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 and Tide Natural Gas Storage II, LP*

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

<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>
<b>IN RE:</b>	§	<b>Chapter 11</b>
	§	
<b>FALCON GAS STORAGE CO., INC.</b>	§	<b>Case No. 12-11790-shl</b>
	§	<b>(Jointly Administered under</b>
<b>Debtor.</b>	§	<b>Case No. 12-11076)</b>
<b>TIDE NATURAL GAS STORAGE I, LP          and TIDE NATURAL GAS STORAGE          II, LP,</b>	§	
	§	
	§	
<b>Plaintiffs,</b>	§	<b>Adversary No. _____</b>
	§	
<b>v.</b>	§	
	§	
<b>HOPPER CLAIMANTS<sup>1</sup></b>	§	
	§	
<b>Defendants.</b>	§	

**ORIGINAL COMPLAINT TO SUBORDINATE HOPPER  
 CLAIMS PURSUANT TO BANKRUPTCY CODE SECTION 510(b)**

<sup>1</sup>The Hopper Claimants are John M. Hopper, Edmund A. Knolle, Jeffrey H. Foutch, Keith L. Chandler, The Estate of Steven B. Toon, deceased, Thomas B. Wynne, Jr., Steven Jenkins, Tamara Jenkins, Alexander Cocke Trust, Dianne G. Foutch, Lesli Paige Leonard, Sally H. Hopper, Ellecia A. Knolle, Michelle P. Foutch, Deborah J. Toon, Rachel Ann Chandler and Daniel Leonard.

Tide Natural Gas Storage I, LP and Tide Natural Gas Storage II, LP (together, “Tide”), by their undersigned counsel, hereby file this Original Complaint to Subordinate Hopper Claims Pursuant to Bankruptcy Code Section 510(b) (“Adversary Complaint”). In support therefore, Tide respectfully submits as follows:

### **I. PARTIES**

1. Plaintiff TIDE NATURAL GAS STORAGE I, LP, is a limited partnership organized and existing under the laws of the State of Delaware. Tide Natural Gas Storage I, LP is a party in interest and holds, with Tide Natural Gas Storage II, LP, a \$120 million claim against the debtor Falcon Gas Storage Company, Inc. (“Falcon”) in the above-captioned bankruptcy case.

2. Plaintiff TIDE NATURAL GAS STORAGE II, LP (together with Tide Natural Gas Storage I, LP, “Tide” or “Plaintiffs”) is a limited partnership organized and existing under the laws of the State of Delaware. Tide Natural Gas Storage II, LP is a party in interest and holds, with Tide Natural Gas Storage I, LP, a \$120 million claim against Falcon in the above-captioned bankruptcy case.

3. The Hopper Claimants are former minority shareholders of Falcon by way of ownership of a minority interest of Falcon’s common stock. The Hopper Claimants can be served with process by mailing a summons and copy of this Complaint to each individual at their dwelling house or usual place of abode, or to the place where such individual regularly conducts a business or profession. A copy of this Complaint shall also be mailed to counsel of record for the Hopper Parties: Andrews Kurth, LLP, c/o David Zdunkewicz, 600 Travis, Suite 4300, Houston, Texas 77002.

4. Falcon is a debtor and debtor in possession in the above-captioned jointly administered bankruptcy case by virtue of having filed a voluntary petition for relief under

chapter 11 of the Bankruptcy Code on April 30, 2012. Falcon is not a party to this litigation, but will receive a courtesy copy of the Complaint via first class United States mail, postage prepaid, to the address on its bankruptcy petition, Falcon Gas Storage, Inc., attention: Brian McCabe, Secretary, 75 14th Street, 24th Floor, Atlanta, Georgia, 30309, with a copy to Falcon's counsel in the above-captioned bankruptcy cases, Michael A. Rosenthal, Gibson, Dunn & Crutcher, LLP, 200 Park Avenue, 47th Floor, New York, New York 10166.

5. The Official Committee of Unsecured Creditors in the above-captioned bankruptcy case ("Creditors Committee") is represented by Milbank, Tweed, Hadley & McCloy, LLP. The Creditors Committee is not a party to this Adversary Proceeding, however, a courtesy copy of the Complaint will be sent to counsel for the Creditors Committee via first class United States Mail to Dennis F. Dunne, Milbank, Tweed, Hadley & McCloy, LLP, 1 Chase Manhattan Plaza, New York, New York 10005.

## **II. JURISDICTION AND VENUE**

6. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 157(b)(1) and 28 U.S.C. § 1334 because this is a proceeding relating to Case No. 12-11076, styled *In re Arcapita Bank B.S.C.(c), et al.*, pending in this district under chapter 11 of the Bankruptcy Code. This proceeding constitutes a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B), and (O). Tide consents entry of a final order or judgment by the Bankruptcy Court if it is determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409(a) because the chapter 11 cases this proceeding arises in are pending in this district.

## **III. BACKGROUND FACTS**

7. Prior to the Petition Date (defined below), Tide, Falcon, and Arcapita, engaged in discussions regarding Tide's purchase of the equity in Falcon's subsidiary, NorTex Gas Storage Company, LLC ("NorTex") a natural gas storage business. Tide and Falcon entered into a purchase agreement ("Purchase Agreement") in March 2010, whereby Tide agreed to purchase all of the equity in NorTex.

8. At the time the Purchase Agreement was executed, the Hopper Claimants (or their successors in interest) were minority shareholders in Falcon.

9. Subsequent to the execution of the Purchase Agreement between Tide and Falcon, but prior to the closing date, the Hopper Claimants, as minority shareholders, filed two lawsuits in Texas seeking to enjoin the NorTex sale and alleging, among other things, a claim for shareholder oppression based on the allegation that the Hopper Claimants were damaged by Falcon selling the NorTex equity to Tide at a below market price ("Texas Lawsuits"). Tide and Falcon agreed to put \$70 million of the purchase price in escrow and move forward to consummate the sale of NorTex equity.

