$0.00	0.00%
4	31	100%	$772,695,491.71	100%	0	0.00%	$0.00	0.00%
5	2	100%	$3,237.29	100%	0	0.00%	$0.00	0.00%
7	2	100%	$456,136,372.72	100%	0	0.00%	$0.00	0.00%

[3] No other Holders of Claims in Classes 7(g) (which the Debtors believe is a null set) or 8(g) voted on the Plan. These Classes should be deemed to be accepting Classes for the reasons set forth in Section II.I, below.

[4] Tide was given two claims for voting purposes, each in the amount of $25,000,000.

Arcapita LT Holdings Limited – Subclass "c"								
	Accepting				Rejecting			
Class	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount
2	1	100%	$96,690,971.25	100%	0	0.00%	$0.00	0.00%

WindTurbine Holdings Limited – Subclass "d"								
	Accepting				Rejecting			
Class	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount
2	1	100%	$96,690,971.25	100%	0	0.00%	$0.00	0.00%

AEID II Holdings Limited – Subclass "e"								
	Accepting				Rejecting			
Class	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount
2	1	100%	$96,690,971.25	100%	0	0.00%	$0.00	0.00%

Railinvest Holdings Limited – Subclass "f"								
	Accepting				Rejecting			
Class	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount
2	1	100%	$96,690,971.25	100%	0	0.00%	$0.00	0.00%

Falcon Gas Storage Company, Inc. – Subclass "g"								
	Accepting				Rejecting			
Class	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount	Ballot Count	% Ballot Count	Dollar Amount	% Dollar Amount
5	18	100%	$8,592,278.37	100%	0	0.00%	$0.00	0.00%
7	0	0.00%	$0.00	0.00%	0	0.00%	$0.00	0.00%
8	0	0.00%	$0.00	0.00%	2	100%	$50,000,000.00	100%

Falcon Gas Storage Company, Inc. – Subclass "g"		
	Accepting	**Rejecting**
Class	Number of Shares Voted/ Percentage of Number of Shares Voted	Number of Shares Voted/ Percentage of Number of Shares Voted
9	5,184,113 / 100%	0 / 0.00%

E. Cayman Proceeding

12. Subsequent to the commencement of these Chapter 11 Cases, Debtor AIHL issued a summons seeking ancillary relief from the Grand Court of the Cayman Islands with a view to facilitating these Chapter 11 Cases (the "***Cayman Proceeding***"). As part of the Cayman Proceeding, joint provisional liquidators (the "***JPLs***") were appointed and have participated throughout the Chapter 11 Cases. Pursuant to an order entered on May 31, 2013, the Grand Court of the Cayman Islands authorized the Plan insofar as it relates to the Cayman Proceeding, thereby demonstrating the Grand Court's recognition of the Plan and acknowledgment of the significant cooperation between the Grand Court and this Court related to AIHL, and satisfying one of the key conditions precedent to the Effective Date of the Plan. *See* Docket No. 1198.

F. Plan Supplement

13. On June 3, 2013, the Debtors filed a *Notice of Filing of Plan Supplement Documents* [Docket No. 1195], which consists of substantially final drafts of many of the documents required to implement the Plan, and the Debtors anticipate filing additional Plan Supplement Documents prior to the Confirmation Hearing.

14. Because of the breadth and complexity of the Debtors' businesses and Chapter 11 Cases, the final versions of all implementing documents will not be available until sometime

after June 12th; however, the Court and the Debtors' stakeholders can take comfort that each of these documents is the subject of intense scrutiny and negotiations by the Committee, the Debtors, and any other counterparty to such document, with the advice of their respective legal and financial professionals.

II. THE PLAN SHOULD BE CONFIRMED

15. As the Plan proponents, the Debtors bear the burden of proof on all elements necessary for Confirmation of the Plan. *JPMorgan Chase Bank, N.A. v. Charter Commc'ns Operating, LLC (In re Charter Commc'ns)*, 419 B.R. 221, 243-44 (Bankr. S.D.N.Y. 2009) (citing *Heartland Fed. Savs. & Loan, Ass'n v. Briscoe Enters. (In re Briscoe Enters.)*, 994 F.2d 1160, 1165 (5th Cir. 1993)). To satisfy this burden, the Debtors need only show by a preponderance of the evidence that the Plan complies with the applicable provisions of the Bankruptcy Code. *See id.*; *In re Quigley Co., Inc.*, 437 B.R. 102, 125 (Bankr. S.D.N.Y. 2010) ("The proponent of confirmation bears the burden of proof by a preponderance of the evidence.").

16. Section 1129(a) of the Bankruptcy Code provides that a court shall confirm a chapter 11 plan if all of the requirements of sections 1129(a)(1) through (a)(13) of the Bankruptcy Code are satisfied. Here, the Plan should be confirmed because the Debtors have satisfied (or will satisfy, at the Confirmation Hearing) the requirements of section 1129(a) of the Bankruptcy Code.

A. The Plan Complies with Applicable Provisions of the Bankruptcy Code as Required by Section 1129(a)(1)

17. Section 1129(a)(1) of the Bankruptcy Code requires that a plan comply with the "applicable provisions" of the Bankruptcy Code. 11 U.S.C. § 1129(a)(1). In determining

whether the Plan complies with section 1129(a)(1), the Court must consider section 1123(a) of the Bankruptcy Code, which sets forth certain elements that a plan must contain, and section 1122 of the Bankruptcy Code, which governs the classification of claims. *See* H.R. Rep. No. 95-595, at 412 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6368; *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984).

1. The Plan Designates Classes of Claims and Interests and Such Classification Is Proper (Sections 1122 and 1123(a)(1))

18. Section 1123(a)(1) of the Bankruptcy Code requires that a plan classify all claims (with the exception of certain administrative and priority claims) and all interests, and that such classification comply with section 1122 of the Bankruptcy Code. With the exception of Administrative Expense Claims, Professional Compensation Claims, DIP Facility Claims, and Priority Tax Claims against all applicable Debtors, which are not required to be classified, Article III of the Plan designates Classes of Claims and Interests.

19. "A plan proponent is afforded significant flexibility in classifying claims under § 1122(a) if there is a reasonable basis for the classification scheme and if all claims within a particular class are substantially similar." *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992). Courts also are afforded broad discretion in approving a plan proponent's classification structure and should consider the specific facts of each case when making such a determination. *See, e.g.*, *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1060-61 (3d Cir. 1987) (observing that "Congress intended to afford bankruptcy judges broad discretion [under section 1122] to decide the propriety of plans in light of the facts of each case"). "Courts frequently interpret [section] 1122 to permit separate classification of different groups of unsecured claims where a reasonable basis existed for the classification." *In re Drexel Burnham*,

138 B.R. at 757. In so doing, they have emphasized that the "Bankruptcy Code only prohibits the identical classification of dissimilar claims and does not require the same classification for claims sharing some attributes." *In re Enron Corp.*, 2004 Bankr. LEXIS 2549, at *203 (Bankr. S.D.N.Y. Jul. 15, 2004); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177-78 (Bankr. S.D.N.Y. 1989) ("[A] debtor may place claimants of the same rank in different classes and thereby provide different treatment for each respective class.").

20. Here, the Plan's classification structure meets these standards. The Plan, which constitutes a separate chapter 11 Subplan for each Debtor, provides for the separation of Claims and Interests into ten Classes based upon differences in the legal nature and/or priority of Claims and Interests. Each Class of Claims or Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. Hence, the Plan's classification structure is factually and legally reasonable and is necessary to implement the Plan. Accordingly, the Debtors submit that the Plan satisfies the requirements of section 1122 of the Bankruptcy Code.

2. Specification of Unimpaired Classes and Treatment of Impaired Classes (Sections 1123(a)(2) and 1123(a)(3))

21. Section 1123(a)(2) of the Bankruptcy Code requires that the Plan "specify any class of claims or interests that is not impaired under the plan." 11 U.S.C. § 1123(a)(2). Section 1123(a)(3) of the Bankruptcy Code requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the plan." 11 U.S.C. § 1123(a)(3). The Classes, which include all Claims and Interests that are required to be classified, are summarized in Section 3.2 of the Plan along with an indication of whether such Classes are Impaired or Unimpaired. Article IV of the Plan identifies all Classes of Claims and Interests that are Impaired or

Unimpaired, and it sets forth the applicable treatment afforded to them under the Plan in a manner consistent with the provisions of the Bankruptcy Code. Thus, the Plan satisfies the requirements of Bankruptcy Code sections 1123(a)(2) and 1123(a)(3).

3. Equal Treatment Within Classes (Section 1123(a)(4))

22. Section 1123(a)(4) of the Bankruptcy Code requires that the Plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). Article IV of the Plan satisfies this requirement in that all Holders of Claims and Interests within a particular Class are receiving identical treatment under the Plan, unless any such Holder has agreed to accept less favorable treatment.

4. Means for Implementation (Section 1123(a)(5))

23. Section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide "adequate means" for its implementation. 11 U.S.C. § 1123(a)(5). Articles VI, VII, and VIII of the Plan, along with various other provisions, provide adequate means not only procedurally to implement the transactions contemplated by the Plan (*e.g.*, the mechanisms and procedures set forth in the Implementation Memorandum, Cooperation Settlement Term Sheet, Management Services Agreement, and the other documents filed in the Plan Supplement) but also financially to implement such transactions. The Plan provides, among other things, for (i) entry into the Exit Facility; (ii) issuance of the Sukuk Obligations; (iii) issuance of the New Arcapita Shares, New Arcapita Creditors Warrants, and the New Arcapita Shareholder Warrants as provided in Articles IV and VII of the Plan; (iv) payment in full of all Unimpaired Claims; (v) the resolution or transfer, as applicable, of Claims against and Interests in the Debtors in accordance with the

Implementation Memorandum; (vi) the assumption and rejection of Executory Contracts and Unexpired Leases; (vii) the preservation of certain Causes of Action; and (viii) provisions with respect to the ongoing management and operations of the Reorganized Debtors, including the agreement with AIM for post-Effective Date management. Additionally, as explained in the Thompson Declaration and as reflected in the Updated Projections attached to the Douton Declaration as Exhibit B, the Debtors will have sufficient cash to make all payments, whether due on the Effective Date or during the period covered by the Projections, required pursuant to the Plan. Accordingly, the Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code.

5. Charter Provisions (Section 1123(a)(6))

24. Section 1123(a)(6) of the Bankruptcy Code requires that the Plan provide for the inclusion in a debtor's charter of specific provisions (i) prohibiting the issuance of nonvoting equity securities and (ii) providing for an "appropriate distribution" of voting power among the securities possessing voting power. 11 U.S.C. § 1123(a)(6). Section 7.13 of the Plan provides: "The New Governing Documents of the Reorganized Debtors and the New Holding Companies (as applicable), among other things, shall prohibit the issuance of non-voting equity securities to the extent required by section 1123(a) of the Bankruptcy Code," and the operative documents with respect to the Reorganized Debtors will in fact prohibit the issuance of nonvoting equity securities and dictate an appropriate distribution of voting power.[5] Accordingly, the Plan satisfies the requirement of section 1123(a)(6) of the Bankruptcy Code.

[5] Forms of these documents were filed in the Plan Supplement.

6. Selections for Certain Positions (Section 1123(a)(7))

25. Section 1123(a)(7) of the Bankruptcy Code requires that the Plan's provisions with respect to the manner of selection of any officer, director or trustee, or any successor thereto, be "consistent with the interests of creditors and equity security holders and with public policy." 11 U.S.C. § 1123(a)(7).

26. Section 7.11 of the Plan provides that "the operation, management, and control of the New Holding Companies and the Reorganized Debtors shall be the general responsibility of their respective boards of directors or managers and senior officers . . . ." Post-reorganization, the new board of New Arcapita Topco will be ultimately responsible for the management of New Arcapita Topco, the New Holding Companies, and the Reorganized Debtors. Pursuant to the Equity Term Sheet, the new board of New Arcapita Topco will consist of seven members. The members of the Committee that hold Claims against AIHL will designate five directors, the members of the Committee that hold claims only against Arcapita Bank will designate one director, and the six directors will appoint one director, which director will be designated by the CBB. These directors will be identified by the Committee prior to the Confirmation Hearing.

27. The selection process was negotiated in good faith by the Debtors and the Committee (which consists of Creditors that hold Claims against AIHL and against Arcapita Bank), and the directors (who will be appointed by the Creditors under the terms of the Equity Term Sheet) will be qualified to effectively operate, manage, and control the Reorganized Debtors and the New Holding Companies after the Effective Date. Hence, the manner of selection of officers and directors and their successors is consistent with public policy and the interests of Creditors and Holders of Interests, many of which have been directly involved in the

development of the selection procedures. Therefore, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

B. The Permissive Provisions Contained in the Plan Are Appropriate

28. Section 1123(b)(6) of the Bankruptcy Code provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). The Plan contains a number of these provisions, each of which is consistent with the applicable provisions of the Bankruptcy Code.

1. The Plan's Provisions Regarding Modification of the Rights of Holders of Claims (Sections 1123(b)(1) and (5))

29. Consistent with sections 1123(b)(1) and (b)(5) of the Bankruptcy Code, Articles III and IV of the Plan modify or leave unaffected, as the case may be, the rights of Holders of Claims and Interests within each Class.

2. The Plan's Treatment of Executory Contracts (Section 1123(b)(2))

30. Consistent with section 1123(b)(2) of the Bankruptcy Code, Article VI of the Plan provides for the rejection of Executory Contracts and Unexpired Leases of the Debtors except for any such contract or lease that (i) has been assumed, rejected, or renegotiated and assumed on renegotiated terms, pursuant to an order of the Bankruptcy Court entered prior to the Effective Date; (ii) is the subject of a motion to assume or reject, or a motion to approve renegotiated terms and to assume on such renegotiated terms, that has been filed and served prior to the Effective Date; (iii) is a management, administration, management services, consulting, advisory or similar agreement (including any of the agreements set forth in Exhibit 6 to the Management Services Agreement), between a Debtor and any Syndication Company, PV, PNV, Transaction Holdco, or any direct or indirect subsidiary of a Transaction Holdco or any other similar entity

related to any portfolio investment; or (iv) is identified on the Assumed Executory Contract and Unexpired Lease List or in the Plan. Such treatment of Executory Contracts and Unexpired Leases is typical in chapter 11 cases and is appropriate.

3. Subordination of Claims (Section 1123(b)(6))

31. Section 510(b) of the Bankruptcy Code mandates that the following types of claims be subordinated:

> [A] claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

11 U.S.C. § 510(b).

32. Consistent with section 1123(b)(6) of the Bankruptcy Code and Bankruptcy Rule 7001(8), Article IV of the Plan provides for the subordination of certain Claims.

a. Subordination of Rights Offering Claims

33. In late 2010, Arcapita Bank commenced a common stock rights offering to its then-current shareholders of up to $500 million of Arcapita Bank Shares at a price of $3.00 per Share and, for any Shares not subscribed by the then current shareholders, a subsequent series of offerings to third-party investors at a price of $3.00 each per Share (collectively, the "***Rights Offering***"). The Rights Offering was formally closed in early 2012. Under the Rights Offering, Arcapita Bank accepted the subscriptions from the then-current shareholders and third-party investors (the "***Rights Offering Participants***") for 27,700,054 Shares and received $83,100,161 in subscription proceeds. Upon closing, the steps to formally issue the Shares under Bahrain law

were commenced but were not finalized as of the Petition Date and the Shares were therefore not formally issued as a matter of Bahrain law. The rights of the Rights Offering Participants to receive the Arcapita Bank Shares contemplated by the Rights Offering arise from the purchase or sale of a security of Arcapita Bank and, consistent with section 510(b) of the Bankruptcy Code, are treated under the Plan as Subordinated Claims against Arcapita Bank (the "***Rights Offering Claims***"). Pursuant to section 510(b) and applicable case law cited below, the Rights Offering Claims, which arise from a subscription for common stock, share *pari passu* with equity, and the Debtors have appropriately classified the Rights Offering Claims in Class 8(a). As noted above, 63 Holders of Rights Offering Claims in Class 8(a), which Claims exceed $59 million in amount, voted to accept the Plan. No Holders of Rights Offering Claims voted to reject the Plan.

b. Subordination of Thronson Claims

34. On April 26, 2011, plaintiffs Lowell Thronson, Henry Adair, Guy Busk, Galen W. Cantrell, Michelle G. Colombo, Glen M. Coman, Vhonda Cook, Randall L. Crumpley, Stephen Dorcheus, Judy B. Farley, Joe V. Fields, Gregory D. Fletcher, Kenneth Gillespie, Darrell R. Green, Terra Leigh Griffin, Michael L. Gryder, Jack L. Hopkins, John Holcomb, Andy Johnson, Ed McIntosh, Bryan K. Mercer, Carla Nims, David Robinson, Chad Rogers, Mark Rowland, James Scott, Danny J. Sharp, Derrick M. Shaw, Randall J. Small, Joel P. Stephen, Ray Don Turner, Johnny B. Ulrich, James Bradley Underwood, Hank R. Watson, Royce Williams, and Troyce Willis (the "***Thronson Parties***") filed a complaint against Falcon in Texas state court (the "***Thronson Complaint***") for breach of contract and breach of fiduciary duty by Falcon in connection with Falcon's 2005 Equity Incentive Plan and non-qualified stock option plan. *Lowell C. Thronson, et al. v. Falcon Gas Storage, Inc.*, Case No. 2011- ED101J016284241. The

Thronson Parties allege that Falcon prevented them as "option holders from exercising their options prior to the sale to [Tide], and allegedly fail[ed] to pay the Thronson Parties the difference between the strike price based on a fair valuation of the Falcon shares and the option price." The Thronson Parties have filed proofs of claim totaling approximately $1.7 million (the "***Thronson Claims***") [Claim Nos. 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, and 422].

35. The Thronson Claims are based on alleged damages arising from the purported breach of an agreement relating to the sale of Falcon common stock. The Executory Contracts on which the alleged Thronson Claims are based will be rejected pursuant to Article VI of the Plan. Whether the Thronson Claims are based on the allegations that Falcon failed to issue common stock prior to the sale of the LLC interests in NorTex LLC to Tide, or whether the damages arise from Falcon's rejection of the Executory Contracts with the Thronson Parties makes no difference. *See* 11 U.S.C. § 365(g)(1) (rejection of executory contract gives rise to prepetition claim). In either event, the Thronson Claims must be subordinated pursuant to section 510(b).

36. The Second Circuit has "interpret[ed] section 510(b) broadly" to require subordination of any claim arising from the purchase or sale of securities, regardless of the legal theory upon which the claim is based. *Rombro v. Dufrayne (In re Med Diversified, Inc.)*, 461 F.3d 251, 259 (2d Cir. 2006) (subordinating claim for fraudulent inducement and breach of contract arising from debtor's failure to issue stock); *see also In re Enron*, 341 B.R. 141, 144 (Bankr. S.D.N.Y. 2006) ("claims for damages that arise from the ownership of employee stock

options . . . should be subordinated pursuant to section 510(b)"); *Weissmann v. Pre-Press Graphics Co. (In re Pre-Press Graphics Co.)*, 307 B.R. 65, 79-80 (N.D. Ill. 2004) (subordinating claim of shareholder and former director, which was based on state court judgment that fellow directors engaged in stockholder oppression and breach of fiduciary duty when they removed him from board position and secretly issued additional stock, which significantly diluted his ownership interest in debtor).

37. Because the Thronson Claims are based on alleged damages in connection with their inability or failure to exercise their stock options to purchase Falcon common stock, the Thronson Claims arise from the "purchase or sale of a security of the debtor" and must be subordinated to the level of Falcon common stock. 11 U.S.C. § 510(b); *In re Enron*, 341 B.R. 141, 144 (Bankr. S.D.N.Y. 2006) (subordinating stock option claims to the level of common stock interests). Pursuant to the provisions of section 510(b), the Plan provides that, if Allowed, any right of Distribution with respect to the Thronson Claims is subordinated to all Claims or Interests senior to the Interests represented by the common stock of Falcon. Accordingly, the Thronson Claims have been classified in the Plan as Subordinated Claims in Class 8(g).

c. Subordination of the Tide Claims

38. Tide Natural Gas Storage I, LP and Tide Natural Gas Storage II, LP (together, "***Tide***") filed certain Claims against Arcapita Bank and Falcon [Claim Nos. 295-298] (the "***Tide Claims***") based on alleged damages arising from Tide's purchase of Falcon's LLC membership interests in the Debtors' non-debtor affiliate NorTex Gas Storage Company, LLC ("***NorTex LLC***"). For the reasons set forth in the Debtors' briefs in support of subordination of the Tide Claims [Docket Nos. 1108 and 1194], the Debtors submit that the Tide Claims, to the extent they

are found to constitute Allowed Claims in any amount, must be subordinated and are properly classified in Classes 10(a) and 10(g).

4. The Plan's Provisions Regarding Retention, Enforcement and Settlement of Claims Held by the Debtors and Retention of Jurisdiction (Section 1123(b)(3))

39. Consistent with section 1123(b)(3) of the Bankruptcy Code, Sections 7.1 and 9.2 of the Plan provide for certain settlements and releases of claims by the Debtors, and Section 7.18 of the Plan provides for the preservation of other Causes of Action. In addition, pursuant to Article XI of the Plan, the Court will generally retain jurisdiction as to all matters involving the Plan, including, among other things, allowance of Claims, determination of tax liability under section 505 of the Bankruptcy Code, resolution of Plan-related controversies, and approval of matters related to the assumption or rejection of Executory Contracts or Unexpired Leases.

40. Significantly, the above matters are matters that the Court would otherwise have jurisdiction over during the pendency of the Chapter 11 Cases. *See* 28 U.S.C. §§ 157 and 1334. This retention of jurisdiction by the Court post-confirmation is permitted by the Bankruptcy Code. *Luan Investment S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 230 (2d Cir. 2002) ("A bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders, particularly when disputes arise over a bankruptcy plan of reorganization."). Therefore, the Court's retention of jurisdiction is appropriate.

5. The Release, Exculpation, and Injunctive Provisions (Section 1123(b)(6))

41. The Plan's release, exculpation, and injunctive provisions are necessary and appropriate for the implementation of the Plan and are otherwise consistent with the Bankruptcy

Code and Second Circuit precedent. Accordingly, the release, exculpation, and injunctive provisions should be approved.

a. The Debtor Release

42. Section 9.2.1 of the Plan provides that, as of the Effective Date, the Debtors shall release all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities arising on or prior to the Effective Date that the Debtors may have against the Released Parties. The "Released Parties" means (i) Debtors AIHL and Arcapita Bank; (ii) the Committee and its members, solely in their capacities as members of the Committee; (iii) the JPLs, solely in their capacities as joint provisional liquidators; (iv) the respective current and former officers, members of the board of directors, employees, managers (in their capacities as officers, members of the board of directors, employees, or managers, as applicable) of the Debtors and the Debtors' Affiliates; (v) Professionals and other professionals and agents (in their capacities as Professionals or other professionals and agents, as applicable) for services rendered during the pendency of the Chapter 11 Cases to or for the Debtors, the Debtors' Affiliates, the Committee, the JPLs, or the Ad Hoc Group, along with the successors, and assigns of each of the foregoing; (vi) SCB; (vii) the third-party holders of interests in the Syndication Companies, the PVs, and the PNVs, provided, however, that if any such holder of an interest is also a Placement Bank, such holder shall be a Released Party solely in its capacity as a holder of an interest in the Syndication Companies, the PVs, and/or the PNVs, as applicable; (viii) the Central Bank of Bahrain (including, without limitation, in its capacity as Creditor and regulator); (ix) the AHQ Cayman I Investors; (x) Holders of Interests in Arcapita Bank; and (xi) the members of the Ad Hoc Group. Additionally, the Debtors (other than Falcon) release any Avoidance Actions

against (i) the Debtors and their Affiliates, (ii) the Released Parties, (iii) any Persons that have had funds on deposit with Arcapita Bank in a restricted investment account or an unrestricted investment account (other than Placement Banks or their Affiliates, Portigon Financial Services AG (f/k/a West LB AG), Alubaf Arab International Bank BSC and Arcsukuk (2011) Limited), (iv) QIB (with respect to any payments received in connection with the Lusail Transactions only), and (v) QInvest LLC (with respect to any payments received in connection with the Lusail Transactions only) (all releases by Debtors constituting the "***Debtor Release***"). QIB and QInvest LLC will only receive the release set forth in Section 9.2.2 of the Plan if both QIB and QInvest LLC provide all consents needed with respect to the assumption and assignment of the QRE Letter Agreement, the Lusail Lease, and the Lusail Option. Notably, the Debtor Release does not release claims arising out of the willful misconduct or gross negligence of the Released Parties.

