

HEARING DATE AND TIME: January 21, 2014 at 11:00 a.m. (prevailing Eastern time)

OBJECTION DEADLINE: January 14, 2014 at 12:00 p.m. (prevailing Eastern time)

**GIBSON, DUNN & CRUTCHER LLP**

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Attorneys for Falcon Gas Storage Company, Inc.

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

-----X	
IN RE:	: Chapter 11
ARCAPITA BANK B.S.C.(c), <i>et al.</i> ,	: Case No. 12-11076 (SHL)
Debtors.	: Jointly Administered
-----X	
IN RE:	: Chapter 11
FALCON GAS STORAGE COMPANY, INC.,	: Case No. 12-11790 (SHL)
Debtor.	: X
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JOHN M. HOPPER, <i>et al.</i> ,	: Adv. Proc. No. 12-01662 (SHL)
Plaintiffs,	: v.
FALCON GAS STORAGE COMPANY, INC.,	: Defendant.
Defendant.	: X
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TIDE NATURAL GAS STORAGE I, LP, <i>et al.</i> ,	: Adv. Proc. No. 13-01335 (SHL)
Plaintiffs,	: v.
JOHN M. HOPPER, <i>et al.</i> ,	: Defendants.
Defendants.	: X
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**NOTICE OF (I) MOTION TO APPROVE FALCON SETTLEMENT WITH TIDE, THE  
HOPPER PARTIES, AND HSBC; AND (II) HEARING TO CONSIDER  
CONFIRMATION OF ADJOURNED FALCON PLAN**

PLEASE TAKE NOTICE that on December 30, 2013, Falcon Gas Storage Company, Inc. (“**Falcon**”) filed the attached *Motion To Approve Falcon Settlement with Tide, the Hopper Parties, and HSBC* (the “**Motion**”).

PLEASE TAKE FURTHER NOTICE that the hearing to consider confirmation of Falcon’s chapter 11 plan of reorganization was commenced on June 11, 2013 and adjourned to a then-to-be-determined date (the “**Adjourned Falcon Plan**”).

PLEASE TAKE FURTHER NOTICE that a hearing (the “**Hearing**”) to consider the Motion and confirmation of the Adjourned Falcon Plan will take place before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408 (the “**Bankruptcy Court**”) on **January 21, 2014 at 11:00 a.m. (prevailing U.S. Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that the objection deadline with respect to the Adjourned Falcon Plan expired on May 30, 2013, and no further timely objections may be filed.

PLEASE TAKE FURTHER NOTICE that any and all objections to the Motion (the “**Objections**”) shall be filed electronically with the Court on the docket of *Arcapita Bank B.S.C.(c), et al.*, Ch. 11 Case No. 12-11076 (SHL) (the “**Docket**”), pursuant to the Case Management Procedures approved by the Court and the Court’s General Order M-399 (available at <http://nysb.uscourts.gov/orders/orders2.html>), by registered users of the Court’s case filing system and by all other parties in interest on a 3.5 inch disk, preferably in portable document format, Microsoft Word, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General

Order M-399 on (i) counsel for Falcon, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, 10166 (Attn: Michael A. Rosenthal, Esq., Craig H. Millet, Esq., and Matthew K. Kelsey, Esq.); (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); (iii) counsel for RA Holding Corp., Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq. and Evan R. Fleck, Esq.); (iv) counsel for the Hopper Parties, Andrews Kurth LLP, 450 Lexington Ave, 15th Floor, New York, New York 10017 (Attn: Jonathan I. Levine, Esq.) and Andrews Kurth LLP, 600 Travis, Ste 4200, Houston, Texas 77002 (Attn: David A. Zdunkewicz); (v) HSBC Bank USA, N.A., 8 East 40th St., New York, New York 10016 (Attn: Ignazio Tamburello) and counsel for HSBC Bank USA, Hogan Lovells US LLP, 875 Third Ave., New York, New York 10022 (Attn: Daniel J. Lanigan, Esq.); and (vi) counsel for Tide, Bracewell & Giuliani LLP, 711 Louisiana St., Houston, Texas 77002 (Attn: Trey Wood, Esq.), so as to be received no later than **January 14, 2014 at 12:00 p.m. (prevailing U.S. Eastern Time)** (the “*Objection Deadline*”).

PLEASE TAKE FURTHER NOTICE that, if no Objections are timely filed and served with respect to the Motion, Falcon may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order attached to the Motion, which order may be entered with no further notice or opportunity to be heard.

Dated: New York, New York  
December 30, 2013

Respectfully submitted,

/s/ Michael A. Rosenthal

Michael A. Rosenthal (MR-7006)

Craig H. Millet (admitted *pro hac vice*)

Jeremy L. Graves (admitted *pro hac vice*)

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ATTORNEYS FOR FALCON GAS STORAGE  
COMPANY, INC.

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<b>FALCON GAS STORAGE COMPANY, INC.,</b>	: Case No. 12-11790 (SHL)
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<b>Debtor.</b>	: X
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<b>JOHN M. HOPPER, et al.,</b>	: :
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<b>Plaintiffs,</b>	: Adv. Proc. No. 12-01662 (SHL)
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<b>FALCON GAS STORAGE COMPANY, INC.,</b>	: :
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<b>v.</b>	: :
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<b>Defendants.</b>	: X
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**MOTION TO APPROVE FALCON SETTLEMENT WITH TIDE, THE HOPPER  
PARTIES, AND HSBC**

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Falcon Gas Storage Company, Inc. (“*Falcon*”) submits this motion (the “*Motion*”) for entry of an order substantially in the form annexed hereto as Exhibit A, authorizing and approving that certain Tide/Hopper Settlement (as defined herein) by and among (i) Tide Natural Gas Storage I, L.P. and Tide Natural Gas Storage II, L.P. (together, “*Tide*”); (ii) Falcon, Arcapita Bank B.S.C.(c) (“*Arcapita Bank*”), GASStorage Investments II LLC (“*Gas Storage II*”), and Arcapita Inc.; (iii) HSBC Bank USA, National Association (“*HSBC*”); and (iv) John M. Hopper, Edmund A. Knolle, Jeffrey H. Foutch, Keith W. Chandler, The Estate of Steven B. Toon, deceased, Thomas B. Wynne, Jr., Steven Jenkins, Tamara Jenkins, Dianne G. Foutch, Lesli Paige Leonard, Sally H. Hopper, Ellecia A Knolle, Michelle P. Foutch, Deborah J. Toon, Rachel Ann Chandler, Daniel Leonard, and Alexander Cocke Trust (collectively, the “*Hopper Parties*”). In support thereof, Falcon respectfully represents:

### **PRELIMINARY STATEMENT**

1. Falcon has reached an agreement with its most significant creditors that resolves all outstanding objections to its chapter 11 plan, ensures payment in full to all of Falcon’s unsecured creditors, allows for a substantial distribution to Falcon’s equity owners, and paves the way for immediate confirmation of Falcon’s plan. In fact, the settlement allows the plan to be confirmed at the same time that the settlement is approved. The settlement also resolves pending litigation in the District Court, two adversary proceedings pending before this Court, a pending dispute as to the subordination of Tide’s claim, a pending objection to Tide’s claim, and provides for the withdrawal of certain claims against the Falcon estate.

### **BACKGROUND**

#### **A. The Arcapita Group and the NorTex Investment**

2. Falcon is an indirect subsidiary of Arcapita Bank. Prior to the September 17, 2013 effective date of its chapter 11 plan of reorganization Arcapita Bank and its subsidiaries



(collectively, the “*Arcapita Group*”) were in the business of investing in and managing Shari’ah-compliant alternative investments. As part of the ordinary course of the business of the Arcapita Group, in July 2005 Arcapita Group affiliate GASStorage Investments LLC acquired 80% of the stock of Falcon from the Hopper Parties, who retained the remaining 20%. Through Arcapita Group affiliates that owned portions of GASStorage Investments LLC’s parent, the Arcapita Group then syndicated a portion of its indirect interest in Falcon to third-party investors. As of early 2010, Falcon’s primary asset was 100% of the membership interests of NorTex Gas Storage Company, LLC (together with its subsidiaries, “*NorTex*”), a company that owns and operates two large underground natural gas storage facilities and associated equipment near Fort Worth, Texas.

**B. Falcon’s Sale of NorTex Gas Storage Company, LLC and Related Prepetition Litigation**

3. On March 15, 2010, Falcon entered into a purchase agreement (as amended, the “*NorTex Purchase Agreement*”) to sell 100% of its LLC membership interests in NorTex (the “*NorTex Sale*”) to Tide for \$515 million. Arcapita Bank guaranteed certain of Falcon’s obligations under the NorTex Purchase Agreement. Prior to closing the NorTex Sale, the Hopper Parties filed actions in state court in Texas against Tide, Falcon, certain of its directors, and NorTex, seeking damages and to enjoin the NorTex Sale to Tide (collectively, the “*Hopper Litigation*”) alleging that Falcon’s board of directors had breached their fiduciary duties by agreeing to a sales price for the NorTex membership interests purportedly below fair value.

4. The Texas courts refused to enjoin the NorTex Sale; however, as a result of the pending Hopper Litigation and as a condition to closing imposed by Tide, Falcon agreed to amend the NorTex Purchase Agreement to (1) indemnify Tide for any liability Tide might suffer as a result of the Hopper Litigation, and (2) place approximately \$70 million of the total

sales proceeds from the NorTex Sale in escrow (the “**Escrowed Money**”) with HSBC to be available to satisfy those specific indemnification obligations.

5. After the NorTex Sale closed, on July 27, 2010, Falcon and the Hopper Parties settled the Hopper Litigation in exchange for (1) an immediate cash payment of \$6.5 million, and (2) the agreement that, when the Escrowed Money was released to Falcon, the Hopper Parties would be paid an additional \$8.25 million (\$1,072,500 of which would be paid by Gas Storage II), less applicable tax withholding. Because the settlement of the Hopper Litigation fully resolved the contingent indemnification obligations of Falcon to Tide, the dismissal of the Hopper Litigation resulted in the occurrence of an “**Escrow Breakage Trigger**” under the terms of the NorTex Purchase Agreement and the related escrow agreement.

6. Despite the occurrence of an Escrow Breakage Trigger, Tide refused to provide release instructions to HSBC and filed an action in the Southern District of New York against Falcon, Arcapita Bank, non-debtor Arcapita Inc. and HSBC, alleging claims for “fraud in the inducement” and intentional misrepresentation in connection with the purchase and sale of securities, among other things. *Tide Natural Gas Storage I, L.P. v. Falcon Gas Storage Co., Inc.*, Case No. 10-cv-05821-KMW (S.D.N.Y.) (the “**District Court Action**”). In the District Court Action, Tide alleged that Falcon had misrepresented the extent and value of the assets held by NorTex and, therefore, Tide had overpaid for the NorTex LLC membership interests. Falcon denies Tide’s allegations.