10. On April 1, 2010, the sale of the NorTex equity closed and Tide paid Falcon \$445 million for the purchase of NorTex. Tide also deposited \$70 million into escrow with HSBC Bank USA, National Association, pursuant to a First Amendment to the Purchase Agreement dated April 1, 2010 and an Escrow Agreement ("Escrow Account").

11. In July 2010, the Hopper Claimants entered into a Settlement Agreement with Falcon, Arcapita and others ("Hopper Settlement", attached hereto as **Exhibit A**) in order to settle the claims for damages arising from the sale of equity in NorTex, as alleged in the Texas Lawsuits. Under the Settlement Agreement, the Hopper Claimants agreed to dismiss the Texas Lawsuits with prejudice. The Hopper Claimants also agreed to abandon, forfeit, transfer and

cancel all of their stock in Falcon. In exchange for these and other agreements, Falcon and its affiliate agreed to deliver to the Hopper Claimants \$14.75 million, \$6.5 million of which was paid immediately, and \$8.25 million was to be paid out of the Escrow Account.

12. Before execution of the Settlement Agreement, the Hopper Claimants were minority shareholders in Falcon. After execution of the Settlement Agreement, the Hopper Claimants ceased to be shareholders in Falcon, and Arcapita's affiliate became the sole shareholder in Falcon.

13. Arcapita filed for chapter 11 protection on March 19, 2012. Falcon filed for chapter 11 protection on April 30, 2012 ("Petition Date").

14. Each of the Hopper Claimants filed a proof of claim in the Falcon bankruptcy proceeding in the amount of \$8.25 million, seeking payment from the Escrow Account (the "Hopper Claims").

15. Tide now brings this Adversary Complaint, requesting that the court subordinate the Hopper Claims pursuant to section 510(b) of the Bankruptcy Code.

#### **IV. CAUSES OF ACTION**

##### **COUNT ONE: SUBORDINATION OF HOPPER CLAIMS PURSUANT TO § 510(b)**

16. To the extent necessary or appropriate, the foregoing paragraphs are incorporated herein.

17. Pursuant to section 510(b) of the Bankruptcy Code, "for the purposes of distribution...a claim...for damages arising from the purchase or sale of [a security of the debtor or of an affiliate of the debtor]...shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock." 11 U.S.C. § 510(b).

18. The Hopper Claims are claims based on the Settlement Agreement entered into between the Hopper Claimants, Falcon, Arcapita and others. The Settlement Agreement arises directly from, and was intended to settle, the claims asserted by the Hopper Claimants in the Texas Lawsuits. The claims asserted by the Hopper Claimants in the Texas Lawsuits were claims for damages arising from the sale of the LLC membership interests of NorTex.

19. Additionally, the Settlement Agreement is itself an agreement for the purchase of a minority stake of Falcon's common stock, pursuant to which the Hopper Claimants now seek damages.

20. The Hopper Claims are subject to mandatory subordination under section 510(b).

21. The Hopper Claims are claims based on common stock.

22. The Hopper Claims should be subordinated to a level equal to the common stock of Falcon.

#### **V. REQUESTED RELIEF**

23. In accordance with the pleadings set forth herein, Tide requests the subordination of the Hopper Claims to a level equal to common stock pursuant to section 510(b) of the Bankruptcy Code.

24. Tide reserves its rights to seek a substantial contribution claim for any fees and expenses incurred in this adversary proceeding.

Respectfully submitted,

**BRACEWELL & GIULIANI LLP**

By: /s/ William A. (Trey) Wood III

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**COUNSEL FOR TIDE NATURAL GAS  
STORAGE I, LP AND TIDE NATURAL GAS  
STORAGE II, LP**

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**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement ("Agreement") is made and entered between: (1) Plaintiffs John M. Hopper, Edmund A. Knolle, Jeffrey H. Foutch, Keith L. Chandler, Steven B. Toon, Thomas B. Wynne, Jr., Steven Jenkins, Tamara Jenkins, Alexander Cocke Trust, Dianne G. Foutch, Lesli Paige Leonard, Sally H. Hopper, Ellecia A. Knolle, Michelle P. Foutch, Deborah J. Toon, Rachel Ann Chandler, and Daniel Leonard (each a "Plaintiff" and collectively the "Plaintiffs"), and (2) Defendants Falcon Gas Storage Company, Inc. ("Falcon"), Antoine LaFargue, Asim Zafar, Qaisar Zaman, Brian McCabe, Charles L. Griffith, Kevin J. Keough, Tore Nelson, Arcapita Bank B.S.C.(c) ("Arcapita"), GASStorage Investments LLC, GASStorage Investments II LLC ("GSI II"), GASStorage Funding, Inc. ("GSF"), MoBay Storage Holdings, LLC ("MoBay"), MoBay Storage Hub LLC (together with MoBay, the "MoBay Entities") (all together, the "Falcon Defendants"). Plaintiffs and the Falcon Defendants shall be referred to together as the "Parties".

**WHEREAS**, certain disputes have arisen between the Parties, and certain of the Plaintiffs brought two Lawsuits against certain of the Falcon Defendants.

**WHEREAS**, the term "Lawsuits" as used herein shall mean Cause No. CV1041822, styled *John M. Hopper, et al. v. Asim Zafar, et. al.* in the 91st Judicial District Court of Eastland County, Texas, and Cause No. 2010-19789, styled *John M. Hopper, et al. v. Asim Zafar, et. al.* in the 152nd Judicial District Court of Harris County, Texas, and the Lawsuits shall be deemed to include any and all claims, counterclaims, and/or causes of action asserted therein (or that could have been asserted therein) by the Parties;

**WHEREAS**, there are additional defendants in the Lawsuits, specifically: Worsham-Steed Gas Storage, L.P., Worsham-Steed GP, Inc., Hill-Lake Gas Storage, L.P., Hill-Lake GP,



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Inc.,<sup>1</sup> NorTex Gas Storage Company, LLC ("NorTex"), Alinda Natural Gas Storage I, L.P., and Alinda Natural Gas Storage II, L.P. (collectively, the "Other Defendants").