43. Under section 1123(b)(3)(A) of the Bankruptcy Code, a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A); *see also In re DBSD N. Am., Inc.*, 419 B.R. 179, 217 (Bankr. S.D.N.Y. 2009) ("Section 1123(b)(3) permits a debtor to include a settlement of any claims it might own as a discretionary provision in its plan . . . ."), *rev'd on other grounds*, 634 F.3d 79 (2d Cir. 2010). The Plan's Debtor Release provisions constitute such a settlement. The standard for approval of the settlement is the same as that applied under Bankruptcy Rule 9019. *See, e.g.*, *Resolution Trust Corp. v. Best Prods. Co. (In re Best Prods. Co.)*, 177 B.R. 791, 794 n.4 (S.D.N.Y. 1995) ("Irrespective of whether a claim is settled as part of a plan pursuant to section 1123(b)(3)(A) of the Bankruptcy Code or pursuant to a separate motion under

Bankruptcy Rule 9019, the standards applied by the Bankruptcy Court for approval are the same."). Under Rule 9019, approval of a proposed settlement is within the "sound discretion" of the bankruptcy court. *In re Stone Barn Manhattan LLC*, 405 B.R. 68, 75 (Bankr. S.D.N.Y 2009). However, the bankruptcy court should not substitute its judgment for that of the debtor. *See, e.g.*, *In re Charter Commc'ns*, 419 B.R. at 252 ("while the approval of a settlement rests in the Court's sound discretion, the debtor's business judgment should not be ignored") (quotations and citations omitted). "In determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather, should 'canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness.'" *In re WorldCom, Inc.*, 2003 WL 23861928, at *38 (Bankr. S.D.N.Y. Oct. 31, 2003) (quoting *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983)) (other quotations and citations omitted). Factors to be considered include:

> (1) the balance between the litigation's possibility of success and the settlement's future benefits; (2) the likelihood of complex and protracted litigation, "with its attendant expense, inconvenience, and delay," including the difficulty in collecting on the judgment; (3) "the paramount interests of the creditors," including each affected class's relative benefits "and the degree to which creditors either do not object to or affirmatively support the proposed settlement"; (4) whether other parties in interest support the settlement; (5) the "competency and experience of counsel" supporting, and "[t]he experience and knowledge of the bankruptcy court judge" reviewing, the settlement; (6) "the nature and breadth of releases to be obtained by officers and directors"; and (7) "the extent to which the settlement is the product of arm's length bargaining."

Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 462 (2d Cir. 2007) (quoting *In re WorldCom, Inc.*, 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006)).

44. Applying this standard, the Debtor Release provisions should be approved:

(1) The Debtors are not aware of any claims released by the Debtor Release that have significant value in the context of the Chapter 11 Cases; and, more importantly, the Debtor Release is a key component of the settlements reached pursuant to the Plan and numerous Creditors voted in reliance on the Debtor Release provision.

(2) Given the international nature of the Debtors' Creditor body, it is likely that pursuing litigation against the parties released pursuant to the Debtor Release would be expensive, complicated, time consuming, and it may be difficult to enforce any resulting judgment.

(3) The "paramount interest of the creditors" is best served by the Court's approval of the Plan, including the Debtor Release, which was heavily negotiated and approved by the Committee as being in the Creditors' best interest.

(4) No party in interest has objected to the Debtor Release provisions.

(5) The Plan, including the Debtor Release provisions, was drafted by competent and experienced counsel, and the Court has the experience and knowledge to review the propriety of the Debtor Release.

(6) The Debtor Release provisions are similar in nature and breadth to those routinely approved in this District. *See, e.g.*, *In re DBSD*, 419 B.R. at 217 (approving a debtor release provision which excluded actions based on willful misconduct or gross negligence and that released, among others, the debtors and their officers and directors as well as "the New Credit Facility Agent and the New Credit Facility Lenders . . . the Principal Noteholders . . . the Senior Note Indenture Trustee . . . [and] the Existing Stockholder").

(7) The Debtor Release was a key component of the arm's-length negotiations with respect to the Plan between the Debtors, the Committee, the Ad Hoc Group, SCB, and certain other released parties. By virtue of agreeing to the Debtor Release, among other Plan provisions, the Debtors were successful in formulating an almost entirely consensual Plan.

45. Accordingly, the Debtor Release provisions are necessary and appropriate under the circumstances of the Chapter 11 Cases and should be approved pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019.

b. Consensual Third-Party Releases

46. Section 9.2.4 of the Plan is a consensual third-party release of the Released Parties that is given only by those Holders of Claims or Interests (other than Holders of Claims

against or Interests in Falcon) that (i) voted to accept or reject the Plan and, (ii) did not elect (as was permitted on the Ballots) to opt out of the releases contained in Section 9.2.4 of the Plan (the "***Third-Party Release***").

47. "In the Second Circuit, it has long been the law that third party releases are permissible under at least some circumstances." *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 266 (Bankr. S.D.N.Y. 2007), *appeal dismissed*, 371 B.R. 660 (S.D.N.Y. 2007), *aff'd*, 544 F.3d 420 (2d Cir. 2008) (citing *Deutsche Bank AG, London Branch v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 142 (2d Cir. 2005) and *SEC v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.)*, 960 F.2d 285, 293 (2d Cir. 1992)). One of those circumstances is where the affected creditors consent. *Id.* at 268 (citing *In re Specialty Equip. Cos., Inc.*, 3 F.3d 1043, 1047 (7th Cir. 1993)); *see also In re Metromedia Fiber Network, Inc.*, 416 F.3d at 142 ("Nondebtor releases may also be tolerated if the affected creditors consent."); *In re DBSD*, 419 B.R. at 218 (observing that third-party releases may be used "if the affected creditors consent"). Consent can be established by a vote in favor of the plan where "those voting in favor of the Plan were on full notice that they would be granting the releases." *In re Adelphia*, 368 B.R. at 268. Consent may also be established where a creditor abstained from voting and did not affirmatively opt out of the release provision, provided that they "were given adequate notice that they would be granting the release by acting in such a manner." *In re DBSD*, 419 B.R. at 218 (Bankr. S.D.N.Y. 2009) (citing *In re Calpine Corp.*, 2007 WL 4565223 (Bankr. S.D.N.Y. Dec. 17, 2007)).

48. Here, the Third-Party Release was consensual and in conformity with prevailing Second Circuit law because it was only given by those who voted on the Plan and chose not to

opt out. Moreover, the Plan, the Disclosure Statement, and each Ballot clearly identified in bold typeface (and in many cases, capital letters) the procedure for opting out of the Third-Party Release and notified Claimants that if they voted on the Plan and did not opt out of the release provisions contained in section 9.2.4 of the Plan, they would be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged all claims and causes of action against the Released Parties. Accordingly, the Third-Party Release is appropriate under applicable case law and should be approved.

c. Exculpation

49. Section 9.2.5 of the Plan contains a provision that, in sum, exculpates the Exculpated Parties from liability for acts or omissions occurring during and in connection with the Chapter 11 Cases, except for claims arising from gross negligence, willful misconduct, fraud, or breach of the fiduciary duty of loyalty (the "***Exculpation***"). The Exculpated Parties consist of (i) each of the Debtors and their Affiliates; (ii) the Committee and its members, solely in their capacities as members of the Committee; (iii) the JPLs, solely in their capacities as joint provisional liquidators; (iv) the respective current and former officers, directors, employees, managers (in their capacities as officers, directors, employees, or managers, as applicable) of the Debtors and the Debtors' Affiliates; (v) Professionals and other professionals and agents (in their capacities as Professionals or other professionals and agents, as applicable) for services rendered during the pendency of the Chapter 11 Cases to or for the Debtors, the Debtors' Affiliates, the Committee, the JPLs, or the Ad Hoc Group, along with the successors, and assigns of each of the foregoing; (vi) SCB; (vii) the Central Bank of Bahrain (including, without limitation, in its capacity as Creditor and regulator); and (viii) the members of the Ad Hoc Group.

50. Courts evaluate exculpation provisions based upon a number of factors, including whether protection from liability was necessary for plan negotiations, whether the exculpation excludes gross negligence and willful misconduct, and whether the exculpation is consensual. *See Upstream Energy Servs. v. Enron Corp. (In re Enron Corp.)*, 326 B.R. 497, 501, 503 (S.D.N.Y. 2005) (observing that the bankruptcy court approved an exculpation provision where it was necessary to effectuate the plan and excluded gross negligence and willful misconduct); *In re DBSD*, 419 B.R. at 218 ("exculpation provisions . . . may be used . . . where the provisions are important to a debtor's plan" or "if the affected creditors consent"); *In re Worldcom, Inc.*, 2003 WL 23861928, at *28 (approving an exculpation provision where it "was an essential element of the Plan formulation process and negotiations"); *In re Adelphia*, 368 B.R. at 268 (same). Accordingly, exculpation clauses appropriately prevent future collateral attacks against parties that have made substantial contributions to a debtor's reorganization.

51. The Exculpation provision is vital to the Chapter 11 Cases and appropriate under applicable law. As set forth in the Thompson Declaration, the Debtors formulated the Plan after negotiating extensively with numerous parties in good faith in the months leading up to and following the Petition Date. Thompson Declaration ¶¶ 32-33. Each of the Exculpated Parties made substantial contributions throughout these Chapter 11 Cases and were instrumental in the formulation of the largely consensual Plan. *Id.* Furthermore, negotiation and compromise were crucial to the formulation of a feasible Plan and could not have occurred without the protection from liability that the Exculpation clause provides to the constituents involved. *Id.*; *see also In re Enron*, 326 B.R. at 503 (excising exculpation provision would "tend to unravel the entire fabric of the Plan, and would be inequitable to all those who participated in good faith to bring it

into fruition"). Accordingly, each of the Exculpated Parties are appropriately included in the Exculpation.

52. Generally speaking, the effect of an appropriate exculpation provision is to set a standard of care of gross negligence or willful misconduct in future litigation for acts arising out of the restructuring, not to eliminate liability altogether. *See, e.g.*, *In re PWS Holding Corp.*, 228 F.3d 224, 246-47 (3d Cir. 2000) (reasoning that an exculpation provision did not eliminate third party liability, but rather "set[] forth the appropriate standard of liability" for the exculpated parties). Here, the Exculpation provision, including its carve out for gross negligence and willful misconduct, is consistent with established practice in this jurisdiction and others in that it "generally follows the text that has become standard in this district [and] is sufficiently narrow to be unexceptionable." *In re Granite Broadcasting Corp.*, 369 B.R. 120, 139 (Bankr. S.D.N.Y. 2007) (quoting *In re Oneida*, 351 B.R. at 94, n.22 (Bankr. S.D.N.Y. 2006)) (brackets in original); *see also In re DJK Residential LLC*, No. 08-10375 (JMP) (Bankr. S.D.N.Y. May 7, 2008) [Docket No. 497] (approving exculpation provision that excluded gross negligence and willful misconduct); *In re Bally*, 2007 WL 2779438, at *8 (Bankr. S.D.N.Y. Sept. 17, 2007) (approving an exculpation provision that excluded gross negligence and willful misconduct and exculpated, among others, prepetition noteholders and new investors); *In re Worldcom, Inc.*, 2003 WL 23861928, at *28 (approving an exculpation provision that excluded gross negligence and willful misconduct). Therefore, the Exculpation provision is appropriate and should be approved.

d. Injunction

53. Finally, Section 9.2.6 of the Plan is an injunction provision relating to the release and exculpation provisions and should be approved. The injunction provision is necessary to

preserve and enforce the Debtor Release, the Third-Party Release, and the Exculpation. Further, Article XII(B) of the Disclosure Statement, along with Section 9.2 of the Plan, comply with the requirements of Bankruptcy Rule 3016(c) that "the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and entities that would be subject to the injunction." Fed. R. Bankr. P. 3016(c). The applicable release, exculpation, and injunction provisions are clearly identified in the Plan and Disclosure Statement, are displayed in bold font, and specifically identify all acts to be enjoined and all entities that would be subject to the injunction. Therefore, the injunction provision should be approved.

6. The Conditions for Receiving Distributions Are Appropriate (Section 1123(b)(6))

54. The Plan includes certain conditions for receiving Distributions, including the New Unsecured Claim Distribution Procedures and the Warrant Distribution Conditions.

55. With respect to Claimants in Classes 5(b), 5(g), 6(a), and 8(a), the Debtors are requiring such Claimants to sign and deliver the Creditor Release as a condition to receiving distributions under the Plan. The Creditor Release simply restates and reaffirms the effect of the Plan. Specifically, by signing the Creditor Release, Claimants will (i) acknowledge and agree to the amount of their Claims, (ii) acknowledge and agree that they are bound by the terms and conditions of the Plan and the Confirmation Order, and (iii) acknowledge and agree that all of their Claims, demands, liabilities, other debts against, or Interests in, the Debtors (other than those created by the Plan) have been discharged and enjoined in accordance with Article IX of the Plan, as provided in Section 8.17 of the Plan. Many of the Debtors' Claimants reside outside of U.S. jurisdiction, and although the Confirmation Order will apply extraterritorially, the

Creditor Release will assist the Debtors' efforts to enforce the provisions of the Plan in the event that any Claimants attempt to circumvent its provisions in a foreign jurisdiction.

56. With respect to any Claimant entitled to receive Distributions in the form of Sukuk Obligations, New Arcapita Shares, or New Arcapita Warrants, such Claimants will be asked to provide a statement signifying that they are (i) a Qualified Purchaser,[6] (ii) a Knowledgeable Employee,[7] or (iii) a Non-U.S. Person.[8] To the extent that any Claimant entitled to receive Sukuk Obligations, New Arcapita Shares, or New Arcapita Warrants is a U.S. person that is neither a Qualified Purchaser nor a Knowledgeable Employee (such person, a "***Non-Eligible Claimant***"), then the consideration otherwise distributable to the Non-Eligible Claimant will be liquidated by the Disbursing Agent in a manner as efficient as practicable, and the Non-Eligible Claimant will receive the proceeds of the liquidation in lieu of its Plan Distribution. This is necessary for the Debtors to ensure that they do not violate any U.S. securities laws to which they are subject.

57. Thus, as explained above, the conditions for Distribution are reasonable and appropriate.

7. The Authorizations Contained in Section 7.16 of the Plan are Appropriate (Section 1123(b)(6))

58. Section 7.16 of the Plan ratifies, authorizes, and approves all of the actions contemplated by the Plan. Section 7.16 further provides that the authorizations and approvals

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6 "Qualified Purchaser" has the meaning ascribed to such term in Rule 2a51-1, promulgated under the Investment Company Act of 1940 (the "***Investment Company Act***").

7 "Knowledgeable Employee" has the meaning ascribed to such term in Rule 3c-5, promulgated under the Investment Company Act

8 "U.S. Person" has the meaning ascribed to such term in Regulation S, promulgated under the Securities Act of 1933.

contemplated therein shall be effective notwithstanding any requirements under any non-bankruptcy law, but only to the extent permitted by the Bankruptcy Code. Section 1123(a) of the Bankruptcy Code dictates that a plan shall contain various provisions that are operative "[n]otwithstanding any otherwise applicable non-bankruptcy law." 11 U.S.C. § 1123(a). One such provision, section 1123(a)(5), requires that a plan provide adequate means for its implementation. The actions described in Section 7.16 of the Plan are necessary for adequate implementation of the Plan. Accordingly, the authorizations contained in section 7.16 of the Plan are appropriate.

8. Payment of the Ad Hoc Group Fees (Section 1123(b)(6))

59. The Debtors respectfully request that the Court approve the payment of the reasonable and documented fees and expenses of the Ad Hoc Group incurred on or after the Petition Date, including, without limitation, professional fees and expenses (the "***Ad Hoc Group Fees***"). The Debtors agreed to pay such fees (and the Committee supported their payment) as one of the many important terms and conditions of the global settlement reached by and among all of the Debtors' stakeholders and embodied in the Plan. The fees, therefore, may be approved as part of the overall settlement embodied in the Plan pursuant to section 1123(b)(3) and Bankruptcy Rule 9019 and/or section 1123(b)(6) of the Bankruptcy Code. In the alternative, the Ad Hoc Group Fees may also be approved due to the Ad Hoc Group's substantial contribution to these chapter 11 cases pursuant to section 503(b) of the Bankruptcy Code. In support of this request, the Ad Hoc Group has filed the *Declaration of Matthew Bonanno in Support of the Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code* (the "***Bonanno Declaration***").

a. The Court Should Approve Debtors' Payment of Ad Hoc Group Fees as a Reasonable Part of the Plan's Global Resolution of All Claims

60. As the Court is well aware, this consensual Plan represents a compromise of many complex issues involving property in many countries and is the product of a series of settlements and compromises among the many stakeholders in these Chapter 11 Cases. The aggregate Claims of the Ad Hoc Group represent a material part of the total Claims against AIHL, and the Ad Hoc Group was the only organized body of Creditors holding Claims only against AIHL and acted as important liaison with the JPLs. As detailed further in the Bonanno Declaration, the Ad Hoc Group's participation in and support for the Plan was important to the Debtors achieving a consensual Plan and in resolving the many disputes without litigation, including the resolution of sensitive issues faced by the Committee as to the interests of the Creditors of both Arcapita Bank and AIHL, who are both represented by the Committee. The Debtors' agreement to pay the Ad Hoc Group Fees pursuant to Article II.2.6 of the Plan was an important part of securing the Ad Hoc Group's support and cooperation and was one of the important compromises upon which the Plan was built.

61. By virtue of the Ad Hoc Group's active participation in the Plan negotiation process, along with the Debtors, the Committee, the JPLs and others, the Debtors were able to develop a fully consensual Plan that, among other things, (a) precludes expensive and time-consuming litigation on the Potential Plan Disputes, (b) secures a fair allocation of value among Creditors, including the AIHL Creditors, (c) establishes a framework for the sale or other disposition of investment assets pursuant to the Cooperation Settlement Term Sheet, (d) benefits all parties in interest, including the Third-Party Investors in the Debtors and, (e) as a result, was approved by the Grand Court of the Cayman Islands as to AIHL and AIHL Creditors (of which

the Ad Hoc Group is a material part). Indeed, in the absence of the many settlements embodied in the Plan, the Debtors' estates could also have incurred additional costs and delay associated with potential disputes over exclusivity and competing plans, both in the United States and the Cayman Islands.

62. The approval of the Debtors' payment of the Ad Hoc Group Fees should be subsumed within the Court's broader approval, under section 1123(b)(3)(A) of the Bankruptcy Code or Bankruptcy Rule 9019, of the many compromises and settlements that underlie the entire Plan. Section 1123(b)(6) of the Bankruptcy Code, which provides that a reorganization plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title," provides ample support for the Court to approve the Debtors' agreement to pay the Ad Hoc Group Fees. 11 U.S.C. § 1123(b)(6). In *In re Adelphia Communications Corp.*, 441 B.R. 6, 9-10 (Bankr. S.D.N.Y. 2010), Judge Gerber found a plan provision providing for the payment of ad hoc committee fees complied with section 1123(b)(6), to the extent the requested fees were reasonable and the requirements of section 1129(a)(4) were satisfied. Specifically, the court stated that "to the extent that the requested fees are reasonable, and the requirements of section 1129(a)(4) likewise are complied with, [the plan provision providing for reimbursement for certain creditors' professional fees] is permissible, and the Code permits the Applicants' reasonable fees to be recovered under that provision without showing compliance with sections 503(b)(3) or (4)." *Id.* at 19.

63. The *Adelphia* ruling was subsequently adopted by Judge Peck in the *Lehman* bankruptcy case as to the fees of official committees. *See In re Lehman Brothers Holdings Inc.*, 487 B.R. 181, 192 (Bankr. S.D.N.Y. 2013) ("In *Adelphia*, Judge Gerber held that 'to the extent

that the requested fees are reasonable, and the requirements of section 1129(a)(4) likewise are complied with, [the plan provision providing for reimbursement for certain creditors' professional fees] is permissible, and the [Bankruptcy] Code permits the [applicants'] reasonable fees to be recovered under that provision without showing compliance with sections 503(b)(3) or (4). His reasoning, while addressed to members of *ad hoc* committees, rather than official committees, is persuasive and applies to the present controversy.") Furthermore, Courts in this District have allowed payment of ad hoc committee fees, subject to reasonableness, where, in the debtors' business judgment, it is appropriate to pay those fees. *See, e.g.*, *In re AMR Corp.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Sept. 21, 2012) [Docket No. 4652] (authorizing Debtors to pay Ad Hoc Committee's professionals their work fees related to potential financing commitments pursuant to fee letter); *In re Chemtura Corp.*, Case No. 09-11233 (REG) (Bankr. S.D.N.Y. Dec. 2, 2010) [Docket No. 4665] (authorizing Debtors to pay $7 million of Ad Hoc Bondholder Committee's professional fees and expenses); *In re Tronox Inc.*, Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Nov. 24, 2009) [Docket No. 915] (authorizing Debtors to pay reasonable and documented fees and expenses of Ad Hoc Committee's counsel from pool of $2.5 million set aside for financing-related due diligence efforts); *In re Tronox Inc.*, Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Nov. 30, 2010 [Docket No. 2567] (confirmation order approving plan provisions providing for the payment of all fees and expenses of legal counsel and financial advisors for creditors instrumental in developing the plan, including all fees and expenses of advisors to an ad hoc noteholder committee and $3 million to advisors for governmental entities).

64. The procedures provided in the Plan ensure that the amount the Debtor pays the Ad Hoc Group is reasonable and, therefore, in compliance with section 1129(a)(4) of the Bankruptcy Code. The Ad Hoc Group Fees include the reasonable and documented fees and expenses of Kirkland & Ellis LLP ("***K&E***"), which are based on K&E's normal hourly rates, typically charged and routinely approved in chapter 11 cases in this District and others. Article II.2.6. of the Plan subjects the Ad Hoc Group Fees to a reasonableness review by the Debtors and the Committee, and any dispute as to any portion of the Ad Hoc Fees that cannot be resolved is subject to the further order of the Bankruptcy Court. As provided in the testimony in the Bonanno Declaration, the Ad Hoc Fees will not exceed $1.2 million, which in light of the Ad Hoc Group's contribution to these Chapter 11 Cases, the complexity of the issues involved and the overall results achieved, is imminently reasonable.

b. Alternatively, the Court May Approve Debtors' Payment of Ad Hoc Group Fees as a Substantial Contribution to These Chapter 11 Cases

65. Payment of the Ad Hoc Group Fees is also justified by the substantial contribution the Ad Hoc Group made to these Chapter 11 Cases. Section 503(b) of the Bankruptcy Code authorizes bankruptcy courts to award compensation to creditors for the legal and other expenses incurred in making a "substantial contribution" in a case. 11 U.S.C. § 503(b)(3)(D), (b)(4).

66. In vesting bankruptcy courts with authority to make substantial contribution awards, Congress intended through section 503(b) to encourage and promote meaningful creditor participation in the reorganization process. *See generally In re Jartran, Inc.*, 732 F.2d 584, 586-87 (7th Cir. 1984). Where, as here, a creditor constituency expends resources that benefit a debtor's estate as a whole, bankruptcy courts have broad discretion to compensate that creditor

for out-of-pocket fees and expenses. *In re Lister*, 846 F.2d 55, 56 (10th Cir. 1988) (citing *In re Consolidated Bancshares*, *Inc.*, 785 F.2d 1249, 1252 (5th Cir. 1986)).

67. The term "substantial contribution" is not defined in the Bankruptcy Code, but bankruptcy courts have consistently found a substantial contribution when the applicant provided "an actual and demonstrable benefit to the debtor's estate, its creditors, and to the extent relevant, the debtor's shareholders." *In re Granite Partners, L.P.*, 213 B.R. 440, 445 (Bankr. S.D.N.Y. 1997); *see also In re Best Prods. Co., Inc.*, 173 B.R. 862, 866 (Bankr. S.D.N.Y. 1994); *In re Alert Hldgs., Inc.*, 157 B.R. 753, 757 (Bankr. S.D.N.Y. 1993); *In re United States Lines*, 103 B.R. 427, 429 (Bankr. S.D.N.Y. 1989); *In re Am. Plumbing & Mech., Inc.*, 327 B.R. 273, 280 (Bankr. W.D. Tex. 2005) (standard requires a "significant and tangible benefit," a "concrete benefit," a "direct, significant and demonstrably positive benefit," and a contribution that is "considerable in amount, value or worth").

68. Once a court determines that a creditor has made a substantial contribution to a chapter 11 case, the court must determine that the professional fees are "reasonable . . . based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title," and that expenses are "actual and necessary." 11 U.S.C. § 503(b)(4). A "[c]ourt's evaluation of the reasonableness of counsel fees and expenses under section 503(b)(4) should generally follow the approach used under section 330 . . . [except that] because the professional may not know that he or she will be submitting a fee and expenses request, the Court need not necessarily enforce time record requirements as strictly as with requests under section 330." *In re Bayou Group, LLC*, 2010 WL 1416776 at *12 (Bankr. S.D.N.Y. 2010) (citing 4 Collier on Bankruptcy ¶ 503.11[5] at 503-71).