7. The District Court Action is a complicated suit that seeks \$120 million in damages from Falcon and Arcapita Bank. The Action is highly fact-dependent and turns on byzantine analyses relating to, *inter alia*, volumetric calculations and measurements that were performed to estimate the quantities and values of pad gas located in the NorTex natural gas storage facilities, the source of compressor fuel and associated operating expenses, and the

source of hydrocarbons produced during NGL extraction facility operations. If post-hoc forensics demonstrate that any of the intricate analyses and calculations performed by NorTex relating to the foregoing led to unreliable or inaccurate estimates, the District Court Action also involves an inquiry into whether this was something that Falcon's and/or Arcapita's management knew or should have known about.

8. In the District Court Action, Tide also contends that, as a result of Falcon's alleged "fraud in the inducement", the full amount of the Escrowed Money did not become part of the Falcon bankruptcy estate and that Tide may recover its alleged damages, if any, from the Escrowed Money without sharing with other creditors. Conversely, Falcon contends that title to the Escrowed Money passed to Falcon at the closing of the NorTex Sale and that any fraud or contract claim of Tide is a claim against the Falcon bankruptcy estate subject to subordination.

**C. The Chapter 11 Cases and Postpetition Litigation**

9. On March 19, 2012 Arcapita Bank and five of its affiliates (together with Falcon, the "*Debtors*") commenced cases under chapter 11 of title 11 of the United States Code (the "*Bankruptcy Code*") in this Court. On March 21, 2012, Arcapita Bank filed a Suggestion of Bankruptcy in the District Court Action, notifying the court of the bankruptcy filing and that the District Court Action was stayed as to Arcapita Bank under the Bankruptcy Code.

10. On April 12, 2012, the Hopper Parties filed a Motion to Intervene in the District Court Action based on their asserted interest in a portion of the Escrowed Money. On April 26, 2012, Tide opposed the Hopper Parties' motion, arguing that the Hopper Parties lack a direct interest in the subject matter of the District Court Action. Tide also filed a Motion to Sever, seeking to sever its claims as against Arcapita Bank so that those claims could remain stayed while Tide's claims as against the other defendants moved forward.

11. On April 30, 2012, Falcon commenced a case under chapter 11 the Bankruptcy Code, and its bankruptcy case was ordered administratively consolidated with the other six related bankruptcy cases. On May 1, 2012, Falcon filed a Suggestion of Bankruptcy in the District Court Action, notifying the court of the filing and that the District Court Action was stayed as to Falcon under the Bankruptcy Code.

12. On May 16, 2012, the District Court entered a Stipulation and Order that provided that (i) Tide's Motion to Sever was withdrawn without prejudice, and (ii) the District Court Action was stayed in its entirety pursuant to § 362(a) of the Bankruptcy Code, unless or until otherwise ordered by the Bankruptcy Court.

1. **The Hopper Adversary Proceeding**

13. On May 21, 2012, the Hopper Parties filed adversary proceeding number 12-01662 (SHL) (the "***Hopper Adversary Proceeding***") solely against Falcon and requested a declaration that prepetition the Hopper Parties acquired all right, title and interest to \$8.25 million of the Escrowed Money and, therefore, the \$8.25 million is not property of the Falcon estate. Although they assert claims to the same Escrowed Money, neither Tide nor HSBC were named in the Hopper Adversary Proceeding. Falcon has answered, has denied the allegations in the Hopper Adversary Proceeding, and has asserted an affirmative defense based on the Hopper Parties' failure to join indispensable parties.

14. Although the Hopper Parties asserted in the Hopper Adversary Proceeding that the obligations of Falcon in the settlement of the Hopper Litigation had been satisfied by Falcon's alleged prepetition transfer of \$8.25 million of the Escrowed Money to the Hopper Parties and that such funds are not property of the Falcon estate, the Hopper Parties filed duplicative proofs of claim against Falcon, each in the amount of \$8.25 million.

## 2. The Plan and the Subordination Dispute

15. Both Tide entities filed proofs of claim against Arcapita Bank and Falcon asserting a secured claim of \$70 million and an unsecured claim of \$50 million. HSBC filed a secured claim against Falcon in the amount of \$39,681.63 for fees, costs, and expenses due to HSBC (plus accruing fees, costs, and expenses).

16. Because the Tide Claims are based on “damages arising from the purchase or sale of a security of ... an affiliate of the debtor” and because the security purchased by Tide was 100% of Falcon’s LLC membership interests in NorTex, the Debtors believe that if the Tide Claims are allowed against the estates, they must be subordinated to all other equity interests in Falcon or Arcapita Bank, as applicable, that are senior or equal to the interest represented by the LLC membership interests in NorTex. *See* 11 U.S.C. § 510(b); *USA Capital Realty Advisors, LLC, et al. v. USA Capital Diversified Trust Deed Fund, LLC et al. (In re USA Commercial Mortgage Company)*, 377 B.R. 608 (9th Cir. BAP 2007).

17. With these legal principles in mind, Arcapita Bank, Falcon, and the other affiliated Debtors proposed a joint chapter 11 plan of reorganization (as amended and/or supplemented, the “**Plan**”) which treated the Tide Claims as fully subordinated claims in Classes 10(a) and 10(g) of the Plan, the Hopper Claims as unsecured claims in Class 5(g), and the claims filed by HSBC as secured claims in Class 3(g).

18. On April 26, 2013, Arcapita Bank and Falcon also both filed objections to the Tide Claims (the “**Tide Claim Objections**”). *See* Docket No. 1051. Therein, they objected to the Tide Claims generally, and specifically objected to the assertion of a secured claim against either Arcapita Bank or Falcon. Thereafter, Falcon, Arcapita Bank, and Tide stipulated to temporarily allow the Tide Claims in Classes 8(a) and 8(g) for Plan voting purposes only, and Tide voted against the confirmation of Plan as to both Falcon and Arcapita Bank. The Tide

Claim Objections remain pending before the Court.

19. Tide objected to confirmation of the Plan based on the fully subordinated treatment of Tide's Claims in Classes 10(a) and 10(g) of the Plan (the "***Tide Subordination Dispute***"). And, on May 29, 2013, Tide filed an Adversary Proceeding captioned *Tide Natural Gas Storage I, LP et al. v. Hopper Claimants*, Case No. 13-01355, (the "***Tide Adversary Proceeding***") seeking to subordinate the Hopper Claims.

20. In June 2013, Falcon and the Hopper Parties entered into a Plan Support Agreement (the "***Hopper Plan Support Agreement***") whereby the Hopper Parties agreed to vote in favor of the Plan, and Arcapita Bank and Falcon agreed that:

- a. On or before the effective date of the Plan as to Falcon, Gas Storage II shall pay \$1,072,000 to the Hopper Parties as provided in the settlement of the Hopper Litigation;
- b. The Hopper Parties shall have an allowed unsecured claim against Falcon in Class 5(g) of the Plan in the amount of \$8,250,000, *provided, however*, that any payment by on or behalf of Gas Storage II to or on behalf of the Hopper Parties shall be fully credited against the amount of the allowed Hopper Claims; and,
- c. Subject only to the rights of Tide to object to the Hopper Claims, if any, Arcapita Bank, Falcon, and the affiliated Debtors waived and released any claim they may have to subordinate the Hopper Claims, any claim against the Hopper Parties based on chapter 5 the Bankruptcy Code, or any other objection to the Hopper Claims.

21. At the hearing before the Court on June 11, 2013 to consider confirmation of the Plan, Tide withdrew its objection to confirmation of the Plan as to Arcapita Bank and all other Debtors except Falcon, and withdrew Tide's objection to the classification of the Tide Claims as to Arcapita Bank in Class 10(a). By an order entered on June 17, 2013, the Plan was confirmed as to all Debtors except Falcon and the effective date of the Plan as to all Debtors except Falcon occurred on September 17, 2013. *See* Docket Nos. 1262 and 1518. In the Order confirming the Plan as to all Debtors except Falcon, the hearing to consider confirmation of the

Plan as to Falcon was adjourned pending the resolution of the District Court Action, the Tide Subordination Dispute, and certain other matters. The Tide Subordination Dispute has been fully briefed and argued before the Bankruptcy Court and is currently *sub judice*.

3. **The District Court Action Continues**

22. On June 25, 2012, Tide filed a *Motion for an Order Lifting the Automatic Stay Pursuant to 11 U.S.C. Section 362(d) to Allow Continuance of District Court Action* [Docket No. 279] (the “*Lift Stay Motion*”).

23. On February 28, 2013, the Court granted the Lift Stay Motion for the limited purpose of allowing the District Court to determine (i) the relevant rights of Tide, Falcon, and the Hopper Parties, to the Escrowed Money, and (ii) the merits of Tide’s claims in the District Court Action. *See* Docket No. 873.

24. After the stay was lifted, the District Court ordered that all discovery be completed by January 23, 2014 and set the matter for trial on March 3, 2014. On August 13, 2013 the Hopper Parties filed a Complaint in Intervention in the District Court Action, raising many of the same issues that were raised in the Hopper Adversary Proceeding. On September 3, 2013 HSBC filed a motion for interpleader relief. Thereafter, the parties continued discovery and trial preparation.

**JURISDICTION AND VENUE**

25. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**RELIEF REQUESTED**

26. By this Motion, Falcon, pursuant to section 105 of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), seeks

entry of an order authorizing and approving the Tide/Hopper Settlement, as defined and described herein.<sup>1</sup>

**THE TIDE/HOPPER SETTLEMENT**

27. In an effort to resolve all outstanding disputes among them, including claims and cross-claims that are pending in four different actions, Falcon, Arcapita Bank, Tide, the Hopper Parties, and HSBC have reached a global resolution of their outstanding disputes (the “*Tide/Hopper Settlement*”) that paves the way for Falcon’s emergence from chapter 11. The key terms of the Tide/Hopper Settlement are as follows:<sup>2</sup>

<b><u>PARTY</u></b>	<b><u>TREATMENT</u></b>
<b><i>Tide</i></b>	<ul style="list-style-type: none"> <li>• Tide will receive \$44 million of the Escrowed Money and Falcon will agree that the \$44 million is not property of Falcon’s estate.</li> <li>• Tide will pay 50% of the fees and costs due to HSBC as described below.</li> <li>• Tide will withdraw its claims against Arcapita Bank and Falcon.</li> <li>• Tide will withdraw its votes to reject the Plan.</li> <li>• Tide will withdraw its objection to confirmation of the Plan as to Falcon.</li> <li>• Tide will dismiss the District Court Action with prejudice.</li> <li>• Tide will dismiss the Tide Adversary Proceeding with prejudice.</li> </ul>
<b><i>Hopper Parties</i></b>	<ul style="list-style-type: none"> <li>• As provided in the original 2010 settlement agreement with the Hopper Parties, Gas Storage II will pay the Hopper Parties the sum of \$1,072,500.</li> <li>• The Hopper Parties will receive \$7,177,500 of the Escrowed Money, a portion of which will be transferred to Falcon to pay U.S. federal income and F.I.C.A. withholding taxes applicable to the distribution to the Hopper Parties, and Falcon will agree that the \$7,177,500 is not property of Falcon’s estate. Falcon will agree promptly to pay such applicable U.S. taxes.</li> <li>• The Hopper Parties will withdraw their claims against Falcon.</li> </ul>

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<sup>1</sup> Pursuant to section 8.12 of its confirmed Plan, Arcapita Bank does not need Court approval of its agreement to settle the District Court Action.