**WHEREAS**, this Agreement shall not become effective and enforceable unless and until (i) each of the Parties executes this Agreement, without modification of its terms, and (ii) the Closing occurs as provided herein;

**WHEREAS**, the effective date ("Effective Date") of this Agreement shall be the date upon which Closing occurs;

**WHEREAS**, by means of this Agreement, as set forth more fully in Paragraph 8 below, the Plaintiffs intend to dismiss with prejudice their claims against the Falcon Defendants and the Other Defendants, and the Falcon Defendants intend to dismiss with prejudice their claims against Plaintiffs, but that the Parties filing of their notices of nonsuit with prejudice and motion for entry of order on the same and support of the those motions shall satisfy the parties obligations with respect to Paragraph 8;

**WHEREAS**, by means of this Agreement, as set forth more fully in Paragraph 8 below, Plaintiffs and Falcon intend that the courts in which the Lawsuits are pending should enter final orders dismissing the Lawsuits with prejudice.

**WHEREAS**, by means of this Agreement, as set forth more fully in Paragraph 4 below, the Plaintiffs intend to abandon, forfeit, and transfer for cancellation their stock, stock options, and stock appreciation rights in Falcon to Falcon and to transfer their units in MoBay to GSI II, respectively; and

**WHEREAS**, by means of this Agreement, as set forth more fully in Paragraph 5 below, the Parties intend to release fully and unconditionally all claims they have or may have had

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<sup>1</sup> Note that (i) Hill-Lake Gas Storage, L.P. and Worsham-Steed Gas Storage, L.P. have been converted into Hill-Lake Gas Storage, LLC and Worsham-Steed Gas Storage, LLC, respectively, and (ii) Hill-Lake GP, Inc. and Worsham-Steed GP, Inc. have been converted into Hill-Lake GP, LLC and Worsham-Steed GP, LLC, respectively.

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against each other and the other Releasees (as that term is defined in Paragraph 5).

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, including the consideration to be paid by the Falcon Defendants to Plaintiffs set forth in Paragraphs 1 and 2 below, the sufficiency of which are hereby expressly acknowledged, the Parties agree as follows:

1. Payments. In full settlement of all claims asserted in the Lawsuits and in consideration of the abandonment, forfeiture, and transfer for cancellation of Plaintiffs' stock, stock options, and stock appreciation rights in Falcon and the transfer of Plaintiffs' units in MoBay described in Paragraph 4 below and the releases given by Plaintiffs in Paragraph 5 below, Falcon and GSI II shall pay the entities identified in Paragraph 3 below the sum total of \$14,750,000.00 (the "Settlement Amount").
2. Payment Schedule. The Settlement Amount shall be made in two payments. The First Payment shall be for \$6.5 million and shall occur at the Closing. The Second Payment shall be for \$8.25 million and shall be made no later than contemporaneously with the distribution of the amounts held in escrow (the "Escrow Account") by HSBC Bank USA, National Association ("HSBC") pursuant to an agreement between HSBC, Alinda Natural Gas Storage I, L.P., Alinda Natural Gas Storage II, L.P., and Falcon Gas Storage Company, Inc. dated April 1, 2010 (the "Escrow Agreement"). The Second Payment shall be paid in full either contemporaneously with or before the Falcon Defendants receive any funds from the Escrow Account and shall constitute the "first money" paid to Falcon out of the Escrow Account (*i.e.*, after Pre-Breakage Losses have been paid out of the Escrow Account, if any). Notwithstanding these staggered payments, the releases, promises, and covenants made herein shall be, and shall remain, fully effective as of the

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Effective Date.

3. Payment Allocation. The Settlement Amount shall be allocated as set forth below. Each allocation shall be pro-rated according to the payment schedule as set forth in Paragraph 2 above.

a. Falcon shall pay the following amounts to the following entities in cash by means of a wire transfer into the Ware, Jackson, Lee & Chambers, L.L.P. IOLTA account:

- i. the sum of \$1,700,000 to Ware Jackson Lee & Chambers, LLP and certain other law firms representing attorneys' fees and costs paid on behalf of Plaintiffs. This amount represents the total fees and expenses of The Kim Law Firm and Ware, Jackson, Lee & Chambers, L.L.P, Locke, Lord, Bissell, and Liddell, LLP, and Jones Day, LLP.. In exchange, Ware Jackson Lee & Chambers, LLP, The Kim Law Firm, and Falcon will execute the letter agreement attached as Exhibit A at Closing. The First Payment amount shall be \$1,200,000. The Second Payment amount shall be \$500,000.
- ii. the sum of \$3,921,856 to Plaintiffs as consideration for their abandonment, forfeiture, and transfer for cancellation of shares of Falcon stock to Falcon as described in Paragraph 4 below and for the releases given by Plaintiffs in Paragraph 5 below. The First Payment amount shall be \$1,653,854. The Second Payment amount shall be \$2,268,002.
- iii. the sum of \$7,210,644 to Plaintiffs as consideration for the abandonment, forfeiture, and transfer for cancellation of their options to purchase

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common stock and their stock and other appreciation rights of Falcon to Falcon as described in Paragraph 4 below. The First Payment amount shall be \$2,801,146. From this amount, Falcon shall withhold the sum of \$781,957 for U.S. federal income and F.I.C.A. taxes, which Falcon shall pay to the U.S. Treasury. The Second Payment amount shall be \$4,409,498. From this amount, Falcon shall withhold the sum of \$1,411,166 for U.S. federal income and F.I.C.A. taxes, which Falcon shall pay to the U.S. Treasury (should the Second Payment be made after December 31, 2010, the amount of withholding shall be adjusted in accordance with the then existing tax rates). Falcon shall timely provide an IRS Form W-2 to each of the Plaintiffs reflecting the appropriate amount of U.S. taxes withheld pursuant to this Paragraph.

b. GSI II shall pay the sum of \$1,917,500 to Plaintiffs in cash by means of wire transfer into the Ware, Jackson, Lee & Chambers, L.L.P. IOLTA as consideration for the transfer of their units in MoBay to GSI II, as described in Paragraph 4 below. The First Payment amount shall be \$845,000. The Second Payment amount shall be \$1,072,500.