69. For all the reasons set forth herein, in the Disclosure Statement, and in the Bonanno Declaration regarding the contributions of the Ad Hoc Group to the development of the Debtors' consensual Plan, the Debtors' request that this Court approve the Debtors' payment of the Ad Hoc Group Fees. Payment of the Ad Hoc Group Fees is consistent with the many decisions of the courts in this District and others in which the payment of the fees and expenses of ad hoc committees for providing a substantial contribution to the chapter 11 cases has been approved. *See, e.g.*, *In re Lehman Brothers Holdings Inc.*, (JMP) (Bankr. S.D.N.Y. Sept. 24, 2012) [Docket No. 31,063] (granting ad hoc committee an allowed administrative claim in amount of approximately $9.5 million for reimbursement of counsel's fees and expenses in connection with ad hoc committee's substantial contribution); *In re Tronox Inc.*, Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Feb. 28, 2011) [Docket No. 2848] (authorizing Debtors to pay fees and expenses of counsel to Ad Hoc Group of alternative backstoppers in an approximate amount of $250,000); *In re Dana Corp.*, Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. May 29, 2008) (authorizing Debtors to pay Ad Hoc Committee's counsel's approximately $3.6 million in fees and expenses); *In re Refco, Inc.*, Case No. 05-60006 (RDD) (Bankr. S.D.N.Y. Feb. 8, 2007) (allowing as an administrative expense of approximately $3.3 million the fees and expenses of the Ad Hoc Committee); *In re Middlebrook Pharmaceuticals, Inc.*, Case No. 10-11485 (MFW) (Bankr. D. Del. Feb. 24, 2011) [Docket No. 614] (granting Ad Hoc Committee's counsel an administrative expense claim in the amount of approximately $40,000 for its fees and expenses); *In re Accredited Home Lenders Holding Co.*, Case No. 09-11516 (MFW) (Bankr. D. Del. Aug. 26, 2011) [Docket No. 2944] (granting Ad Hoc Committee of REIT Shareholders' counsel an administrative expense claim in amount of $180,000 for a portion of its fees and expenses); *In re*

ABB Lummus Global Inc., Case No. 06-10401 (JKF) (Bankr. D. Del. Nov. 14, 2006) [Docket No. 396] (allowing professional compensation and expense reimbursement of approximately $63,000 for counsel to the Ad Hoc Asbestos Claimant's Committee); *In re Pliant Corp.*, Case No. 06-10001 (MFW) (Bankr. D. Del. Dec. 20, 2006) [Docket No. 1212] (authorizing Debtors to pay Ad Hoc Committee reasonable professional fees).

C. The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2))

70. Section 1129(a)(2) of the Bankruptcy Code requires that the proponent of a plan comply with the applicable provisions of title 11. "Courts have interpreted the 1129(a)(2) requirement to include satisfaction of the disclosure and solicitation requirements of section 1125 of the Bankruptcy Code, as well as section 1126, concerning plan acceptance." *In re Boylan Int'l, Ltd.*, 452 B.R. 43, 51 n.4 (Bankr. S.D.N.Y. 2011) (citations omitted).

1. Compliance with Section 1125 of the Bankruptcy Code

71. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan from holders of claims or interests "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved . . . by the court as containing adequate information." 11 U.S.C. § 1125(b).

72. Here, the Debtors have complied with the applicable provisions of section 1125 of the Bankruptcy Code. The Court entered the Disclosure Statement Approval Order on April 26, 2013. The Disclosure Statement, the Plan, appropriate Ballots, notices, and all other related documents were distributed to parties in accordance with the Disclosure Statement Approval Order. *See* GCG Tabulation Declaration ¶¶ 4-15. Similarly, the date and time of the Voting

Deadline and the Confirmation Hearing were timely published in (i) *The Wall Street Journal (Global Edition)* on May 6, 2013 [*See* Docket No. 1136] and (ii) *The Financial Times*, on May 6, 2013 [*See* Docket No. 1135]. GCG has filed an affidavit of service demonstrating compliance with section 1125 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Approval Order with respect to the transmittal of the Disclosure Statement, the Plan and all related solicitation materials. *See* Docket No. 1076. Furthermore, the Debtors have complied with all orders of the Court entered during the pendency of these Chapter 11 Cases and with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules with respect to disclosure and solicitation of votes on the Plan.

2. Compliance with Section 1126 of the Bankruptcy Code

73. Under section 1126 of the Bankruptcy Code, only holders of claims and interests in impaired classes that will receive or retain property under a plan may vote to accept or reject such plan. In accordance with section 1126 of the Bankruptcy Code, the Debtors only solicited acceptances or rejections from the Classes 2(a)-(f), 4(a)-(b), 5(a)-(b), 5(g), 6(a), 7(a)-(b), 7(g), 8(a), 8(g) and 9(g)), which were the only Classes eligible to vote (the "***Voting Classes***"). The Voting Classes are Impaired but will receive Distributions under the Plan. The results of voting on the Plan are set forth in the GCG Tabulation Declaration.

74. The Claims and Interests in Classes 1(a)-(g), 3(a)-(g), 5(c)-(f), 7(c)-(f), and 9(b)-(f) are Unimpaired under the Plan, and, as a result, the Holders of such Claims and Interests are presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

75. In contrast, the Claims in Classes 10(a) and 10(g) are Impaired but will not receive or retain any Distribution or property under the Plan. Holders of such Claims are,

therefore, deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and their votes were not solicited.

76. Accordingly, the Debtors have fully complied with all the provisions of title 11 and, in particular, with the provisions of sections 1125 and 1126 of the Bankruptcy Code and the applicable Bankruptcy Rules. Consequently, the Debtors have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

D. The Plan Was Proposed in Good Faith (Section 1129(a)(3))

77. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). The Second Circuit has held that "a plan will be found in good faith if it 'was proposed with honesty and good intentions and with a basis for expecting that a reorganization can be effected.'" *Argo Fund Ltd. v. Bd. of Directors of Telecom Argentina, S.A. (In re Bd. of Directors of Telecom Argentina, S.A.)*, 528 F.3d 162, 174 (2d Cir. 2008) (quoting *Koelbl v. Glessing (In re Koelbl)*, 751 F.2d 137, 139 (2d Cir. 1984)). In determining whether the good faith requirement has been satisfied, courts properly focus on "'the plan itself and whether such plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'" *In re Granite Broadcasting*, 369 B.R. at 137 (quoting *In re Madison Hotel Assocs.*, 749 F.2d 410 (7th Cir. 1984)). The overarching purpose of the Bankruptcy Code is to provide the debtor with a fresh start while "preserving going concerns and maximizing property available to satisfy creditors." *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453 (1999).

78. The Plan has been proposed by the Debtors in good faith, with legitimate and honest purposes of maximizing the value of each of the Debtors and the recovery to Claimants

under the circumstances of these Chapter 11 Cases. The record in these Chapter 11 Cases demonstrates that the Plan is the product of good faith, arm's-length negotiations among the Debtors, the Committee, the Ad Hoc Group, the JPLs, SCB, and other key constituents. After months of negotiations and the consideration of multiple alternative proposals, the Debtors were able to reach an agreement with the Committee, the Ad Hoc Group, SCB, and a substantial number of other Claimants on the terms of the Plan. The Plan allows the Debtors to maximize funds available for Distribution through an orderly liquidation of the Debtors' assets and provides for Distribution of those funds to Holders of Allowed Claims and Interests. As such, the Plan was proposed with the legitimate and honest purpose of providing the greatest possible Distribution to the Debtors' Claimants. Additionally, the Plan has been proposed in compliance with all applicable laws, rules, and regulations. Clearly, the Plan has been conceived and proposed with "honesty and good intentions"—the hallmarks of "good faith" as required by section 1129(a)(3) of the Bankruptcy Code. *In re Bd. of Directors of Telecom Argentina, S.A.*, 528 F.3d at 174 (citations omitted). Accordingly, the Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code.

E. Payments for Services or Costs and Expenses (Section 1129(a)(4))

79. Section 1129(a)(4) of the Bankruptcy Code requires that any payments by a debtor "for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case," either be approved by the court as reasonable or subject to approval of the court as reasonable. 11 U.S.C. § 1129(a)(4). To date, all such payments have been approved by this Court or are subject to the approval of the Court pursuant to Section 2.2 of the Plan. Section 2.2 of the Plan provides a procedure for Court review of Professional

Compensation Claims. These procedures for the Court's review and ultimate determination of the fees, costs, and expenses to be paid by the Debtors satisfy the requirements of section 1129(a)(4) of the Bankruptcy Code.

F. Service of Certain Individuals (Section 1129(a)(5))

80. Sections 1129(a)(5)(A)(i) and (ii) of the Bankruptcy Code require that the plan proponent disclose the "identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor . . . or successor to the debtor under the plan," and require a finding that the "appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy." 11 U.S.C. § 1129(a)(5)(A)(i)-(ii). In determining whether the post-confirmation management of a debtor is consistent with the interests of creditors, equity security holders, and public policy, a court should consider proposed management's competence, discretion, experience, and affiliation with entities having interests adverse to the debtor. *See In re Sherwood Square Assocs.*, 107 B.R. 872, 878 (Bankr. D. Md. 1989). In general, however, "[t]he [d]ebtor should have first choice of its management, unless compelling cause to the contrary exists." *Id.* Case law is also clear that a plan may contemplate the retention of the debtor's existing directors and officers. *See, e.g.*, *In re Texaco, Inc.*, 84 B.R. 893, 908 (Bankr. S.D.N.Y. 1988) (determining that section 1129(a)(5) was satisfied where plan disclosed debtor's existing directors and officers who would continue to serve in office after plan confirmation). Section 1129(a)(5)(B) of the Bankruptcy Code requires the plan proponent to "disclose[] the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider." 11 U.S.C. § 1129(a)(5)(B).

81. The Debtors have fully satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code. In accordance with the Equity Term Sheet, the Committee will disclose prior to the Confirmation Hearing the identity and affiliations of the individuals or entities proposed to serve as a director or officer of the Debtors under the Plan, including the compensation of any insiders that will be employed or retained by the Reorganized Debtors. The appointment to, or continuation in such offices of each such individual or entity will be consistent with the interests of Creditors and with public policy since the Creditors' representatives will appoint such persons. As a result, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

G. Rate Changes (Section 1129(a)(6))

82. Section 1129(a)(6) of the Bankruptcy Code requires any governmental regulatory commission having jurisdiction over the rates charged by the post-confirmation debtor in the operation of its business to approve any rate change provided for in the plan. Because no governmental regulatory commission will have jurisdiction over the Debtors' rates after confirmation of the Plan, the provisions of section 1129(a)(6) of the Bankruptcy Code are not applicable to the Plan and, consequently, should be deemed satisfied.

H. The Plan Satisfies the "Best Interests" Test (Section 1129(a)(7))

83. The Bankruptcy Code protects creditors and equity holders who are impaired by the Plan and have not voted to accept the Plan through the "best interests" test of section 1129(a)(7). The "best interests" test requires that holders of impaired claims or interests who do not vote to accept the plan "receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on

such date." 11 U.S.C. § 1129(a)(7)(A). If the Court finds that each non-consenting member of an Impaired Class will receive at least as much under the Plan as it would receive in a chapter 7 liquidation, the Plan satisfies the best interests test. *See, e.g.*, *In re Leslie Fay Cos. Inc.*, 207 B.R. 764, 787 (Bankr. S.D.N.Y. 1997).

84. The Debtors submit that, with respect to each Impaired Class of Claims or Interests, each Holder of a Claim or Interest in such Impaired Class (i) has accepted the Plan; (ii) will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtor entity was liquidated under chapter 7 of the Bankruptcy Code on the Effective Date; or (iii) has agreed to receive less favorable treatment. This is demonstrated by the Updated Liquidation Analysis prepared by the Debtors' financial advisors Alvarez & Marsal North America, LLC ("***A&M***"), which is attached to the Kvarda Declaration as Exhibit B. Specifically, Standard Chartered Bank ("***SCB***"), as the Debtors' sole Secured Creditor, has not only accepted the Plan but also entered into a settlement with the Debtors, which settlement will be presented for approval in connection with the Confirmation Hearing. Therefore the best interests of creditors analysis is irrelevant as to SCB, although the Debtors believe that SCB is receiving at least as much under the Plan as it would receive in a chapter 7 liquidation.[9] Holders of Syndicated Facility and Arcsukuk Claims are projected to recover 66.5% under the Plan, compared to a total recovery of 18.7%% to 22.8% in a hypothetical chapter 7 liquidation.

[9] As explained in the "Assumptions" to the Liquidation Analysis, the individual liquidation analyses for AEID II, RailInvest, and WindTurbine (collectively, the "***SCB Portfolio Company Debtors***") are incorporated into the analyses for AIHL and ALTHL due to the Debtors' concerns regarding the confidential nature of the Debtors' valuation assumptions for the SCB Portfolio Company Debtors. Because SCB is the only Impaired Creditor with Claims against AEID II, RailInvest, or WindTurbine, section 1129(a)(7) is satisfied with respect to such Debtors by virtue of SCB's acceptance of the Plan.

Holders of General Unsecured Claims against Arcapita Bank are projected to recover 7.6% under the Plan, compared to a recovery of 3.3% to 4.1% in a hypothetical chapter 7 liquidation. Holders of General Unsecured Claims against AIHL are projected to recover 58.9% under the Plan, compared to a recovery of 15.4% to 18.7% in a hypothetical chapter 7 liquidation.

85. Holders of General Unsecured Claims and Subordinated Claims against Falcon are not projected to receive a Distribution under the Plan or in a hypothetical chapter 7 liquidation. However, depending on the outcome of the District Court Action, Holders of General Unsecured Claims and Subordinated Claims against Falcon could receive a Distribution under the Plan, and that Distribution would likely be greater than or equal to any Distribution in a hypothetical chapter 7 liquidation, if for no other reason than under the Plan such Distribution would not be subject to chapter 7 trustee fees. Holders of Super-Subordinated Claims will receive no Distribution under the Plan and would likewise receive no Distribution in a hypothetical chapter 7 liquidation.

86. Additionally, recoveries would also be less for Creditors in a chapter 7 liquidation due to the lack of cooperation from relevant parties outside of the United States. A chapter 7 trustee would likely face resistance in his or her efforts to forcibly liquidate assets outside of the United States, and particularly within the Middle East. Such a scenario would certainly result in lower recoveries for Creditors.

87. Therefore, for the reasons set forth above, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

I. Acceptance of the Plan by Each Impaired Class (Section 1129(a)(8))

88. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept a plan or be unimpaired under a plan. The Claims and Interests in Classes 1(a)-(g), 3(a)-(g), 5(c)-(f), 7(c)-(f), and 9(a)-(f) are Unimpaired under the Plan, and the Holders of Claims and Interests in such Classes are conclusively presumed to have accepted the Plan. *See* 11 U.S.C. § 1126(f). Impaired Classes 2(a)-(f), 4(a)-(b), 5(a)-(b), 5(g), 6(a), 7(a)-(b), and 9(g) have accepted the Plan. *See* GCG Tabulation Declaration ¶ 29.

89. Each of the Creditors with actual Claims in Class 8(a) that voted on the Plan voted to accept the Plan. *See* GCG Tabulation Declaration ¶ 29. Although Tide was given the right to vote in Class 8(a) for voting purposes, the Debtors do not believe that Tide has any Claim at all; and if Tide does have a Claim against Arcapita Bank, it is classified for Distribution purposes in Class 10(a) pursuant to the Plan. Nonetheless, even if Tide's rejecting (and inflated) vote is allowed to override the will of the actual Creditors in Class 8(a), the Plan can still be confirmed because, as described below, the Plan satisfies the "cramdown" requirements of section l129(b) of the Bankruptcy Code with respect to Class 8(a).

90. No vote was cast by Class 7(g), and the Debtors believe that there are no Claims in Class 7(g). *See Id.*; Thompson Declaration ¶ 54. Likewise, no Creditors with actual Claims in Class 8(g) voted on the Plan.[10] *See* GCG Tabulation Declaration ¶ 29. Under similar circumstances, courts routinely hold that a non-voting class is deemed to have accepted a chapter 11 plan. *See, e.g.*, *In re Adelphia*, 368 B.R. at 261 ("[r]egarding non-voters as rejecters runs

[10] Tide was also given the right to vote in Class 8(g) for voting purposes only. As noted above, the Debtors do not believe that Tide has any Claim at all; and if Tide does have a Claim against Falcon, it is classified in Class 10(g) pursuant to the Plan.

contrary to the Code's fundamental principle, and the language of section 1126(c)"); *In re DBSD*, 419 B.R. at 206 (non-voting class deemed to accept plan); *see also Heins v. Ruti–Sweetwater, Inc. (In re Ruti–Sweetwater, Inc.)*, 836 F.2d 1263, 1266 (10th Cir.1988) (same). In *Adelphia*, the court reasoned that deemed acceptance by a non-voting class was especially appropriate given that multiple classes did vote, and the effect of not voting was announced in advance. *In re Adelphia*, 368 B.R. at 261. In this case, just like *Adelphia*, Creditors with Claims in every Class except Classes 7(g) and 8(g) voted, and the Plan states that the Debtors would seek a determination that such non-voting Classes would be deemed to accept the Plan. Accordingly, the Debtors submit that Class 7(g) should be deemed to accept the Plan. Class 8(g) should also be deemed to accept the Plan once Tide's Claim is properly classified in Class 10(g). In any event, even if Tide's rejecting vote is counted in Class 8(g), the Plan can still be confirmed over Class 8(g)'s rejection for the reasons described in Section II.P below.

91. Claims in Classes 10(a) and 10(g) are Impaired and, because they will not receive a Distribution under the Plan, Holders of such Claims are deemed to have rejected the Plan. Notwithstanding the lack of compliance with section 1129(a)(8) of the Bankruptcy Code with respect to Classes 10(a) and 10(g), the Plan is confirmable for the reasons described in Section II.P below.

J. Treatment of Priority Claims (Section 1129(a)(9))

92. Under section 1129(a)(9) of the Bankruptcy Code, unless otherwise agreed, a plan must satisfy administrative and priority tax claims in full in cash. Accordingly, Section 2.1 of the Plan provides for the payment of Administrative Expense Claims in cash on the Effective Date, unless the Debtors and the Holder of such Claims have agreed to other terms or that the

Claims will be satisfied at a later date. With respect to Professional Compensation Claims, Section 2.2 of the Plan provides that any unpaid portion of such Claims will be paid within three business days of the date that the order approving the final fee application with respect to such Claims becomes a Final Order (or on the Effective Date, if it occurs at a later date). Further, Section 2.3 of the Plan provides for full payment of Priority Tax Claims in accordance with section 1129(a)(9)(C). Unless otherwise agreed, Other Priority Claims will also be paid in full, in cash, on the Distribution Date. Thus, the Plan satisfies the requirements of section 1129(a)(9).

K. **Acceptance of at Least One Impaired Class (Section 1129(a)(10))**

93. If a plan has one or more impaired classes of claims, section 1129(a)(10) of the Bankruptcy Code requires that at least one such class vote to accept the plan, determined without including any acceptance of the plan by any insider. Classes 2(a)-(f), 4(a)-(b), and 5(g) voted to accept the Plan. *See* GCG Tabulation Declaration ¶ 29. Insiders do not hold any Claims in these Classes. *See* Thompson Declaration ¶ 56. Thus, at least one Impaired Class of Claims for each of the Debtors has voted to accept the Plan, without including any acceptance of the Plan by any insider of the Debtors.

L. Feasibility (Section 1129(a)(11))

94. Section 1129(a)(11) of the Bankruptcy Code requires, as a condition to confirming a plan of reorganization, that confirmation "is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan." 11 U.S.C. § 1129(a)(11). In interpreting section 1129(a)(11), courts have found the language of the statute to be "sufficiently broad so as to have provided a great deal of latitude to Courts interpreting its provisions." *In re Eddington Thread Mfg., Co., Inc.*,

181 B.R. 826, 832-33 (Bankr. E.D. Pa. 1995). Courts have also universally interpreted the statute to mean that a debtor need only demonstrate a reasonable assurance of commercial viability, and the court need not require a guarantee of success in order to find that a plan satisfies the feasibility requirement. *See In re DBSD N. Am., Inc.*, 634 F.3d at 106 (quoting *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988)) ("For a plan to be feasible, it must 'offer[ ] a reasonable assurance of success,' but it need not 'guarantee[ ]' success."). "The key element of feasibility is whether there exists the reasonable probability that the provisions of the Plan can be performed." *In re Drexel Burnham*, 138 B.R. at 762.

95. While the debtor bears the burden of proving plan feasibility, the applicable standard is by a preponderance of the evidence—proof that a given fact is "more likely than not." *Heartland Fed. Sav. & Loan Ass'n v. Briscoe Enters. Ltd. (In re Briscoe Enters. Ltd.)*, 994 F.2d 1160, 1165 (5th Cir. 1993) ("[P]reponderance of the evidence is the debtor's appropriate standard of proof both under § 1129(a) and in a cramdown"); *In re Charter Commc'ns*, 419 B.R. at 243 (same). Further, a number of courts have held that this constitutes "a relatively low threshold of proof." *In re Eddington Thread Mfg.*, 181 B.R. at 833; *In re Mayer Pollack Steel Corp.*, 174 B.R. 414, 423 (Bankr. E.D. Pa. 1994) (stating that the debtors "have established that they meet the requisite low threshold of support for the Plan as a viable undertaking"); *In re Briscoe*, 994 F.2d at 1166 (upholding the bankruptcy court's ruling that a reorganization that had only "a marginal prospect of success" was feasible because only "a reasonable assurance of commercial viability" was required). Courts have also made clear that while "speculative prospects of failure cannot defeat feasibility," the "mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds." *In re WorldCom, Inc.*, 2003 WL 23861928, at *58.

96. Courts have fashioned a series of factors to be considered in the determination of whether a debtor's plan is feasible. These factors, while varying from case to case, traditionally include "(1) the adequacy of the capital structure; (2) the earning power of the business; (3) economic conditions; (4) the ability of management; (5) the probability of the continuation of the same management; and (6) any other related matters which determine the prospects of a sufficiently successful operation to enable performance of the provisions of the plan." *In re Toy & Sports Warehouse*, 37 B.R. at 151; *In re WorldCom, Inc.*, 2003 WL 23861928, at *58. The Plan satisfies each of these factors.

97. Pursuant to the Plan, the Debtors will undergo an orderly wind-down of their business operations. The Debtors have entered into a commitment letter to obtain DIP financing of up to $175 million (the "***DIP Financing***"), and a hearing to approve entry into the DIP Financing is scheduled for June 10, 2013. A feature of the DIP Financing is the ability of the Debtors to convert such financing into an exit Murabaha facility with total obligations of $350 million (the "***Exit Facility***") subject to the satisfaction of certain conditions precedent. The proceeds from the Exit Facility, and dispositions of the Debtors' portfolio investments, will provide the Reorganized Debtors with sufficient liquidity to fund the cash Distributions contemplated to be made on or as soon as practicable after the Effective Date of the Plan and will provide the Reorganized Debtors with working capital sufficient to support their wind-down business plan.

98. As explained in the Thompson Declaration, the Debtors, with assistance from their financial advisors A&M and Rothschild Inc. and N M Rothschild & Sons Limited (together, "***Rothschild***"), prepared financial projections of the Reorganized Debtors' annual performance

from June 1, 2013 through June 30, 2018 (as amended and filed with the Plan Supplement, the "***Projections***"). A copy of the Projections is attached to the Douton Declaration as Exhibit B. According to the Projections, the Reorganized Debtors (excluding Falcon) will have sufficient cash from operations to implement their business plan and to pay their obligations under the Exit Facility. Thompson Declaration ¶ 58. Because the Exit Facility is the only debt facility that the Reorganized Debtors (other than Falcon) will be obligated to repay, the Debtors' Plan "is not likely to be followed by . . . the need for further financial reorganization." 11 U.S.C. § 1129(a)(11).[11]

99. With respect to Falcon, Falcon has approximately $1.6 million in Administrative Expense Claims and will hold approximately $4.4 million in unrestricted cash upon confirmation of the Plan. Kvarda Declaration Exh. B. Falcon has no obligation to pay any Claims other than Administrative Expense Claims under the Plan; all other obligations are only paid if and to the extent that funds are available. Therefore, the Plan is feasible with respect to Falcon.