<sup>2</sup> The full terms of the Tide/Hopper Settlement are set forth in the Settlement Agreement annexed hereto as Exhibit B (the “*Tide/Hopper Settlement Agreement*”). In the event of any inconsistency between the description set forth herein and the Tide/Hopper Settlement Agreement, the terms of the Tide/Hopper Settlement Agreement shall govern.



	<ul style="list-style-type: none"> <li>The Hopper Parties will dismiss the Hopper Adversary Proceeding with prejudice.</li> </ul>
<i>HSBC</i>	<ul style="list-style-type: none"> <li>Falcon and Tide will each pay 50% of HSBC’s fees and costs incurred in connection with the dispute over the Escrowed Money.</li> <li>HSBC will dismiss any outstanding claims or counter-claims.</li> <li>HSBC’s claim filed in the Falcon Bankruptcy will be withdrawn or disallowed.</li> </ul>
<i>Falcon</i>	<ul style="list-style-type: none"> <li>Falcon will pay 50% of the fees and costs due to HSBC as described above.</li> <li>Falcon will receive all remaining Escrowed Money.</li> </ul>

**BASIS FOR RELIEF REQUESTED**

28. Bankruptcy Rule 9019(a) provides that “on motion by the trustee and after a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Notably, “[a]s a general rule, . . . courts favor compromises because they are ‘a normal part of the process of reorganization.’” *DeBenedictis v. Truesdell*, No. 09 Cv. 374 (BSJ), 2009 U.S. Dist. LEXIS 64213, at \*18 (S.D.N.Y. July 13, 2009).

29. The “factors which should be considered by a court in approving a settlement agreement in the context of a bankruptcy case include the complexity of the litigation, comparison of the proposed settlement with the likely result of litigation, the scope of the discovery preceding settlement, and the ability of the defendant to satisfy a greater judgment.” *In re Ionosphere Clubs*, 156 B.R. 414, 427 (S.D.N.Y. 1993) (citing, *inter alia*, *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992)).

30. “[A]pproval of the settlement lies within the sound discretion of the bankruptcy court.” *In re Enron Corp.*, No. 02 Civ. 8489 (AKH), 2003 U.S. Dist. LEXIS 1383, at \*5 (S.D.N.Y. Jan. 31, 2003); *see also Cousins v. Pereira*, No. 09 Civ. 1190 (RJS), 2010 U.S. Dist. LEXIS 136139, at \*9 (S.D.N.Y. Dec. 22, 2010) (noting that the “bankruptcy court is in the best position, as the . . . ongoing supervisory court for the bankruptcy proceeding, to determine whether a compromise is in the best interest of the estate and [is] fair and equitable”) (citations

omitted) (alteration in original).

31. In making its decisions, “the Court is not to substitute its judgment for that of the parties, nor is it to reopen and enter into negotiations with the parties, nor is it to turn consideration of the adequacy of the settlement ‘into a trial or a rehearsal of the trial.’” *In re Metropolitan Life Derivative Litig.*, 935 F. Supp. 286, 292 (S.D.N.Y. 1996) (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974)); *see also In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993) (“The reviewing court need not conduct its own investigation concerning the reasonableness of the settlement and may credit and consider the opinion of the Trustee and counsel that the settlement is fair and equitable.”). Moreover, the Court is “not to determine whether the settlement was the best that could have been obtained,” but instead, to determine “whether it ‘fall[s] below the lowest point in the range of reasonableness.’” *In re W.T. Grant Co.*, 699 F.2d 599, 613 (2d Cir. 1983) (citation omitted).

32. The Tide/Hopper Settlement paves the way for confirmation of the Plan as to Falcon. The Settlement is the product of extensive arm’s-length negotiations between Falcon, Arcapita Bank, Tide, the Hopper Parties, and HSBC and represents the parties’ good faith compromise of potential disputes. As a result of the Settlement, Falcon will be able to quickly move forward with confirmation and consummation of its Plan without litigating myriad issues related to the District Court Action, the Hopper Adversary Proceeding, the Tide Adversary Proceeding, and the Tide Subordination Dispute. These include, among many others, fact-intensive inquiries relating to volumetric calculations and measurements that were performed to estimate the quantities and values of pad gas located in the NorTex natural gas storage facilities, the source of compressor fuel and associated operating expense at the NorTex facilities, the source of hydrocarbons produced during NGL extraction facility operations, and what Falcon’s and/or Arcapita’s management knew or should have known regarding the foregoing. They also

include legal issues of first impression in the Second Circuit relating to subordination. By agreeing to the Tide Settlement, Falcon has cleared the path for an immediate exit from chapter 11 that will pay all holders of allowed priority, secured, and unsecured claims in full and will result in a substantial distribution to Falcon's equity holders.

33. The \$44 million that will be paid to Tide is a fraction of the \$120 million that was sought by Tide in the District Court Action and represents a fair compromise of the dispute in light of the facts that have been developed during discovery. The \$8.25 million that will be paid to the Hopper Parties is indisputably owed and would be paid in any scenario. Considering the benefits of the Settlement, the relative positions of the parties, and the substantial costs involved in proceeding with litigation, the proposed Settlement is well "within the bounds of reasonableness," *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 523 (S.D.N.Y. 1993), and certainly, does not "fall[] below the lowest point in the range of reasonableness," *In re W.T. Grant Co.*, 699 F.2d at 608 (internal citations and quotations omitted). In light of the foregoing, Falcon, in its business judgment, believes that the Tide/Hopper Settlement represents a compromise that is fair and equitable and advances the interests of all parties that have an interest in the Falcon estate. Accordingly, for the reasons set forth above, Falcon submits that entering into the Tide/Hopper Settlement was an exercise of sound business judgment and that the Court should therefore approve the Tide/Hopper Settlement.

#### **NOTICE**

34. Falcon has provided notice of filing of the Motion by electronic mail, facsimile and/or overnight mail to: (i) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); (ii) RA Holding Corp., Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq. and Evan R.

Fleck, Esq.); (iii) Tide, Bracewell & Giuliani LLP, 711 Louisiana St., Houston, Texas 77002 (Attn: Trey Wood, Esq.); (iv) the Hopper Parties, Andrews Kurth LLP, 450 Lexington Ave, 15th Floor, New York, New York 10017 (Attn: Jonathan I. Levine, Esq.) and Andrews Kurth LLP, 600 Travis, Ste 4200, Houston, Texas 77002 (Attn. David A. Zdunkewicz); (v) HSBC, Hogan Lovells US LLP, 875 Third Ave., New York, New York 10022 (Attn: Pieter H.B. Van Tol, III, Esq. and Robert A. Ripin, Esq.); (vi) Ware Jackson Lee & Chambers, LLP, 2929 Allen Parkway, 42<sup>nd</sup> Floor, Houston, Texas, 77019 (Attn: Don Jackson, Esq.); (vii) The Kim Law Firm, 4309 Yoakum Blvd., Suite 2000, Houston, Texas, 77006 (Attn: John H. Kim, Esq.); (viii) Locke, Lord, Bissell, and Liddell, LLP, 2800 JPMorgan Chase Tower, 600 Travis, Houston, Texas 77002; (ix) Jones Day, LLP, 717 Texas, Suite 3300, Houston, Texas 77002; and (x) all parties listed on the Master Service List established in the Debtors' chapter 11 cases. A copy of the Motion is also available on the website of the Debtors' notice and claims agent, GCG, Inc., at [www.gcginc.com/cases/arcapita](http://www.gcginc.com/cases/arcapita).

**NO PRIOR REQUEST**

35. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, Falcon respectfully requests that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
December 30, 2013

Respectfully submitted,

**GIBSON, DUNN & CRUTCHER LLP**

/s/ Michael A. Rosenthal

---

Michael A. Rosenthal  
Craig H. Millet (admitted *pro hac vice*)  
Jeremy L. Graves (admitted *pro hac vice*)  
GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue  
New York, New York 10166-0193  
Telephone: (212) 351-4000  
Facsimile: (212) 351-4035  
ATTORNEYS FOR FALCON GAS STORAGE  
COMPANY, INC.

Exhibit A

Proposed Order

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

-----X	
IN RE:	: Chapter 11
ARCAPITA BANK B.S.C.(c), <i>et al.</i> ,	: Case No. 12-11076 (SHL)
Debtors.	: Jointly Administered
-----X	
IN RE:	: Chapter 11
FALCON GAS STORAGE COMPANY, INC.,	: Case No. 12-11790 (SHL)
Debtor.	: Case No. 12-11790 (SHL)
-----X	
JOHN M. HOPPER, <i>et al.</i> ,	: Adv. Proc. No. 12-01662 (SHL)
Plaintiffs,	: Adv. Proc. No. 12-01662 (SHL)
v.	: Adv. Proc. No. 12-01662 (SHL)
FALCON GAS STORAGE COMPANY, INC.,	: Adv. Proc. No. 12-01662 (SHL)
Defendant.	: Adv. Proc. No. 12-01662 (SHL)
-----X	
TIDE NATURAL GAS STORAGE I, LP, <i>et al.</i> ,	: Adv. Proc. No. 13-01335 (SHL)
Plaintiffs,	: Adv. Proc. No. 13-01335 (SHL)
v.	: Adv. Proc. No. 13-01335 (SHL)
JOHN M. HOPPER, <i>et al.</i> ,	: Adv. Proc. No. 13-01335 (SHL)
Defendants.	: Adv. Proc. No. 13-01335 (SHL)
-----X	

**ORDER AUTHORIZING AND APPROVING TIDE/HOPPER SETTLEMENT**

Upon consideration of the motion of Falcon (the “*Motion*”)<sup>1</sup> for entry of an order pursuant to Bankruptcy Rule 9019 approving the Tide/Hopper Settlement; and the Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and

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<sup>1</sup> Capitalized terms used in this Order and not otherwise defined in this Order have the meanings ascribed to such terms in the Motion.

the Court having found that venue of this proceeding in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the terms of the Tide/Hopper Settlement are fair and reasonable; and the Court having found that notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the “*Hearing*”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation, and having overruled objections, if any, and sufficient cause appearing therefore,

**IT IS HEREBY ORDERED:**

1. The Motion is GRANTED in its entirety.
2. Pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, the Tide/Hopper Settlement is approved, and the terms, conditions, and provisions of the Tide/Hopper Settlement Agreement attached hereto as Exhibit 1 are incorporated in this Order by reference as if fully set forth herein. The Tide/Hopper Settlement Agreement shall be irrevocably binding and enforceable in accordance with its terms on all parties thereto and shall be irrevocably binding on their successors and assigns.
3. Falcon is authorized and empowered to take any and all steps and to perform such other and further actions as are necessary to carry out, effectuate or otherwise enforce the Tide/Hopper Settlement.



4. Falcon is authorized and directed to promptly pay any U.S. federal income, F.I.C.A. taxes, or other taxes applicable to the distributions to the Hopper Parties, as set forth in the Tide/Hopper Settlement Agreement.

5. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a) and 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: New York, New York  
\_\_\_\_\_, 2014

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THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

Tide/Hopper Settlement Agreement

[Exhibit included as Exhibit B to the Motion]

Exhibit B

Tide/Hopper Settlement Agreement

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## **SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (“**Agreement**”) is hereby entered into as of this 26th day of December 2013 (the “**Agreement Effective Date**”) by and between Tide Natural Gas Storage I, LP f/k/a Alinda Natural Gas Storage I, LP and Tide Natural Gas Storage II, LP f/k/a Alinda Natural Gas Storage II, LP (collectively, “**Tide**”); Falcon Gas Storage Company, Inc. (“**Falcon**”), Arcapita Bank B.S.C.(c) (“**Arcapita Bank**”) and Arcapita, Inc. (“**Arcapita Inc.**” and, collectively with Falcon and Arcapita Bank, “**Falcon/Arcapita**”); GASStorage Investments II LLC (“**Gas Storage II**”); HSBC Bank USA, National Association (“**HSBC**”); and John M. Hopper, Edmund A. Knolle, Jeffrey H. Foutch, Keith W. Chandler, The Estate of Steven B. Toon, deceased, Thomas B. Wynne, Jr., Steven Jenkins, Tamara Jenkins, Dianne G. Foutch, Lesli Paige Leonard, Sally H. Hopper, Ellecia A Knolle, Michelle P. Foutch, Deborah J. Toon, Rachel Ann Chandler, Daniel Leonard, and Alexander Cocke Trust (collectively, the “**Hopper Parties**”) (together the “**Parties**” and each a “**Party**”).

## **RECITALS**

A. Tide and Falcon are parties to a Purchase Agreement dated March 15, 2010 (the “**Purchase Agreement**”) and First Amendment to Purchase Agreement dated April 1, 2010 (the “**First Amendment**”), pursuant to which Tide purchased Falcon’s membership interests in NorTex Gas Storage Company, LLC (“**NorTex**”). Arcapita Bank guaranteed Falcon’s obligations under the Purchase Agreement.

B. As provided in the First Amendment, HSBC is the Escrow Agent pursuant to an Escrow Agreement dated April 1, 2010 among Falcon, HSBC, and Alinda Natural Gas Storage I, L.P. and Alinda Natural Gas Storage II, L.P. (the “**Escrow Agreement**”). Pursuant to the Escrow Agreement, the sum of \$70,046,117.78 is being held in an escrow account under the control of HSBC (the “**Escrow Account**”).

C. The Hopper Parties brought suit against, among others, Falcon, Arcapita Bank, Gas Storage II, GASStorage Investments LLC, GASStorage Funding, Inc., MoBay Storage Holdings, LLC, MoBay Storage Hub LLC, Antoine LaFargue, Asim Zafar, Qaisar Zaman, Brian McCabe, Charles L. Griffith, Kevin J. Keough, and Tore Nelson (collectively, the “**Hopper Action Settling Defendants**”) in two separate actions in Texas state court (together, the “**Hopper Action**”). The claims in the Hopper Action related to Tide’s purchase of Falcon’s membership interests in NorTex. The Hopper Parties and the Hopper Action Settling Defendants settled the Hopper Action by entering into a Settlement Agreement and General Release dated July 27, 2010 (the “**Hopper Settlement Agreement**”). Pursuant to the Hopper Settlement Agreement, Falcon and Gas Storage II agreed to pay the Hopper Parties a total of \$14,750,000 in two installments. Of that amount, \$8,250,000 remained owing to the Hopper Parties as of April 30, 2012, and remains owing at this time.

D. A dispute has arisen between Tide and Falcon/Arcapita relating to (i) Tide’s purchase of Falcon’s membership interests in NorTex, and (ii) Tide’s claim to funds in the

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Escrow Account. On August 2, 2010, Tide commenced an action against Falcon/Arcapita and HSBC captioned *Tide Natural Gas Storage I, LP, et al. v. Falcon Gas Storage Company, Inc., et al.*, 10-cv-05821-KMW (the “**District Court Action**”), in the United States District Court for the Southern District of New York (the “**District Court**”).

E. On March 19, 2012, Arcapita Bank and certain of its affiliates commenced voluntary chapter 11 bankruptcy cases (the “**Arcapita Bankruptcy Case**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) which were ordered jointly administered under the caption *In re Arcapita Bank, B.S.C.(c)*, Case No. 12-11076 (SHL). The commencement of the Arcapita Bankruptcy Case automatically stayed the District Court Action as to Arcapita Bank.

F. On April 30, 2012, Falcon commenced a voluntary chapter 11 bankruptcy case (the “**Falcon Bankruptcy Case**” and, together with the Arcapita Bankruptcy Case, the “**Bankruptcy Cases**”) in the Bankruptcy Court captioned *In re Falcon Gas Storage Company, Inc.*, Case No. 12-11790 (SHL), which was ordered jointly administered with the Arcapita Bankruptcy Case. The commencement of the Falcon Bankruptcy Case automatically stayed the District Court Action as to Falcon.

G. On April 12, 2012, the Hopper Parties filed a motion to intervene in the District Court Action alleging certain claims as to the funds in the Escrow Account.

H. On May 21, 2012, the Hopper Parties filed an Adversary Proceeding against Falcon in the Bankruptcy Cases captioned *Hopper v. Falcon Gas Storage Company, Inc.*, Case No. 12-01662, (the “**Hopper Adversary Proceeding**”) in which the Hopper Parties claimed they were entitled to \$8,250,000 of the funds in the Escrow Account.

I. By an order entered on February 28, 2013, the Bankruptcy Court lifted the automatic stay as to the District Court Action.

J. On September 3, 2013, HSBC filed a motion for interpleader in the District Court Action as to the disposition of the Escrow Account.

K. Each of the Hopper Parties filed a proof of claim against Falcon in the Falcon Bankruptcy Case (collectively, the “**Hopper Claims**”), each in the amount of \$8,250,000.

L. Tide filed two proofs of claim against Falcon in the Falcon Bankruptcy Case and two proofs of claim against Arcapita Bank in the Arcapita Bankruptcy Case (collectively, the “**Tide Claims**”), each in the amount of \$120,000,000.

M. HSBC filed a proof of claim against Falcon in the Falcon Bankruptcy Case for a secured claim in the amount of \$39,681.63 (the “**HSBC Claim**”).

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N. Arcapita Bank, Falcon, and other affiliated debtors proposed a joint chapter 11 plan of reorganization (the “**Plan**”), which treated the Tide Claims as fully subordinated claims in Classes 10(a) and 10(g) of the Plan. The Hopper Claims were classified in Class5(g) as to Falcon.

O. In June of 2013, Falcon and the Hopper Parties entered into a Plan Support Agreement (the “**Hopper Plan Support Agreement**”) whereby the Hopper Parties agreed to vote in favor of the Plan, and Arcapita Bank and Falcon agreed that:

- a. On or before the effective date of the Plan as to Falcon, Gas Storage II shall pay \$1,072,500 to the Hopper Parties as provided in the Hopper Settlement Agreement (the “**Gas Storage Payment**”);
- b. The Hopper Parties shall have an allowed unsecured claim against Falcon in Class 5(g) of the Plan in the amount of \$8,250,000, *provided, however*, that any payment by on or behalf of Gas Storage II to or on behalf of the Hopper Parties shall be fully credited against the amount of the allowed Hopper Claims; and,
- c. Subject only to the rights of Tide to object to the Hopper Claims, if any, Arcapita Bank, Falcon, and the affiliated debtors waived and released any claim they may have to subordinate the Hopper Claims, any claim based on chapter 5 of title 11 of the United States Code (the “**Bankruptcy Code**”), or any other objection to the Hopper Claims.

P. On April 26, 2013, Arcapita Bank and Falcon both filed objections to the Tide Claims (the “**Tide Claim Objections**”). Falcon, Arcapita Bank, and Tide stipulated to temporarily allow the Tide Claims in Classes 8(a) and 8(g) for Plan voting purposes only, and Tide voted against the confirmation of Plan as to both Falcon and Arcapita Bank. The Tide Claims Objections remain pending before the Bankruptcy Court.

Q. Tide objected to the confirmation of the Plan based on the fully subordinated treatment of Tide’s Claims in Classes 10(a) and 10(g) in the Plan (the “**Tide Subordination Dispute**”). The Tide Subordination Dispute has been fully briefed and argued before the Bankruptcy Court and is under advisement awaiting a decision by the Bankruptcy Court.

R. On May 29, 2013, Tide filed an Adversary Proceeding in the Bankruptcy Court Cases against the Hopper Parties captioned *Tide Natural Gas Storage I, LP et al. v. Hopper Claimants*, Case No. 13-01355, (the “**Tide Adversary Proceeding**”) seeking to subordinate the Hopper Claims.

S. At the hearing before the Bankruptcy Court on June 11, 2013, to consider the confirmation of the Plan, Tide withdrew its objection to the confirmation of the Plan as to

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Arcapita Bank and all other debtors except Falcon, and withdrew Tide's objection to the classification of the Tide Claims as to Arcapita Bank in Class 10(a).

T. By an order of the Bankruptcy Court entered on June 17, 2013, the Plan was confirmed as to all debtors except Falcon and the effective date of the Plan as to all debtors except Falcon occurred on September 17, 2013. In the Order confirming the Plan as to all debtors except Falcon, the confirmation of the Plan as to Falcon was adjourned by the Bankruptcy Court pending the resolution of the District Court Action, the Tide Subordination Dispute, and certain other matters.

U. To avoid the cost and uncertainty of litigation, the Parties by this Agreement desire to compromise and resolve all outstanding issues among them allowing for, among other things, the dismissal of the District Court Action and the confirmation of the Plan as to Falcon.

**TERMS**

NOW, THEREFORE, for good and valuable consideration, the exchange of which is hereby acknowledged, and intending to be legally bound hereby, and subject to the conditions set forth below, the Parties agree as follows:

1. Approval Order. Upon execution of this Agreement by all Parties, Falcon will promptly file a motion (the "**9019 Motion**") that seeks entry of an order in the Falcon Bankruptcy Case, in form and substance satisfactory to the Parties hereto, approving this Agreement under Federal Rule of Bankruptcy Procedure 9019 (the "**Approval Order**"), which may be sought contemporaneously with an order confirming the Plan as to Falcon. The provisions and obligations of this Agreement set forth hereafter shall be conditioned upon entry of the Approval Order. The "**Approval Order Effective Date**" shall be the earlier of (a) the date the Approval Order becomes a Final Order or (b) the date, if any, that the Tide, Falcon/Arcapita and the Hopper Parties jointly agree to waive the requirement that the Approval Order become a Final Order, provided however that no such waiver shall be enforceable if given after a stay of the Approval Order has been issued. "**Final Order**" means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction approving this Agreement, which has not been reversed, stayed, modified, or amended, and as to which the time to appeal, seek certiorari, or move for a new trial, reargument, or rehearing has expired and no appeal, petition for certiorari, or motion for a new trial, reargument, or rehearing has been timely filed, or as to which any appeal that has been taken, any petition for certiorari, or motion for a new trial, reargument, or rehearing that has been or may be Filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought; provided, however, that the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code or under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order shall not prevent the Approval Order from becoming a "Final Order". Falcon shall provide prompt notice, by email

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in accordance with paragraph 23 below, to the other Parties of the occurrence of the Approval Order Effective Date.