4. Abandonment, Forfeiture, and Transfer for Cancellation of Plaintiffs' Stock, Appreciation Rights, and Stock Options in Falcon and Transfer of Plaintiffs' Units in MoBay. In consideration of the recitals, agreements, mutual promises, and covenants contained herein, and for good and valuable consideration enumerated above, the sufficiency of which is hereby expressly acknowledged, Plaintiffs will execute the Closing Documents attached as Exhibit B, which effect the transfer of all of Plaintiffs'

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units in MoBay to GSI II and effect the abandonment, forfeiture, and transfer to Falcon for cancellation all of Plaintiffs' stock, options to purchase common stock, and stock appreciation rights in Falcon.

5. Release. Provided that Closing occurs, and in consideration of the recitals, agreements, mutual promises, and covenants contained herein, and for good and valuable consideration enumerated above, the receipt and sufficiency of which are hereby expressly acknowledged, Plaintiffs and the Falcon Defendants (each a "Releasing Party" and together the "Releasing Parties"), individually and collectively, hereby *release and forever discharge* each other, and each of them, and their predecessors, current and former parent companies, subsidiaries, funds, divisions, and affiliates, and their respective current and former directors, officers, partners, employees, trustees, agents, representatives, insurers, and any other person or entity who may be legally responsible for them (collectively, the Releasees), from any and all claims, charges, demands, liabilities, lawsuits, rights or causes of action, damages, restitution, costs, and expenses (including attorneys' fees, court costs, or interest) of any kind or nature, fixed or contingent, whether known or unknown, at law or equity or otherwise, accrued or not accrued, now or in the future (collectively, the "Released Claims"), that they may have against one another or the Releasees. Additionally, Plaintiffs hereby release and forever discharge Credit Suisse Securities, (USA) L.L.C. ("Credit Suisse") and King & Spalding LLP and their predecessors, current and former parent companies, subsidiaries, funds, divisions, and affiliates, and their respective current and former directors, officers, partners, and employees, and these entities shall also be considered Releasees. This release as it relates to Credit Suisse shall be void and unenforceable, solely at the election

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of Plaintiffs, if Credit Suisse sues Plaintiffs concerning the subject matter of this Settlement Agreement, or the Lawsuits. The Released Claims include, but are not limited to: (1) all claims arising out of, incidental to, or in any manner connected with or relating to Plaintiffs' ownership of Falcon and the MoBay Entities, the sale of NorTex by Falcon, Plaintiffs' employment at Falcon, any Plaintiff's designation as officer, director, representative or employee of any of the Other Defendants or the Falcon Defendants or any of their respective affiliates, and all other claims or counterclaims asserted or that could have been asserted in the Lawsuits; and (2) all claims or counterclaims based on or relating to breach of contract or public policy, any tort (whether involving negligence, gross negligence, recklessness, fraud, conspiracy, or strict liability), statutory claims, and any and all rights to or claims for attorneys' fees, interest, damages (including contract, compensatory, punitive, or liquidated damages), or claims for equitable relief; which the Releasing Parties, or any of them, or their respective spouses, heirs, executors, or assigns may ever have had or now have, whether known or unknown at this time, for any acts, failures to act, events, or omissions from the beginning of time until the date each Releasing Party signs this Agreement. This mutual and global release is intended by the Releasing Parties to dispose fully and finally of all issues, conflicts, claims, and complaints between them related to the Lawsuits, whether asserted or not, and this Agreement and this release provision should be construed with this, the express intent of the Releasing Parties, in mind.

6. Release of Escrow. The Falcon Defendants shall notify HSBC as soon as possible after the Escrow Breakage Trigger (as that term is defined in the Escrow Agreement) has occurred. The notification shall be consistent with and reiterate the instructions

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contained in Exhibit C. Plaintiffs acknowledge that the disbursement of the Escrow Fund requires consent from entities that are not owned or controlled by the Falcon Defendants, and as a result, the Falcon Defendants cannot solely control the timing of the disbursement of the Escrow Fund. Under no circumstance will the Falcon Defendants be required to pay interest or any penalty because of the timing of the payment. In furtherance of the foregoing, contemporaneously with the joint filing of the notices of non-suit with prejudice and motion to enter same by the Plaintiffs and the Falcon Defendants (the "Non\_Suits"), the Falcon Defendants shall cause Falcon to notify HSBC of this Agreement, which such notification shall be substantially in the form attached as Exhibit C (the "HSBC Notice of Agreement"), and not later than three days after the filing of the Non-Suits, the Falcon Defendants shall provide the Plaintiffs with evidence that the HSBC Notice of Agreement was sent and received by HSBC. In addition, the Falcon Defendants shall hereafter provide the Plaintiffs with any copies of any written correspondence, or summaries in reasonable detail of any oral communications, received by any of the Falcon Defendants from HSBC in connection with the HSBC Notice of Agreement, in each case not later than two days after such Falcon Defendant's receipt thereof. If the Second Payment occurs after December 31, 2010, and the amount of the Second Payment needs to be adjusted for the then existing tax rates, then Plaintiffs' counsel and Falcon shall provide the Escrow Agent revised distribution instructions that reflect the Second Payment to Plaintiffs minus all U.S. federal income and F.I.C.A. taxes.