100. In addition, as explained in the Disclosure Statement (Section I.B.8), management and administration services will be provided to the Reorganized Debtors by AIM Group Limited ("***AIM***"). Members of the current senior management team of the Debtors are expected to constitute the senior management team of AIM. And, AIM expects to employ or contract with certain key deal team members to maintain continuity in the management of portfolio company investments. The continued employment of existing key deal teams will ensure that the pre-emergence business plan with respect to these investments will continue unaffected post-

[11] The Sukuk Obligations are only paid if and to the extent that funds are available to pay such Obligations. Similarly, the terms of the Class A Shares and the Ordinary Shares provide that redemptions and dividends with respect to those securities are only required if and to the extent that funds are available.

emergence, thereby providing the best ability to maximize the value of the portfolio company investments.

101. Through the services provided by AIM, the Reorganized Debtors will be able to dramatically downsize its operations and personnel requirements, while still performing obligations under existing agreements with Syndication Companies and portfolio companies, and while maintaining the necessary level of cooperation between the Reorganized Debtors and the Syndication Companies. Additionally, AIM's services will allow the Reorganized Debtors to have continued access to AIM's management and deal teams, to the institutional knowledge, regional connections, and industry expertise necessary to maximize the value of the assets of the Reorganized Debtors. In this way, the provisions of the Plan related to post-Effective Date management ensure that the Plan will be feasible.

102. Moreover, all conditions precedent to confirmation contained in Section 10.1.1 of the Plan have been or will be satisfied. For example, the Court has already entered the Disclosure Statement Approval Order, and the Plan Supplement Documents have been or will be filed in form and substance reasonably acceptable to the Debtors. Similarly, all conditions precedent to the Effective Date contained in Section 10.1.2 either have been or will be satisfied. For example, the Debtors have advanced drafts of the documents needed to implement the Cooperation Settlement Term Sheet, the transactions contemplated by the Implementation Memorandum, the Exit Facility, and the Sukuk Facility. Moreover, the Debtors expect to enter into all necessary settlements contemplated by the Plan, including the HQ Settlement. And, the Cayman Court has already entered the Cayman Order.

103. In sum, the Plan meets the requirements of Section 1129(a)(11).

M. Payment of Certain Fees (Section 1129(a)(12))

104. Section 1129(a)(12) of the Bankruptcy Code requires that all fees payable under 28 U.S.C. § 1930 "have been paid or the plan provides for the payment of all such fees on the effective date of the plan." 11 U.S.C. § 1129(a)(12). Section 2.5 of the Plan provides that U.S. Trustee Fees incurred by the U.S. Trustee prior to the Effective Date shall be paid on the Distribution Date. Thus, this requirement is satisfied.

N. Retiree Benefits (Section 1129(a)(13))

105. Section 1129(a)(13) requires a plan to provide for retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code. The Plan provides for the continuation of payment by the Debtors of all "retiree benefits," as defined in section 1114(a) of the Bankruptcy Code, if any, at previously established levels. Accordingly, the Plan complies with section 1129(a)(13) of the Bankruptcy Code.

O. Sections 1129(a)(14) Through 1129(a)(16) are not Applicable

106. The remaining provisions of section 1129 of the Bankruptcy Code are not applicable to the Debtors. Sections 1129(a)(14) and 1129(a)(15) apply only to individual debtors and therefore do not apply to the Debtors. Lastly, section 1129(a)(16) is inapplicable because the Debtors are not non-profit organizations.

P. The Plan Satisfies the "Cram Down" Requirements with Respect to the Non-Accepting Classes

107. As stated above, Classes 8(a) and 8(g) voted to reject the Plan, and Classes 10(a) and10(g) were not entitled to vote on the Plan because such Classes were deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code (together, the "***Non-Accepting Classes***").

108. Section 1129(b) of the Bankruptcy Code provides a mechanism for confirmation of a plan when the plan is not accepted by all impaired classes of claims or interests. Specifically, section 1129(b) provides, in pertinent part:

109. Section 1129(b) of the Bankruptcy Code provides a mechanism for confirmation of a plan when the plan is not accepted by all impaired classes of claims or interests. Specifically, section 1129(b) provides, in pertinent part:

> [I]f all of the applicable requirements of subsection (a) of [section 1129] other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b).

110. This section essentially provides two requirements for "cramdown" of a plan on a dissenting impaired class: (i) that the plan does not discriminate unfairly, and (ii) that it be fair and equitable, with respect to such class. 11 U.S.C. § 1129(b)(1).

1. The Plan Complies with Section 1129(b)(1) Because it Does Not Discriminate Unfairly Against Holders of Claims and Interests in the Non-Accepting Classes

111. The section 1129(b)(1) requirement that a plan not discriminate unfairly against impaired, dissenting classes focuses on the treatment of the dissenting class relative to other classes consisting of similar legal rights. *See* H.R. Rep. No. 95-595, at 416 ("The plan may be confirmed . . . if the class is not unfairly discriminated against with respect to equal classes and if junior classes will receive nothing under the plan . . . ."); *see also In re Charter Commc'ns*, 419 B.R. at 267 (dissimilar treatment for dissimilar classes is not "unfair discrimination"); *In re Drexel Burnham Lambert Group, Inc.*, 140 B.R. 347, 350 (S.D.N.Y. 1992) ("[W]here legal

claims are sufficiently different as to justify a difference in treatment under a reorganization plan, reasonable differences in treatment are permissible.") (internal quotation marks and citation omitted). Moreover, section 1129(b)(1) does not prohibit discrimination among classes; it only prohibits discrimination that is "unfair" with respect to a dissenting class or classes. *In re Charter Commc'ns*, 419 B.R. at 267 (holding that, even if creditor classes were similarly situated, the "discrimination was justified"). The weight of judicial authority holds that a plan does not unfairly discriminate if there is a "reasonable basis for the discrimination" and if the debtor is "unable to confirm and consummate a plan without the proposed discrimination." *In re Tribune Co.*, 476 B.R. 843, 865 (Bankr. D. Del. 2012); *In re Charter Commc'ns*, 419 B.R. at 267. Thus, with respect to the Non-Accepting Classes, there is no unfair discrimination if (i) the Claims or Interests in the non-Accepting Classes are dissimilar to Claims or Interests in other Classes, or (ii) taking into account the particular facts and circumstances of the case, (a) there is a reasonable basis for such disparate treatment and (b) the Debtors are unable to confirm and consummate the Plan without the proposed disparate treatment.

112. The Plan does not discriminate unfairly with respect to the Non-Accepting Classes because there are no other Classes with similar legal rights to those in Classes 8(a), 8(g), 10(a), and 10(g), which each consist of Claims that are subordinated pursuant to section 510(b) of the Bankruptcy Code. Accordingly the Plan does not discriminate unfairly with respect to these Classes.

2. The Plan Complies with Section 1129(b)(2) Because it is Fair and Equitable with Respect to Holders of Claims and Interests in Non-Accepting Classes

113. Under section 1129(b)(2), a plan is fair and equitable with respect to dissenting classes of unsecured claims and interests if it follows the "absolute priority" rule, which requires

that "the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property . . . ." 11 U.S.C. § 1129(b)(2)(B)(ii); *see also 203 N. LaSalle St. P'ship*, 526 U.S. at 441-42; *In re PPI Enters. (U.S.), Inc.*, 228 B.R. 339, 352 (Bankr. D. Del. 1998).

114. Claims in Classes 8(a) and 8(g) are subordinated below General Unsecured Claims and, as such Claims arise from the purchase and sale of common stock, are treated *pari passu* with Interests in Arcapita Bank and Falcon (*i.e.*, Classes 9(a) and 9(g)) in accordance with section 510(b) of the Bankruptcy Code. Pursuant to the Plan, Holders of Claims in Classes 8(a) and 8(g) will receive, to the greatest extent practicable, the same treatment as Holders of Interests in Classes 9(a) and 9(g), and no junior Class will receive or retain anything under the Plan.

115. Because Classes 8(a) and 8(g) are Classes of Claims measured in dollars (apples) and Classes 9(a) and 9(g) are Classes of Interests whose value is not measurable by a fixed dollar amount (oranges), there is no easy way to compare the relative value of each for the purpose of accomplishing the *pari passu* distribution required by the Bankruptcy Code. *See, e.g.*, *Allen v. Geneva Steel Co. (In re Geneva Steel Co.)*, 281 F.3d 1173, 1177 (10th Cir. 2002) ("[C]laims springing from the purchase or sale of common stock are treated on the same level as common stock."). To do so in the most equitable fashion possible, the Plan contains a formula that assigns a value to the Interests that approximates the average market value of those interests in the five-year period preceding the Petition Date. With respect to Arcapita Bank, the Interests (Class 9(a)) are assigned an aggregate value of $1,634,446,889. This amount represents the

median issue price of Arcapita Bank Shares over the five-year period preceding the Petition Date ($5.25) multiplied by the total number of outstanding Arcapita Bank Shares on the Petition Date.

116. With respect to Falcon, the Interests (Class 9(g)) are assigned an aggregate value of $70,000,000. This amount represents the approximate equity value of Falcon (as determined by the arm's-length sale of its only material asset) minus the amounts that have already been distributed to Falcon's shareholders.

117. Once the Interests in Classes 9(a) and 9(g) are assigned a value that can be compared to the Allowed Claims in Classes 8(a) and 8(g), the Plan provides for *pari passu* treatment as between Classes 8(a) and 9(a) and as between Classes 8(g) and 9(g). In this manner, no Class that is junior to Classes 8(a) or 8(g) will receive or retain anything under the Plan.

118. Tide, which in the Debtors' view is not even a proper participant in Class 8(a) or 8(g), complains that the formula with respect to the Falcon Interests (Class 9(g)) "improperly allows the Interests in Falcon at an inflated amount in excess of the true value of those Interests." *See Tide's Limited Objections to Debtors' Second Amended Joint Plan of Reorganization* ¶ 3. [Docket No. 1173]. Tide misses the point. The formula does not "allow" the Interests in any amount—it is simply a mechanism to enable the *pari passu* treatment required by the Bankruptcy Code. *See, e.g.*, *In re Drexel Burnham*, 140 B.R. 347, 351 (S.D.N.Y. 1992) (plan satisfied absolute priority rule where equity classes of equal priority received equal treatment).

119. Nor does the formula "inflate" the value of the Falcon Interests—the formula is tied to the value of the Falcon Interests on the date of the transaction that gave rise to Tide's Claims. In arguing that the value of the Falcon Interests is inflated by the formula, Tide confuses

the ultimate Distribution to which Interests might be entitled with the way that Distribution should be calculated. Thus, Tide asserts a variety of reasons that the ultimate Distributions to Class 9(g) will be less than $70 million and argues that the number in the formula should therefore be reduced. This red herring completely misses the point of the formula, which is to construct a way of fairly allocating the Distributions among Classes 8(g) and 9(g). It is simply of no moment that the ultimate distributions to Class 9(a) will be less than $70 million—in the same way that the value of the ultimate Distributions to Class 8(a) has no bearing on the calculation of the Allowed Amount of Class 8(a) Claims. Because the mechanisms described above enable *pari passu* treatment between Classes 8(a) and 8(g) on the one hand and Classes 9(a) and 9(g) on the other hand, the Plan complies with section 1129(b)(2)(B)(ii) as to Classes 8(a) and 8(g).

120. Classes 10(a) and 10(g) are subordinated below the level of Interests. Because no junior Class will receive or retain anything under the Plan, the Plan complies with section 1129(b)(2)(B)(ii) as to these Classes.

121. Therefore, the "cramdown" provisions of section 1129(b)(2)(B) are satisfied, and the Plan is confirmable notwithstanding the Non-Accepting Classes.

Q. Only One Plan (Section 1129(c))

122. Section 1129(c) of the Bankruptcy Code provides that "the court may confirm only one plan, unless the order of confirmation in the case has been revoked under section 1144" of the Bankruptcy Code. 11 U.S.C. § 1129(c). No other plan has been confirmed in these Chapter 11 Cases; therefore, section 1129(c) is satisfied.

R. Principal Purpose of the Plan (Section 1129(d))

123. Section 1129(d) of the Bankruptcy Code provides that "[n]otwithstanding any other provision of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." 11 U.S.C. § 1129(d). No governmental unit has requested that the Plan not be confirmed on the grounds that the primary purpose of the Plan is the avoidance of taxes or the avoidance of application of Section 5 of the Securities Act of 1933, and the primary purpose of the Plan is not avoidance of taxes or avoidance of the requirements of Section 5 of the Securities Act of 1933. Therefore, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

III. ALL OBJECTIONS HAVE BEEN RESOLVED OR SHOULD BE OVERRULED ON THE MERITS

A. Limited Objection of Mayhoola for Investment Q.S.P.C. [Docket No. 1165]

124. Mayhoola for Investment Q.S.P.C. ("***Mayhoola***") has objected to the Confirmation of the Plan unless the Confirmation Order clarifies that Mayhoola may bring actions (i) against any Debtor as a nominal party on account of any claim held by Mayhoola and to the extent necessary to allow Mayhoola to assert a claim against the Debtors' insurance coverage, and (ii) against the Debtors' officers, directors, managers, agents, employees, representatives, and Professionals.

125. Provided that Mayhoola does not intend to assert any claim held by the estate, including without limitation any derivative claim, or a claim exculpated under Section 9.2.5 of the Plan, the Debtors propose to resolve the objection of MFI by including the following provision in the Confirmation Order:

> Nothing in the Plan or the Confirmation Order shall operate to enjoin or impede Mayhoola from commencing a lawsuit against any of the Debtors before a tribunal of competent jurisdiction or taking other action for the sole purpose of establishing the Debtors' liability to Mayhoola on account of a claim held by Mayhoola as a prerequisite of Mayhoola's recovery from the Debtors' insurance carriers. The recovery of Mayhoola in any such action against any of the Debtors shall be limited to recovery of the proceeds of any applicable insurance policies, and in no event shall Mayhoola collect any debt or judgment obtained in connection with such action from the assets of the Debtors or the Reorganized Debtors. Further, notwithstanding Section 9.9 of the Plan, nothing in the Plan or the Confirmation Order shall operate to enjoin or impede the ability of Mayhoola from commencing a lawsuit against before a tribunal of competent jurisdiction or taking other action to establish the liability of the Debtors' officers, directors, managers, agents, employees, representatives, and Professionals to Mayhoola on account of a claim held by Mayhoola , or prevent Mayhoola from collecting on any liability established. Notwithstanding the foregoing, nothing in this paragraph shall entitle Mayhoola to assert claim or collect on an claim against any Exculpated Party that is exculpated pursuant to Section 9.2.5 of the Plan.

B. Limited Objection of ACE American Insurance Co. and Westchester Fire Insurance Company [Docket No. 1178]

126. As provided in the Plan and Disclosure Statement, on May17, 2013, the Debtors served notices of the amount that the Debtors understood to be due on various Executory Contracts and Unexpired Leases to determine if the contracting counterparty disputed the cure amount *in the event that* the Debtors later decided to assume any of those contracts. By sending the Cure Notices, the Debtors did not commit to assume any contract.

127. One of the Cure Notices was served on ACE American Insurance Co. and Westchester Fire Insurance Company ("***Westchester***" and, together with ACE American Insurance Co., "***ACE***") as to a guarantee between ACE and Arcapita Bank supporting outstanding bonds issued by ACE to certain of Arcapita Bank's portfolio companies. ACE then filed an objection to the confirmation of the Debtors' Plan based on ACE's assumption that

certain ACE and Arcapita related agreements would, in fact, be assumed. *See* ACE Objection at ¶ 6.

128. From the vague and general references to "Agreements, Bonds, Indemnities and Guarantees" in ACE's objection, it is impossible to understand the relationship between ACE and any specific Debtor or to determine the specific agreements subject to section 365 that may be in issue. However, after some investigation and an exchange of emails with ACE's counsel, the Debtors have discerned the following essential facts and contentions.

1. The ACE/Falcon Relationship

129. ACE participated to the extent of $33 million in $100 million in property and casualty coverage issued to Falcon and NorTex LLC by means of three one-year policies covering the period from 2006 through 2009 (the "***Policies***" or "***Policy***"). The final Policy expired by its terms on December, 31, 2009 (a copy of the final Policy is attached hereto as ***Exhibit A***). As the Court knows, in the middle of 2010, Falcon sold 100% of its interest in NorTex LLC to Tide and Falcon has not had any gas storage operations since that time.

130. After the filing of ACE's objection, ACE's counsel confirmed in emails that there have been no claims asserted under the Policies and that all premiums have been paid. Accordingly, the three expired Policies are not executory contracts and none of the Policies are subject to assumption or rejection by Falcon. Indeed, Falcon does not propose to "assume" or "reject" the Policies under section 365 and, instead, the policies are treated as agreements that expired three and a half years ago.

2. The ACE/Arcapita Bank Relationship

131. A group of Arcapita Bank portfolio companies, known as First Elysian Hotel Company LLC, First Elysian Properties LLC and Chicago Condominium Investments LLC First Elysian Properties LLC (the "***Elysian Entities***") are involved in a condominium construction project in Chicago, Illinois (the "***Elysian Project***"). First American Title Insurance Company ("***First American***") issued a Lender's Policy in connection with the purchase of the real estate utilized in the Elysian Project. Certain contractors had asserted mechanics' liens in the approximate amount of $4,000,000 against the property, which were hotly disputed. To remove the mechanic liens as exceptions to the title policy, First American required the Elysian Entities to obtain a bond protecting First American in the event the mechanics' liens were upheld. Accordingly, the Elysian Entities obtained a bond (the "***Bond***") from Westchester for the benefit of First American in the amount of $5,000,000.

132. As a condition of issuance of the Bond, Westchester required each of the Elysian Entities to execute a form Indemnity Agreement whereby they agreed to indemnify Westchester for any amounts Westchester was required to pay under the Bond. The Elysian Entities are not Debtors and nothing in the Plan affects the rights or obligations of the Elysian Entities as to any agreement with Westchester.

133. Arcapita Bank then entered into a one page unsecured Guarantee in favor of Westchester, guaranteeing the indemnity obligations of each of the Elysian Entities, up to a maximum of $9 million (the "***ACE/Arcapita Bank Guarantee***"). The ACE/Arcapita Bank Guarantee is not a policy of insurance. A copy of the ACE/Arcapita Bank Guarantee is attached hereto as ***Exhibit B***.

134. ACE agrees that there is no breach or other cure required under the ACE/Arcapita Bank Guarantee.

3. The Nature of ACE's Limited Objection to Confirmation of the Plan

135. ACE bases its objection on a misunderstanding of the operation of section 365 and the operation of Section 9.3 of the Plan as to executory agreements assumed by the Debtors. *See* ACE Objection at ¶ 7. Section 9.3 of the Plan provides as follows:

> Except as otherwise expressly provided herein, none of the Released Parties, the New Holding Companies, or the Reorganized Debtors shall be determined to be successors to any of the Debtors with respect to any obligations for which the Debtors may be held legally responsible, by reason of any theory of law or equity, and none can be responsible for any successor or transferee liability of any kind or character. The Released Parties, the New Holding Companies, and the Reorganized Debtors do not agree to perform, pay or indemnify creditors or otherwise have any responsibilities for any liabilities or obligations of the Debtors, whether arising before, on or after the Confirmation Date, except as otherwise expressly provided in the Plan.

Plan at Section 9.3 (emphasis added).

136. ACE then argues that, because of its concern and as a condition to confirmation, the Court should include in the Confirmation Order a very vague and overreaching provision proposed by ACE specifically applicable to "Insurance Agreements" without regard to whether any Insurance Agreements exist applicable to the Debtors and without regard to the treatment of Claims and rejected agreements as provided elsewhere in the Plan. *See* ACE Objection ¶ 11. However, the additional Confirmation Order provision that ACE wants is not a correct statement of law, is too general, vague and overbroad and is unnecessary given the legal effect of the assumption of an executory contract. Further, there are no executory Insurance Agreements between any of the Debtors and ACE to which the provision ACE requests be added to the Order would apply.

4. ACE's Objection Only Pertains to Executory Contracts That Are, In Fact, Assumed by the Debtors

137. In paragraph 6 of its Objection, ACE contends it is objecting to Confirmation because the Cure Notices "indicate Debtors' intention to include the Indemnity Agreement and the [ACE/Arcapita Bank Guarantee] on the Assumed Contract and Unexpired Lease List referenced in Plan § 6.1." Further, the legal authorities and principles discussed at paragraphs 8 through 10 relate only to the assumption of agreements or obligation that "pass through" the Plan to the extent the Debtors intend to retain the benefits of a non-executory agreement. ACE does not object to the confirmation of the Plan or the terms of the Confirmation Order except as to any ACE agreement that is to be assumed by the Debtors. *See* ACE Objection at ¶¶ 6, 8-10.

a. ACE/Falcon Expired Policies

138. In its Objection, ACE fails to explain how Falcon has any obligations to ACE under the expired Policies, how Falcon's Plan affects the rights of ACE, if any, under the expired Policies, or why any clarification in the Confirmation Order is needed as to Falcon. Nevertheless, to be clear, Falcon will not assume any of the three Policies or any other ACE-related agreement. Also, the Policies have each expired, and there is nothing to "pass through" the Plan requiring any clarification in the Confirmation Order. Hence, with that clarification, the Debtors understand that ACE has no objection as to the confirmation of the Plan as to Falcon.

b. ACE/Arcapita Bank Guarantee

139. The ACE/Arcapita Bank Guarantee is a simple one-page unsecured guarantee; it is not a policy of insurance. ACE agrees that there is no outstanding breach of the ACE/Arcapita Bank Guarantee, and no cure is due as a condition of assumption. Arcapita Bank may assume the ACE/Arcapita Bank Guarantee supporting the Bond issued by ACE to First American on

behalf of Elysian Entities and, if so, the Debtors will follow the procedures set forth in the Plan. But, if the assumption of the ACE/Arcapita Bank Guarantee is approved by the Court, then reorganized Arcapita Bank and any assignee will be bound by the terms of the assumed ACE/Arcapita Bank Guarantee, the successor liability provision of section 9.3 of the Plan does not apply, and the provision that ACE wants added to the Confirmation Order is both unnecessary and an incorrect statement of the legal effect of the assumption of an executory contract.

C. Limited Objection of Mounzer Nasr [Docket No. 1182]

140. The Limited Objection filed by Mounzer Nasr ("***Nasr***") is puzzling. According to the objection, "Nasr does not believe that the Plan, Plan Documents, or any order confirming the Plan alters, impairs, or in any way affects Nasr's rights . . . ." Nonetheless, Nasr request that "clarifying" language be added to the Confirmation Order "[t]o the extent . . . that the Plan may be read to impair these rights . . . ." By Nasr's own admission, the Plan does not "alter, impair[], or in any way affect" his rights. The Debtors do not believe that it is necessary to add language to the Confirmation Order to clarify what the Plan and Confirmation Order do not do. Accordingly, Nasr's Limited Objection should be overruled.

D. Limited Objection of Tide [Docket No. 1173]

141. Tide does not object to the Plan with respect to the non-Falcon Debtors and even notes that its objections "are not intended to prevent the Debtors from confirming liquidating plans of reorganization and exiting bankruptcy . . . ." *See* Tide Confirmation Obj. ¶ 1.

142. The majority of Tide's objections are either misplaced or will be resolved through amendments to the Plan. First, Tide complains that "Falcon's Plan does not provide for the

possibility that the Interests in Falcon may be subordinate under § 510(c)" and that "Falcon's Plan denies Tide's right to object to other claims/interests and to seek subordination of these claims and interests under §§ 510(b) and (c)." *Id.* ¶ 3. The Plan "expressly reserves the right of the Debtors and the Reorganized Debtors (or any other Person authorized to prosecute the rights of the Debtors' Estates) to file an adversary proceeding or other appropriate proceeding, before or after the Effective Date, to subordinate any Claim subject to subordination." *See* Plan § 7.18 (emphasis added). In addition, the Plan will be amended to clarify that Creditors of Falcon may object to Claims or Interests after the Effective Date.

143. Similarly, Tide takes issue with the fact that "Falcon's Plan allows Falcon to settle and allow claims and causes of action without notice and opportunity for objection and hearing." Tide Confirmation Obj. ¶ 3. The Plan will be amended to provide that Falcon may compromise and settle any Claims and Causes of Action with the approval of the Bankruptcy Court.

144. Tide's remaining objection relates to the *pari passu* sharing formula discussed in section II.P above. This objection should be overruled for the reasons set forth herein.