2. Disbursement of Escrow. On the third (3<sup>rd</sup>) Business Day<sup>1</sup> following the Approval Order Effective Date, HSBC shall forthwith and without further instruction or approval, disburse the funds currently held in the Escrow Account as follows (the day all such disbursements are made shall be the “**Settlement Payment Date**”):

- a) HSBC shall deduct from the funds held in the Escrow Account an amount equal to the portion of fees and costs due HSBC from Falcon pursuant to the Escrow Agreement as of the Settlement Payment Date and shall apply such amount in full satisfaction of such portion of the HSBC fees and costs as are due from Falcon.
- b) \$44,000,000 shall be disbursed to Tide (“**Tide Escrow Distribution**”) in accordance with the disbursement instructions set forth on Annex A attached hereto and made a part hereof.
- c) \$7,177,500 shall be disbursed to or on behalf of the Hopper Parties (the “**Hopper Escrow Distributions,**” and, together with the Gas Storage Payment, the “**Hopper Distributions**”) as follows: (i) \$6,044,057.97 shall be paid to the attorneys for the Hopper Parties, Andrews Kurth LLP, in accordance with the disbursement instructions set forth on Annex B attached hereto and made a part hereof, and (ii) \$1,133,441.85 shall be disbursed to Falcon, in accordance with the disbursement instructions set forth on Annex C attached hereto and made a part hereof, to fund payment to the U.S. Treasury for U.S. federal income and F.I.C.A. taxes applicable to the distributions to the Hopper Parties pursuant to this Settlement Agreement. As between the Hopper Parties on the one hand and Falcon/Arcapita on the other, those Parties hereby agree that the Hopper Distributions (i) shall be deemed as payment to the Hopper Parties for their ownership of the equity interests in Falcon as set forth on Annex D attached hereto and made a part hereof, and (ii) together with the Gas Storage Payment described in Paragraph 4., below, shall be in full satisfaction of the “Second Payment” owed to the Hopper Parties in the amount of \$8,250,000 as provided in Paragraphs 2 and 3 of the Hopper Settlement Agreement.
- d) The remainder of the funds in the Escrow Account shall be disbursed by HSBC to Falcon in accordance with the disbursement instructions set forth on Annex C attached hereto and made a part hereof.

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<sup>1</sup>“Business Day” means any day that is none of a Saturday, Sunday, United States federal holiday, or New York state holiday.



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Prior to the Settlement Payment Date, Tide will pay HSBC any and all outstanding fees and costs due HSBC from Tide pursuant to the Escrow Agreement as of the Settlement Payment Date. If Tide fails to do so, HSBC shall deduct all such amounts from the Tide Escrow Distribution. No later than the Settlement Payment Date, Falcon shall provide an IRS Form W-2 to each of the Hopper Parties reflecting the appropriate amount of U.S. taxes to be withheld and paid to the U.S. Treasury by Falcon as provided in 2(c)(ii) above; no later than two (2) Business Days following the Settlement Payment Date, Falcon shall make the payments to the U.S. Treasury provided in 2(c)(ii) above.

3. Non-Property of Falcon Estate. For purposes of this Agreement and the resolution of the disputes referenced herein, the Parties acknowledge and agree that as of the Settlement Payment Date (a) the Tide Escrow Distribution, the Hopper Escrow Distributions, and the HSBC Fees do not constitute property of the Falcon bankruptcy estate as provided in section 541 of the Bankruptcy Code, and (b) the funds disbursed to Falcon as provided in 2(d) above shall constitute property of the Falcon bankruptcy estate as provided in section 541 of the Bankruptcy Code.

4. Other Distributions to the Hopper Parties; Indemnification. Notwithstanding anything in the Hopper Plan Support Agreement to the contrary, (i) on or prior to Settlement Payment Date, Gas Storage II shall pay the Gas Storage Payment to the Hopper Parties, in accordance with the disbursement instructions set forth on Annex B attached hereto, and made a part hereof in full settlement of the obligation of Gas Storage II to make the Gas Storage Payment under the Hopper Plan Support Agreement, and (ii) the Hopper Parties on the one hand, and Gas Storage II and Falcon/Arcapita, on the other hand, hereby agree that the Gas Storage Payment also is being made in satisfaction of Gas Storage II's obligation to pay \$1,072,500 of the "Second Payment" owed to the Hopper Parties as provided in Paragraphs 2 and 3 of the Hopper Settlement Agreement. The Hopper Parties shall indemnify, defend, and hold harmless Falcon/Arcapita and each of their respective officers, directors, employees, representatives and agents, against any claim or cause of action brought by anyone relative to the Hopper Settlement Agreement, including, without limitation, any action brought by any taxing authority on the grounds that the amounts withheld by Falcon for the payment of taxes were insufficient.

5. Dismissal of the Hopper Adversary Proceeding. Within one (1) Business Day after the Settlement Payment Date, the parties to the Hopper Adversary Proceeding shall execute and file a stipulation for dismissal of such Hopper Adversary Proceeding in the form attached hereto as Annex E.

6. Dismissal of the District Court Action. Within one (1) Business Day after the Settlement Payment Date, the parties to the District Court Action shall jointly submit a fully executed stipulation of dismissal with prejudice and proposed order to the District Court, in the form attached hereto as Annex F.

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7. Dismissal of the Tide Adversary Proceeding. Within one (1) Business Day after the Settlement Payment Date, the parties to the Tide Adversary Proceeding shall execute and file a stipulation for dismissal of such Tide Adversary Proceeding in the form attached hereto as Annex G.

8. Disallowance of Hopper Claims. Within one (1) Business Day after the Settlement Payment Date, the Hopper Parties shall execute and file a stipulation, in the form of Annex H, to disallow, with prejudice, the Hopper Claims in full. The Hopper Parties agree that they shall not pursue, file or assert any further claims of any kind or nature whatsoever against Falcon/Arcapita, and that, for purposes of confirmation of the Plan, the Hopper Claims can be deemed to be withdrawn, with prejudice, and Hopper shall be deemed not to oppose confirmation of the Plan, if the Approval Order is entered.

9. Disallowance of the Tide Claims. Within one (1) Business Day after the Settlement Payment Date, Tide and Falcon shall execute and file a stipulation, in the form of Annex I, to (i) disallow, with prejudice, the Tide Claims in full, (ii) dismiss the Tide Claim Objections and (iii) withdraw the Tide Subordination Dispute. Tide agrees that upon approval of the 9019 Motion and provided that the order confirming the Plan provides that the Plan shall not become effective as to Falcon before the Settlement Payment Date, for purposes of confirmation of the Plan, the Tide Claims, Tide Claim Objections, and Tide Subordination Dispute shall be deemed to be withdrawn, with prejudice, and any vote submitted by Tide with respect to the Tide Claims shall not be counted.

10. Withdrawal of the HSBC Claim. Upon the Settlement Payment Date, the HSBC Claim shall be deemed withdrawn in full, with prejudice, and HSBC shall have no further claim of any kind against Falcon.

11. Releases by Tide, the Hopper Parties, and HSBC. **“Released Claims”** shall mean damages, suits, claims, proofs of claims, debts, demands, obligations, liabilities, attorneys’ fees, costs, expenses, and causes of action, known and unknown, suspected and unsuspected, disclosed and undisclosed, from the beginning of the world to the Settlement Payment Date based on, arising out of, or relating in any way to the Purchase Agreement, the First Amendment, the Escrow Agreement, the 2010 purchase and sale of NorTex, the disposition of funds held in the Escrow Account, or the Hopper Settlement Agreement, including, without limitation, any claims or causes of action that were or could have been asserted in the District Court Action or any proceedings before the Bankruptcy Court. Effective on the Settlement Payment Date, Tide, the Hopper Parties, and HSBC, on behalf of themselves and their predecessors, successors, subsidiaries, principals, parents, affiliates, joint ventures, officers, directors, partners, members, proprietors, servants, employees, representatives, shareholders, agents, attorneys, licensees, and assigns hereby generally fully and forever release and discharge (i) one another, and (ii) the Hopper Action Settling Defendants, including Arcapita Bank and Falcon, Arcapita, Inc., RA Holding Corp., AIM Group Limited, and their respective current and former predecessors, successors, subsidiaries, parents, affiliates, joint ventures, investment funds and similar

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investment vehicles, partners, and proprietors (collectively, the “**RA/AIM Persons**”), along with the current and former principals, officers, directors, managers, servants, employees, representatives, shareholders, agents, attorneys, licensees, and assigns of the RA/AIM Persons (collectively, the “**RA/AIM Released Parties**”) from and for any and all Released Claims.

12. Releases by Falcon/Arcapita. Effective on the Settlement Payment Date, Falcon/Arcapita on behalf of themselves and their predecessors, successors, subsidiaries, principals, parents, affiliates, joint ventures, officers, directors, partners, members, proprietors, servants, employees, representatives, shareholders, agents, attorneys, licensees, and assigns, including but not limited to the RA/AIM Released Parties, hereby generally fully and forever release and discharge Tide, Alinda Capital Partners LLC, Alinda Capital Partners, Ltd., the Hopper Parties, and HSBC, and their respective current and former predecessors, successors, subsidiaries, parents, affiliates, joint ventures, investment funds and similar investment vehicles, partners, and proprietors (collectively, the “**Tide/Hopper/HSBC Entities**”), along with the current and former principals, officers, directors, managers, servants, employees, representatives, shareholders, agents, attorneys, licensees, and assigns of the Tide/Hopper/HSBC Entities (collectively, the “**Tide/Hopper/HSBC Released Parties**”) from and for any and all Released Claims.

13. Release of Avoidance Actions. Effective on the Settlement Payment Date, Falcon/Arcapita (and any applicable section 1123(b)(3) representative of the Falcon estate) and the RA/AIM Released Parties on behalf of themselves and their predecessors, successors, subsidiaries, principals, parents, affiliates, joint ventures, officers, directors, partners, members, proprietors, servants, employees, representatives, shareholders, agents, attorneys, licensees, and assigns hereby fully and forever waive, release and discharge any causes of action arising under chapter 5 of the Bankruptcy Code against the Tide/Hopper/HSBC Released Parties.

14. No Release of Mineral Interests of Peregrine Interests, L.P. Notwithstanding anything to the contrary in this Agreement, nothing contained herein shall bar, waive, release, discharge or otherwise affect, (i) any mineral interests, including any royalty interests, of Peregrine Interests, L.P. in respect to the Hill-Lake Gas Storage Unit, which is a part of NorTex’s Hill-Lake Gas Storage Facility in Eastland County, Texas (the “**Peregrine Mineral Interests**”), and (ii) any claims by Peregrine Interests, L.P. for any amounts owed, or to be owed, with respect to the Peregrine Mineral Interests.