7. No Assignment, Sale, or Other Transfer of Released Claims. The Releasing Parties each represent and warrant that he, she, or it has not assigned, sold, or otherwise transferred, or purported to assign, sell, or otherwise transfer, to any person, firm, corporation,

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association, or entity whatsoever any of the Released Claims, except that Plaintiffs have assigned a contingency fee interest in their claims to Ware, Jackson, Lee and Chambers, LLP and the Kim Law Firm, and except any claims that the Falcon Defendants may have transferred pursuant to the Purchase Agreement dated March 15, 2010 between Falcon, Alinda Natural Gas Storage I, L.P., and Alinda Natural Gas Storage II, L.P., if any. The Releasing Parties agree to indemnify and hold harmless the other Releasing Party(ies) and any other adversely affected Releasee(s) against, without limitation, any and all rights, claims, warranties, demands, debts, obligations, liabilities, costs, expenses (including attorneys' fees), causes of action, and judgments based on, arising out of, or connected with any such assignment, sale, or transfer or purported assignment, sale, or transfer.

8. Closing. The "Closing" shall occur electronically beginning on July \_\_, 2010 at 8:30 am Central Time. At Closing, the following shall occur, in the following order and sequence:
- a. Each of the Parties and their respective legal counsel shall transmit via email executed copies of this Agreement;
  - b. Falcon shall deposit \$6.5 million, less withholding of federal income and F.I.C.A. taxes of \$781,957 to be withheld and paid by Falcon (evidence of which shall be provided to the Plaintiffs by Falcon immediately after Closing occurs), for a total of \$5,718,043 into the Ware, Jackson, Lee & Chambers, L.L.P. IOLTA, as provided in Paragraph 2, above.
  - c. Each of the Plaintiffs shall transmit via email executed copies of the Closing Documents attached to this Agreement as Exhibit B;



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- d. Ware, Jackson, Lee & Chambers, L.L.P. and The Kim Law Firm shall transmit via email executed copies of the letter agreement attached as Exhibit A;
- e. The Parties' respective legal counsel shall transmit via email executed copies of the Notice of Nonsuit with Prejudice with the attached Orders of Dismissal with Prejudice attached to this Agreement as Exhibits D and E, respectively, and the Plaintiffs shall file such Motions and Orders with the respective Courts immediately. The Parties' obligations under this provision shall be satisfied upon the filing of their notices of nonsuit with prejudice to each pending lawsuit and shall not be dependent on whether the Courts sign an order with respect to the nonsuit or the form of any order the Courts sign with respect to the nonsuits with prejudice. However, Plaintiffs agree to support each Courts' entry of an order of dismissal with prejudice in the form attached;
- f. Plaintiffs shall transmit via email executed copies of the Motion to Expunge Lis Pendens attached to this Agreement as Exhibit F, and Plaintiffs shall file it with the appropriate Court immediately. Plaintiffs' obligations under this provision shall be satisfied upon the delivery of the Motion to Expunge and shall not be dependent on whether the court signs an order with respect to the motion. However, Plaintiffs agree to support the motion in the form attached and make their best efforts to promptly obtain an order on the motion; and
- g. Plaintiffs shall file the executed order(s) expunging the *lis pendens*, or, if the order on the motion to expunge is not signed, a letter notifying the county clerks in Eastland and Jack Counties that Plaintiffs have non-suited the cases to which the notices of *lis pendens* are attached and directing the clerks to remove the

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notices of lis pendens from the real estate records as soon as possible. Plaintiffs' obligations under this provision shall be satisfied upon the filing of the order or letters in Eastland and Jack Counties.

9. No Admission of Liability. The Releasing Parties understand and agree that this Agreement is a release of disputed claims, is intended to avoid the risks associated with litigating such disputed claims, and does not constitute an admission of liability by the Releasing Parties or any other Releasee as to any matter whatsoever, including, but not limited to, the claims alleged in the Lawsuits, which the Releasing Parties dispute, and that the Parties intend by this Agreement to avoid further litigation and to buy peace. The Releasing Parties further acknowledge and agree that this Agreement shall not preclude or collaterally estop any Releasing Party(ies) or any Releasee(s) from denying liability as to any claim not resolved by this Agreement, whether by third parties, those similarly situated to Plaintiffs but not a party hereto, or otherwise.

10. Confidentiality.

- a. Except as otherwise specifically provided in Paragraphs 10.b and 10.c below, each Party agrees and covenants that he, she, or it, subject to the penalty of contempt, has maintained and will continue to maintain the confidentiality of, and will not disclose, reveal, publish, disseminate, or discuss, directly or indirectly, to or with any other person or entity, other than his or her spouse, necessary employees, or legal representatives, the terms of this Agreement (including whether or not any amount was paid, the amount paid, or opinion(s) or information he or she may have with respect to this Agreement).

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- b. The Parties may disclose to any other person and/or entity that this matter has been settled on terms which are confidential.
- c. The following disclosures, which are specific exceptions to Paragraph 10.a above, are permitted in the following limited circumstances:
  - i. The Parties or their legal representatives may make such disclosures as are reasonably necessary for tax reporting purposes.
  - ii. The Parties or their legal representatives may disclose the terms and amount paid under this Agreement as reasonably necessary to obtain legal, tax, or accounting advice or services.
  - iii. The Parties or their legal representatives may disclose the terms of this Agreement to the extent required in any legal proceeding involving the enforcement of this Agreement, but, as to any other legal proceedings, such persons may disclose the terms of this Agreement only to the extent (i) permitted by Paragraphs 10.b or 10.c, (ii) specifically requested and consented to in writing by the Parties or their counsel, or (iii) compelled pursuant to a subpoena or other court order, provided, however, that to the extent permitted by law, and to the extent practicable, the Parties shall seek to preserve the confidentiality of this Agreement and use their best efforts to promptly give written notice of such disclosure requirement to the other Parties so as to reasonably permit such Parties to prevent or limit the Agreement's disclosure.