E. Reservation of Rights of Al Imtiaz Investment Company K.S.C. [Docket No. 1180]

145. Al Imtiaz Investment Company K.S.C. ("***Al Imtiaz***") clearly states that it "is not at this time objection to confirmation of the Plan," but it is "concerned about the terms of the documents to be contained in the Plan Supplement . . . ." Al Imtiaz Reservation of Rights ¶ 7. Al Imtiaz, therefore, "reserves its rights to object to confirmation of the Plan and implementation of the Cooperation Settlement Term Sheet . . . ." *Id.*

146. Accordingly, the Debtors reserve their right to respond to such objection if and when it is made.

F. Reservation of Rights of HarbourVest Partners L.P. [Docket No. 1191]

147. Similarly, HarbourVest Partners L.P. and certain affiliated funds ("***HarbourVest***") also "is not at this time objection to confirmation of the Plan, approval of any Plan document, or assumption of the Debtors' contracts with HarbourVest" but "reserves its rights to object to confirmation of the Plan, approval of any Plan document, or assumption of HarbourVest's contracts, based on its review of the documents contained in the Plan Supplement . . . ." HarbourVest Reservation of Rights ¶ 12.

148. Likewise, the Debtors reserve their right to respond to such objection if and when it is made.

G. Limited Objection to Assumption of Executory Contract of Oracle America, Inc. [Docket No. 1177]

149. Oracle America, Inc. ("***Oracle***") objects to the Debtors' proposed assumption and assignment to AIM of two agreements by and between Oracle and Arcapita Bank (the "***Oracle Agreements***"). The Debtors are no longer seeking to assume or assign the Oracle Agreements through the Plan and accordingly Oracle's objection is moot.

IV. CONCLUSION

For all the foregoing reasons, the Plan should be confirmed pursuant to section 1129 of the Bankruptcy Code.

Dated: New York, New York
June 6, 2013

Respectfully submitted,

/s/ Michael A. Rosenthal

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New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

Exhibit A

Falcon Insurance Policy

Renewing or ... :eu of: EPR N04287071

ACE American Insurance Company
436 Walnut Street
Philadelphia, PA 19106

POLICY NO: EPR N0506451A

ACE USA PROPERTY

DECLARATIONS

Commission: 10% Service Office: Houston, Texas

Insured:	FALCON GAS STORAGE COMPANY, INC. & NORTEX GAS STORAGE COMPANY, LLC	**Producer:**	LOCKTON COMPANIES, INC.
Address:	5847 SAN FELIPE, SUITE 3050 HOUSTON, TX 77057	**Address:**	5847 SAN FELIPE, SUITE 320 HOUSTON, TX 77057

Policy Period: From 12/01/2008 at 12:01 A.M., to 12/01/2009 at 12:01 A.M. Standard Time at place of issuance.
To the extent that coverage in this policy replaces coverage in other policies terminating at noon standard time on the inception date of this policy, coverage under this policy shall not become effective until such other coverage has terminated.
The insurance afforded is only with respect to the specific part and coverages therein, the full title of which is set forth below the caption "Form."

PERILS INSURED	COVERAGE PROVIDED	FORM	LIMIT OF LIABILITY	PREMIUM (Gross Annual)
AS PER FORMS AND ENDORSEMENTS ATTACHED	AS PER FORMS AND ENDORSEMENTS ATTACHED	AS PER FORMS AND ENDORSEMENTS ATTACHED	$33,000,000 (33%) p/o $100,000,000 per occurrence excess of various deductibles	$242,550.00
			CERTIFIED TERRORISM NON-CERTIFIED TERRORISM	
ISSUED: STARR TECHNICAL RISKS AGENCY, INC.			**TOTAL**	**$242,550.00**

Endorsements attached to policy at inception: Common Policy Conditions (IL00171198), Commercial Property Conditions (CP00900788), OFAC Advisory Notice to Policyholders (ILP0010104) SEE SCHEDULE OF FORMS AND ENDORSEMENTS ATTACHED.

Surcharges at inception:

Louisiana Citizens Emergency (FAIR Plan)	$411.20		
		TOTAL SURCHARGES	$411.20

Signature of Authorized Agent Located at Houston, Texas 3/18/2009

UW6033B

This Declaration and Form(s), with Policy Standard Conditions and Endorsements, if any, issued to form a part thereof, completes the above numbered policy.

PARTICIPATION CLAUSE:

This Policy covers for 33% interest in this insurance, and this company shall not be liable for more than 33% of the limit of liability, sublimits of liability, and any other limits of insurance, or any aggregate limits contained within the form attached to this policy or contained in any endorsement attached to this policy.

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
   a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
   b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
   a. Make inspections and surveys at any time;
   b. Give you reports on the conditions we find; and
   c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
   a. Are safe or healthful; or
   b. Comply with laws, regulations, codes or standards.
3. Paragraphs **1.** and **2.** of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph **2.** of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

   □

COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

D. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

F. NO BENEFIT TO BAILEE

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
   a. During the policy period shown in the Declarations; and
   b. Within the coverage territory.
2. The coverage territory is:
   a. The United States of America (including its territories and possessions);
   b. Puerto Rico; and
   c. Canada.

I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
   a. Someone insured by this insurance;
   b. A business firm:
      (1) Owned or controlled by you; or
      (2) That owns or controls you; or
   c. Your tenant.

This will not restrict your insurance.

IL P 001 01 04

U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – http//www.treas.gov/ofac.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments or premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

SCHEDULE OF FORMS AND ENDORSEMENTS
For
FALCON GAS STORAGE COMPANY, INC. &
NORTEX GAS STORAGE COMPANY, LLC

(EPR N0506451A)

Endorsement / Form No.	Name
50 Pgs. (Includes Endt No.1 & Starr-Tech Endt No. 1)	Lockton Manuscript Policy
2	Bridge Wording
3	Authorities
4 / Form #71331 (1/08)	Total Terrorism Exclusion
5 / Form #71330 (1/08)	TRIA Terrorism Exclusion
6	Trade or Economic Sanctions
7	Texas Amendatory Endorsement
CP 01 45 12 00	Alabama Changes
IL 01 90 07 02	Alabama Changes – Actual Cash Value
IL 02 77 05 05	Louisiana Changes – Cancellation & Nonrenewal
ALL-4Y30c (07/2007)	ACE USA Information and Complaints Form
8 / CC-1K11e (02/06)	Signature Endorsement
	Starr-Tech Loss Reporting Notice

Lockton Policy No. LME-4407
USD 100 M Quota Share

TABLE OF CONTENTS

TABLE OF CONTENTS

Lockton Policy No. LME-4407
USD 100 M Quota Share

TABLE OF CONTENTS

Lockton Policy No. LME-4407
USD 100 M Quota Share

DECLARATIONS

1. NAMED INSURED & MAILING ADDRESS

Falcon Gas Storage Company, Inc. and NorTex Gas Storage Company, LLC and any and all subsidiaries, affiliated, associated or allied companies, corporations, firms, organizations, partnerships or joint ventures as now or hereinafter constituted, as their respective interests may appear, and any other party in interest that is required by contract and/or active management and/or other agreement to be named, as their respective interests may appear, hereinafter referred to as the "Insured".

Notwithstanding the above, it is understood and agreed that certain Named Insureds may be specified in certain Sections and/or Subsections of this policy.

Mailing Address
San Felipe Plaza
5847 San Felipe, Suite 3050
Houston, TX 77057
Attn: Mr. Luke Saban

2. ADDITIONAL INSURED

Additional Insureds as required by contract with the Named Insured.

3. LOSS PAYABLE

Loss, if any, shall be adjusted with and payable to the Insured or as directed by them.

4. PERIOD OF INSURANCE

12 Months from **December 1, 2008** to **December 1, 2009** both at 12:01 am Local standard time at the location of the Insured.

5. LIMIT OF LIABILITY

Except as otherwise specified herein or by Endorsement hereto, Insurers shall not be liable for more than their respective proportion of the following:

USD 100,000,000 any one occurrence subject to the Sublimits of Liability stated herein or endorsed hereon

6. SUBLIMITS OF LIABILITY

The following Sublimits of Liability are per occurrence, unless otherwise stated, and are part of the Limit of Liability stated above.

USD	40,000,000	Business Interruption
USD	1,000,000	Accounts Receivable
USD	1,000,000	Ammonia Contamination
USD	100,000	Architects and Engineering Fees
USD	1,000,000	Auditor's Fees
USD	7,500,000	Contingent Business Interruption for Named Contributing and Named Recipient Locations
USD	5,000,000	Contingent Business Interruption for Unnamed Contributing and Unnamed Recipient Locations
USD	2,500,000	Contingent Extra Expenses
USD	5,000,000	Property in the Course of Construction
USD	10,000,000	or 25% of the amount of the loss, (greater of) as respects to Debris Removal
USD	500,000	Defense Costs
USD	5,000,000	Demolition and/or Increased Cost of Construction due to Laws or Ordinance
USD	50,000,000	Earth Movement (annual aggregate)
USD	5,000,000	Expediting Expenses
	90 days	Extended Period of Indemnity
USD	5,000,000	Extra Expense
USD	500,000	Fire Brigade Charges and Extinguishing Expenses
USD	50,000,000	Flood (annual aggregate), except for locations within Special Flood Hazard Areas (SFHA)
USD	5,000,000	Flood (annual aggregate) for locations within Special Flood Hazard Areas (SFHA) defined as FEMA Zones A or V, including all sub-zones
USD	1,000,000	Foreign Material Removal
	30 Days	Ingress and/or Egress including Denial of Access subject to a maximum of one (1) mile of the Insured's premises
	30 days	Interruption by Civil Authority
USD	500,000	Leasehold Interest
USD	5,000,000	Miscellaneous Unnamed Locations
USD	10,000,000	Newly Acquired Property
USD	500,000	Pollutant Clean-up of Land and/or Water (annual aggregate)

USD	1,000,000	Rental Income
USD	5,000,000	Service Interruption – Sublimit applies to Time Element coverages only
USD	2,500,000	Property in Transit
USD	1,000,000	Valuable Papers and Records

7. DEDUCTIBLES

In the event of loss or damage by a Peril Insured, Insurers will be liable only if the Insured sustains, in a single occurrence, a loss greater than the applicable deductible or waiting period deductible specified below and then only for the amount excess of such deductible or waiting period deductible.

USD	100,000	any one occurrence except;
USD	250,000	any one occurrence as respects to Gas in Storage;
	21 Day	Waiting Period Deductible any one occurrence as respects Time Element Coverages
	2%	of the affected locations Property values in respects to Named Windstorm, including flood following, subject to a $250,000 minimum per occurrence

If an occurrence involves more than one deductible stated above, then only the largest single deductible shall apply. It is understood that waiting period deductibles are applied separately from dollar deductibles.

8. TERRITORY

Within and between the fifty (50) states comprising the United States of America, its territories and possessions, the District of Columbia, Puerto Rico, Mexico and Canada including inter-coastal and coastal waters. Elsewhere in the world as may be required subject to agreement by Insurers.

9. PREMIUM

As stated within each Insurers Security Page.

10. PARTICIPATION

This Policy covers for a one hundred percent (100%) interest in this insurance and Insurers shall not be liable for more than one hundred percent (100%) of the limits and sublimits of liability as set forth in the Limits of Liability Clause herein.

11. SEVERAL LIABILITY NOTICE (LSW 1001)

The Insurer's obligation under this Policy to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Insurers are not responsible for the subscription of a co-subscribing Insurers who, for any reason, do not satisfy all or part of its obligations.

Lockton Policy No. LME-4407
USD 100 M Quota Share

SECTION I – PROPERTY COVERAGE

1. PROPERTY INSURED

Real and Personal Property of every kind and description owned, used, leased or rented by the Insured, or for which the Insured may be liable, or in which the Insured has or may have an insurable interest, or for which the Insured has agreed to insure or may be responsible to insure, including but not limited to the following:

A. Personal property of officers and employees of the Insured while on the Insured's premises;

B. Property of others in the Insured's care, custody or control which the Insured is under obligation or has agreed under contract to insure for physical loss or damage insured by this Policy;

C. Property of the Insured in the care, custody or control of others;

D. Property held in trust or on consignment or on commission or sold but not delivered.

E. The Insured's interest as a tenant in Improvements and Betterments. In the event of loss or damage, Insurers agree to accept and consider the Insured as sole and unconditional owner of Improvements and Betterments, notwithstanding any contract or lease to the contrary;

2. PROPERTY EXCLUDED

This Policy excludes:

A. Watercraft, aircraft hulls;

B. Land and water;

C. Property while covered by Ocean Marine Cargo insurance;

D. Accounts, bills, currency, stamps, deeds, evidences of debt, checks, money or securities, precious metals except precious metals destined to be a permanent part of the Insured's product(s), precious stones or other property of a similar nature;

E. Vehicles or equipment licensed for highway use or railroad rolling stock, except while on the Insured's premise or as covered elsewhere herein;

F. Growing crops, standing timber or animals;

G. Property located offshore except that structures and their contents extending from the land or shore are not to be considered offshore;

H. Oil, gas or minerals prior to recovery above the surface of the earth;

I. Underground caverns and their contents, but if contents of the caverns are reported in the statement of values, then such contents will be covered under this Policy; and

J. Electrical transmission and distribution lines, poles and structures, and pole transformers beyond 1,000 feet of the Insured's premises.

3. PERILS INSURED

This Policy insures against all risks of direct physical loss or damage to Property Insured herein during the Policy Term including but not limited to Flood, Earthquake, Machinery and Electrical Breakdown, all as per wording herein.

4. PERILS EXCLUDED

This Policy does not cover loss, damage or destruction of the Property Insured caused by or resulting from:

A. Fraudulent or dishonest acts committed by the Insured or any of the Insured's employees, where "Dishonest or fraudulent acts" means only dishonest or fraudulent acts committed by the Insured or the Insured's employees with the manifest intent to:

1) cause the Insured to sustain such loss; and

2) obtain financial benefit for the Insured, Insured's employee or for any other person or organization intended by the Insured or the employee to receive such benefit, other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment;

B. Errors or omissions in design, faulty workmanship or faulty or defective materials, unless other loss or damage from a peril insured against ensues and then only for such ensuing peril;

C. Ordinary wear or tear, gradual deterioration, gradual erosion, inherent vice or latent defect unless other loss or damage from a peril insured against ensues and then only for such ensuing loss, damage or expense;

D. Delay or loss of market unless specifically covered herein;

E. Insect damage, vermin, dampness or dryness of atmosphere, evaporation, loss of weight, rust, wet or dry rot, gradual corrosion, change in flavor, color, texture or finish, unless a peril insured against ensues and then only for such ensuing loss, damage or expense;

F. Mysterious disappearance and/or shortage on taking inventory;

G. Earthquake as respects to locations within the States of Alaska, California, Hawaii and Washington.

5. ADDITIONAL COVERAGES

This Policy, subject to all of its provisions and without increasing the Limit or Sublimits of Liability, is extended per the Additional Coverages listed below.

A. Accounts Receivable

This Policy is extended to cover Accounts Receivable defined as:

1) All sums due from customers to the Insured, provided that the Insured is unable to effect collection thereof as a result of physical loss or damage by a cause of loss not otherwise excluded by this Policy to records of accounts receivable.
2) All sums due the Insured from factoring transactions, when the property of the debtor has been lost or damaged by a peril insured against and the Insured has been unable to effect collection thereof.
3) Interest charges on any loan to offset impaired collections pending repayment of such sums made collectible by such loss or damage.
4) Collection expenses in excess of normal collection costs and made necessary because of such loss or damage.
5) Other expenses, when reasonable incurred by the Insured in re-establishing records or accounts receivable following such loss or damage.

For the purpose of this insurance, credit card company charge media shall be deemed to represent sums due the Insured from customers.

When there is proof that a loss of records of accounts receivable has occurred and the Insured cannot more accurately establish the total amount of accounts receivable outstanding as of the date of the loss, the amount shall be computed as follows:

1) The monthly average of accounts receivable during the last available twelve (12) months, together with the collection expenses in excess of normal collection costs and made necessary because of such loss or damage and reasonable expenses incurred in re-establishing records of accounts receivable following such loss or damage, shall be adjusted in accordance with the percentage increased or decreased in the twelve (12) months average of monthly gross revenues which may have occurred in the interim;

2) The monthly amount of accounts receivable thus established shall further adjusted in accordance with any demonstrable variance from the average for the particular month in which the loss occurred, due consideration being given to the normal fluctuations in the amount of accounts receivable within the fiscal month involved.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records, not lost or damaged, or otherwise established or collected by the Insured and an amount to allow for probable bad debts which would normally have been uncollectible by the Insured.

B. Ammonia Contamination

This Policy insures for loss, including salvage expense, with respect to damage by ammonia contacting or permeating property under refrigeration or in process requiring refrigeration, resulting from an occurrence, as defined herein.

C. Architects and Engineering Fees

This Policy is extended to cover Architect and Engineering fees, including but not limited to any cost associated with the preparation of plans for the repair or reconstruction of damaged property.

D. Auditors Fees

This Policy is extended to include expenses incurred by the Insured, or by the Insured's representatives for preparing and certifying details of a claim as required by Insurers resulting from a loss which would be payable under this Policy. Such fees shall be included in the accumulation of the Policy Deductibles.

It is agreed that Auditors Fees exclude fees and expenses from Public Adjusters and/or Attorneys. For the purposes of this Condition, Public Adjusters are defined as individuals or firms that the Insured engages to negotiate claim settlements with Insurers adjusters.

E. Consequential Loss

In the event of direct physical loss of or damage to Property Insured caused by a Peril Insured and such loss or damage, without the intervention of any other independent cause, results in a sequence of events which causes direct physical loss of or damage, not otherwise excluded to other Property Insured, then this Policy covers the resulting loss or damage.

F. Course of Construction

This policy will provide automatic coverage for property in the course of construction, installation, repair, renovation, testing and the like, at existing locations where such is of an incidental nature. Incidental shall be understood to mean jobs where the total full contract value does not exceed the Sublimit of Liability stated in the Declarations. In the event of coverage being required for jobs that have a full contract value in excess of the Sublimit of

Liability stated in the Declarations, information, including contract period and any testing period, is to be provided to Insurers for their consideration and agreement prior to commencement of the coverage under this policy. Coverage under this extension excludes unproven and prototypical equipment.

G. Debris Removal

Nothing contained in this clause shall override any seepage and/or pollution and/or contamination exclusion or any radioactive contamination exclusion or any other exclusion applicable to this policy. The inclusion of this clause shall in no event increase the Limit of Liability of Insurers under this policy or any endorsement applicable to this policy.

1) In the event of direct physical loss or damage to Property Insured for which Insurers agree to pay hereunder or which, but for the application of a deductible or underlying amount they would agree to pay, this policy also insures, subject to the limitations below and the terms and conditions of the policy, the expense;
   (a) which is reasonable and necessarily incurred by the Insured in the removal, from the premises of the Insured at which the loss or damage occurred, of debris which results from the loss or damage to property; and
   (b) of which the Insured becomes aware and advises the amount to Insurers hereon within twelve (12) months from the date of the loss or damage;
2) The maximum amount of expense for removal of debris shall be the amount stated within the Declarations section of this policy.
3) Insurers will not pay the expense, unless specifically stated elsewhere herein, to:
   (a) extract contaminates or pollutants from the debris, land or water; or
   (b) remove, restore or replace contaminated or polluted land or water; or
   (c) remove or transport any property or debris to a site for storage or decontamination required because the property or debris is effected by pollutants or contaminants, whether or not such removal, transport, or decontamination is required by law or regulation.

H. Defense Cost

Insurers agree to defend that portion of any suit against the Insured that alleges liability for physical loss or damage as respects to property of others in the Insured's care, custody or control to the extent of the Insured's legal liability for physical loss or damage insured by this policy. Insurers may, without prejudice, investigate, negotiate and settle any claim or suit as Insurers deem expedient.

I. Demolition and/or Increased Cost of Construction due to Law or Ordinance

If physical loss or damage to Property Insured caused by a peril, not otherwise excluded, causes the enforcement of any law or ordinance in effect at the time of loss that:

1) requires the demolition of parts of the undamaged property;

2) regulates the construction or repair of damaged property;

Insurers will pay for:

1) the cost of demolishing or clearing the site of the undamaged real property;
2) the value of such undamaged part of the facility which must be demolished;
3) the increased cost of repair or reconstruction of the damaged and undamaged real property on the same or different site in accordance with such law or ordinance regulating the repair or reconstruction;
4) any increase in the business interruption, extra expense or any other time element loss arising out of the additional time required to comply with said law or ordinance.

J. Earth Movement

This Policy covers physical loss or damage caused by or resulting from Earth Movement. Earth Movement is defined as any natural earth movement including, but not limited to earthquake or landslide, regardless of any other cause or event contributing concurrently or in any other sequence of loss.

However, physical damage by fire, explosion, or sprinkler leakage resulting from Earth Movement will not be considered to be loss by Earth Movement within the terms and conditions of this Policy.

All Earth Movements within a continuous 72 hour period will be considered a single Earth Movement, as more fully defined within the Occurrence Definition.

K. Electrical Breakdown

This policy covers loss or damage resulting from "electrical injury" to electrical equipment and devices. "Electrical Injury" shall mean the sudden and accidental electrical breakdown of electrical equipment and devices involving electrical arcing therein, caused by artificially generated electrical current. This definition shall not include electrical injury while said equipment or devices are undergoing insulation breakdown tests, impulse tests or an internal drying out process.

L. Expediting Expenses

This Policy also covers the additional reasonable expenses incurred by the Insured to expedite the repair of property damaged, by an Peril Insured, including overtime and the extra cost of express or other rapid means of transportation.

M. Fire Brigade Charges and Extinguishing Expenses

If the property insured is destroyed or damaged by any peril insured against, the insurance herein shall cover fire brigade charges and other extinguishing expenses for which the Insured may be assessed.

N. Flood

This Policy covers physical loss or damage caused by or resulting from Flood.

Flood means:

1) The release of water from, or the rising, overflowing, or breaking of boundaries of rivers, lakes, streams, ponds, or other natural or man-made bodies of water; or
2) Waves, tides, tidal waves, surface water, rain accumulation or runoff.

Flood also includes spray from a) and b) above, all whether driven by wind or not.

However, physical damage by fire, explosion, or sprinkler leakage resulting from Flood will not be considered to be loss by Flood within the terms and conditions of this Policy.

All Floods within a continuous 72 hour period will be considered a single Flood, as more fully defined within the Occurrence Definition.

O. Foreign Materials Removal

This Policy covers the cost or expense necessarily incurred by the Insured for the removal of material or debris of property not insured herein that is windblown, waterborne or otherwise deposited on the Insured's premises. This coverage is further extended to cover the resultant necessary interruption of business.

P. Foundations and Other Supports

This Policy covers foundations and other supports, including backfills, tunnels, flues, pipes and drains beneath the lowest basement floor, or if there is not a basement, below ground level.

Q. Machinery Breakdown

This Policy covers loss or damage caused by or resulting from the sudden accidental breakdown or derangement of an "object" whether such object is working or while at rest and including while being dismantled, moved, reassembled, re-erected or tested.

R. Miscellaneous Unnamed Locations

This Policy is extended to cover property of the Insured at miscellaneous unnamed locations including any manufacturer's site or fabrication site all while within the policy territory.

S. Newly Acquired Property

This Policy is automatically extended to cover additional property and interests described in this Policy, which may be acquired or otherwise become at risk of the Insured during the term of and within the territorial limitations of this Policy, subject to values not exceeding the Sublimit of Liability shown in the Declarations.

Newly acquired property that is greater than the Sublimit of Liability shown in the Declarations is covered automatically for a period of ninety (90) days from the date of acquisition, subject to the Sublimit of Liability shown in the Declarations. Coverage beyond ninety (90) days requires agreement by Insurers.

T. Pollution Cleanup of Insured Property

This Policy insures the additional expense incurred for clean up, repair or replacement, or disposal of damaged, contaminated or polluted insured property as a result of loss or damage by a Peril Insured, which causes insured property to become contaminated or polluted by a substance declared hazardous to health by an authorized governmental agency.

U. Pollution Cleanup of Land and/or Water

This Policy is extended to cover the expenses actually incurred by the Insured to cleanup and remove debris defined as a Pollutant and other Pollutants from land and/or water on covered premises if the release, discharge, dispersal, migration, or seepage of these substances results from loss or damage occurring during the term of this Policy caused by perils insured by this Policy.

V. Service Interruption

This policy is extended to cover physical loss or damage, including consequential loss, expense or damage there from, which is caused by a service interruption resulting from physical loss or damage by an Peril Insured to electric, steam, gas, water, telephone and other transmission lines and related plants, substations and equipment, all being the property of others not insured hereunder, whether located on or outside the Named Insured's premises. It is understood that any applicable sublimit for Service Interruption does not apply to physical loss or damage to Property Insured herein caused by a Peril Insured by this policy that results from the service interruption.

W. Transit

This Policy covers all property of the Insured, including the Insured's interest in and/or liability for property of others while in the custody of the Insured, while in transit, by any means of conveyance, except by ocean marine transit, within the territorial limits of this Policy.

Property in transit shall be valued at the amount of invoice plus any prepaid or advanced freight, profits or commissions due the Insured as selling agent and any other costs and charges as may have accrued and become legally due since shipment.