15. Waiver of All Claims. The releases provided by the respective Parties to the Tide/Hopper/HSBC Released Parties and the RA/AIM Released Parties (together, the “**Released Parties**”) shall be a waiver and relinquishment, to the fullest extent permitted by law, of all provisions, laws and rules limiting relinquishment of unknown or unsuspected claims, including the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

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FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR”

and any and all provisions, rights and benefits of any similar statute or common law rule of any other jurisdiction.

16. Warranty Regarding Assignment of Claims. It is the intention of each Party that this Agreement will fully and finally dispose of all the Released Claims, that no other entity or person may assert any such Released Claims, and that no other entity or person is subrogated to the right of any Party to assert any Released Claim. Accordingly, the Parties individually represent and warrant that they have not heretofore assigned, transferred, pledged, or hypothecated, or purported to assign, transfer, pledge, or hypothecate, to any entity or individual, any of the Released Claims that they ever had the right to assert, and each Party agrees to indemnify and hold harmless each other Party against any Released Claim brought by anyone that has been assigned, transferred, pledged, or hypothecated such Released Claim from such Party.

17. Termination of the Purchase Agreement, First Amendment, Escrow Agreement, and Hopper Settlement Agreement. The Parties agree that this Agreement, including without limitation the releases set forth herein and the payments to be made hereunder, resolves any and all issues, whenever arising or asserted, related to the transactions described in the Purchase Agreement, the First Amendment, the Escrow Agreement, the Hopper Settlement Agreement, and the Hopper Plan Support Agreement and that they shall have no obligations to each other under such Purchase Agreement, First Amendment, Escrow Agreement, Hopper Settlement Agreement or the Hopper Plan Support Agreement, or any documents related thereto except as and to the extent expressly provided herein.

18. Plan Support. All Parties shall take such other actions as may be reasonably requested by Falcon to support entry of an order confirming the Plan as to Falcon, the Approval Order, and the occurrence of the Approval Order Effective Date and the effective date of the Plan as to Falcon, provided that the Plan shall not become effective as to Falcon until on or after the Settlement Payment Date. Falcon and the Hopper Parties agree that the provisions of this Agreement supersede the terms of the Hopper Plan Support Agreement.

19. No Effect on Plan as to Arcapita Bank. The Parties expressly acknowledge and agree that nothing in this Agreement affects the Plan as to Arcapita Bank or any other debtor, other than Falcon, and that nothing herein affects or alters the rights and obligations of any Party, if any and whatever they may, under the Plan previously confirmed as to Arcapita Bank.

20. General Representations of Non-Debtors. The Hopper Parties, Tide, and HSBC each represents and warrants that:

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- a) Status. To the extent applicable, it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such law, is in good standing;
- b) Corporate Power and Authorization. To the extent applicable, it has the power and authority, and the legal right, to make, deliver and perform under this Agreement, and has taken all necessary actions to authorize its execution, delivery and performance;
- c) No Violation or Conflict. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and
- d) Obligations Binding. Its obligations under this Agreement to which it is a party constitute its legal, valid, and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

21. No Admission of Liability. The Parties agree that nothing in this Agreement shall be construed as, or be deemed to be, an admission of wrongdoing or liability. The Parties each agree that neither this Agreement nor any of its terms shall be admissible as evidence in any suit or proceeding whatsoever as evidence of or as an admission of any liability; provided that this sentence shall not be applicable in the case of any proceeding to enforce the provisions of this Agreement, including without limitation, the waiver, release, and discharge of the Released Claims set forth herein.

22. Voluntary Agreement with Advice of Counsel. Each Party acknowledges that it has entered into this Agreement freely and voluntarily and after having consulted with counsel of its own choosing and having had the terms contained in this Agreement explained by counsel. The Parties appreciate and understand the terms contained in this Agreement and are fully satisfied with the settlement set forth herein.

23. Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or if by facsimile or e-mail, upon written confirmation of receipt by facsimile, e-mail or otherwise, (b) on the third day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the seventh day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All

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notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice.

a) If to Tide:

Joe Kelleher  
Managing Director & General Counsel  
Alinda Capital Partners LLC  
3rd Floor  
100 West Putnam Avenue  
Greenwich, Connecticut 06830  
(203) 961-6957 (facsimile)  
joe.kelleher@alinda.com

with a copy to:

Stephen B. Crain  
Bracewell & Giuliani, LLP  
711 Louisiana St., Suite 2300  
Houston, Texas 77002  
(713) 437-5305 (facsimile)  
stephen.crain@bgllp.com

b) If to Falcon:

Eugene I. Davis  
PIRINATE Consulting Group, LLC  
5 Canoe Brook Drive  
Livingston, New Jersey 07039  
(973) 535-1843 (facsimile)  
GeneDavis@pirinateconsulting.com

with a copy to:

Evan R. Fleck  
Milbank Tweed Hadley & McCloy, LLP  
One Chase Manhattan Plaza  
New York, NY 10005  
(212) 822-5567 (facsimile)  
efleck@milbank.com

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c) If to Gas Storage II:

Eugene I. Davis  
PIRINATE Consulting Group, LLC  
5 Canoe Brook Drive  
Livingston, New Jersey 07039  
(973) 535-1843 (facsimile)  
GeneDavis@pirinateconsulting.com

with a copy to:

Evan R. Fleck  
Milbank Tweed Hadley & McCloy, LLP  
One Chase Manhattan Plaza  
New York, NY 10005  
(212) 822-5567 (facsimile)  
efleck@milbank.com

d) If to Arcapita Bank:

Eugene I. Davis  
PIRINATE Consulting Group, LLC  
5 Canoe Brook Drive  
Livingston, New Jersey 07039  
(973) 535-1843 (facsimile)  
GeneDavis@pirinateconsulting.com

with a copy to:

Evan R. Fleck  
Milbank Tweed Hadley & McCloy, LLP  
One Chase Manhattan Plaza  
New York, NY 10005  
(212) 822-5567 (facsimile)  
efleck@milbank.com

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- e) If to Arcapita Inc.:

Eugene I. Davis  
PIRINATE Consulting Group, LLC  
5 Canoe Brook Drive  
Livingston, New Jersey 07039  
(973) 535-1843 (facsimile)  
GeneDavis@pirinateconsulting.com

with a copy to:

Evan R. Fleck  
Milbank Tweed Hadley & McCloy, LLP  
One Chase Manhattan Plaza  
New York, NY 100005  
(212) 822-5567 (facsimile)  
efleck@milbank.com

- f) If to the Hopper Parties:

John Hopper  
Peregrine Midstream Partners LLC  
Three Riverway - Suite 1100  
Houston, Texas 77056  
(713) 974-5601 (facsimile)  
jhopper@peregrinempllc.com

with a copy to:

David A. Zdunkewicz  
Andrews Kurth LLP  
600 Travis St., Suite 4200  
Houston, Texas  
(713) 238-7106 (facsimile)  
dzdunkewicz@akllp.com



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g) If to HSBC:

Fernando Acebedo, Vice President  
HSBC Bank USA, National Association  
452 Fifth Avenue  
New York, New York 10018  
(212) 525-1300 (facsimile)  
us.ctla.structured.unit@us.hsbc.com

with a copy to:

Pieter H. B. Van Tol, III  
Robert A. Ripin  
Hogan Lovells US LLP  
875 Third Ave.  
New York, New York 10022  
(212) 918-3100 (facsimile)  
pieter.vantol@hoganlovells.com  
robert.ripin@hoganlovells.com

24. Successors, Subsidiaries, and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective agents, representatives, subsidiaries, successors, trustees, heirs, and assigns.

25. Entire Agreement/No Reliance. The Parties acknowledge that no person has made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce the execution of this instrument, and each signatory hereby acknowledges that such signatory has not executed this instrument in reliance upon any such promise, representation or warranty. Without limiting the generality of the foregoing, no Party shall be deemed to have made to another Party any representation or warranty other than as expressly made in this Agreement, and no Party has relied on nor is it relying on any statement, representation or warranty, either express or implied, other than those expressly made in this Agreement or contained in the Plan or Plan-related documents. This Agreement is a fully integrated agreement, and this Agreement constitutes the entire agreement between the Parties concerning the resolution of the Parties' disputes with respect to the Released Claims and supersedes all prior negotiations, representations, or agreements between the Parties, either written or oral, on the subject hereof. This Agreement may be amended only by written instrument designated as an amendment to this Agreement, executed by each of the Parties hereto or their respective successors, heirs, or assigns.

26. Governing Law/Forum. The validity, construction, and all rights and obligations relating to this Agreement shall be governed by New York Law and the United States

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Bankruptcy Code, as applicable. Any disputes arising from this Agreement shall be decided in an action or proceedings occurring before the Bankruptcy Court, which shall have exclusive jurisdiction over any dispute relating to this Agreement.

27. No Waiver. No provision herein may be waived, modified, or amended unless in writing and signed by all Parties whose rights are thereby waived, modified, or amended. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

28. Third-Party Beneficiaries. All Parties agree that the Released Parties that are not Parties are express beneficiaries of this Agreement. The Parties each warrant, acknowledge, and agree that, except for the Released Parties, there are no other third-party beneficiaries of the rights, claims, and obligations created by this Agreement.

29. No Presumptions Against Any Party. The Parties acknowledge that this Agreement and the provisions contained herein were jointly drafted and shall not be construed or interpreted for or against any Party on the basis of presumption that such Party was the drafter.

30. Execution in Counterparts. This Agreement may be executed in counterparts. Each of such counterparts, when executed and delivered, shall be deemed to be an original and, taken together, shall constitute one and the same instrument.

31. PDF Signatures. The signatures to this Agreement may be evidenced by pdf copies reflecting the Party's signature hereto, and any such pdf copy shall be sufficient to evidence the signature of such Party just as if it were an original signature.

32. Captions. The captions to the paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not part of the Agreement, and shall not be used for the interpretation of, or determination of the validity of, this Agreement or any provision hereof.

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**IN WITNESS WHEREOF**, the undersigned have read this Agreement in its entirety, and fully understand its terms, and have caused this Agreement to be duly executed as of the date first above written.

TIDE NATURAL GAS STORAGE I, LP

By:\_\_\_\_\_

Name:

Title:

TIDE NATURAL GAS STORAGE II, LP

By:\_\_\_\_\_

Name:

Title:

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FALCON GAS STORAGE COMPANY, INC.

By:\_\_\_\_\_

Name:

Title:

RA HOLDING CORP. ON BEHALF OF  
ARCAPITA BANK B.S.C.(c)

By:\_\_\_\_\_

Name:

Title:

ARCAPITA INC.

By:\_\_\_\_\_

Name:

Title:

GASTORAGE INVESTMENTS II LLC

By:\_\_\_\_\_

Name:

Title:

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HSBC BANK USA, NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name:  
Title:

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---

JOHN M. HOPPER

EXECUTION COPY

---

EDMUND A. KNOLLE

EXECUTION COPY

---

JEFFREY H. FOUTCH



EXECUTION COPY

---

KEITH W. CHANDLER

EXECUTION COPY

THE ESTATE OF STEVEN B. TOON,  
DECEASED

By: \_\_\_\_\_

Name:

Title:

EXECUTION COPY

---

THOMAS B. WYNNE, JR.