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iv. The Falcon Defendants or their legal representatives may disclose the terms and amount paid under this Agreement to the indirect owners of GSF and GSI II.

d. The Parties understand and agree that any disclosure that is not explicitly permitted herein of this Agreement or any of its terms by them, their spouses, their employees, or their legal representatives in any fashion shall constitute a material breach thereof. By signing this Agreement, each Party represents, acknowledges and agrees that he, she, or it has not agreed to reveal the terms of this Agreement to any party to whom disclosure is not explicitly permitted herein.

11. Nonassistance. Plaintiffs hereby covenant and agree not to voluntarily assist, support, or cooperate with, directly or indirectly, any person or entity alleging or pursuing any claim, administrative charge, or cause of action against any of the Falcon Defendants relating to the sale of NorTex by Falcon, the value of Falcon's or the MoBay Entities' shares, units, and/or options, or the Lawsuits, including without limitation by providing testimony or other information or documents, except under compulsion of law. If a Plaintiff is compelled to testify, nothing in this Agreement is intended to or shall prohibit him or her from providing complete and truthful testimony. Nor shall this Agreement in any way prevent Plaintiffs from cooperating with any investigation by any federal, state, or local governmental agency.

12. Non-Disparagement. The Parties hereby agree and covenant that, except as may be required by law, no Party will make any statement, written or verbal, in any forum or media, or take any action in disparagement of any Party, including but not limited to negative references to the Party, or their attorneys, corporate affiliates, products, services,

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corporate policies, officers or employees, or take any other action which may disparage the Party to the general public or its employees, customers, suppliers, or business partners or associates.

13. Severability. In the event that any provision of this Agreement is held to be unenforceable, each and all of the other provisions of this Agreement shall remain in full force and effect.
14. Modification. No provision of this Agreement may be changed, altered, modified, or amended except in writing signed by the Parties directly affected by such change or a duly authorized representative of those affected Parties, which writing shall specifically reference this Agreement and the provision that the Parties intend to change, alter, modify, or amend.
15. Entire Agreement. The Parties acknowledge and agree that this Agreement and the exhibits attached to it constitute a full, final, and complete settlement of their differences relating to the subject matter hereof and supersedes and replaces any and all other written or oral exchanges, agreements, understandings, arrangements, or negotiations between them relating to the subject matter hereof, and the Parties affirmatively state that there are no other prior or contemporaneous agreements, exchanges, representations, arrangements, or understandings, written or oral, between them relating to the subject matter hereof other than that as set forth herein and in the exhibits, and that this Agreement and the exhibits contain the sole and entire agreement between them with respect to the subject matter hereof.
16. Waiver. No claim or right arising out of a breach or default under this Agreement may be discharged by a waiver of that claim or right unless the waiver is in writing and signed by

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- the Party to be bound by such waiver. A waiver by any Party of a breach or default by another Party of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and this Agreement in its entirety shall remain in full force and effect.
17. Applicable Law. This Agreement shall be construed and enforced according to the laws of the State of Texas, without reference to any law that would require transfer to another state; however, the Parties expressly acknowledge that by entering this Agreement, no Party is agreeing to jurisdiction in Texas or the United States (other than as expressly agreed to in Paragraph 18) or otherwise waiving any jurisdictional defenses he, she, or it may have.
18. Disputes. The Parties agree that any dispute related to or arising out of this Agreement shall be submitted to binding arbitration pursuant to the rules of the American Arbitration Association (the "AAA"). Any such arbitration shall be filed with the AAA in New York, and the final hearing shall be held in New York City. The Parties involved in the arbitration agree to choose a three arbitrator panel, and the Parties involved in the arbitration shall share equally in all filing fees and administrative costs of the arbitration; however, any award rendered may equitably reallocate those costs.
19. Headings and Captions. The headings and captions in this Agreement are for convenience and reference only and shall in no way define, limit, expand, or otherwise affect the meaning or construction of any provisions of this Agreement.
20. Joint Drafting. The Parties and their respective counsel have reviewed and approved this Agreement and, accordingly, the normal rule of construction to the effect that any

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ambiguities are to be resolved against the drafting party will not be employed in any interpretation of this Agreement.

21. Counterparts Acceptable. This Agreement may be executed in multiple counterparts (including execution by facsimile or via other electronic means), each of which shall be deemed to be an original for all purposes hereunder but all of which together shall constitute one and the same instrument. A true and correct copy of this Agreement shall be as binding as the original.
22. Understanding. Each of the Parties represents and warrants that they have the authority to enter into this Agreement on behalf of themselves and any shareholders, partners, and/or principals, and the Parties each acknowledge and represent that they have been given a reasonable time to consider this Agreement, that they have had the opportunity to seek the assistance of an attorney in considering this Agreement, that they have read this Agreement in full, and that they understand and voluntarily consent and agree to each and every provision contained herein.
23. Good Faith Efforts. The Falcon Defendants shall make reasonable, good faith efforts to promptly secure the release of the Escrow Account.
24. Notices. For the purposes of this Agreement all notices shall be in writing and sent by certified mail as follows:

If to Falcon Defendants:

Mr. R. Bruce Hurley  
King & Spalding LLP  
1100 Louisiana Street, Suite 4000  
Houston, Texas 77002-5213  
713-751-3200 (telephone)  
713-751-3290 (facsimile)

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If to Plaintiffs:

Mr. Don Jackson  
Ware Jackson Lee & Chambers, LLP  
2929 Allen Parkway, 42nd Floor  
Houston, Texas 77019  
713-659-6400 (telephone)  
713-659-6262 (facsimile)

Mr. John H. Kim  
The Kim Law Firm  
4309 Yoakum Blvd., Suite 2000  
Houston, Texas 77006  
713-987-3908 (telephone)  
888-809-6793 (facsimile)

or to such other address or telecopy number and with such other copies as the Parties may hereafter specify by notice to the other Parties. Each such notice, request, or other communication shall be effective upon delivery or refusal of delivery at the address specified in this Paragraph.

25. Taxes. Plaintiffs agree that, except for the amounts withheld and paid by Falcon pursuant to Paragraph 3, above, Plaintiffs are solely responsible for and will pay all federal income taxes and other applicable taxes, if any, which are required by law to be paid with respect to amounts received under this Agreement. Except for the amounts withheld and paid by Falcon pursuant to Paragraph 3, above, the Falcon Defendants are not obligated to pay such taxes.

26. Costs and Fees. Except as expressly provided for above, the Parties agree that all costs, expenses, and attorneys' fees arising by virtue of the Lawsuits shall be paid by the Party incurring same.

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JEAN LAFARGUE

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FALCON DEFENDANTS:

Antoine Lafargue  
ANTOINE LAFARGUE

07.27.10  
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ASIM ZAFAR

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ARCAPITA BANK B.S.C.(C)

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GASTORAGE INVESTMENTS I.L.C

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TITLE: \_\_\_\_\_

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GASTORAGE INVESTMENTS II L.C

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TITLE: \_\_\_\_\_

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GASTORAGE FUNDING, INC.

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TITLE: \_\_\_\_\_

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**FALCON DEFENDANTS:**

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GASTORAGE INVESTMENTS LLC *by GASTorage Funding, Inc. as successor*  
B.R.McC  
NAME: Brian R. McCabe  
TITLE: Secretary

7-27-10  
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GASTORAGE INVESTMENTS II LLC

B.R.McC  
NAME: Brian R. McCabe  
TITLE: Secretary

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GASTORAGE FUNDING, INC.

B.R.McC  
NAME: Brian R. McCabe  
TITLE: Secretary

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**FALCON DEFENDANTS:**

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FALCON GAS STORAGE COMPANY, INC.

B.R.McCabe  
NAME: Brian R. McCabe  
TITLE: Vice President

7-27-10  
DATE

MOBAY STORAGE HUB LLC

B.R.McCabe  
NAME: Brian R. McCabe  
TITLE: Vice President

7-27-10  
DATE

MOBAY STORAGE HOLDINGS, LLC

B.R.McCabe  
NAME: Brian R. McCabe  
TITLE: Vice President

7-27-10  
DATE

**STRICTLY CONFIDENTIAL**

**FALCON DEFENDANTS:**

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ANTOINE LAFARGUE

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CHARLES L. GRIFFIN

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**FALCON DEFENDANTS:**

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GASTORAGE FUNDING, INC.

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STRICTLY CONFIDENTIAL

**REVIEWED AND APPROVED BY:**

*R. Bruce Hurley / by permission*

Mr. R. Bruce Hurley  
King & Spalding LLP  
1100 Louisiana Street, Suite 4000  
Houston, Texas 77002-5213  
713-751-3200 (telephone)  
713-751-3290 (facsimile)

*Counsel for Asim Zafar, Qaisar Zaman,  
Antoine LaFargue, Brian McCabe,  
Charles L. Griffith, Kevin J. Keough,  
Tore Nelson, Arcapita Bank B.S.C.(c),  
Falcon Gas Storage Company, Inc.,  
GAStorage Investments LLC, GAStorage  
Investments II LLC, MoBay Storage  
Holdings, LLC, and MoBay Storage HUB LLC  
GAStorage Funding, Inc.,*

---

Mr. Don Jackson  
Ware Jackson Lee & Chambers, LLP  
2929 Allen Parkway, 42nd Floor  
Houston, Texas 77019  
713-659-6400 (telephone)  
713-659-6262 (facsimile)

Mr. John H. Kim  
The Kim Law Firm  
4309 Yoakum Blvd., Suite 2000  
Houston, Texas 77006  
713-987-3908 (telephone)  
888-809-6793 (facsimile)

*Counsel for John M. Hopper, Edmund A. Knolle,  
Jeffrey H. Foutch, Keith Chandler, Steven B. Toon,  
Thomas B. Wynne, Jr., Steven Jenkins, Tamara  
Jenkins, Alexander Cocke Trust, and Dianne G. Foutch*

Jul 27 2010 11:09PM Peregrine Midstream Part. 713-974-5601 P.2.

**STRICTLY CONFIDENTIAL**

**PLAINTIFFS:**

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JOHN M. HOPPER

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EDMUND A. KNOLLE

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JEFFERY H. FOUTCH

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THOMAS B. WYNNE, JR.

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STEVEN JENKINS

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**STRICTLY CONFIDENTIAL**

**PLAINTIFFS:**

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*Steven B. Jenkins*  
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STEVEN JENKINS

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TAMARA JENKINS

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**STRICTLY CONFIDENTIAL**

**PLAINTIFFS:**

JOHN M. HOPPER

DATE

EDMUND A. KNOLLE

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THOMAS B. WYNNE, JR.

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TAMARA JENKINS

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*Dianne G. Foutch*  
DIANNE G. FOUTCH

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**PLAINTIFFS:**

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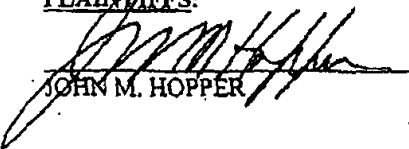
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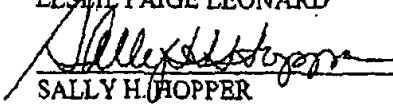
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RACHEL ANN CHANDLER

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DATE

JUL 27 2010 1:09PM Peregrine Midstream Part. 713-974-5601 P.3

**STRICTLY CONFIDENTIAL**

PLAINTIFFS:

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JOHN M. HOPPER  
*Edmund A. Knolle*  
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EDMUND A. KNOLLE

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DATE  
*7-27-10*  
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DATE

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JEFFERY H. FOUTCH

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KEITH L. CHANDLER

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STEVEN B. TOON

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THOMAS B. WYNNE, JR.

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STEVEN JENKINS

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TAMARA JENKINS

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DIANNE G. FOUTCH

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LESLIE PAIGE LEONARD

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SALLY H. HOPPER  
*Ellecia A. Knolle*  
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ELLECIA A. KNOLLE

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MICHELLE P. FOUTCH

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DEBORAH J. TOON

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RACHEL ANN CHANDLER

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DATE

Jul 27 2010 1:09PM Peregrine Midstream Part. 713-974-5601 P. 4  
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PLAINTIFFS:

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JOHN M. HOPPER

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EDMUND A. KNOLLE

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7/27/10  
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7/27/2010  
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\_\_\_\_\_  
DATE



Jul 27 2010 2:00PM Peregrine Midstream Part. 713-974-5601

P. 2

**STRICTLY CONFIDENTIAL**

PLAINTIFFS:

\_\_\_\_\_  
JOHN M. HOPPER

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EDMUND A. KNOLLE

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*Keith W. Chandler*  
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KEITH W. CHANDLER

*7/27/2010*  
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DEBORAH J. TOON

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*Rachel Ann Chandler*  
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RACHEL ANN CHANDLER

*7/27/2010*  
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DATE

Jul 27 2010 12:53PM Peregrine Midstream Part. 713-974-5501

p.2

**STRICTLY CONFIDENTIAL**

**PLAINTIFFS:**

JOHN M. HOPPER

DATE

EDMUND A. KNOLLE

DATE

JEFFERY H. FOUTCH

DATE

KEITH L. CHANDLER

DATE

*Steven B. Toon*  
STEVEN B. TOON

7/27/10  
DATE

THOMAS B. WYNNE, JR.

DATE

STEVEN JENKINS

DATE

TAMARA JENKINS

DATE

DIANNE G. FOUTCH

DATE

LESLIE PAIGE LEONARD

DATE

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DATE

ELLECIA A. KNOLLE

DATE

MICHELLE P. FOUTCH

DATE

DEBORAH J. TOON

DATE

RACHEL ANN CHANDLER

DATE

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**PLAINTIFFS:**

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JOHN M. HOPPER

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EDMUND A. KNOLLE

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DIANNE G. FOUTCH

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ELLECIA A. KNOLLE

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MICHELLE P. FOUTCH

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DATE

*Deborah J. Toon*  
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DEBORAH J. TOON

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RACHEL ANN CHANDLER

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**STRICTLY CONFIDENTIAL**

  
\_\_\_\_\_  
DANIEL LEONARD

7-27-10  
DATE

ALEXANDER COCKE TRUST  
\_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

\_\_\_\_\_  
DATE

**STRICTLY CONFIDENTIAL**

DANIEL LEONARD

DATE

ALEXANDER COCKE TRUST

Steven B. Jenkins  
NAME: STEVEN B. JENKINS  
TITLE: TRUSTEE

7.27.10  
DATE

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**STRICTLY CONFIDENTIAL**

**FALCON DEFENDANTS:**

\_\_\_\_\_  
ANTOINE LAFARGUE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
ASIM ZAFAR

\_\_\_\_\_  
DATE

\_\_\_\_\_  
QAISAR ZAMAN

\_\_\_\_\_  
DATE

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BRIAN MCCABE

\_\_\_\_\_  
DATE

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CHARLES L. GRIFFITH

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DATE

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KEVIN J. KEOUGH

\_\_\_\_\_  
DATE

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TORE NELSON

\_\_\_\_\_  
DATE

ARCAPITA BANK B.S.C.(C)

\_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

\_\_\_\_\_  
DATE

GASTORAGE INVESTMENTS LLC

\_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

\_\_\_\_\_  
DATE

GASTORAGE INVESTMENTS II LLC

\_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

\_\_\_\_\_  
DATE

GASTORAGE FUNDING, INC.

\_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

\_\_\_\_\_  
DATE

**STRICTLY CONFIDENTIAL**

FALCON GAS STORAGE COMPANY, INC.

NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

DATE \_\_\_\_\_

MOBAY STORAGE HUB LLC

NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

DATE \_\_\_\_\_

MOBAY STORAGE HOLDINGS, LLC

NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_


DATE \_\_\_\_\_

**STRICTLY CONFIDENTIAL**

**REVIEWED AND APPROVED BY:**

\_\_\_\_\_  
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Tore Nelson, Arcapita Bank B.S.C.(c),  
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GASStorage Investments LLC, GASStorage  
Investments II LLC, MoBay Storage  
Holdings, LLC, and MoBay Storage HUB LLC  
GASStorage Funding, Inc.,*

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Thomas B. Wynne, Jr., Steven Jenkins, Tamara  
Jenkins, Alexander Cocke Trust, and Dianne G. Foutch*



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(713) 220-4266

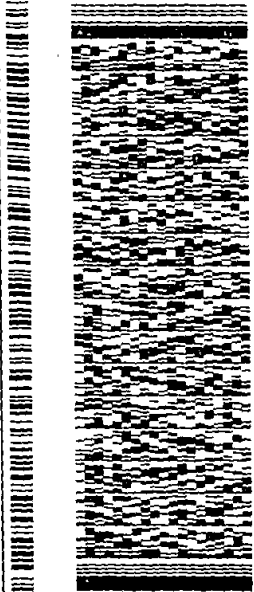
CHICEN ID: 8187  
Paul Davis  
Andrews Kurth LLP  
600 Travis #86 4200

HOUSTON TX 77002  
UNITED STATES US

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

Dublin OH 43017  
713.220.4574  
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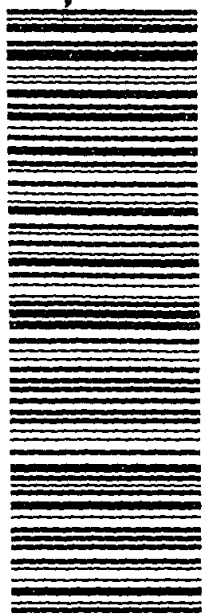


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**ANDREWS**  
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