This insurance attaches and covers continually on incoming, outgoing, refused and/or returned shipments from the time the property is moved for the purpose of loading and continuously thereafter, while awaiting and during loading and unloading and while in temporary storage on any conveyance intended for use for any outbound or inbound

shipment, including during deviation and delay, until safely delivered and accepted at the place of final destination.

This insurance is extended to cover loss or damage to property:

1) sold and/or shipped by the Insured under terms of F.O.B., C.I.F, F.A.S. point of origin and any other terms usually regarded as terminating the shipper's responsibility short of the points of delivery;
2) arising out of any unauthorized person(s) representing themselves to be the property party(ies) to receive goods for shipment or to accept goods for delivery;
3) occasioned by the acceptance of the Insured, its agents, or by its customers of fraudulent bills of lading, shipping and delivery orders, or similar documents, and
4) shipments which are incoming to the Insured.

However, Insurers shall not be liable for loss or damage to:

1) the conveyance used as the mode of transportation, including any part of the equipment thereof;
2) property insured under any marine import or export policy;
3) property shipped by mail or parcel post from the time it passes into the custody of the Postal Service, unless specifically declared to an agreed by Insurers.

The Insured may waive right(s) of recovery against private, contract and common carriers and accept bills of lading or receipts from carriers, bailees, warehousemen, processors limiting or releasing their liability, but this insurance shall not inure to the benefit of any carrier, bailee, warehouse or processor.

The Insured is not to be prejudiced by an agreement exempting lightermen from liability.

Seaworthiness of any vessel or watercraft or airworthiness of any aircraft is admitted between Insurers and the Insured.

Where goods are shipped under a bill of lading containing the Both to Blame Clause, Insurers agree, as to losses covered by this insurance, to indemnify the Insured for any undisputed amount of such loss, and for a maximum of fifty percent (50%) of such disputed amount, not exceeding the amount insured, for which the Insured may be legally liable to pay under such Clause. In the event that such liability is asserted, the Insured agrees to notify Insurers herein who shall have the right, at their own cost and expense, to defend the Insured against such claim.

X. Valuable Papers and Records

This Policy covers Valuable Papers and Records defined as "written, printed or otherwise inscribed documents, security and records including but not limited to books, maps, films, drawings, abstracts, evidence of debt, deeds, mortgages, mortgage files, manuscripts and micro or electronically/magnetically inscribed documents, but not including the monetary value of monies and/or securities".

6. VALUATION

At the time of loss, the basis of adjustment, unless otherwise endorsed herein, shall be as follows:

A. On buildings and structures not under construction at cost to repair or rebuild, provided that the property is actually repaired or rebuilt, otherwise, actual cash value.

B. On machinery, equipment, furniture, fixtures and improvements and betterments, the replacement cost. It is understood and agreed that the Insured shall have the option to replace, repair or rebuild equipment and/or machinery so that such equipment and/or machinery shall operate at the same level of functionality that existed prior to loss or damage.

C. Electronic Data Processing Equipment at the full cost to repair or replace the damaged equipment.

It is agreed that the Insured shall be the sole judge as to whether electronic data processing equipment is damaged and unusable by the Insured. Insurers shall be allowed to dispose of, as salvage, any non-proprietary property deemed unusable by the Insured.

If replaced, the Insured shall have the option to replace the damaged property with equipment having technological advantages and/or representing an improvement in function and/or forming part of a system enhancement provided that such replacement can be accomplished without increasing Insurer's liability.

D. Electronic Data Processing Media not to exceed the value blank plus the full cost to reconstruct the lost or damaged data.

E. Valuable Papers and Records not to exceed the value blank plus the full cost to reconstruct the lost or damaged data.

F. Exhibitions and displays, at replacement cost or cost to the Insured, whichever is greater.

G. Fine Arts at appraised value or, in the absence of such appraisal, the market value at time of loss, plus Insured's costs.

H. Stock, including crude and natural gas, shall be valued at the market price at the date and time of loss of each finished product or potential finished product in the case of loss or damage to raw stock or stock in process, less all discounts or expenses to which such stock would have been subject had no loss occurred.

I. Property leased by the Insured at replacement cost or the amount stipulated in the lease agreement, at the Insured's option.

J. Catalysts at actual cash value.

K. All other property, not otherwise provided for, at the replacement value at time of replacement, plus the proportionate share of selling, administrative, research and development and other costs.

The right to recovery under items A through J above shall not be prejudiced should the Insured desire to rebuild or replace the insured property by a construction or type superior to or more extensive than its condition when new, it being understood and agreed that Insurer's liability shall not exceed the amount required to repair or replace the damaged or destroyed property with new materials of like kind and quality at the time of loss, without deductions new for old.

SECTION II – TIME ELEMENT

1. BUSINESS INTERRUPTION

A. Coverage

This Policy shall also cover against loss resulting from the necessary interruption of business conducted by the Insured resulting from physical loss or damage as covered in Section I of this Policy during the term of this Policy.

B. Measure of Recovery

The measure of recovery in the event of a loss occurring during the term of this Policy, shall be the reduction in Gross Earnings, as defined elsewhere in this Policy, directly resulting from such interruption of business, not exceeding such length of time as would be required, with the exercise of due diligence and dispatch, to rebuild, repair or replace the destroyed or damaged property to the condition which existed immediately prior to the loss, commencing with the date of such damage or destruction and not limited by the date of expiration of this Policy, but for a length of time not exceeding the Period of Indemnity as defined herein and not to exceed the ACTUAL LOSS SUSTAINED by the Insured resulting from such interruption of business.

Due consideration shall be given to the continuation of normal charges and expenses, including payroll, to the extent necessary to resume the operations of the Insured with the same quality of service which existed immediately preceding the damage to or destruction of property insured.

For the purposes of this insurance the Period of Indemnity is defined within the Declarations and shall commence from the exhaustion of the applicable day waiting period stated in the Declarations section of this Policy.

C. Expenses to Reduce Loss

This Policy also covers such expenses as are necessarily incurred for the purpose of reducing loss and such expense, in excess of normal, as would be necessarily incurred in replacing any finished stock used by the Insured to reduce loss but in no event shall the aggregate of such expenses exceed the amount by which the loss under this Policy is thereby reduced.

D. Experience of the Business

In determining the Actual Loss Sustained, due consideration shall be given to the experience of the business before the date of loss and to the probable experience thereafter had no loss occurred.

Further, in the event the Insured would have experienced an operating deficit had there been no interruption of production or suspension of business operations or services, Fixed Charges shall be covered as if no operating deficit shall have occurred.

2. EXTRA EXPENSE

A. Coverage

This Policy will indemnify the Insured for the Extra Expenses incurred by the Insured in order to continue as nearly as practicable the normal operation of the Insured's business following physical loss or damage as covered in Section I of this Policy during the term of this Policy.

The term "Extra Expenses" shall mean the excess, if any, of the total cost incurred during the period of restoration chargeable to the operation of the Insured's business, over and above the total cost that would have normally been incurred to conduct the business during the same period had no damage or destruction occurred.

B. Measure of Recovery

Insurers shall be liable for such necessary Extra Expenses incurred only for such length of time as would be required with due diligence and dispatch to rebuild, repair or replace the damaged or destroyed property, commencing with the date of the loss and not limited by the expiration of this Policy.

The Insured, as soon as practicable, shall resume operations of the business and shall dispense with such Extra Expenses.

3. ADDITIONAL COVERAGES

A. Contingent Time Element:

This Policy shall also cover against loss resulting from the necessary interruption of business conducted by the Insured and/or caused by direct physical loss of, damage to or destruction of property not otherwise excluded by this Policy by any peril insured herein during the term of this Policy to:

1) The facilities of direct suppliers of the Insured;
2) The facilities of direct receivers or distributors or customers of the Insured;
3) The facilities of direct transport companies.

B. Extended Period of Indemnity

The Business Interruption coverage of this Policy is extended to cover the Actual Loss Sustained by the Insured due to consequential reduction in sales resulting from:

1) The interruption of business as covered herein, and
2) The additional length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss occurred, and

3) Commencing with the date on which the liability of the Insurers for loss resulting from interruption of business would normally terminate but for the inclusion of this extension.

Insurer's liability under this extension shall not exceed the number of days specified in the Declarations.

C. Ingress / Egress

This Policy is extended to cover the actual loss sustained during the period of time, when as a result of the peril insured against, ingress into or egress from real or personal property is thereby prevented, limited to one (1) statute mile of the Insured's premises.

D. Interdependencies

This Policy shall also cover against loss resulting from the necessary interruption of business conducted by the Insured and/or extra expenses at other non-damaged insured locations caused by direct physical loss or damage to Property Insured by this Policy by a Peril Insured herein during the Period of Insurance.

E. Interruption by Civil Authority

This Policy is extended to include the actual loss sustained herein during the period of time, not to exceed the time stated in the Declarations, when access to the premises is prohibited by order of civil authority.

F. Leasehold Interest

For buildings and/or structures leased by the Insured, this Policy is extended to cover pro-rata proportion from the date of loss to expiration date of the lease, to be paid without discount, for the Insured's interest in:

1) the amount of bonus paid by the Insured for the acquisition of the lease not recoverable under the terms of the lease for the unexpired term of the lease;
2) improvements and betterments to real property during the unexpired term of the lease which is not covered under any other section of this Policy;
3) the amount of advanced rents paid by the Insured and not recoverable under the terms of the lease for the unexpired term of the lease.

When property is rendered wholly or partially untenable by any of the perils covered herein during the term of this Policy and the lease is cancelled by the Lessor in accordance with the conditions of the lease or by statutory requirements if the state in which the damaged or destroyed property is located the interest of the Insured as lessee shall be paid for the first three (3) months succeeding the date of the loss and the Net Lease Interest shall be paid for the remaining months of the unexpired lease.

Definitions

The following terms, wherever used in this section, shall mean as follows:

Interest of the Insured is defined as:

1) the excess of the rental value over the actual rental payable by the lessee including any maintenance or operating charges paid by the lessee during the unexpired term of the lease; and /or
2) the rental income earned by the Insured from sublease agreements to the extent not covered under any other section of this Policy, over and above the expenses specified in the lease between the Insured and the Lessor.

Net Lease Interest is defined as that sum, when placed at six percent (6%) interest compounded annually will be equivalent to the interest of the Insured as Lessee.

Insurers shall not be liable for any increase of loss that may be occasioned by the suspension, lapse or cancellation of any lease or by the Insured exercising an option to cancel the lease.

G. Rental Income

If any insured building(s) or part thereof, whether rented at the time or not, be destroyed or damaged by the perils insured against during the terms of this Policy and because of such damage or destruction is rendered wholly or partially untenable, Insurers shall be liable for the rental income of such untenable portions less such charges and expenses which do not necessarily continue during the period of untenantability.

The term "Rental Income" wherever used in this Policy shall mean the sum of:

1) the total anticipated gross rental income from tenant(s) of the Insured's building(s) and structure(s) and
2) The amount of all charges assumed by tenant(s) which would otherwise be obligations of the Insured, plus
3) a similar value for that portion occupied by the Insured.

This Policy further indemnifies the Insured for the contingent loss of Rental Income necessarily incurred by the Insured following a loss or damage which renders the property wholly or partially untenantable whether such property is rented or not.

The loss shall be computed from the date of damage or destruction, until such time as the above described building(s) could, with the exercise of due diligence and dispatch, be restored to the same tenable condition as before the damage or destruction and not limited by the expiration of this Policy and shall be adjusted on an ACTUAL LOSS SUSTAINED basis.

In determining Rental Income for the purpose of ascertaining the amount of loss sustained, due consideration shall be given to the experience of the business before the loss and probably experience thereafter had no such loss occurred.

H. Service Interruption

This policy is extended to cover Time Element loss, including consequential loss or expense there from, which is caused by a service interruption resulting from physical loss or damage by a Peril Insured to electric, steam, gas, water, telephone and other transmission lines and related plants, substations and equipment, all being the property of others not insured hereunder, whether located on or outside the Named Insured's premises. It is understood that any applicable sublimit for Service Interruption does not apply to Time Element losses resulting from physical loss or damage to Property Insured herein caused by a Peril Insured by this policy that results from the service interruption.

4. TIME ELEMENT CONDITIONS

A. Resumption of Operations

If the Insured can reduce the loss resulting from the interruption of the business:

1) by complete or partial resumption of operation of the property, whether damaged or not;
2) by making use of other property at the location of the loss or damage or elsewhere;
3) by making use of stock (raw, in process or finished) at the location of the loss or damage or elsewhere;

then such reduction shall be taken into account in arriving at the amount of loss hereunder.

B. Exclusions

1) Leases, Licenses, Contracts and Orders

This policy does not cover any increase of loss resulting from the suspension, lapse, or cancellation of any lease, license, contract or order unless such suspension, lapse or cancellation results directly from the interruption of business and then there shall be coverage for only such loss as affects the Insured's earnings (excluding imposed fines, penalties or punitive damages) during and limited to the period of indemnity covered under this policy.

2) Finished Stock

This policy does not cover Time Element loss resulting from damage to Finished Stock nor for the time required to reproduce said Finished Stock.

3) Strikers

This policy does not cover Time Element loss for any period during which business would not or could not have been conducted due to action by strikers or other work stoppage.

4) **Fines and Penalties**

This Policy does not insure against any increase in loss due to fines or penalties sought or assessed by any governmental agency or authority.

5) **Delay in Startup/Advanced Loss of Profits**

This policy does not insure loss of future Gross Earnings anticipated from property under construction.

5. DEFINITIONS

A. Gross Earnings

For the purpose of this insurance, "Gross Earnings" are defined as the sum of:

1) the total net sales value of production,
2) total net sales of merchandise, and
3) other earnings derived from operations of the business;

less the cost of:

1) raw stock from which such production is derived,
2) supplies consisting of materials consumed directly in the conversion of such raw stock into finished stock, or in supplying the services sold by the Insured, but limited to the cost of materials consumed that do not continue under contract,
3) merchandise sold, including packaging materials therefore, and
4) service(s) purchased from outsiders (not employees of the Insured) for resale which do not continue under contract.

No other costs shall be deducted in determining gross earnings.

When determining the reduction in "Gross Earnings" due consideration shall be given to:

1) the continuation of normal charges and expenses, including payroll, to the extent necessary to resume operations of the Insured with the same quality of service which existed immediately preceding the loss or damage by the peril insured against;
2) the experience of the business before the date of the occurrence of the loss or damage and the probable experience of the business had no loss occurred;
3) the available experience of the business after completion as respect to alterations, additions, and property while in the incidental course of construction, erection, installation, or assembly;
4) any "take or pay" contract provisions as far as applicable.

B. Raw Stock

Material in the state in which the Insured receives it for conversion by the Insured into finished stock.

C. **Stock in Process**

Raw stock that has undergone any aging, seasoning, mechanical or other process of manufacture at the location(s) herein described but which has not become finished stock.

D. **Finished Stock**

Stock manufactured by the Insured that, in the ordinary course of the Insured's business, is ready for packing, shipment or sale.

E. **Normal**

The condition that would have existed had no loss or accident occurred.

SECTION III – LOSS ADJUSTMENT AND SETTLEMENT

1. NOTICE OF LOSS

As soon as practicable after any loss or damage occurring under this Policy which may give rise to a claim under this policy, the Insured shall report such loss or damage with full particulars to Lockton Companies of Houston, who in turn will notify Insurers.

Lockton Companies LLC
5847 San Felipe, Suite 320
Houston, TX 77057
Attn: Ms. Linda Skiles or Mr. Mark Kasik
Tel: (713) 458-5300
Fax: (713) 458-5299
e-mail: lskiles@lockton.com or mkasik@lockton.com

2. REQUIREMENTS IN CASE OF A LOSS

The Insured will:

A. Give written notice as soon as practical to the Insurers of any loss, or of any claim under this Policy. "The Insured" refers to the Corporate Insurance Department of the First Named Insured.

B. Protect the property from further loss or damage.

C. Promptly separate the damaged and undamaged property; put it in the best possible order; and furnish a complete inventory of the lost, destroyed, damaged and undamaged property showing in detail the quantities, costs, actual cash value, replacement value and amount of loss claimed.

D. Give a signed and sworn proof of loss to the Insurers as soon as possible after the loss, unless that time is extended in writing by the Insurers. The proof of loss must state the knowledge and belief of the Insured as to:

1) the time and origin of the loss;

2) the Insured's interest and that of all others in the property;

3) the actual cash value and replacement value of each item and the amount of loss to each item; all encumbrances; and all other contracts of insurance, whether valid or not, covering any of the property;

4) any changes in the title, use, occupation, location, possession or exposures of the property since the effective date of this Policy; and

5) by whom and for what purpose any location insured by this Policy was occupied on the date of loss, and whether or not it then stood on leased ground.

E. Include a copy, if available, of all the descriptions and schedules in all policies and, if required, provide verified plans and specifications of any buildings, fixtures, machinery or equipment destroyed or damaged.

F. As often as may be reasonably required:

1) Exhibit to any person designated by the Insurers all that remains of any property;

2) Submit to examination under oath by any person designated by the Insurers and sign the written records of examinations; and

3) Produce for examination at the request of the Insurers:

a) All books of accounts, business records, bills, invoices and other vouchers; or

b) Certified copies if originals are lost,

at such reasonable times and places that may be designated by the Insurers or its representatives and permit extracts and machine copies to be made.

3. APPOINTED LOSS ADJUSTER

In the event of a loss that may involve this insurance, the Insured may appoint, on behalf of the Insurers, a loss adjuster from the Adjustment Companies listed below, without seeking the prior approval of the Insurers

Panel of Agreed Adjustment Companies:

A. Bozeman Technical Adjusters

B. McLain Crow Associates

C. Cunningham Lindsey

D. Charles Taylor Adjusting

The Loss Adjuster will notify the Insurers of the loss particulars and distribute all loss adjustment reports, updates and correspondence, as appropriate, to the Insurers.

4. LOSS ADJUSTMENT EXPENSES

It is further agreed that adjusting fees and expenses incurred by Insurers shall be payable by the Insurers and not subject to the deductible.

5. PROOF AND PAYMENT OF LOSS

A detailed Proof of Loss shall be filed with the Insurers as soon as practicable. Loss shall be adjusted with the Insurance and/or Risk Management Department of the Insured and all adjusted claims shall be paid to the Insured or its order within thirty (30) days after filing a Proof of Loss. For loss adjustment purposes, the Insured shall be considered as sole unconditional owner of the insured property, any contract or lease to the contrary not withstanding.

6. INTERIM PAYMENTS

In the event of a loss of a loss occurrence which is covered under this Policy and for which indemnification is estimated by Insurers or the Insurer's representative to be in excess of the deductible stipulated in the policy, Insurers will advance a partial payment of the total loss subject to the Named Insured providing a signed Partial Proof of Loss based on documented costs and expenses.

7. PRIORITY OF PAYMENTS

At the discretion of the Insured, all claim payments made under this Policy shall first apply to those perils, properties or coverages not insured against by any policy providing limits excess of this Policy's limits.

In the event of annual aggregate limits of any coverage under this Policy are diminished or exhausted in any one policy year, the remaining coverage limit provided under this Policy for such perils shall, at the discretion of the Insured, be paid first, before payment is made for non-diminished or non-exhausted coverage limits.

8. APPRAISAL (ARBITRATION)

In case the Insured and Insurers shall fail to agree to the amount of loss or damage, each shall, on written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire and if they fail for fifteen (15) days to agree upon such umpire, then on request of the Insured or Insurers, such umpire shall be selected by a judge or court of record in the State in which the property insured is located. The appraisers shall then appraise the loss or damage, stating separately the sound value and loss or damage to each item; failing to agree shall submit their differences only to the umpire. An award in writing, so itemized of any two when filed with Insurers, shall determine the amount of the sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of the appraisal and the umpire shall be paid by the parties equally.

9. SERVICE OF SUIT CLAUSE (U.S.A.)

It is agreed that in the event of the failure of the Insurers hereon to pay any amount claimed to be due, the Insurers, at the request of the Insured will submit to the jurisdiction of any court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute waiver of Insurers' rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or seek a transfer of a case in the United States.

It is further agreed that service of process in such suit may be made upon:
Mendes & Mount
750 Seventh Avenue
New York, NY 10019-6829

and that in any suit instituted against any one of them upon this Contract, Insurers will abide by the final decision of such Court or any Appellate Court in the event of an appeal.

The above named are authorized and directed to accept service of process on behalf of Insurers in any such suit and/or upon the request of the Insured to give a written undertaking to the Insured that they will enter a general appearance upon Insurers' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, Insurers hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured, or any beneficiary hereunder arising out of the Contract of Insurance, and hereby designate the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

10. SUBROGATION

In the event of any payment under this Policy, Insurers shall be subrogated to the extent of such payment to all the Insured's rights of recovery there from. The Insured may execute all papers required and shall do anything that may be necessary to secure such rights.

Insurers will act in concert with all other interests concerned including the Insured and any other company(ies) participating in the payment of any loss as primary or excess insurers, in the exercise of such rights of recovery. If any amount is recovered, after deducting the costs of such recovery, such amount shall be divided between the interests concerned in the proportion of their respective interests. If there should be no recovery, the expense of proceedings shall be borne proportionally by the interests instituting the proceedings.

11. WAIVER OF SUBROGATION

Insurers will have no rights of subrogation against:

A. any person or entity, which is an Insured under the policy; or

B. any other person or entity, which the Insured has waived its rights of subrogation against before the time of loss, as contained within written contractual agreements drawn up by Insured and other persons or entities prior to loss.

However, it is a condition of this policy that the Insurers shall be subrogated to all the Insured's rights of recovery against any manufacturer or supplier of machinery, equipment or other property, whether named as an Insured or not, for the cost of making good any loss or damage which said party has agreed to make good under a guarantee or warranty, whether expressed or implied, or for the cost of making good any loss or damage resulting from errors in design, plan, specification, material or workmanship.

12. SALVAGE AND RECOVERY

After expenses incurred in salvage and recovery are deducted, any salvage or other recovery, except recovery through subrogation proceedings and from underlying and excess insurance as described herein, shall accrue to the benefit of Insurers until the sum paid by Insurers has been recovered, except for any amount assumed by the Insured beyond any payment made under this Policy, which amount shall accrue entirely to the benefit of the Insured until such amount has been recovered by the Insured.

13. BRAND AND LABELS

In case of damage to property bearing a brand or trademark or which in any way carries or implies the guarantee or the responsibility of the manufacturer or Insured, the salvage value of such damaged property shall be determined after removal in the customary manner of all such brands or trademarks or other identifying characteristics.

14. PAIR AND SET

In the event of loss of or damage to any article or articles which are a part of a set, the measure of loss of or damage to such article or articles shall be the reasonable and fair proportion of the total value of the set, giving consideration to the importance of said article or articles. This Policy also covers the reduction in value of insured component part or parts of products due to loss or damage insured against to other components or parts of such products.

15. NON-REDUCTION OF LIMITS OF LIABILITY

Any loss hereunder shall not reduce the Limit of Liability, nor the Sublimits of Liability under this contract except those noted as Annual Aggregate within the Declarations. Those limits noted as Annual Aggregate limits represent the total liability of Insurers for the annual policy period for the particular coverage they are applicable.

16. ASSISTANCE AND COOPERATION OF THE INSURED

The Insured shall cooperate with Insurers and, upon Insurers request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits.

17. ENTRY, CONTROL AND ABANDONMENT

After loss or damage to property insured, Insurers shall have immediate right of access and entry by accredited representatives in order for them to make an estimate of the loss or damage after the Named Insured has secured the property against further loss or damage, however, Insurers shall not be entitled to the control and/or possession of the property insured nor can the Insured abandon the property to Insurers without their written consent.

18. CONTROL OF DAMAGED MERCHANDISE

In case of loss or damage to finished goods, the Insured shall have full right to the possession and control of all such damaged goods. The Insured, exercising a reasonable discretion, shall be the sole judge as to whether such damaged goods are suitable for consumption or reprocessing or for marketing and no such damaged goods deemed by the Insured to be unfit shall be sold or otherwise disposed of except by the Insured or with the Insured's consent, but the Insured shall allow Insurers any salvage obtained on any sale or other disposition of such goods.

19. CLAIM AGAINST TRANSIT CARRIER AND/OR BAILEE

No claim for loss or damage during transit shall be payable hereunder until the Insured has filed a claim with and made reasonable efforts to secure payment from the transporting carrier and the confirmation that the carrier has denied liability.

20. KNOWLEDGE OF OCCURRENCE

It is agreed that knowledge of occurrence by an agent, servant or employee of the Insured shall not in itself constitute knowledge of the Insured. Knowledge is understood to occur only when the individual responsible for Insurance and/or Risk Management shall have received notice from its agent, servant or employee.

21. DUE DILIGENCE AND PROTECTION OF PROPERTY

The Insured shall use due diligence and will take all reasonable steps to protect, recover or save the property insured and minimize any further or potential loss or damage when:

A. the property insured has sustained direct physical loss or damage by an insured peril; or

B. the property insured is in imminent danger of sustaining direct physical loss or damage by an insured peril.

The acts of the Named Insured or the Insurers in protecting, recovering or saving the property insured will not be considered a waiver or an acceptance or abandonment. The Named Insured and the Insurers will bear the expense incurred proportionate to their respective interests.

Any payment made pursuant to their cause shall not serve to increase the Limit of Liability stated in the Declarations.

SECTION IV - GENERAL PROVISIONS

1. EXCLUSIONS

The following exclusions apply to all sections of this Policy.

A. Asbestos

1) Except as set forth in 2) below, this Policy does not insure asbestos or any sum relating thereto.
2) This Policy insures asbestos physically incorporated in an insured building or structure and then only for that part of the asbestos which has been physically damaged during the Period of Insurance by a peril not otherwise excluded by this Policy.
3) Coverage provided above in 2) is subject to all limitations in this Policy and, in addition, to each of the following additional policy conditions and limitations:
   a) the building or structure must be insured under this Policy;
   b) the peril(s) causing the damage must be the immediate, sole cause of the damage to the asbestos;
   c) the Insured must inspect the building or structure and report to the Insurers the existence of and cost of the damage with twelve (12) months after damage by an Peril Insured;
   d) insurance under this Policy in respect of asbestos shall not include any sum relating to:
      i) faults in the asbestos or its design or workmanship,
      ii) asbestos not physically damaged by an Peril Insured,
      iii) actions taken to protect human health or property, or
      iv) standards or requirements set by any government or regulatory authority.

B. Biological or Chemical Materials Exclusion (NMA 2962)

It is agreed that this Insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

C. Data Distortion/Corruption Exclusion

The Insurers will not pay for damage or consequential loss directly or indirectly caused by, consisting of, or arising from:

1) Any functioning or malfunctioning of the Internet or similar facility, or of any intranet or private network or similar facility,
2) Any corruption, destruction, distortion, erasure or other loss or damage to data, software or any kind of programming or instruction set,

3) Loss of use or functionality whether partial or entire of data, coding, program, software, any computer or computer system or other device dependent upon any microchip or embedded logic, and any ensuing inability or failure of the Insured to conduct business.

This exclusion shall not exclude subsequent damage or consequential loss, not otherwise excluded, which itself results from a Defined Peril not otherwise excluded. Defined Peril shall mean: fire, lightning, Earth Movement, explosion, falling aircraft, Flood, smoke, vehicle impact, windstorm or tempest, accidental breakdown of an Object including Mechanical and Electrical Breakdown.

Such damage or consequential loss described in 1), 2), or 3) above, is excluded regardless of any other cause that contributed concurrently or in any other sequence.

D. Cyber Exclusion

Notwithstanding any provision(s) to the contrary within this policy or any endorsement(s) attached thereto, it is understood and agreed that this policy does not insure any loss of, damage to, destruction, distortion, interruption, erasure, corruption or alteration of Electronic Data caused by Computer Virus, nor any resulting business interruption or other time element loss. In the event that Computer Virus causes ensuing loss or direct damage to insured property, then this policy, subject to all of its terms, conditions and exclusions, shall cover only such resulting damage.

Electronic Data means facts, concepts, code or any other information converted to a form useable for communication, interpretation or processing by computers or other electronic or electromechanically data processing or electronically controlled equipment, and includes programs, software and other coded instructions for the processing or manipulation of other data or the direction and manipulation of any equipment.

Computer Virus means any corrupting, harmful or otherwise disruptive instructions or code including any unauthorized instructions or code, programmatic or otherwise, that propagate through any computer or computer system(s) or groups of whatsoever nature. Computer Virus includes, but is not limited to "Trojan Horses", "worms" and "time or logic bombs".

E. Electronic Date Recognition Exclusion

This policy does not cover any loss, damage, cost, claim or expense, whether preventative, remedial or otherwise, directly or indirectly arising out of or relating to:

1) the recognition, interpretation, calculation, comparison, differentiation sequencing or processing of data involving one or more date or time changes, including leap year calculations, by any computer system, hardware, program or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the insured or not; or

2) any change, alteration, correction or modification involving one or more date or time changes, including leap year calculations, to any such computer system, hardware, program or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the insured or not.

Except as provided for in the next paragraph, this exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, cost, claim or expense.

If damage not otherwise excluded by this policy results, then subject to all its terms and conditions, this policy shall be liable only for such resulting damage. Such resulting damage shall not include any cost, claim or expense, whether preventative, remedial or otherwise arising out of or relating to any change, alteration, correction or modification relating to the ability of any damage computer system, hardware, program or software or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment to recognize, interpret, calculate, compare, differentiate, sequence or process any data involving one or more date or time changes, including leap year calculations. Each claim for resulting damage shall be adjusted separately for each location at which resulting damage occurs, and each location at which such resulting damage occurs shall be regarded as a separate and distinct event.

F. Fungi/Mold Exclusion

Notwithstanding any other terms or conditions, this Policy does not insure against:

1) any cost or expense incurred to clean up, remove or remediate any Fungi, or;

2) any cost or expense incurred to test for, monitor, or assess the existence of, concentration or effects of Fungi.

For the purpose of this Policy, Fungi shall mean any form of fungus, including but not limited to yeast, mold, mildew, smut, mushrooms, spores, mycotoxins, odors or any other substances, products or byproducts produced by, released by or arising out of the current or past presence of Fungi.

G. Political Risks Exclusion

Loss of property due to Political Risks is hereby excluded. Political Risks are defined as follows: "Confiscation, expropriation, nationalization, commandeering, requisition or destruction of or damage to property by order of the Government de jure or de facto or any public, municipal or local authority of the country or area in which the property is situated; seizure or destruction under quarantine or customs regulation"

H. Pollution and/or Contamination Exclusion with Resultant Damage Cover

This Policy excludes loss or damage caused by, resulting from, contributed to or made worse by actual, alleged or threatened release, discharge, escape or dispersal of Pollutants and/or Contaminants, all whether direct or indirect, proximate or remote or in whole or in

part caused by contributed to or as aggravated by any physical damage insured by this Policy, except as provided by the Pollution Cleanup of Insured Property and/or Pollution Cleanup of Land and/or Water clauses contained in this policy.

However, if a peril, not otherwise excluded by this Policy, results directly or indirectly from seepage or contamination or pollution, then any loss or damage insured under this Policy resulting directly or indirectly from that peril is insured, subject to the provisions of this Policy.

I. Radioactive Contamination Exclusion

Nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, attributed to, or aggravated by the peril(s) insured against in this Policy except that:

1) If a Peril Insured ensues, then liability is specifically assumed for loss by such Peril Insured hereunder but not including any loss due to nuclear reaction, nuclear radiation or radioactive contamination.

J. Terrorism Exclusion

Terrorism, meaning an act, including but not limited to the use of force or violence and/or the threat thereof of any person(s) or group(s) of person, whether acting alone or on behalf of or in connection with any organization(s) or government(s) committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

K. War Exclusion

1) Hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending, or expected attack:
   a) by any government or sovereign power (de jure or de facto) or by any authority maintaining or using military, naval or air forces;
   b) or by military, naval or air forces;
   c) or by an agent of such government, power, authority or forces;
2) Any weapon employing atomic fission or fusion;
3) Rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such occurrence;
4) Seizure or destruction by order of public authority, except destruction by order of public authority to prevent the spread of, or to, otherwise contain, control or minimize loss, damage or destruction which occurs due to a Peril Insured against under this Policy.
5) Risks of contraband or illegal trade.

2. DEFINITIONS

A. Named Insured

The Named Insured shall be deemed the sole and irrevocable agent for each and every Insured under this Policy for the purpose of:

1) giving or receiving from Insurers notices of cancellation or non-renewal;
2) giving instructions to or agreeing with Insurers for alterations to this Policy;
3) making or receiving payments of premium or adjustments of premium

B. Additional Insured

Additional Insured shall include all persons, firms or corporations specifically named or falling within the general description stated in the Declarations.

C. Occurrence

Occurrence shall mean an accident or occurrence or series of accidents or occurrences arising out of one event and which gives rise to physical loss or damage by a peril insured herein.

Each loss which involves the peril of Earthquake shall include all loss or damage there from whenever occurring during a continuous period of seventy-two (72) hours, however, if the National Earthquake Information Service of the United States Department of the Interior should declare that one single earthquake had continued at the location(s) involved beyond a period of seventy-two (72) hours, all loss or damage sustained during such extended period shall be included as a single loss.

Each loss occurrence which involves the perils of tornado, windstorm, cyclone, hurricane, hail or flood shall include all loss or damage wherever occurring, occasioned by these perils which arise out of one atmospheric disturbance during a continuous period of seventy (72) hours; however, if the National Weather Service of the United States should declare that one atmospheric disturbance had continued at the location(s) involved beyond a period of seventy-two (72) hours; all loss or damage sustained during such extended period shall be included as a single loss occurrence. If the National Weather Service does not make such a designation, the Insured shall select another appropriate means of making such designation.

If this Policy should expire or be cancelled while any such occurrence or disaster is in progress, it is understood and agreed that Insurers are responsible as if the entire loss had occurred prior to termination of this insurance.

D. Earthquake

The term "Earthquake" where contained herein means land movement due to seismic activity.

E. Named Windstorm

The term "Named Windstorm" where contained herein is defined as any cyclonic disturbance having a wind speed of 39 miles per hour or greater which has been assigned a name, numeric or other designation by the National Hurricane Center or any other governmental agency having the authority to name or designate such disturbances.

F. Accident

Accident shall mean a sudden and accidental breakdown of an Object or part thereof which manifests itself at the time of the occurrence by physical damage that necessitates repair or replacement of the Object or part thereof.

G. Object

Object shall mean any boiler, fired or unfired pressure vessel, refrigerating or air conditioning system, piping and its accessory equipment, and any mechanical or electrical machine or apparatus used for the generation, transmission or utilization of mechanical or electrical power.

H. Pollutants and/or Contaminants

Any material which, after its release, can cause or threaten damage to human health or human welfare or cause or threaten damage , deterioration, loss of value, marketability or loss of use to property insured herein including, but not limited to , bacteria, fungi, virus or any hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976 or Toxic Substances Control Act or as designated by the US Environmental Protection Agency.

I. Fire Protective Equipment

Tanks, water mains, hydrants or valves or any other equipment whether used solely for fire protection or jointly for fire protection and for other purposes, but does not include:

1) branch piping from a joint system where such branches are used entirely for purposes other than fire protection;
2) any underground water mains or appurtenances located outside of described premises and forming a part of the public water distribution system;
3) any pond or reservoir, other than a pond or reservoir used specifically for storage of fire fighting water, in which the water is impounded by a dam.

3. CANCELLATION

This Policy may be cancelled at any time at the request of the Insured by surrender of this Policy to Insurers or delivery to Insurers written notice stating when thereafter such

cancellation shall take effect. Return premium shall be allowed to the Insured on the basis of short rate defined as pro-rata unearned premium less 10%.

This Policy may be cancelled by Insurers by certified mailing of written notice stating that in no less than ninety (90) days thereafter, ten (10) days in the event of non-payment of premium, such cancellation shall be effective. Return premium shall be allowed to the insured on the basis of pro-rata return of the unearned premium.

Payments or tender of unearned premium by Insurers shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

Mailing notice shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice by either the Insured or by Insurers shall be equivalent to mailing.

4. MISREPRESENTATION AND FRAUD

If any person or entity falsely describes the property to the prejudice of the Insurers or misrepresents or fraudulently omits communicating any circumstances or information that is material to the assessment of the risk by Insurers, this Policy shall be made null and void and premiums paid shall be returned.

Any fraud or willfully false statement in a statutory declaration in relation to any of the particulars herein shall invalidate the claim of any person or entity making the declaration. Claims made, however, by any other insured entity shall not be prejudiced.

5. OTHER INSURANCE

Except as provided in the Primary Insurance, Excess Insurance, Underlying Insurance and Contributing Insurance clauses below, if there is other collectible insurance, this Policy will cover as excess insurance and will not contribute with such other insurance.

A. Primary Insurance

This Policy shall be primary to the Insured's insurance program(s) or any insurance program(s) held by Lenders, Joint Ventures or any other entity.

B. Excess Insurance

Permission is granted the Insured to have excess insurance over the Limit of Liability in this Policy and the existence of such insurance, if any, shall not reduce any liability under this Policy.

C. **Underlying Insurance**

Permission is granted to the Insured to purchase insurance on all or part or the deductible and against all or any of the perils covered by this Policy. The existence of such underlying insurance shall not prejudice or affect any recovery otherwise payable under this Policy.

D. **Contributing Insurance**

Permission is grant for other policies written upon the same plan, terms, conditions and provisions as those contained in this Policy. This Policy shall contribute to the total of each loss otherwise payable herein to the extent of the participation of this Policy in the total limit of liability as provided by all policies written upon the same plan, conditions and provisions as those contained in this Policy.

6. CERTIFICATES OF INSURANCE

All parties to whom Certificates of Insurance have been issued are automatically added to this Policy upon issuance of said Certificates either as an Additional Insured or as Loss Payee or both, with Waiver of Subrogation, where required by written contract, in accordance with the Terms and Conditions of said Certificates. Permission is granted for Lockton Companies of Houston to issue Certificates on behalf of Insurers.

7. ASSIGNMENT

This Policy may not be assigned nor any legal rights or interests in the policy be transferred without the Insurers written consent.

8. CONFORMANCE TO STATUTES

To the extent that any provisions of this Policy are governed by federal or state statutes, the comparable provisions of this Policy shall be deemed to be amended in accordance with such statutes.

9. ERRORS AND OMISSIONS

Claims for loss or damage shall not be prejudiced by an unintentional or inadvertent error or omission with respect to this insurance provided that Insurers are notified immediately upon discovery of the error or omission and additional premium, if any, is paid.

10. MATERIAL CHANGE

Any change material to the risk within the control and knowledge of the Insured and which significantly increases the exposure to risk of loss to the Insurers shall be reported to Insurers as soon as the material change is known.

11. CHANGE OF INTEREST

Insurers shall be liable for loss or damage occurring after an authorized assignment under the Bankruptcy Act or a change of title by succession, by operation of law or death.

12. ALTERATIONS AND USE CLAUSE

Except as otherwise provided with respect to insured perils, permission is hereby granted for any buildings to be and to remain vacant and/or unoccupied without limit of time for existing hazards and for any change in occupancy or use of the premises to make alterations, repairs and/or additions to any existing building and to construct new buildings.

13. RECORDS

Books and records shall be kept by the Insured in such manner that the total project cost of any work performed and the amount of any loss or damage covered by this Policy can be accurately determined.

14. COINSURANCE WAIVER

This Policy is not subject to any Coinsurance Penalty and any Coinsurance Clause contained in any other portion of this Policy is hereby waived.

15. NO CONTROL CLAUSE

This insurance shall not be prejudiced by any act or neglect of the owner of any building if the Insured is not the owner thereof, or by any act or neglect of any occupancy of any building, when such act or neglect of the owner or occupant is not within the control of the Insured, or by failure of the Insured to comply with any warrant or condition contained in any form or endorsement attached to this Policy with regard to any portion of the premises over which the Insured has no control.

16. LIBERALIZATION

If during the period that insurance is in force under this Policy, any authorized endorsement or filed rules or regulations affecting the same are revised by statute or otherwise so as to broaden the insurance without additional premium charge, such extended or broadened insurance shall inure to the benefit of the Insured herein.

17. TITLES OF PARAGRAPHS

The titles of the various paragraphs within this policy, and any endorsements and supplement contracts, if any, attached to this policy, are inserted solely for convenience or reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

18. MORTGAGE CLAUSE

Loss or damage, if any, under this Policy shall be payable to the mortgage or trustee as interest may appear, and this insurance, as to the interest of the mortgagee or trustee only therein, shall not be invalidated by any act or neglect of the mortgagor or owner within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this Policy provided that in case the mortgagee or trustee shall neglect to pay any premium due under this Policy, the mortgagee or trustee shall, on demand, pay the same. Provided also that the mortgagee or trustee shall notify Insurers of any change of ownership or occupancy or increase in hazard which shall come to the knowledge of said mortgagee or trustee and, unless permitted by this Policy, it shall be noted thereon and the mortgagee or trustee shall, on demand, pay the premium for such increased hazard for the term of use thereof; otherwise this Policy shall be null and void.

Insurers reserve the right to cancel this Policy at any time provided by its terms, but in such case this Policy shall continue in force for the benefit only of the mortgagee or trustee for thirty (30) days after notice to the mortgagee or trustee of such cancellation and shall cease and Insurers shall have the right, on like notice, to cancel this agreement.

Whenever Insurers shall pay the mortgagee or trustee any sum for loss or damage under this Policy, and shall claim that as the mortgagee or owner, no liability therefore existed, Insurers shall, to the extent of such payment, be legally subrogated to all of the rights of the party to whom such payment shall be made.

19. INSPECTION AND AUDIT

Insurers shall be permitted, but not obligated, to inspect the Insured's property at any time. Neither Insurers' right to make inspections nor the making thereof nor any report thereon shall

constitute an undertaking, on behalf of or for the benefit of the Insured or others, to determine or warrant such property is safe.

Insurers may examine and audit the Insured's books and records at any time during the policy period and extensions thereof and within three (3) years after the final termination of this Policy, as far as they relate to the subject matter of this insurance.

20. SEVERABILITY OF INTEREST

Each of the Insureds covered by this Policy will have the same protection and obligations as if this Policy had been issued individually to each of them. However, the inclusion of more than one Insured will not operate to increase the limit of liability of the Insurers beyond the Limit of Liability stated in this Policy which is a combined limit for all of the Insureds. Insurers shall have no liability excess of this limit whether the Insured loss(es) are sustained by all of the Insureds or any one of them.

21. VALUES

The values declared to Insurers at the inception of this Policy are for premium calculation purposes only and shall not limit the coverages provided by this Policy.

22. CURRENCY

It is agreed that all amounts used herein are in United States currency and that premiums shall be paid and all losses adjusted and paid in United States currency. In the event of a loss adjustment involving foreign currency, conversion into the currency of the United States of America shall be calculated as follows:

A. In respect of physical loss or damage at the rate of exchange as quoted by Citibank, N.A. as of the date that either partial or final proof of loss is signed.

B. In respect of Business Interruption, Contingent Business Interruption, Extra Expense, Contingent Extra Expense, Rental Income/Value, Royalties, Licensing Fees/Technical Fees, Commissions and Dividends shall be based on the average of the daily rate of exchange as quoted by Citibank N.A. for the period of loss.

23. CONFLICTS OF WORDING

The terms and conditions contained in this policy shall supersede those of the Insurer's basic policy and/or endorsements, which are attached to this policy, wherever the same may conflict, except those required by law.

Where there is a conflict between the specific sections and general conditions of this Policy, the conditions of the specific section shall prevail.

24. UNDISCLOSED DAMAGE 50/50 CLAUSE

In the event of loss or damage to the property insured being discovered after risk under an applicable Marine Insurance Policy has terminated and if after investigation it is not possible to determine where the cause of such loss or damage occurred, it is understood and agreed that Insurers hereon shall contribute 50% of the properly adjusted claim and the Marine Insurer(s) will also agreed to contribute 50% of the properly adjusted claim, both less 50% of the applicable deductible.

The provisions of this clause shall only apply in the event that the applicable Marine Insurance contains a clause similar in fashion for contribution in like manner to this clause.

Lockton Policy No. LME-4407
USD 100 M Quota Share

ENDORSEMENT NO. 1

NAMED INSURED:	**Falcon Gas Storage Company, Inc. and NorTex Gas Storage Company, LLC,** et al
PERIOD OF INSURANCE:	December 1, 2008 to December 1, 2009
EFFECTIVE DATE OF ENDORSEMENT:	December 1, 2008

VARIOUS CHANGES

It is hereby understood and agreed that the following provisions are added to the policy to which this endorsement is attached.

SECTION IV – GENERAL PROVISIONS

2. DEFINITIONS

J. Replacement Cost/Replacement Value

The amount it takes or would take to repair or replace the damaged or destroyed property with new materials of like kind and quality, without deduction for depreciation and including the Insured's overhead should the Insured participate in the repair or replacement of damaged property, all determined at the time and place of loss.

It is understood and agreed that as respects replacement cost, the following shall apply:

1) the Insured shall have the option to rebuild or replace the insured property by a construction or type superior to or more extensive than its condition when new;
2) the Insured shall have the option of replacement with electrical and mechanical equipment having technological advantages and/or representing an improvement in function and/or forming part of a program or system enhancement provided the Insurers liability is not increased beyond the amount it would have cost to repair or replace with materials of the like kind or quality;
3) subject to Insurers prior agreement, the Insured may elect to obtain loss settlement on a replacement cost basis regardless of whether the real and/or personal property lost, damaged or destroyed has been replaced, provided the proceeds of such loss settlement are expended in other capital expenditures related to the Insured's operations;
4) the Insured may elect to replace the property lost, damaged, or destroyed at an alternative site provided the Insurers liability is not increased beyond the amount it would have cost to replace on the same site;

POLICY ENDORSEMENT NO. 1 – VARIOUS CHANGES

5) if the Insured participates in the repair or replacement of damage property, then the Insured's expenses for such participation shall be included as part of the repair or replacement costs, including normal and reasonable overhead;

It is understood and agreed that Insurers' liability shall not exceed the amount required to replace the damaged or destroyed property with like kind and quality at the time of loss, without deduction for depreciation.

K. Actual Cash Value

The Replacement Cost less deduction for depreciation, however, in no event shall the Actual Cash Value exceed what it would then cost to repair or replace the same with material of like kind and quality.

All other terms and conditions remain unchanged.

POLICY ENDORSEMENT NO. 1 – VARIOUS CHANGES

Lockton Policy No. LME-4407
Ace (Starr Tech) – 33% of USD 100 M

SECURITY PAGE

Security Page attaching to Policy document called:
Property Wording (final) – Falcon Gas (08-09)

Policy Period

December 1, 2008 to December 1, 2009

Security/Policy No.

Ace American Insurance Company (through Starr Technical Risk Agency, Inc.)
Policy No. EPR N 0 50 64 51 A

Interest

33% of 100% being USD 33,000,000 part of USD 100,000,000

Premium Due		100%	Security Share
All Risk	USD	735,000	USD 242,550
Terrorism (TRIPRA)			No Coverage
			USD 242,550

FOR AND ON BEHALF OF
Ace American Insurance Company

Authorized Representative

SEVERAL LIABILITY NOTICE (LSW 1001):
The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

ACE (STARR TECH) SECURITY PAGE

Lockton Policy No. LME-4407
Ace (Starr Tech) – 33% of USD 100 M

ACE (STARR TECH) ENDORSEMENT NO. 1

The following changes to the Policy, to which this Security Page is attached, are applicable only to the Security stated in the Security Page. The changes/amendments are shown in ***bold/italic*** text.

DECLARATIONS

6. **SUBLIMITS OF LIABILITY (100%)**

USD	***5,000,000***	Contingent Business Interruption for Named ***Direct*** Contributors and Recipients Locations
USD	***2,500,000***	Contingent Business Interruption for Unnamed ***Direct*** Contributing and Recipient Locations
USD	***5,000,000***	or 25% of the amount of the loss (greater of) as respects to Debris Removal
USD	***20,000,000***	Earth Movement (annual aggregate)
USD	***2,500,000***	Expediting Expenses
	No Coverage	Extended Period of Indemnity
USD	***20,000,000***	Flood (annual aggregate), except for locations within Special Flood Hazard Areas (SFHA)
	30 days	Interruption by Civil Authority ***subject to a maximum of one (1) mile of the Insured's premises***
USD	***5,000,000***	Newly Acquired Property
USD	***250,000***	Pollutant Cleanup of Land and/or Water (annual aggregate)
USD	***2,500,000***	Service Interruption – Sublimit applies to Time Element coverages only
USD	***1,000,000***	***Electronic Data Processing Media***
USD	***1,000,000***	***Errors and Omissions***
USD	***50,000,000***	***Gas in Storage***
USD	***20,000,000***	***Named Windstorm (Annual Aggregate)***

7. **DEDUCTIBLES**

2.5%	of the affected locations Property values in respects to Named Windstorm, including flood following, subject to a $250,000 minimum per occurrence
48 hour	***Outage required to trigger Service Interruption coverage, then the policy deductibles apply***

ACE (STARR TECH) ENDORSEMENT NO. 1

Lockton Policy No. LME-4407
Ace (Starr Tech) – 33% of USD 100 M

SECTION I – PROPERTY COVERAGE

5. ADDITIONAL COVERAGES

R. **Miscellaneous Unnamed Locations**

This Policy is extended to cover property of the Insured at miscellaneous unnamed locations including any manufacturer's site or fabrication site all while within the policy territory.

Coverage under this Additional Coverage excludes loss or damage resulting from:

1) ***Flood for locations within Special Flood Hazard Areas, and***
2) ***Earth Movement for locations within areas defined as High Hazard with respects to Earthquake.***

S. **Newly Acquired Property**

This Policy is automatically extended to cover additional property and interests described in this Policy, which may be acquired or otherwise become at risk of the Insured during the term of and within the territorial limitations of this Policy, subject to values not exceeding the Sublimit of Liability shown in the Declarations.

Newly acquired property that is greater than the Sublimit of Liability shown in the Declarations is covered automatically for a period of ninety (90) days from the date of acquisition, subject to the Sublimit of Liability shown in the Declarations. Coverage beyond ninety (90) days requires agreement by Insurers.

Coverage under this Additional Coverage excludes loss or damage resulting from:

1) ***Flood for locations within Special Flood Hazard Areas, and***
2) ***Earth Movement for locations within areas defined as High Hazard with respects to Earthquake.***

ACE (STARR TECH) ENDORSEMENT NO. 1

BRIDGE WORDING ENDORSEMENT

Named Insured			Endorsement Number
Falcon Gas Storage Company, Inc. & NorTex Gas Storage Company, LLC			**2**
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
EPR	**N0506451A**	**Dec. 1, 2008 – Dec. 1, 2009**	**12/01/2008**
Issued By			
ACE American Insurance Company			

THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.

BRIDGE WORDING ENDORSEMENT

Whenever used in this Policy, the terms, "we", "our", "you", and "your" are hereby changed to "the Company", "the Company's", "the Insured", and "the Insureds".

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limits or conditions of the policy, except as herein above set forth.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

AUTHORITIES ENDORSEMENT

Named Insured			Endorsement Number
Falcon Gas Storage Company, Inc. & NorTex Gas Storage Company, LLC			**3**
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
EPR	**N0506451A**	**Dec. 1, 2008 – Dec. 1, 2009**	**12/01/2008**
Issued By			
ACE American Insurance Company			

THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.

AUTHORITIES ENDORSEMENT

It is hereby understood and agreed that with respect to the property section only:

Except as specifically stated in this policy or endorsement attached thereto, the company shall not be liable for loss, damage, costs, expenses, fines, or penalties incurred, sustained by or imposed on the Insured at the order of any Government Agency, Court, or other Authority arising from any cause whatsoever.

However, if any time element coverage is afforded by this policy or endorsements thereto, the coverage is extended to include any increase in the actual loss sustained by the Insured, resulting directly from an interruption of business covered hereunder, during the length of time not exceeding thirty (30) consecutive days, when as a direct result of damage to or destruction of covered property by the peril(s) insured against, access to the premises or commencement of repairs is delayed at the order of any Government Agency, Court, or other Authority.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

TOTAL TERRORISM EXCLUSION ENDORSEMENT

Named Insured			Endorsement Number
Falcon Gas Storage Company, Inc. & NorTex Gas Storage Company, LLC			**4**
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
EPR	**N0506451A**	**Dec. 1, 2008 – Dec. 1, 2009**	**12/01/2008**
Issued By			
ACE American Insurance Company			

THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.

TOTAL TERRORISM EXCLUSION ENDORSEMENT

This Endorsement only applies in the United States of America and its Territories and Possessions.

Notwithstanding any provision to the contrary within this Policy or any endorsement thereto, it is agreed that this Policy excludes loss, damage, cost, or expense of whatsoever nature directly or indirectly caused by, resulting from, or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement, an "act of terrorism" means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost, or expense of whatsoever nature directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing, or in any way relating to any act of terrorism.

However, if an act of terrorism results in a fire and the direct physical loss or damage to property insured hereunder located in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands and any territory or possession of the United States, that, either pursuant to the Standard Fire Policy or otherwise, prohibits exclusions for acts of terrorism that result in fire, this Company will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage to property insured hereunder and may be limited, in accordance with the Standard Fire Policy to the lesser of the actual cash value of the property at the time of the loss, or the amount which it would cost to repair or replace the property, without allowance for any increased cost of repair or replacement by reason of any ordinance or law, and without any compensation for business interruption, extra expense to continue business activities, or any other coverage for loss or damage other than direct physical loss or damage to the property insured hereunder.

With respect to fire resulting from any one or more "certified acts of terrorism" as defined under the Federal Terrorism Risk Insurance Act, as amended ("the Act"), this Company will not pay any amounts for which this Company is not responsible under the terms of the Act (including subsequent Congressional action pursuant to the Act) due to the application of Section 103 of the Act or any clause that results in a cap on our liability for payments for terrorism losses.

THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A $100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABIITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS $100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED $100 BILLION, COVERAGE MAY BE REDUCED.

Nothing herein contained shall be held to vary, alter, waive, or change any of the terms, limits, or conditions of the policy, except as herein above set forth.

TRIA TERRORISM EXCLUSION ENDORSEMENT

Named Insured			Endorsement Number
Falcon Gas Storage Company, Inc. & NorTex Gas Storage Company, LLC			**5**
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
EPR	**N0506451A**	**Dec. 1, 2008 – Dec. 1, 2009**	**12/01/2008**
Issued By			
ACE American Insurance Company			

THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.

TERRORISM EXCLUSION ENDORSEMENT
(FOR CERTIFIED ACTS OF TERRORISM UNDER THE TERRORISM RISK INSURANCE ACT, AS AMENDED)

This Policy excludes loss, damage, cost or expense, arising directly or indirectly as a result of a "certified act of terrorism" as defined by Section 102(1) of the Terrorism Risk Insurance Act, as amended ("the Act"), and any revisions or amendments thereto, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For purposes of this endorsement and in compliance with the Act, "certified act of terrorism" shall mean an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the Act. The criteria contained in that Act for a "certified act of terrorism" include the following:

1. The act resulted in aggregate losses in excess of $5 million; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

However, if an act of terrorism results in a fire and the direct physical loss or damage to property insured hereunder located in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands and any territory or possession of the United States, that, either pursuant to the Standard Fire Policy or otherwise, prohibits exclusions for acts of terrorism that result in fire, this Company will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage to property insured hereunder and may be limited, in accordance with the Standard Fire Policy to the lesser of the actual cash value of the property at the time of the loss, or the amount which it would cost to repair or replace the property, without allowance for any increased cost of repair or replacement by reason of any ordinance or law, and without any compensation for business interruption, extra expense to continue business activities, or any other coverage for loss or damage other than direct physical loss or damage to the property insured hereunder.

With respect to fire resulting from any one or more acts of terrorism, this Company will not pay any amounts for which this Company is not responsible under the terms of the Act (including subsequent Congressional action pursuant to the Act) due to the application of Section 103 of the Act or any clause that results in a cap on our liability for payments for terrorism losses.

THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A $100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABIITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS $100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED $100 BILLION, COVERAGE MAY BE REDUCED.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limits or conditions of the policy, except as herein above set forth.

TRADE OR ECONOMIC SANCTIONS ENDORSEMENT

Named Insured			Endorsement Number
Falcon Gas Storage Company, Inc. & NorTex Gas Storage Company, LLC			**6**
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
EPR	**N0506451A**	**Dec. 1, 2008 – Dec. 1, 2009**	**12/01/2008**
Issued By			
ACE American Insurance Company			

THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.

TRADE OR ECONOMIC SANCTIONS ENDORSEMENT

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including, but not limited to, the payment of claims.

All other terms and conditions of policy remain unchanged.

Endorsement No. 7

This endorsement, effective December 1, 2008 – December 1, 2009 forms a part of Policy No. EPR N0506451A issued to Falcon Gas Storage Company, Inc. & NorTex Gas Storage Company, LLC
By ACE American Insurance Company

TEXAS AMENDATORY ENDORSEMENT
(CANCELLATION AND NONRENEWAL)

Wherever used in this endorsement: 1)"Insurer" means the insurance company which issued this policy; and 2) "Insured" means the Name Corporation, Named Organization, Named Sponsor, or Named Insured stated in the declarations page.

It is hereby agreed that the cancellation provision of this policy is deleted in its entirety and replaced by the following:

CANCELLATION AND NONRENEWAL

A. CANCELLATION

1. This policy may be canceled by the Insured by surrender thereof to the Insurer or any of its authorized agents or by mailing to the Insurer written notice stating when thereafter the cancellation shall be effective.

2. Except as provided by subsection A.3. below, the Insurer may not cancel this policy after the 60th day following the date on which the policy was issued, or if it is a renewal or continuation of a policy issued by the Insurer.

3. The Insurer may cancel this policy at any time during the term of the policy for the following reasons:

   a) fraud in obtaining coverage;

   b) failure to pay premiums when due;

   c) an increase in hazard within the control of the Insured which would produce an increase in rate;

   d) loss of the Insurer's reinsurance covering all or part of the risk covered by the policy; or

   e) an Insurer being placed in supervision, conservatorship, or receivership, if the cancellation or nonrenewal is approved or directed by the supervisor, conservator, or receiver.

4. The Insurer shall deliver or mail to the Insured first named in the Declarations written notice of cancellation at the address shown on the policy not less than the 10th day before the date on which the cancellation takes effect. Such written notice shall state the reasons(s) for cancellation.

5. The Insurer may not cancel this policy based solely on the fact that the Insured is an elected official.

B. NONRENEWAL

1. The Insurer may refuse to renew this policy by delivering or mailing to the Insured first named in the Declarations written notice of nonrenewal at the address shown on the policy. Such written notice shall state the reason(s) for nonrenewal. The notice must be delivered or mailed not later than the 60th day before the date on which the policy expires. If the notice is delivered or mailed later than the 60th day before the date on which the policy expires, the coverage shall remain in effect until the 61 day after the date on which the notice is delivered or mailed. Earned premium for any period of coverage that extends beyond the expiration date of the policy shall be computed pro rata based on the previous year's rates.

2. The transfer of a policyholder between admitted companies within the same insurance group is not considered a refusal to renew.

3. The Insurer may not refuse to renew this policy based solely on the fact that the Insured is an elected official.

All other terms and conditions remain unchanged.

COMMERCIAL PROPERTY
CP 01 45 12 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ALABAMA CHANGES

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

A. When this endorsement is attached to the Standard Property Policy **CP 00 99,** the term Coverage Part in this endorsement is replaced by the term Policy.

B. The following exclusion and related provisions are added to Paragraph **B.2. Exclusions** in the Causes Of Loss Forms and to any Coverage Form or policy to which a Causes Of Loss Form is not attached:

1. We will not pay for loss or damage arising out of any act committed:

a. By or at the direction of any insured; and

b. With the intent to cause a loss.

2. However, this exclusion will not apply to deny coverage to an innocent co-insured when the loss or damage is otherwise covered under this policy and is proximately related to and in furtherance of an abusive act by an insured who is a family or household member. Such coverage will be provided only if the innocent co-insured:

a. Provides evidence of the abuse to us, to demonstrate that the loss is abuse-related; and

b. For the act causing the loss, either:

(1) Files a complaint under the Protection From Abuse Act against the abuser, and does not voluntarily dismiss the complaint; or

(2) Seeks a warrant for the abuser's arrest and cooperates in the prosecution of the abuser.

3. If we pay a claim pursuant to Paragraph **B.2.,** our payment to the innocent co-insured is limited to that insured's legal interest in the property less any payments we first made to a mortgagee or other party with a legal secured interest in the property. In no event will we pay more than the Limit of Insurance.

C. The following is added to the Transfer Of Rights Of Recovery Against Others To Us Condition:

If we pay an innocent co-insured for loss arising out of an act of abuse by another insured, the rights of the innocent co-insured to recover damages from the abuser are transferred to us to the extent of our payment. Following the loss, the innocent co-insured may not waive such rights to recover against the abuser.

   □

IL 01 90 07 02

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ALABAMA CHANGES – ACTUAL CASH VALUE

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART
CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
FARM COVERAGE PART

The following is added to any provision which uses the term actual cash value:

Actual cash value is calculated as the amount it would cost to repair or replace Covered Property, at the time of loss or damage, with material of like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence. Actual cash value applies to valuation of Covered Property regardless of whether that property has sustained partial or total loss or damage.

The actual cash value of the lost or damaged property may be significantly less than its replacement cost.

IL 02 77 05 05

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOUISIANA CHANGES – CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART
CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART

A. Paragraph **2.** of the **Cancellation Common Policy Condition** is replaced by the following, which applies unless Paragraph **B.** of this endorsement applies.

2. Notice Of Cancellation

a. Cancellation Of Policies In Effect For Fewer Than 60 Days Which Are Not Renewals

If this policy has been in effect for fewer than 60 days and is not a renewal of a policy we issued, we may cancel this policy for any reason, subject to the following:

(1) Cancellation for nonpayment of premium

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least 10 days before the effective date of cancellation.

(2) Cancellation for any other reason

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

b. Cancellation Of Renewal Policies And New Policies In Effect For 60 Days Or More

If this policy has been in effect for 60 days or more, or is a renewal of a policy we issued, we may cancel only for one or more of the following reasons:

(1) Nonpayment of premium;

(2) Fraud or material misrepresentation made by you or with your knowledge with the intent to deceive in obtaining the policy, continuing the policy, or in presenting a claim under the policy;

(3) Activities or omissions by you which change or increase any hazard insured against;

(4) Change in the risk which increases the risk of loss after we issued or renewed this policy including an increase in exposure due to regulation, legislation, or court decision;

(5) Determination by the Commissioner of Insurance that the continuation of this policy would jeopardize our solvency or would place us in violation of the insurance laws of this or any other state;

(6) The insured's violation or breach of any policy terms or conditions; or

(7) Any other reasons that are approved by the Commissioner of Insurance.

We will mail or deliver written notice of cancellation under Paragraph **A.2.b.**, to the first Named Insured at least:

(a) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

(b) 30 days before the effective date of cancellation if we cancel for a reason described in Paragraphs **A.2.b.(2)** through **(7)** above.

B. Paragraph **2.** of the **Cancellation Common Policy Condition** is replaced by the following, which applies with respect to premium payments due on new and renewal policies, including installment payments.

2. Notice Of Cancellation

a. If your premium payment check or other negotiable instrument is returned to us or our agent or a premium finance company because it is uncollectible for any reason, we may cancel the policy subject to Paragraphs **B.2.b.** and **B.2.c.**

b. We may cancel the policy effective from the date the premium payment was due, by sending you written notice by certified mail, or by delivering such notice to you within 10 days of the date that we receive notice of the returned check or negotiable instrument.

c. The cancellation notice will also advise you that the policy will be reinstated effective from the date the premium payment was due, if you present to us a cashier's check or money order for the full amount of the returned check or other negotiable instrument within 10 days of the date that the cancellation notice was mailed.

C. Paragraph **5.** of the **Cancellation Common Policy Condition** is replaced by the following:

5. Premium Refund

If this policy is cancelled, we will return any premium refund due, subject to Paragraphs **C.5.a., C.5.b., C.5.c., C.5.d., C.5.e.** and **C.5.f.** The cancellation will be effective even if we have not made or offered a refund.

a. If we cancel, the refund will be pro rata.

b. If the first Named Insured cancels, the refund may be less than pro rata, and will be returned within 30 days after the effective date of cancellation.

c. We will send the refund to the first Named Insured unless Paragraph **C.5.d.** or **C.5.e.** applies.

d. If we cancel based on Paragraph **B.2.** of this endorsement, we will return the premium due, if any, within 10 days after the expiration of the 10-day period referred to in **B.2.c.** If the policy was financed by a premium finance company, or if payment was advanced by the insurance agent, we will send the return premium directly to such payor.

e. With respect to any cancellation of the Commercial Auto Coverage Part, we will send the return premium, if any, to the premium finance company if the premium was financed by such company.

f. When return premium payment is sent to the premium finance company or the agent of the insured, we will provide notice to you, at the time of cancellation, that a return of unearned premium may be generated by the cancellation.

D. The **Premiums Common Policy Condition** is replaced by the following:

PREMIUMS

1. The first Named Insured shown in the Declarations is responsible for the payment of all premiums.

2. We will pay return premiums, if any, to the first Named Insured, unless another person or entity is entitled to be the payee in accordance with Paragraph **C.** of this endorsement.

E. Paragraph **f.** of the **Mortgageholders Condition** in the Commercial Property Coverage Part and the Capital Assets Program (Output Policy) Coverage Part and Paragraph **4.(f)** of the **Mortgageholders Condition** in the Farm Coverage Part are replaced by the following:

If we cancel a policy that has been in effect for fewer than 60 days and is not a renewal of a policy we issued, we will give written notice to the mortgageholder at least:

(1) 10 days before the effective date of cancellation, if we cancel for nonpayment of premium; or

(2) 60 days before the effective date of cancellation, if we cancel for any other reason.

If we cancel a policy that has been in effect for 60 days or more, or is a renewal of a policy we issued, we will give written notice to the mortgageholder at least:

(1) 10 days before the effective date of cancellation, if we cancel for nonpayment of premium; or

(2) 30 days before the effective date of cancellation, if we cancel for any other reason.

F. The following is added and supersedes any other provision to the contrary:

NONRENEWAL

1. If we decide not to renew this policy, we will mail or deliver written notice of nonrenewal to the first Named Insured, at least 60 days before its expiration date, or its anniversary date if it is a policy written for a term of more than one year or with no fixed expiration date.
2. We need not mail or deliver this notice if:
   a. We or another company within our insurance group have offered to issue a renewal policy; or
   b. You have obtained replacement coverage or have agreed in writing to obtain replacement coverage.
3. Any notice of nonrenewal will be mailed or delivered to the first Named Insured at the last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. Such notice to the insured shall include the insured's loss run information for the period the policy has been in force within, but not to exceed, the last three years of coverage.

ACE USA

Information and Complaints

This information is being provided to you pursuant to the requirements of Articles 1.35, 1.35D and 21.71 of the Texas Insurance Code relating to our Toll Free information and complaint number.

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call the Company's toll-free telephone number for information or to make a complaint at:

1-(800) 352-4462

You may also write to the Company at:

ACE USA
Customer Services
PO Box 1000
Philadelphia, PA 19106-3703

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-(800) 252 3439

You may write the Texas Department of Insurance

P. O. Box 149104
AUSTIN, TX 78714-9104
FAX # (512) 475-1771
Web: http://www.tdi.state.tx.us
E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim you should contact your agent or the company first. If the dispute is not resolved you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de la Compania para informacion o para someter una queja al:

1 (800) 352-4462

Usted tambien puede escribir a la Compania:

ACE USA
Customer Services
PO Box 1000
Philadelphia, PA 19106-3703

Puede communicarse con el Departmento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

1 (800) 252-3439

Puede escribir al Departamento de Seguros de Texas

P.O. Box 149104
AUSTIN, TX 78714-9104
FAX # (512) 475-1771
Web: http://www.tdi.state.tx.us
E-mail: ConsumerProtection@tdi.state.tx.us

DISPUTAS SOBRE PRIMAS O RECLAMOS: Si tiene una disputa concerniente a su prima o un reclamo, debe comunicarse con el agente o la compania primero. Si no se resuelve la disputa puede entonces communicarse con el departmento de Seguros en Texas

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

SIGNATURES

Named Insured			Endorsement Number
Falcon Gas Storage Company, Inc. & NorTex Gas Storage Company, LLC			**8**
Policy Symbol	Policy Number	Policy Period	Effective Date of Endorsement
EPR	**N0506451A**	**Dec, 1, 2008 – Dec. 1, 2008**	**12/01/2008**
Issued By (Name of Insurance Company)			
ACE American Insurance Company			

By signing and delivering the policy to you, we state that it is a valid contract.

ACE AMERICAN INSURANCE COMPANY
436 Walnut Street, P.O. Box 1000, Philadelphia, Pennsylvania 19106-3703

GEORGE D. MULLIGAN, Secretary

JOHN J. LUPICA, President

STARR TECHNICAL RISKS AGENCY, INC.

IMPORTANT NOTICE – TO BE KEPT WITH POLICY

To our Brokers/Agents

What to do when Loss Occurs:

1. Report as soon as practicable, every incident, loss, or damage which may become a claim to :

   Jim Jezewski, Vice President and Claims Manager
   Starr Technical Risks Agency, Inc.
   Property Claims Department
   90 Park Avenue
   New York, NY 10016
   Phone: (646) 227-6348
   Fax: (212) 599-3061
   e- mail: Jim.Jezewski@cvstarrco.com

   (AND)

   William L. Lush
   Vice President, Regional Manager
   5151 San Felipe St., Suite 700
   Houston, TX 77056-3638
   Phone #: 713-740-1470
   Fax: 713-353-0246
   E-mail: william.lush@cvstarrco.com

2. Starr Technical Risks Agency, Inc. claims cannot be processed through any other facility and must be reported as indicated above.

3. Adjustors can only be assigned by Starr Technical Risks Agency, Inc. Property Claims Department.

Exhibit B

ACE/Arcapita Bank Guarantee

CHICAGO CONDOMINIUM INVESTMENTS, LLC
c/o Global Securitization Services, LLC
68 South Service Road, Suite 120
Melville, NY 11747

Notice

August 11th, 2011

Arcapita Bank B.S.C.(c)
P.O. Box 1406
Manama
Kingdom of Bahrain

Re: Guarantee issued by Arcapita Bank B.S.C.(c)

Ladies and Gentlemen:

We refer to the Guarantee issued by Arcapita Bank B.S.C.(c), dated as of the date hereof, and to a certain indemnity undertaking issued by the undersigned in favor of Westchester Fire Insurance Company on or about the date hereof. We hereby notify you that Westchester Fire Insurance Company is a counterparty (as defined in the Guarantee).

Very truly yours,
Chicago Condominium Investments, LLC

By: Michael K. Casey
Name: Michael Casey
Title: Manager

GUARANTEE

The undersigned, Arcapita Bank B.S.C.(c) (GUARANTOR), has sponsored the investment in a real estate development project in Chicago, Illinois, known as the Elysian project. Investment in the Elysian project was made through Chicago Condominium Investments, LLC, a Delaware limited liability company (INDEMNITOR).

FOR VALUE RECEIVED, GUARANTOR hereby guarantees for the benefit of each entity (COUNTERPARTY) that enters into, or is the beneficiary of, a written, contractual obligation or undertaking with or by INDEMNITOR in relation to the Elysian project, and as to which a written notice is provided by INDEMNITOR to GUARANTOR confirming such entity to be a COUNTERPARTY, the timely payment of all obligations and amounts owing by INDEMNITOR to each and every COUNTERPARTY.

To the extent INDEMNITOR fails to make any payments or security calls as become due in favour of any COUNTERPARTY, GUARANTOR will within three (3) business days of receiving written demand from COUNTERPARTY pay or deposit all amounts due.

FURTHER, GUARANTOR undertakes to indemnify each COUNTERPARTY in full within three (3) business days of receiving written demand from COUNTERPARY against all losses, costs, expenses or liability suffered or incurred by COUNTERPARTY arising from or in connection to the failure of INDEMNITOR to make full and prompt payment or deposit.

THIS GUARANTEE shall not be affected by any act, omission, matter or thing which might operate to reduce, discharge or otherwise affect THIS GUARANTEE, whether or not known to GUARANTOR or COUNTERPARTY, including but not limited to:

(1) any time, waiver or other accommodation granted to INDEMNITOR or GUARANTOR;

(2) any unenforceability, illegality or invalidity of any obligation of, or any security created by INDEMNITOR or GUARANTOR; and

(3) any insolvency, liquidation, administration, dissolution or similar procedure by INDEMNITOR or GUARANTOR.

THIS GUARANTEE is and shall remain a continuing security for the INDEMNITOR to COUNTERPARTY at any time and shall not be discharged, satisfied or otherwise affected by any repayment from time to time of the whole or any part of any amount due and owing from INDEMNITOR to COUNTERPARTY.

If at any time any one or more of the provisions of THIS GUARANTEE is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity and enforceability of the remaining provisions of THIS GUARANTEE nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result.

THIS GUARANTEE is in addition to and is not in any way subject to or prejudiced by any other security now or subsequently held by COUNTERPARTY with respect to INDEMNITOR.

THIS GUARANTEE shall be governed and construed in accordance with the laws of the State of New York, USA and the jurisdiction thereof.

IN NO EVENT shall the total amount recoverable by COUNTERPARTY from the GUARANTOR exceed $9,000,000.

[signature page follows]

THIS GUARANTEE IS EXECUTED as for and on behalf of Arcapita Bank B.S.C.(c) by its duly authorized signatory as of this 12th day of August 2011.

ARCAPITA BANK B.S.C.(c)

By MR Chowdhury
Name: Mohammed Chowdhury
Title: Executive Director