EXECUTION COPY

---

STEVEN JENKINS

EXECUTION COPY

---

TAMARA JENKINS

EXECUTION COPY

---

DIANNE G. FOUTCH

EXECUTION COPY

---

LESLI PAIGE LEONARD

EXECUTION COPY

---

SALLY H. HOPPER



EXECUTION COPY

---

ELLECIA A. KNOLLE

EXECUTION COPY

---

MICHELLE P. FOUTCH

EXECUTION COPY

---

DEBORAH J. TOON

EXECUTION COPY

---

RACHEL ANN CHANDLER

EXECUTION COPY

---

DANIEL LEONARD

EXECUTION COPY

ALEXANDER COCKE TRUST

By: \_\_\_\_\_

Name:

Title:







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Annex C  
Wire Instructions for Falcon Escrow Distribution

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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Annex D  
Allocation of Hopper Distributions

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Allocation of Settlement Proceeds to Hopper Claimants Net of Legals Fees and Withholding*																							
Hopper Party Claimant	% Ownership	Allocation of \$8.25 Million Claim Against Falcon (Per Filing in Falcon Bankruptcy Proceeding)	Long-Term Capital Gains Portion of Settlement Proceeds (Midway)	Gross Long-Term Capital Gains Portion of Settlement Proceeds (Falcon)	Less: Ware Jackson and John Kim Legal Fees Allocable to LT Capital Gains	Less: Andrews & Kurth Legal Fees Allocable to LT Capital Gains	Net Long-Term Capital Gains Payments for Falcon Common Stock	Gross Portion of Settlement Proceeds for Falcon Stock Options/SARs	Less: Ware Jackson and John Kim Legal Fees Allocable to Falcon Stock Options/SARs	Less: Andrews & Kurth Legal Fees Allocable to Falcon Stock Options/SARs	Net Portion of Settlement Proceeds for Stock Options/SARs Subject to Withholding	Less: FIT Withholding to be paid over by Falcon (to RRS)	Less: FICA tax withholding to be paid over by Falcon (to RRS)	Less: Medicare tax withholding (to be paid over by Falcon to RRS)	Less: Medicare surtax withholding (to be paid over by Falcon to RRS)	Less: Other withholding (if any - to be paid over by Falcon to State/RS)	Total withholding, FICA, Medicare and Surtax	Net Disbursement of Settlement Proceeds Payable to ASK for Further Disbursement	Total Pro-Rata Allocation of Legal Fees	Total Pro-Rata Allocation of A&K Legal Fees	Total Pro-Rata Allocation of Legal Fees	Net Disbursement to Hopper Party Claimant (Payable by ASK)	
Chandler, Keith L. and Rachel Ann	6.20347%	\$ 916,823	\$ 52,534	\$ -	\$ -	\$ -	\$ 463,280	\$ -	\$ -	\$ -	\$ 38,828	\$ 39,858	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (110,377.28)	\$ 406,445.72	\$ 39,828.64	\$ 39,828.64	\$ 79,657.28	\$ 326,788.45
Fouch, Jeffrey H. and Michelle P.	26.32919%	\$ 2,172,158	\$ 286,327	\$ 671,228	\$ 24,320	\$ 24,320	\$ 622,588	\$ 1,214,803	\$ 104,419	\$ 104,419	\$ 1,005,769	\$ (52,283.32)	\$ (7,254.00)	\$ (14,583.61)	\$ (7,251.89)	\$ -	\$ -	\$ (81,372.82)	\$ 1,890,785.35	\$ 128,738.66	\$ 128,738.66	\$ 257,477.32	\$ 1,633,308.03
Hopper, John M. and Sally H.	34.03047%	\$ 2,807,881	\$ 342,890	\$ 1,246,784	\$ 40,281	\$ 40,281	\$ 1,196,189	\$ 1,215,247	\$ 104,474	\$ 104,474	\$ 1,036,099	\$ (52,404.37)	\$ (7,254.00)	\$ (14,591.33)	\$ (7,256.89)	\$ -	\$ -	\$ (81,506.59)	\$ 2,506,224.49	\$ 148,755.25	\$ 148,755.25	\$ 297,510.50	\$ 2,208,713.99
Hosley, Edmund A. and Elizabeth A.	21.02700%	\$ 1,734,728	\$ 250,209	\$ 269,949	\$ 9,781	\$ 9,781	\$ 250,387	\$ 1,214,570	\$ 104,416	\$ 104,416	\$ 1,005,738	\$ (52,272.28)	\$ (7,254.00)	\$ (14,583.20)	\$ (7,251.64)	\$ -	\$ -	\$ (81,358.12)	\$ 1,643,366.58	\$ 114,196.55	\$ 114,196.55	\$ 228,393.10	\$ 1,424,973.27
Toon, Steven B. (Deceased) and Deborah J. Toon	3.46020%	\$ 286,209	\$ 70,496	\$ -	\$ -	\$ -	\$ -	\$ 215,713	\$ 18,545	\$ 18,545	\$ 178,624	\$ (44,655.90)	\$ (7,254.00)	\$ (2,590.04)	\$ -	\$ -	\$ -	\$ (54,499.94)	\$ 231,709.06	\$ 18,544.70	\$ 18,544.70	\$ 37,089.40	\$ 194,619.66
Wynn, Jr., Thomas B.	6.25242%	\$ 916,823	\$ 52,534	\$ -	\$ -	\$ -	\$ 463,289	\$ -	\$ 39,828	\$ 39,828	\$ 381,632	\$ (95,907.00)	\$ (7,254.00)	\$ (5,562.96)	\$ (1,652.69)	\$ -	\$ -	\$ (110,377.28)	\$ 406,445.72	\$ 39,828.64	\$ 39,828.64	\$ 79,657.28	\$ 326,788.45
Leonard, Loral Paige and Daniel	0.48879%	\$ 40,324	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 37,522	\$ 3,226	\$ 3,226	\$ 31,071	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (10,144.62)	\$ 41,215.62	\$ -	\$ -	\$ -	\$ 41,215.62
Alexander Clarke Fives	1.02190%	\$ 84,307	\$ 7,004	\$ 77,303	\$ 2,801	\$ 2,801	\$ 71,701	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 84,306.79	\$ 2,800.86	\$ 2,800.86	\$ 5,601.71	\$ 78,705.04
Fouch, Dianne G.	0.10219%	\$ 8,431	\$ 701	\$ 7,730	\$ 280	\$ 280	\$ 7,170	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,430.68	\$ 280.07	\$ 280.07	\$ 560.15	\$ 7,870.53
Winn, Steven and Tamara	1.02190%	\$ 84,307	\$ 7,004	\$ 77,303	\$ 2,801	\$ 2,801	\$ 71,701	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 84,306.79	\$ 2,800.86	\$ 2,800.86	\$ 5,601.71	\$ 78,705.04
<b>Total</b>	<b>100%</b>	<b>\$ 8,250,000</b>	<b>\$ 1,072,500</b>	<b>\$ 2,353,267</b>	<b>\$ 85,264</b>	<b>\$ 85,264</b>	<b>\$ 2,182,739</b>	<b>\$ 4,824,233</b>	<b>\$ 414,736</b>	<b>\$ 414,736</b>	<b>\$ 3,994,761</b>	<b>\$ (1,001,289.44)</b>	<b>\$ (46,460.39)</b>	<b>\$ (87,824.03)</b>	<b>\$ (25,065.60)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (1,129,728.46)</b>	<b>\$ 7,125,270.54</b>	<b>\$ 500,000.00</b>	<b>\$ 500,000.00</b>	<b>\$ 1,000,000.00</b>	<b>\$ 6,125,270.54</b>
		\$ 7,177,499.53		\$ 6,192,770.72																			
		\$ 7,120,270.54																					
* Net of Legal Fees and Withholding																							

Assumptions  
 1. Hopper Party Claimants are treated as employees for ordinary income portion of settlement which will be reported on Form W-2  
 2. Payments to Hopper Party Claimants will be made in 2014  
 3. Social Security wage base for 2014 = \$17,000  
 4. Medicare Surplus employee withholding wage base for 2014 assumed to be \$300,000 for individual filers.  
 5. FIT withholding rate assumed to be a flat 26% based on supplemental wage withholding rate for amounts less than \$1,000,000 and to be a flat 39.6% for amounts in excess of \$1,000,000

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Annex E  
Stipulation of Dismissal of Hopper Adversary Proceeding

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

-----X	
<b>IN RE:</b>	: <b>Chapter 11</b>
	: :
<b>ARCAPITA BANK B.S.C.(c), et al.,</b>	: <b>Case No. 12-11076 (SHL)</b>
	: :
<b>Debtors.</b>	: <b>Jointly Administered</b>
-----X	
<b>IN RE:</b>	: <b>Chapter 11</b>
	: :
<b>FALCON GAS STORAGE COMPANY, INC.,</b>	: <b>Case No. 12-11790 (SHL)</b>
	: :
<b>Debtor.</b>	: <b>Case No. 12-11790 (SHL)</b>
-----X	
	: :
<b>JOHN M. HOPPER, et al.,</b>	: <b>Adv. Proc. No. 12-011662 (SHL)</b>
	: :
<b>Plaintiffs,</b>	: <b>Adv. Proc. No. 12-011662 (SHL)</b>
	: :
<b>v.</b>	: :
	: :
<b>FALCON GAS STORAGE COMPANY, INC.,</b>	: :
	: :
<b>Defendant.</b>	: <b>Adv. Proc. No. 12-011662 (SHL)</b>
-----X	

**STIPULATION OF DISMISSAL OF ADVERSARY PROCEEDING WITH PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned attorneys for (i) Plaintiffs John M. Hopper, Edmund A. Knolle, Jeffrey H. Foutch, Keith W. Chandler, the Estate of Steven B. Toon, deceased, Thomas B. Wynne, Jr., Steven Jenkins, Tamara Jenkins, Dianne G. Foutch, Lesli Paige Leonard, Sally H. Hopper, Ellecia A. Knolle, Michelle P. Foutch, Deborah J. Toon, Rachel Ann Chandler, Daniel Leonard, and Alexander Cocke Trust, and (ii) Defendant Falcon Gas Storage Company, Inc. that, pursuant to Rule 7041 of the Federal Rules of Bankruptcy Procedure and Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, the above-captioned adversary proceeding and all claims, crossclaims, and counterclaims asserted therein are hereby dismissed with prejudice and without costs to any party.

Dated: New York, New York  
January \_\_\_, 2014

ANDREWS KURTH LLP

GIBSON, DUNN & CRUTCHER LLP

---

Joseph A. Patella  
Cassandra A. Porsch  
450 Lexington Avenue, 15<sup>th</sup> Floor  
New York, New York 10017  
(212) 850-2800

David A. Zdunkewicz  
600 Travis Street, Ste. 4200  
Houston, Texas 77002  
(713) 220-4200

*Attorneys for Plaintiffs*

Dated: January \_\_\_, 2014

---

Michael A. Rosenthal  
Craig H. Millet (admitted *pro hac vice*)  
Jeremy L. Graves (admitted *pro hac vice*)  
200 Park Avenue  
New York, New York 10166-0193  
Telephone: (212) 351-4000  
Facsimile: (212) 351-4035

*Attorneys for Defendant*

SO ORDERED:

By: \_\_\_\_\_  
THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

Annex F  
Stipulation of Dismissal of District Court Action

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

TIDE NATURAL GAS STORAGE I, LP and  
TIDE NATURAL GAS STORAGE II, LP,

ECF CASE

Plaintiffs/Counterclaim  
Defendants,

Civil Action No. 10 CIV 5821 (KMW)

-v-

FALCON GAS STORAGE COMPANY, INC.;

Defendant/Counterclaim  
and Crossclaim Plaintiff,

**STIPULATION OF DISMISSAL  
WITH PREJUDICE**

ARCAPITA BANK B.S.C.; and ARCAPITA  
INC.;

Defendants,

and HSBC BANK USA, NATIONAL  
ASSOCIATION,

Defendant/Crossclaim  
Defendant

-----x

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned attorneys for plaintiffs and counterclaim defendants Tide Natural Gas Storage I, LP and Tide Natural Gas Storage II, LP; defendant, counterclaim and crossclaim plaintiff and counterclaim defendant Falcon Natural Gas Storage Company, Inc. and defendants Arcapita Bank B.S.C.(c) and Arcapita, Inc.; nominal and crossclaim defendant and counterclaim plaintiff HSBC Bank USA National Association; and intervenors and counterclaim defendants John M. Hopper, Edmund A. Knolle, Jeffrey H. Foutch, Keith W. Chandler, the Estate of Steven B. Toon, deceased, Thomas B. Wynne, Jr., Steven Jenkins, Tamara Jenkins, Dianne G. Foutch, Lesli Paige Leonard, Sally H. Hopper, Ellecia A. Knolle, Michelle P. Foutch, Deborah J. Toon, Rachel Ann Chandler, Daniel Leonard, and Alexander Cocke Trust that, pursuant to Rule 41(a)(1)(A)(ii) of the Federal



Rules of Civil Procedure, the above-captioned action and all claims, crossclaims and counterclaims asserted therein are hereby dismissed with prejudice and without costs to any party.

Dated: New York, New York  
January \_\_\_, 2014

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KING & SPALDING LLP

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*Attorneys for Intervenors*

Dated: January \_\_\_, 2014

SO ORDERED:

By: \_\_\_\_\_  
U.S.D.J

Annex G  
Stipulation of Dismissal of the Tide Adversary Proceeding

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

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<b>IN RE:</b>	: <b>Chapter 11</b>
<b>ARCAPITA BANK B.S.C.(c), et al.,</b>	: :
<b>Debtors.</b>	: <b>Case No. 12-11076 (SHL)</b>
-----X	: <b>Jointly Administered</b>
<b>IN RE:</b>	: <b>Chapter 11</b>
<b>FALCON GAS STORAGE COMPANY, INC.,</b>	: :
<b>Debtor.</b>	: <b>Case No. 12-11790 (SHL)</b>
-----X	: :
<b>TIDE NATURAL GAS STORAGE I, LP, et al.,</b>	: <b>Adv. Proc. No. 13-01335 (SHL)</b>
<b>Plaintiffs,</b>	: :
<b>v.</b>	: :
<b>JOHN M. HOPPER, et al.,</b>	: :
<b>Defendants.</b>	: :
-----X	: X

**STIPULATION OF DISMISSAL OF ADVERSARY PROCEEDING WITH PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned attorneys for (i) Plaintiffs Tide Natural Gas Storage I, LP and Tide Natural Gas Storage II, LP, and (ii) Defendants John M. Hopper, Edmund A. Knolle, Jeffrey H. Foutch, Keith W. Chandler, the Estate of Steven B. Toon, deceased, Thomas B. Wynne, Jr., Steven Jenkins, Tamara Jenkins, Dianne G. Foutch, Lesli Paige Leonard, Sally H. Hopper, Ellecia A. Knolle, Michelle P. Foutch, Deborah J. Toon, Rachel Ann Chandler, Daniel Leonard, and Alexander Cocke Trust, that, pursuant to Rule 7041 of the Federal Rules of Bankruptcy Procedure and Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, the above-captioned adversary proceeding and all claims, crossclaims, and counterclaims asserted therein are hereby dismissed with prejudice and without costs to any party.

Dated: New York, New York  
January \_\_\_, 2014

BRACEWELL & GIULIANI LLP

ANDREWS KURTH LLP

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*Attorneys for Defendants*

Dated: January \_\_\_\_, 2014

SO ORDERED:

By: \_\_\_\_\_  
THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

Annex H  
Stipulation Disallowing the Hopper Claims

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

-----X	
<b>IN RE:</b>	: <b>Chapter 11</b>
<b>ARCAPITA BANK B.S.C.(c), et al.,</b>	: :
<b>Debtors.</b>	: <b>Case No. 12-11076 (SHL)</b> : :
-----X	<b>Jointly Administered</b>
<b>IN RE:</b>	: :
<b>FALCON GAS STORAGE COMPANY, INC.,</b>	: <b>Chapter 11</b> :
<b>Debtor.</b>	: <b>Case No. 12-11790 (SHL)</b> : X
-----X	

**STIPULATION DISALLOWING CLAIMS WITH PREJUDICE**

This Stipulation (the “*Stipulation*”) is entered into as of \_\_\_\_\_, 2014 by and among Falcon Gas Storage Company Inc. (“*Falcon*”), on the one hand; and John M. Hopper, Edmund A. Knolle, Jeffrey H. Foutch, Keith W. Chandler, The Estate of Steven B. Toon, deceased, Thomas B. Wynne, Jr., Steven Jenkins, Tamara Jenkins, Dianne G. Foutch, Lesli Paige Leonard, Sally H. Hopper, Ellecia A Knolle, Michelle P. Foutch, Deborah J. Toon, Rachel Ann Chandler, Daniel Leonard, and Alexander Cocke Trust (collectively, the “*Hopper Parties*”), on the other hand. Falcon and the Hopper Parties are collectively referred to herein as the “*Parties*”.

**RECITALS**

WHEREAS, the Hopper Parties have each filed proofs of claim against Falcon that have been designated claim numbers 173, 181, 182, 176, 170, 174, 180, 179, 178, 175, 177, 167, 168, 169, 171, 166, and 165 (collectively, the “*Hopper Claims*”).

WHEREAS, the Parties have entered into a Settlement Agreement dated as of \_\_\_\_\_ that resolves the Hopper Claims.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the exchange of which is hereby acknowledged, and intending to be legally bound hereby, it is hereby stipulated and agreed that:

**TERMS**

1. Withdrawal of Claims. The Hopper Parties agree to withdraw the Hopper Claims, with prejudice, and any and all other claims they may have against Falcon.

2. Claims Register. GCG, Inc., as the claims agent appointed in the chapter 11 cases, shall be authorized and empowered to adjust the claims register to reflect the withdrawal of the Hopper Claims with prejudice.

3. Successors, Assigns, and Third Party Beneficiaries. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns to the Hopper Parties and Falcon.

Dated: New York, New York  
January \_\_\_, 2014

ANDREWS KURTH LLP

GIBSON, DUNN & CRUTCHER LLP

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*Attorneys for the Hopper Parties*

Dated: January \_\_\_, 2014

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*Attorneys for Falcon Gas Storage  
Company, Inc.*

SO ORDERED:

By: \_\_\_\_\_  
THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

Annex I  
Stipulation Disallowing the Tide Claims,  
Dismissing the Tide Claim Objections, and Dismissing the Tide Subordination Dispute



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

-----X	
<b>IN RE:</b>	: <b>Chapter 11</b>
	:
<b>ARCAPITA BANK B.S.C.(c), et al.,</b>	: <b>Case No. 12-11076 (SHL)</b>
	:
<b>Debtors.</b>	: <b>Jointly Administered</b>
-----X	
<b>IN RE:</b>	:
	: <b>Chapter 11</b>
<b>FALCON GAS STORAGE COMPANY, INC.,</b>	:
	:
<b>Debtor.</b>	: <b>Case No. 12-11790 (SHL)</b>
-----X	

**STIPULATION (I) DISALLOWING CLAIMS WITH PREJUDICE; (II) DISMISSING  
CLAIM OBJECTIONS; AND DISMISSING SUBORDINATION ACTIONS**

This Stipulation (the “*Stipulation*”) is entered into as of \_\_\_\_\_, 2014 by and among Falcon Gas Storage Company Inc. (“*Falcon*”) and Arcapita Bank B.S.C.(c) (“*Arcapita Bank*”), on the one hand; and Tide Natural Gas Storage I, LP f/k/a Alinda Natural Gas Storage I, LP and Tide Natural Gas Storage II, LP f/k/a Alinda Natural Gas Storage II, LP (collectively, “*Tide*”), on the other hand. Falcon, Arcapita Bank, and Tide are collectively referred to herein as the “*Parties*”.

**RECITALS**

WHEREAS, Tide has filed proofs of claim against Falcon and Arcapita Bank that have been designated claim numbers 295, 296, 297, and 298 (collectively, the “*Tide Claims*”).

WHEREAS, Falcon and Arcapita Bank filed objections to the Tide Claims [Docket No. 1051] (the “*Tide Claim Objections*”).

WHEREAS, Arcapita Bank, Falcon, and the other affiliated Debtors proposed a joint chapter 11 plan of reorganization (the “*Plan*”) which treated the Tide Claims as fully subordinated claims in Classes 10(a) and 10(g) of the Plan.

WHEREAS, Tide objected to confirmation of the Plan because of the fully subordinated treatment of Tide's Claims in Classes 10(a) and 10(g) of the Plan and because of Falcon's Plan Support Agreement with the Hopper Parties [Docket Nos. 1173 and 1232] (the "*Tide Subordination Dispute*").

WHEREAS, the Parties have entered into a Settlement Agreement dated as of \_\_\_\_\_ that resolves the Tide Claims, the Tide Claim Objections, and the Tide Subordination Dispute.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the exchange of which is hereby acknowledged, and intending to be legally bound hereby, it is hereby stipulated and agreed that:

**TERMS**

1. Withdrawal of Claims. Tide agrees to withdraw the Tide Claims, with prejudice, and any and all other claims it may have against Falcon or Arcapita Bank.
2. Tide Claim Objections. Falcon and Arcapita Bank agree to withdraw the Tide Claim Objections, with prejudice.
3. Claims Register. GCG, Inc., as the claims agent appointed in the chapter 11 cases, shall be authorized and empowered to adjust the claims register to reflect the withdrawal of the Tide Claims with prejudice.
4. Tide Subordination Dispute. Tide agrees to withdraw the Tide Subordination Dispute and any other objections it may have to confirmation of the Plan, and agrees to support confirmation of the Plan as to Falcon.
5. Successors, Assigns, and Third Party Beneficiaries. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns to Tide, Falcon, and Arcapita Bank.

Dated: New York, New York  
January \_\_, 2014

BRACEWELL & GIULIANI LLP

GIBSON, DUNN & CRUTCHER LLP

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Company, Inc. and Arcapita Bank B.S.C.(c)*

Dated: January \_\_, 2014

SO ORDERED:

By: \_\_\_\_\_  
THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE