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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 8-K  
CURRENT REPORT  
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **December 9, 2005**

**DCP MIDSTREAM PARTNERS, LP**

(Exact name of registrant as specified in its charter)

**DELAWARE**  
(State or other jurisdiction of incorporation)

**001-32678**  
(Commission File Number)

**03-0567133**  
(IRS Employer Identification No.)

**370 17th Street, Suite 2775  
Denver, Colorado 80202**  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code **(303) 633-2900**

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Item 1.01 Entry into a Material Definitive Agreement.**

**General.** On December 1, 2005, DCP Midstream Partners, LP (the “Partnership”) entered into an underwriting agreement (the “Underwriting Agreement”) with Duke Energy Field Services, LLC (“DEFS”), DCP Midstream GP, LLC (the “General Partner”), the general partner of DCP Midstream GP, LP (the “GP LP”), the general partner of the Partnership, DCP Midstream Operating, LP (the “OLP”), and the underwriters named therein providing for the offer and sale in a firm commitment underwritten offering of 9,000,000 common units representing limited partner interests in the Partnership (“Common Units”). Pursuant to the Underwriting Agreement, the Partnership granted the Underwriters a 30-day option to purchase up to an additional 1,350,000 Common Units (the “Option”) to cover over-allotments, if any, on the same terms as those Common Units sold by the Partnership, which Option was exercised in full by the Underwriters on December 5, 2005.

The transactions contemplated by the Underwriting Agreement were consummated on December 7, 2005. The proceeds (net of underwriting discounts) received by the Partnership (before expenses) from the sale of 10,350,000 common units (including the 1,350,000 common units subject to the Option) were approximately \$208.3 million. As described in the Prospectus, the Partnership will use the net proceeds of the offering to: (i) purchase \$90.1 million of United States Treasury and other qualifying securities, which will be assigned as collateral to secure the term loan portion of the Partnership’s credit facility, (ii) pay approximately \$4.7 million of expenses associated with the initial public offering and related formation transactions, (iii) use approximately \$53.9 million to fund payables, (iv) distribute approximately \$8.6 million in cash to subsidiaries of DEFS as reimbursement for capital expenditures incurred by subsidiaries of DEFS prior to the initial public offering related to the assets contributed to the Partnership upon the closing of the initial public offering, which distribution was made in partial consideration of the assets contributed to the Partnership upon the closing of the initial public offering, and (v) use the remaining amount of approximately \$40.7 million to fund future capital expenditures (including potential acquisitions), working capital and other general partnership purposes. In connection with the exercise of the Option, the Partnership will borrow an additional \$27.1 million under its term loan facility and use these loan proceeds to redeem 1,350,000 common units from a subsidiary of DEFS.

A copy of the Underwriting Agreement is filed as Exhibit 1.1 to this Form 8-K and is incorporated herein by reference.

**Omnibus Agreement.** On December 7, 2005, in connection with the closing of the transactions contemplated by the Underwriting Agreement, DEFS, the General Partner, the GP LP, the Partnership and the OLP entered into an omnibus agreement (the “Omnibus Agreement”). As more fully described in the Partnership’s final prospectus (the “Prospectus”) dated December 1, 2005 (File No. 333-128378) and filed on December 2, 2005 with the Commission pursuant to Rule 424(b)(4) under the Securities Act of 1933, as amended (the “Securities Act”), the Omnibus Agreement governs the Partnership’s relationship with DEFS and its affiliates regarding the following matters:

- (i) the Partnership’s obligation to reimburse DEFS for the payment of operating expenses, including salary and benefits of operating personnel, it incurs on the Partnership’s behalf in connection with its business and operations;
  - (ii) the Partnership’s obligation to pay DEFS an annual administrative fee for providing it general and administrative services with respect to its business and operations;
  - (iii) the Partnership’s obligation to reimburse DEFS for insurance coverage expenses it incurs with respect to the Partnership’s business and operations and with respect to director and officer liability coverage;
  - (iv) DEFS’ obligation to indemnify the Partnership for certain liabilities and the Partnership’s obligation to indemnify DEFS for certain liabilities;
  - (v) DEFS’ obligation to continue to maintain its credit support, including without limitation guarantees and letters of credit, for the Partnership’s obligations related to derivative financial instruments, such as commodity price hedging contracts, to the extent that such credit support arrangements are in effect as of the closing of the initial public offering until the earlier to occur of the fifth anniversary of the closing of the initial public offering or such time as the Partnership obtains an investment grade credit rating from either Moody’s Investor Services, Inc. or Standard & Poor’s Ratings Group with respect to any of its unsecured indebtedness; and
  - (vi) DEFS’ obligation to continue to maintain its credit support, including without limitation guarantees and letters of credit, for the Partnership’s obligations related to commercial contracts with respect to its business or operations that are in effect at the closing of the initial public offering until the expiration of such contracts.
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A copy of the Omnibus Agreement is filed as Exhibit 10.1 to this Form 8-K and is incorporated herein by reference.

**Long-Term Incentive Plan.** On November 28, 2005, the board of directors of the General Partner adopted the DCP Midstream Partners, LP Long-Term Incentive Plan (the “Plan”), effective as of December 7, 2005, for employees, consultants and directors of the General Partner and employees and consultants of its affiliates who perform services for the General Partner or its affiliates. The Plan provides for the grant of restricted units, phantom units, unit options and substitute awards and, with respect to unit options and phantom units, the grant of distribution equivalent rights, or DERs. Subject to adjustment for certain events, an aggregate of 850,000 Common Units may be delivered pursuant to awards under the Plan. The Plan will be administered by the compensation committee of the general partner’s board of directors.

The General Partner’s board of directors, or its compensation committee, in its discretion may initiate, terminate, suspend or discontinue the Plan at any time with respect to any award that has not yet been granted. The General Partner’s board of directors, or its compensation committee, also has the right to alter or amend the Plan or any part of the Plan from time to time, including increasing the number of Common Units that may be granted subject to unitholder approval as required by the exchange upon which the Common Units are listed at that time. However, no change in any outstanding grant may be made that would materially impair the rights of the participant without the consent of the participant. A copy of the Plan is filed as Exhibit 10.2 to this Form 8-K and is incorporated herein by reference.

**Other Agreements.** The description of the Contribution Agreement described below under Item 2.01 is incorporated in this Item 1.01 by reference. A copy of the Contribution Agreement is filed as Exhibit 10.3 to this Form 8-K and is incorporated herein by reference.

The description of the Credit Agreement described below under Item 2.03 is incorporated in this Item 1.01 by reference. A copy of the Credit Agreement is filed as Exhibit 10.4 to this Form 8-K and is incorporated herein by reference.

**Relationships.** Each of the General Partner, the GP LP, the Partnership, the OLP, DEFS Holding 1, LLC (“DEFS Holding 1”), DEFS Holding, LLC (“DEFS Holding”), DCP Assets Holding, LP (“Assets LP”), and DCP Assets Holdings GP, LLC (“Assets GP”), Duke Energy Guadalupe Pipeline Holdings, Inc. (“Guadalupe Holdings”), Duke Energy NGL Services, LP (“DENGL”), DCP LP Holdings, LP (“LP Holdings”), and DCP Black Lake Holdings, LP (“Black Lake Holdings”) are direct or indirect subsidiaries of DEFS. As a result, certain individuals, including officers and directors of the General Partner, serve as officers and/or directors of more than one of such entities. As described above, each of the General Partner, the GP LP, the Partnership, the OLP and DEFS were parties to the Underwriting Agreement and the Omnibus Agreement. As described in Item 2.01 below, each of the General Partner, the GP LP, the Partnership, the OLP, DEFS Holding 1, DEFS Holding, Assets LP, Assets GP, Guadalupe Holdings, DENGL, LP Holdings and Black Lake Holdings are also party to a Contribution Agreement. The GP LP serves as the general partner of the Partnership, holding a 2% general partner interest and incentive distribution rights in the Partnership.

#### **Item 2.01 Completion of Acquisition or Disposition of Assets.**

**Contribution Agreement.** As described in the Prospectus, in connection with the consummation of the transactions contemplated by the Underwriting Agreement, on December 7, 2005, the General Partner, the GP LP, the Partnership, the OLP, DEFS Holding 1, DEFS Holding, Assets LP, Assets GP, Guadalupe Holdings, DENGL, LP Holdings and Black Lake Holdings entered into a Contribution, Conveyance and Assumption Agreement (the “Contribution Agreement”). The Contribution Agreement provided for (i) the transfer of businesses and related assets and liabilities to the Partnership and its subsidiaries and (ii) the distribution of cash by the Partnership to the GP LP which in turn will be loaned to DEFS. These transfers and distributions were made in a series of steps outlined in the Contribution Agreement.

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A copy of the Contribution Agreement is filed as Exhibit 10.3 to this Form 8-K and is incorporated herein by reference. As noted in Item 1.01 above, the Partnership has certain relationships with certain parties to the Contribution Agreement.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

On December 7, 2005, the OLP entered into a new 5 -Year Credit Agreement (the "Credit Agreement") with Wachovia Bank, National Association, as administrative agent for the lenders named therein, providing a \$250 million revolving and up to a \$175 million term credit facility (with the option of increasing the size of the facility up to \$550 million with the consent of the administrative agent and the issuing lenders) for the initial asset acquisition, cash distributions to the Partnership, and for working capital and other general corporate purposes. The Credit Agreement will expire in 5 years. Borrowings under the Credit Agreement bear interest at the rates specified in the agreement, and the agreement contains leverage ratio and interest coverage ratio covenants. The term credit facility portion of the Credit Agreement is secured by the Borrower's investments, cash and cash equivalents in an amount not less than the balance of the term loan and the Credit Agreement is guaranteed by the Partnership and its operating subsidiaries.

A copy of the Credit Agreement is filed as Exhibit 10.4 to this Form 8-K and is incorporated herein by reference.

**Item 3.02 Unregistered Sales of Equity Securities.**

In connection with the consummation of the transactions contemplated by the Contribution Agreement, on December 7, 2005, the Partnership issued (i) 1,357,143 Common Units (1,350,000 of which were subsequently redeemed by the Partnership) and 7,142,857 Subordinated Units to LP Holdings, a subsidiary of DEFS, in exchange for certain equity interests and (ii) the continuation of a 2.0% general partner interest in the Partnership and incentive distribution rights (which represent the right to receive increasing percentages of quarterly distributions in excess of specified amounts) to the GP LP in exchange for certain equity interests, is incorporated herein by reference. Each Subordinated Unit will convert into one Common Unit at the end of the subordination period. Unless earlier terminated pursuant to the terms of the partnership agreement of the Partnership, the subordination period will extend until the first day of any quarter beginning after December 31, 2010 that the Partnership meets the financial tests set forth in the partnership agreement of the Partnership.

The foregoing transactions were undertaken in reliance upon the exemption from the registration requirements of the Securities Act afforded by Section 4(2). The Partnership believes that exemptions other than the foregoing exemption may exist for these transactions.

**Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.**

On November 25, 2005, Messrs. Michael J Bradley, William H Easter III, Paul F. Ferguson, Jr. and John E. Lowe were elected to serve as directors of the General Partner. Mr. Bradley is also the President and Chief Executive Officer of the General Partner. Mr. Ferguson is the initial member of the audit and compensation committees of the board of directors of the General Partner.

There is no arrangement or understanding between Messrs. Bradley, Easter, Ferguson and Lowe and any other persons pursuant to which they were selected as directors. There are no relationships between Messrs. Bradley, Easter, Ferguson and Lowe and the General Partner, the Partnership or its subsidiaries that would require disclosure pursuant to Item 404(a) of Regulation S-K.

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Changes in Fiscal Year.**

On December 7, 2005, the Partnership amended and restated its Agreement of Limited Partnership in connection with the closing of the initial public offering. A description of the First Amended and Restated Partnership Agreement is contained in the section entitled "The Partnership Agreement" of the Prospectus and is incorporated herein by reference. A copy of the First Amended and Restated Partnership Agreement as adopted is filed as Exhibit 3.1 to this Form 8-K and is incorporated herein by reference.

On December 7, 2005, the GP LP amended and restated its Agreement of Limited Partnership. A copy of the First Amended and Restated Agreement of Limited Partnership of the GP LP as adopted is filed as Exhibit 3.2 to this Form 8-K and is incorporated herein by reference.

On December 7, 2005, the General Partner amended and restated its Limited Liability Company Agreement. A copy of the Amended and Restated Limited Liability Company Agreement of the General Partner as adopted is filed as Exhibit 3.3 to this Form 8-K and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

(c) **Exhibits.**

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<u>Exhibit Number</u>	<u>Description</u>
Exhibit 1.1	Underwriting Agreement, dated December 1, 2005 among Duke Energy Field Services, LLC, DCP Midstream Partners, LP, DCP Midstream GP, LP, DCP Midstream GP, LLC, DCP Midstream Operating, LP and Lehman Brothers Inc. and Citigroup Global Markets Inc. as representatives of the several underwriters named therein.
Exhibit 3.1	Amended and Restated Limited Partnership Agreement of DCP Midstream Partners, LP.
Exhibit 3.2	First Amended and Restated Limited Partnership Agreement of DCP Midstream GP, LP.
Exhibit 3.3	First Amended and Restated Limited Liability Company Agreement of DCP Midstream GP, LLC.
Exhibit 10.1	Omnibus Agreement, dated December 7, 2005, among Duke Energy Field Services, LLC, DCP Midstream GP, LLC, DCP Midstream GP, LP, DCP Midstream Partners, LP and DCP Midstream Operating, LP.
Exhibit 10.2	DCP Midstream Partners, LP Long-Term Incentive Plan.
Exhibit 10.3	Contribution, Conveyance and Assumption Agreement, dated December 7, 2005, among DCP Midstream Partners, LP, DCP Midstream Operating, LP, DCP Midstream GP, LLC, DCP Midstream GP, LP, Duke Energy Field Services, LLC, DEFS Holding 1, LLC, DEFS Holding, LLC, DCP Assets Holdings, LP, DCP Assets Holdings GP, LLC, Duke Energy Guadalupe Pipeline Holdings, Inc., Duke Energy NGL Services, LP, DCP LP Holdings, LP and DCP Black Lake Holdings, LLC.
Exhibit 10.4	Credit Agreement, dated December 7, 2005, between DCP Midstream Operating, LP and Wachovia Bank, National Association, as administrative agent for the lenders named therein.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**DCP MIDSTREAM PARTNERS, LP**

**By: DCP MIDSTREAM GP, LP,  
its General Partner**

**By: DCP MIDSTREAM GP, LLC,  
its General Partner**

By: /s/ Michael S. Richards

Name: Michael S. Richards

Title: Vice President, General Counsel and Secretary

December 12, 2005

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## EXHIBIT INDEX

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**9,000,000 Common Units**  
**DCP MIDSTREAM PARTNERS, LP**  
**Representing Limited Partner Interests**  
**UNDERWRITING AGREEMENT**

December 1, 2005

LEHMAN BROTHERS INC.  
CITIGROUP GLOBAL MARKETS INC.  
As Representatives of the several  
Underwriters named in Schedule 1 hereto

c/o Lehman Brothers Inc.  
745 Seventh Avenue  
New York, New York 10019

Ladies and Gentlemen:

DCP Midstream Partners, LP, a Delaware limited partnership (the “**Partnership**”), proposes to sell 9,000,000 common units (the “**Firm Units**”), each representing a limited partner interest in the Partnership (the “**Common Units**”). In addition, the Partnership proposes to grant to the Underwriters named in **Schedule 1** hereto (the “**Underwriters**”) an option to purchase up to an additional 1,350,000 Common Units on the terms and for the purposes set forth in **Section 2** (the “**Option Units**”). The Firm Units and the Option Units, if purchased, are hereinafter collectively called the “**Units**.” This is to confirm the agreement with you (the “**Representatives**”) and the other several Underwriters on whose behalf you are acting concerning the purchase of the Units from the Partnership by the Underwriters.

It is understood and agreed to by all parties that the Partnership was formed to own, operate, acquire and develop a diversified portfolio of complementary midstream energy assets that historically have been owned and operated directly or indirectly by Duke Energy Field Services, LLC, a Delaware limited liability company (“**DEFS**”), as described more particularly in the Prospectus (as defined in **Section 1(a)** hereof). It is further understood and agreed to by all parties that at the time of each Delivery Date (as defined in **Section 4** hereof), (i) DCP Midstream GP, LP, a Delaware limited partnership (the “**General Partner**”), will be the sole general partner of the Partnership, (ii) DCP Midstream GP, LLC, a Delaware limited liability company and direct wholly owned subsidiary of DEFS (“**DCP Midstream GP, LLC**”), will be the sole general partner of the General Partner and DEFS will be the sole limited partner of the General Partner, (iii) the Partnership will operate its business through DCP Midstream Operating, LP, a Delaware limited partnership (the “**Operating Partnership**”), (iv) DCP Midstream Operating, LLC, a Delaware limited liability company and direct wholly owned subsidiary of the Partnership (the “**OLP GP**”), will be the sole general partner of the Operating Partnership and the Partnership will be the sole limited partner of the Operating Partnership, and

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(v) each of the entities listed on **Schedule 2** hereto (collectively, the “**Operating Subsidiaries**” and each individually an “**Operating Subsidiary**”) will be wholly owned, directly or indirectly, by the Operating Partnership (except as otherwise indicated on **Schedule 2** hereto). DEFS, the Partnership, the General Partner, DCP Midstream GP, LLC and the Operating Partnership are hereinafter collectively referred to as the “**DCP Parties**.” The Partnership, the General Partner, DCP Midstream GP, LLC, the Operating Partnership, the OLP GP and the Operating Subsidiaries are herein collectively referred to as the “**Partnership Entities**.”

Furthermore, as of the date hereof:

(a) DEFS, either directly or indirectly through one or more wholly owned subsidiaries, owns all of the outstanding partnership interests in DCP Assets Holdings, LP, a Delaware limited partnership (“**DCP Assets Holdings**”);

(b) DCP Assets Holdings owns (i) all of the outstanding capital stock or member interests, as applicable, of Associated Louisiana Intrastate Pipe Line, LLC, a Delaware limited liability company (“**Associated**”), Duke Energy Intrastate Pipeline, LLC, a Delaware limited liability company (“**Intrastate**”), and PanEnergy Louisiana Intrastate LLC, a Delaware limited liability company (“**PanEnergy**”), and (ii) certain assets relating to the Minden natural gas processing plant and gathering system (collectively, “**Minden**”), the Ada natural gas processing plant and gathering system (collectively, “**Ada**”), the PanEnergy Louisiana Intrastate pipeline system (“**PELICO**”), and the Seabreeze natural gas liquids pipeline;

(c) Associated owns certain assets relating to Minden;

(d) Intrastate owns certain assets relating to Minden;

(e) PanEnergy owns certain assets relating to PELICO;

(f) DEFS indirectly owns all of the outstanding partnership interests in Duke Energy NGL Services, LP, a Delaware limited partnership (“**DENGL**”);

(g) DENGL owns a 50% equity interest in Black Lake Pipe Line Company, a Texas general partnership (“**Black Lake**”) and directly owns all of the outstanding membership interest in DCP Black Lake Holdings, LLC, a Delaware limited liability company (“**Black Lake Holdings**”).

Furthermore, on or prior to the First Delivery Date (as defined below), DEFS, the General Partner, the Partnership, the Operating Partnership and certain other parties will enter into a Contribution and Conveyance Agreement (the “**Contribution Agreement**”) pursuant to which the following transactions will occur as set forth in the Contribution Agreement:

(a) DCP Assets Holdings will distribute to DEFS the stock and member interests in certain subsidiaries of DCP Assets Holdings that are not intended to be contributed to the Partnership;

(b) DCP Assets Holdings and all remaining subsidiaries of DCP Assets Holdings will distribute all their cash and accounts receivable to DEFS;

(c) DEFS Holding, LLC, a Delaware limited liability company (“**DEFS Holding**”), will convey its 0.5% general partner interest in DCP Assets Holdings to DCP Assets Holdings GP, LLC, a Delaware limited liability company (“**DCP Assets Holdings GP**”), as a capital contribution.

(d) DENGL will convey a 45% partnership interest in Black Lake to Black Lake Holdings.

(e) DENGL will distribute its member interest in Black Lake Holdings to DEFS Holdings 1 LLC, a Delaware limited liability company (“**DEFS Holdings 1**”), and DEFS Holding, on a pro rata basis based on their respective ownership interests in DENGL (99.5% and 0.5% for DEFS Holdings 1 and DEFS Holding, respectively); and DEFS Holdings 1 will distribute all of its interest in Black Lake Holdings to DEFS; and DEFS and DEFS Holding will convey all of their respective interests in Black Lake Holdings to DCP Assets Holdings as a capital contribution.

(f) DEFS will convey a limited partner interest in DCP Assets Holdings plus the amount of any cash distributed to the General Partner by the Partnership as a capital contribution (of which 0.001% of such contribution will be made to DEFS on behalf of DCP Midstream GP, LLC).

(g) DEFS will convey its remaining limited partner interest in DCP Assets Holdings (the “**Interest**”) to DCP LP Holdings, LP, a Delaware limited partnership (“**DCP LP Holdings**”), as a capital contribution.

(h) DEFS Holding will convey its member interests in DCP Assets Holdings GP to DCP LP Holdings as a capital contribution and in exchange for a limited partner interest in DCP LP Holdings.

(i) The General Partner will contribute the Interest to the Partnership in exchange for (i) 357,143 general partner units representing a continuation of its 2% general partner interest in the Partnership, (ii) the Incentive Distribution Rights (as defined in the Partnership Agreement (as defined herein)) (the “**Incentive Distribution Rights**”), (iii) the right to receive approximately \$3.447 million to reimburse the General Partner for certain capital expenditures, and (iv) the right to receive \$183.0 million from the net proceeds of borrowings under the Credit Agreement (as defined below);

(j) DCP LP Holdings will contribute to the Partnership all of (i) its limited partner interest in DCP Assets Holdings, (ii) all of its member interest in DCP Assets Holdings GP, and (iii) all of its member interests in Duke Energy Guadalupe Pipeline, LLC, a Delaware limited liability company, in exchange for (x) 1,357,143 Common Units, (y) 7,142,857 subordinated units (the “**Subordinated Units**”), and (z) the right to receive approximately \$5.153 million to reimburse it for certain capital expenditures;

(k) The public, through the Underwriters, will contribute \$193,500,000 in cash to the Partnership, less the Underwriters’ discount of \$12,330,000, in exchange for 9,000,000 Common Units; and

(l) The Partnership will (i) pay transaction expenses, estimated to be \$4.7 million, (ii) distribute approximately \$3.447 million to the General Partner to reimburse it for certain capital expenditures, (iii) distribute approximately \$5.153 million to DCP LP Holdings to reimburse it for certain capital expenditures, (iv) contribute \$53.9 million in the aggregate to DCP Assets Holdings (.001% on behalf of DCP Assets Holdings GP) to replenish working capital, and (v) contribute \$113.7 million in cash and its interests in DCP Assets Holdings GP and DCP Assets Holdings to the Operating Partnership as a capital contribution (.001% on behalf of the OLP GP).

The transactions described directly above in clauses (a)-(l) of the immediately preceding paragraph or otherwise provided for in the Contribution Documents (as defined below) are referred to collectively as the “**Transactions**.” In connection with the Transactions, the parties to the Transactions entered or will enter into various bills of sale, assignments, conveyances, contribution agreements and related documents (collectively, with the Contribution Agreement, the “**Contribution Documents**”).

In addition, on or before the First Delivery Date, the Operating Partnership, the Partnership and the Operating Subsidiaries that are parties thereto will have entered into a Credit Agreement and related financing documents (collectively, the “**Credit Agreement**”) providing for a \$400 million credit facility consisting of up to a \$175 million term loan facility and up to a \$250 million revolving credit facility.

1. *Representations, Warranties and Agreements of the DCP Parties.* Each of the DCP Parties, jointly and severally, represents, warrants and agrees that:

(a) *Definitions; No Stop Order.* A registration statement on Form S-1 (File No. 333-128378) with respect to the Units has (i) been prepared by the Partnership in conformity with the requirements of the Securities Act of 1933, as amended (the “**Securities Act**”), and the rules and regulations (the “**Rules and Regulations**”) of the Securities and Exchange Commission (the “**Commission**”) thereunder, (ii) been filed with the Commission under the Securities Act and (iii) become effective under the Securities Act. Copies of such registration statement and each of the amendments thereto have been delivered by the Partnership to you. As used in this Agreement, “**Applicable Time**” means 5:15 p.m. (New York City time) on the date of this Agreement; “**Effective Time**” means the date and the time as of which such registration statement, or the most recent post-effective amendment thereto, if any, was declared effective by the Commission; “**Effective Date**” means the date of the Effective Time; “**Preliminary Prospectus**” means each prospectus included in such registration statement, or amendments thereof, before it became effective under the Securities Act and any prospectus filed with the Commission by the Partnership with the consent of the Representatives pursuant to Rule 424(a) of the Rules and Regulations; “**Registration Statement**” means such registration statement, as amended at the Effective Time, including all information contained in the final prospectus filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations and deemed to be a part of the registration statement as of the Effective Time pursuant to Rule 430A of the Rules and Regulations; and “**Prospectus**” means such final prospectus, as first filed with the Commission pursuant to paragraph (1) or (4) of Rule 424(b) of the Rules and

Regulations. If the Partnership has filed an abbreviated registration statement to register additional Common Units pursuant to Rule 462(b) under the Rules and Regulations (the “**Rule 462 Registration Statement**”), then any reference herein to the term “**Registration Statement**” shall be deemed to include such Rule 462 Registration Statement. The Commission has not issued any order preventing or suspending the use of any Preliminary Prospectus or Prospectus or suspending the effectiveness of the Registration Statement, and no proceeding for such purpose has been instituted or, to the knowledge of DCP Parties, threatened by the Commission.

(b) *No Material Misstatements or Omissions.* The Registration Statement conforms, and the Prospectus and any further amendments or supplements to the Registration Statement or the Prospectus will, when they become effective or are filed with the Commission and on the applicable Delivery Date, as the case may be, conform in all material respects to the requirements of the Securities Act and the Rules and Regulations and do not and will not, as of the applicable Effective Date (as to the Registration Statement and any amendment thereto) and as of the applicable filing date and as of the applicable Delivery Date (as to the Prospectus and any amendment or supplement thereto) contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of the Prospectus, in light of the circumstances under which the statements were made). The Preliminary Prospectus dated November 23, 2005 provided to the Underwriters for use in connection with the public offering of the Units conforms in all material respects to the requirements of the Securities Act and the Rules and Regulations as of its date and as of the date hereof; and, as of the Applicable Time, such Preliminary Prospectus did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except, that the price of the Units and disclosures directly relating thereto and derived therefrom will be included on the cover page of the Prospectus or under the captions “Use of Proceeds,” “Capitalization” or “Underwriting” in the Prospectus or in the unaudited pro forma financial information included therein. Each of the statements made by the Partnership in the Registration Statement and in any Preliminary Prospectus provided to the Underwriters for use in connection with the public offering of the Units, and to be made in the Prospectus and any further amendments or supplements to the Registration Statement or Prospectus within the coverage of Rule 175(b) of the rules and regulations under the Act, including (but not limited to) any statements with respect to projected results of operations, estimated available cash, and future cash distributions of the Partnership, and any statements made in support thereof or related thereto under the heading “Our Cash Distribution Policy and Restrictions on Distributions” or the anticipated ratio of taxable income to distributions was made or will be made with a reasonable basis and in good faith. Notwithstanding the foregoing, no representation or warranty is made as to information contained in or omitted from the Registration Statement or the Prospectus in reliance upon and in conformity with information furnished to the Partnership in writing by or on behalf of any Underwriter through the Representatives expressly for inclusion therein, which information consists solely of the information specified in Section 8(e).

(c) *Formation and Qualification of DEFS, the Partnership, the General Partner, the Operating Partnership, DCP Midstream GP, LLC, the OLP GP and the Operating Subsidiaries.* DEFS has been duly formed and is validly existing in good standing as a limited liability company under the laws of the State of Delaware with full limited liability company power and authority necessary to enter into and perform its obligations under this Agreement. Each of the Partnership, the General Partner, the Operating Partnership, DCP Midstream GP, LLC and the OLP GP, and each of the Operating Subsidiaries has been duly formed or incorporated and is validly existing in good standing as a limited partnership, limited liability company or corporation under the laws of the State of Delaware with full partnership, limited liability company or corporate power and authority, as the case may be, necessary to own or lease its properties currently owned or leased or to be owned or leased at each Delivery Date, to assume the liabilities assumed or to be assumed by it pursuant to the Contribution Documents and to conduct its business as currently conducted or to be conducted at each Delivery Date, in each case in all material respects as described in the Registration Statement and the Prospectus, and each of them is, or at each Delivery Date will be, duly registered or qualified to do business and is in good standing as a foreign limited partnership, limited liability company or corporation in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such registration or qualification, except where the failure so to register or qualify would not, individually or in the aggregate, (i) have a material adverse effect on the condition (financial or otherwise), partners' equity, stockholders' equity, members' equity, results of operations, properties, business or prospects of the Partnership Entities taken as a whole (a "**Material Adverse Effect**") or (ii) subject the limited partners of the Partnership to any material liability or disability.

(d) *Power and Authority to Act as a General Partner.* The General Partner has, and as of each Delivery Date will have, full limited partnership power and authority to act as general partner of the Partnership in all material respects as described in the Registration Statement and Prospectus. DCP Midstream GP, LLC has, and as of each Delivery Date will have, full limited liability company power and authority to act as general partner of the General Partner in all material respects as described in the Registration Statement and Prospectus.

(e) *Ownership of the General Partner Interest in the Partnership.* At each Delivery Date, after giving effect to the Transactions, the General Partner will be the sole general partner of the Partnership and, at the First Delivery Date, will have a 2.0% general partner interest in the Partnership; such general partner interest will be duly authorized and validly issued in accordance with the partnership agreement of the Partnership (as the same may be amended or restated at or prior to each Delivery Date, the "**Partnership Agreement**"); and the General Partner will own such general partner interest free and clear of all liens, encumbrances, security interests, charges and other claims (collectively, "**Liens**") (except restrictions on transferability as described in the Prospectus or the Partnership Agreement).

(f) *Ownership of the Sponsor Units and the Incentive Distribution Rights.* Assuming no purchase by the Underwriters of Option Units on the First Delivery Date, at the First Delivery Date, after giving effect to the Transactions, DCP LP Holdings

will own 1,357,143 Common Units and 7,142,857 Subordinated Units (collectively, the “**Sponsor Units**”), and the General Partner will own 100% of the Incentive Distribution Rights. All of such Sponsor Units and Incentive Distribution Rights and the limited partner interests represented thereby will be duly authorized and validly issued in accordance with the Partnership Agreement, and will be fully paid (to the extent required under the Partnership Agreement) and nonassessable (except as such nonassessability may be affected by matters described in the Prospectus under the caption “The Partnership Agreement—Limited Liability”); and DCP LP Holdings will own such Sponsor Units, and the General Partner will own such Incentive Distribution Rights, free and clear of all Liens except restrictions on transferability described in the Prospectus or contained in the Partnership Agreement.

(g) *Valid Issuance of the Units.* At the First Delivery Date, there will be issued to the Underwriters the Firm Units (assuming no purchase by the Underwriters of Option Units on the First Delivery Date); at the First Delivery Date or the Second Delivery Date (as defined in **Section 4** hereof), as the case may be, the Firm Units and the Option Units, as the case may be, and the limited partner interests represented thereby, will be duly and validly authorized by the Partnership Agreement and, when issued and delivered against payment therefor in accordance with this Agreement, will be duly and validly issued, fully paid (to the extent required under the Partnership Agreement) and non-assessable (except as such nonassessability may be affected by matters described in the Prospectus under the caption “The Partnership Agreement—Limited Liability”). Other than the Sponsor Units and the Incentive Distribution Rights, the Units will be the only limited partner interests of the Partnership issued and outstanding at each Delivery Date.

(h) *Ownership of the General Partner.* At each Delivery Date, after giving effect to the Transactions, DCP Midstream GP, LLC will be the sole general partner of the General Partner and DEFS will be the sole limited partner of the General Partner; such partnership interests will be duly authorized and validly issued in accordance with the partnership agreement of the General Partner (as the same may be amended or restated at or prior to each Delivery Date, the “**GP Partnership Agreement**”) and, with respect to DCP LP Holdings’ limited partnership interest in the General Partner, will be fully paid (to the extent required under the GP Partnership Agreement) and nonassessable (except as such nonassessability may be affected by Section 17-607 of the Delaware Revised Uniform Limited Partnership Act (the “**Delaware LP Act**”)); and DCP Midstream GP, LLC and DEFS shall each own their respective partnership interests free and clear of all Liens (except restrictions on transferability as described in the Prospectus or contained in the GP Partnership Agreement).

(i) *Ownership of DCP Midstream GP, LLC.* DEFS is the sole member of DCP Midstream GP, LLC with a 100% membership interest in DCP Midstream GP, LLC; such membership interest has been duly authorized and validly issued in accordance with the limited liability company agreement of DCP Midstream GP, LLC (as the same may be amended or restated at or prior to each Delivery Date, the “**DCP Midstream GP, LLC Limited Liability Company Agreement**”) and is fully

paid (to the extent required by the DCP Midstream GP, LLC Limited Liability Company Agreement) and nonassessable (except as such nonassessability may be affected by Section 18-607 of the Delaware Limited Liability Company Act (the “**Delaware LLC Act**”)); and DEFS owns such member interest free and clear of all Liens (except restrictions on transferability contained in the DCP Midstream GP, LLC Limited Liability Company Agreement).

(j) *Ownership of the OLP GP.* The Partnership is the sole member of the OLP GP with a 100% membership interest in the OLP GP; such membership interest has been duly authorized and validly issued in accordance with the limited liability company agreement of the OLP GP (as the same may be amended or restated at or prior to each Delivery Date, the “**OLP GP Limited Liability Company Agreement**”) and is fully paid (to the extent required by the OLP GP Limited Liability Company Agreement) and nonassessable (except as such nonassessability may be affected by Section 18-607 of the Delaware LLC Act); and the Partnership owns such member interest free and clear of all Liens (except for restrictions on transferability contained in the OLP GP Limited Liability Company Agreement).

(k) *Ownership of the Operating Partnership.* At each Delivery Date, after giving effect to the Transactions, the OLP GP will be the sole general partner of the Operating Partnership and the Partnership will be the sole limited partner of the Operating Partnership; such partnership interests will be duly authorized and validly issued in accordance with the partnership agreement of the Operating Partnership (as the same may be amended or restated at or prior to each Delivery Date, the “**OLP Partnership Agreement**”) and, with respect to the Partnership’s limited partner interest in the Operating Partnership, will be fully paid (to the extent required under the OLP Partnership Agreement) and nonassessable (except as such nonassessability may be affected by Section 17-607 of the Delaware LP Act); and the OLP GP and the Partnership shall each own their respective partnership interests free and clear of all Liens (except restrictions on transferability as described in the Prospectus or the OLP Partnership Agreement and Liens created pursuant to the Credit Agreement).

(l) *Ownership of the Operating Subsidiaries.* At each Delivery Date, after giving effect to the Transactions, the Operating Partnership will directly or indirectly own 100% of the outstanding capital stock, membership interests or partnership interests, as the case may be, of each of the Operating Subsidiaries other than Black Lake; all such stock, membership interests or partnership interests, will be duly authorized and validly issued in accordance with the certificate of incorporation and bylaws, certificate of formation and limited liability company agreement or certificate of limited partnership and partnership agreement of each Operating Subsidiary, as the case may be (collectively, the “**Operating Subsidiaries Operative Documents**” and, as to each individual Operating Subsidiary, the “**Operating Subsidiary Operative Document**”) and will be fully paid (to the extent required in the applicable Operating Subsidiaries Operative Documents) and nonassessable (except as such nonassessability may be affected by Section 18-607 of the Delaware LLC Act or Section 17-607 of the Delaware LP Act, as the case may be); at each Delivery Date, after giving effect to the Transactions, the Operating Partnership will directly or indirectly own 45% of the

partnership interests of Black Lake; and the owners of the Operating Subsidiaries will own all such stock, membership interests or partnership interests listed on Schedule 2 free and clear of all Liens, except for Liens created pursuant to the Credit Agreement.

(m) *No Other Subsidiaries.* Other than its ownership of its 2.0% general partner interest in the Partnership and the Incentive Distribution Rights, the General Partner does not own, and at each Delivery Date will not own, directly or indirectly, any equity or long-term debt securities of any corporation, partnership, limited liability company, joint venture, association or other entity. Other than (i) the Partnership's ownership of a 99.999% limited partnership interest in the Operating Partnership and a 100% membership interest in the OLP GP, (ii) the Operating Partnership's 100% direct or indirect ownership of the outstanding capital stock membership interest or partnership interest in each Operating Subsidiary other than Black Lake, and (iii) the Operating Partnership's direct or indirect ownership of a 45% interest in Black Lake, neither the Partnership nor the Operating Partnership owns, and at each Delivery Date, neither will own, directly or indirectly, any equity or long-term debt securities of any corporation, partnership, limited liability company, joint venture, association or other entity.

(n) *No Preemptive Rights, Registration Rights or Options.* Except as described in the Prospectus, there are no preemptive rights or other rights to subscribe for or to purchase, nor any restriction upon the voting or transfer of any equity securities of, any of the Partnership Entities. Neither the filing of the Registration Statement nor the offering or sale of the Units as contemplated by this Agreement gives rise to any rights for or relating to the registration of any Units or other securities of any of the Partnership Entities other than as provided in the Prospectus and the Partnership Agreement or as have been waived. Except as described in the Prospectus, there are no outstanding options or warrants to purchase (A) any Common Units, Subordinated Units or other interests in the Partnership, (B) any partnership interests in the General Partner or the Operating Partnership, (C) any membership interests in DCP Midstream GP, LLC or the OLP GP, or (D) any shares of stock, membership interests or partnership interests, as applicable, in any Operating Subsidiary.

(o) *Capitalization.* As of September 30, 2005, the Partnership would have had, on the consolidated pro forma basis indicated in the Prospectus (and any amendment or supplement thereto), a capitalization as set forth therein.

(p) *Authority and Authorization.* The Partnership has all requisite partnership power and authority to issue, sell and deliver (i) the Units, in accordance with and upon the terms and conditions set forth in this Agreement and the Partnership Agreement, and (ii) the Sponsor Units and Incentive Distribution Rights, in accordance with and upon the terms and conditions set forth in the Partnership Agreement and the Contribution Agreement. At each Delivery Date, all corporate, partnership and limited liability company action, as the case may be, required to be taken by the Partnership Entities or any of their stockholders, members or partners for the authorization, issuance, sale and delivery of the Units, the Sponsor Units and the Incentive Distribution Rights, the execution and delivery by the Partnership Entities of the Operative Agreements (as

defined in **Section 1(r)** hereof) and the consummation of the transactions (including the Transactions) contemplated by this Agreement and the Operative Agreements, shall have been validly taken.

(q) *Authorization of this Agreement.* This Agreement has been duly authorized and validly executed and delivered by each of the DCP Parties.

(r) *Enforceability of Other Agreements.* At or before the First Delivery Date:

(i) the Partnership Agreement will have been duly authorized, executed and delivered by the General Partner and the Organizational Limited Partner (as defined in the Partnership Agreement) and will be a valid and legally binding agreement of the General Partner and the Organizational Limited Partner, enforceable against the General Partner and the Organizational Limited Partner in accordance with its terms;

(ii) the GP Partnership Agreement will have been duly authorized, executed and delivered by DCP Midstream GP, LLC and DEFS and will be a valid and legally binding agreement of DCP Midstream GP, LLC and DEFS, enforceable against DCP Midstream GP, LLC and DEFS in accordance with its terms;

(iii) the OLP Partnership Agreement will have been duly authorized, executed and delivered by the OLP GP and the Partnership and will be a valid and legally binding agreement of the OLP GP and the Partnership, enforceable against the Partnership in accordance with its terms;

(iv) the DCP Midstream GP, LLC Limited Liability Company Agreement has been duly authorized, executed and delivered by DEFS and is a valid and legally binding agreement of DEFS, enforceable against DEFS in accordance with its terms;

(v) the OLP GP Limited Liability Company Agreement has been duly authorized, executed and delivered by the Partnership and is a valid and legally binding agreement of the Partnership, enforceable against the Partnership in accordance with its terms;

(vi) each of the Operating Subsidiaries Operative Documents will have been duly authorized, executed and delivered by the Operating Partnership and any other necessary parties, as applicable, and will be a valid and legally binding agreement of the respective parties, enforceable against the respective parties in accordance with its terms;

(vii) the Omnibus Agreement will have been duly authorized, executed and delivered by each of the General Partner, the Partnership, the Operating Partnership, OLP GP and DEFS and will be a valid and legally binding

agreement of each of them, enforceable against each of them in accordance with its terms;

(viii) the Credit Agreement will have been duly authorized, executed and delivered by the Operating Partnership, the Partnership and the Operating Subsidiaries that are parties thereto and will be a valid and legally binding agreement of the Operating Partnership, the Partnership and the Operating Subsidiaries that are parties thereto, enforceable against the Operating Partnership, the Partnership and the Operating Subsidiaries that are parties thereto, in accordance with its terms;

(ix) the Contribution Documents will have been duly authorized, executed and delivered by the parties thereto and will be valid and legally binding agreements of such parties thereto, enforceable against such parties thereto in accordance with their respective terms;

*provided* that, with respect to each agreement described in this **Section 1(r)** the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); *provided further*; that the indemnity, contribution and exoneration provisions contained in any of such agreements may be limited by applicable laws and public policy.

The Partnership Agreement, the GP Partnership Agreement, the OLP Partnership Agreement, the DCP Midstream GP, LLC Limited Liability Company Agreement, the OLP GP Limited Liability Company Agreement, and the Operating Subsidiaries Operative Documents, in each case, as they may be amended or restated at or prior to the First Delivery Date, the Omnibus Agreement, the Credit Agreement, and the Contribution Documents are herein collectively referred to as the "**Operative Agreements**."

(s) *No Conflicts.* None of the offering, issuance and sale by the Partnership of the Units and the application of the net proceeds therefrom as described under "Use of Proceeds" in the Prospectus, the execution, delivery and performance of this Agreement and the Operative Agreements by the Partnership Entities, that are parties hereto and thereto, and the consummation of the transactions contemplated hereby and thereby (including the Transactions) (i) conflicts or will conflict with or constitutes or will constitute a violation of the certificate of partnership or agreement of limited partnership, certificate of formation or limited liability company agreement, certificate of incorporation or bylaws, or other organizational documents of any of the Partnership Entities, (ii) conflicts or will conflict with or constitutes or will constitute a breach or violation of, or a default under (or an event which, with notice or lapse of time or both, would constitute such a default), any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which any of the Partnership Entities is a party or by which any of them or any of their respective properties may be bound, (iii) violates

or will violate any statute, law or regulation or any order, judgment, decree or injunction of any court or governmental agency or body directed to any of the Partnership Entities or any of their properties in a proceeding to which any of them or their property is or was a party, or (iv) results or will result in the creation or imposition of any Lien upon any property or assets of any of the Partnership Entities (other than Liens created pursuant to the Credit Agreement), which conflicts, breaches, violations, defaults or Liens, in the case of clauses (ii), (iii) or (iv), would have, individually or in the aggregate, a Material Adverse Effect.

(t) *No Consents*. Except for (i) the registration of the Units under the Securities Act, (ii) such consents, approvals, authorizations, registrations or qualifications as may be required under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) and applicable state securities laws in connection with the purchase and distribution of the Units by the Underwriters, (iii) such consents that have been, or prior to each Delivery Date will be, obtained, or, if not obtained, would not result in a Material Adverse Effect and (iv) as disclosed in the Prospectus, no consent, approval, authorization or order of, or filing or registration with, any court or governmental agency or body having jurisdiction over the Partnership Entities or any of their respective properties is required in connection with the offering, issuance and sale by the Partnership of the Units and the application of the net proceeds therefrom as described under “Use of Proceeds” in the Prospectus, the execution, delivery and performance of this Agreement and the Operative Agreements by the Partnership Entities and the consummation of the transactions contemplated hereby and thereby (including the Transactions).

(u) *No Default*. None of the Partnership Entities (i) is in violation of its certificate or agreement of limited partnership, limited liability company agreement, certificate of incorporation or bylaws or other organizational documents, (ii) is in default, and no event has occurred which, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject, or (iii) is in violation of any law, statute, ordinance, administrative or governmental rule or regulation applicable to it or of any order, judgment, decree or injunction of any court or governmental agency or body having jurisdiction over it, or which default, violation or failure in the case of clause (ii) or (iii) would, if continued, have a Material Adverse Effect, or could materially impair the ability of any of the Partnership Entities to perform their obligations under this Agreement or the Operative Agreements. To the knowledge of the DCP Parties, no third party to any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which any of the Partnership Entities is a party or by which any of them is bound or to which any of their properties is subject, is in default under any such agreement, which default would, if continued, have a Material Adverse Effect.

(v) *Conformity to Description of Units, Sponsor Units and Incentive Distribution Rights*. The Units, when issued and delivered in accordance with the terms of the Partnership Agreement against payment therefor as provided herein, the Sponsor

Units and the Incentive Distribution Rights, when issued and delivered in accordance with the terms of the Partnership Agreement, will conform in all material respects to the descriptions thereof contained in the Prospectus.

(w) *No Material Adverse Change*. No Partnership Entity has sustained, since the date of the latest audited financial statements included in the Prospectus, any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order, investigation or decree, otherwise than as set forth or contemplated in the Prospectus; and, since such date, there has not been any material change in the capitalization or long-term debt of any Partnership Entity or any material adverse change, or any development involving, or which may reasonably be expected to involve, individually or in the aggregate, a prospective material adverse change in or affecting the general affairs, properties, management, condition (financial or otherwise), stockholders' equity, partners' equity, members' equity, results of operations, properties business or prospects of the Partnership Entities, taken as a whole, otherwise than as set forth or contemplated in the Prospectus. Since the date of the latest audited financial statements included in the Prospectus, none of the Partnership Entities has incurred any liability or obligation, direct, indirect or contingent, or entered into any transactions, not in the ordinary course of business, that, individually or in the aggregate, is material to the Partnership Entities, taken as a whole otherwise than as set forth or contemplated in the Prospectus.

(x) *Financial Statements*. The historical financial statements (including the related notes and supporting schedules) filed as part of the Registration Statement or included in the Prospectus (and any amendment or supplement thereto) comply in all material respects with the applicable requirements under the Securities Act and present fairly in all material respects the financial condition, results of operations and cash flows of the entities purported to be shown thereby on the basis stated therein, at the dates and for the periods indicated, and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved. The summary historical and pro forma financial and operating information set forth in the Registration Statement and the Prospectus (and any amendment or supplement thereto) under the caption "Summary — Summary Historical and Pro Forma Financial and Operating Data" and the selected historical and pro forma financial and operating information set forth under the caption "Selected Historical and Pro Forma Financial and Operating Data" is accurately presented in all material respects and prepared on a basis consistent with the audited and unaudited historical financial statements and pro forma financial statements, as applicable, from which it has been derived. The pro forma financial statements of the Partnership (excluding the table captioned "DCP Midstream Partners, LP Unaudited Pro Forma Available Cash" under the caption "Our Cash Distribution Policy and Restrictions on Distributions – Unaudited Pro Forma Available Cash for Year Ended December 31, 2004 and Twelve Months Ended September 30, 2005") included in the Registration Statement and Prospectus (and any amendment or supplement thereto) (i) comply as to form in all material respects with the applicable requirements of Regulation S-X, (ii) have been prepared in accordance with the Commission's rules and guidelines with respect to pro forma financial

statements and (iii) have been properly computed on the bases described therein. The assumptions used in the preparation of such pro forma financial statements are reasonable, and the adjustments used therein are appropriate to give effect to the transactions or circumstances referred to therein. The other historical financial and statistical information and data included in the Prospectus are, in all material respects, fairly presented.

(y) *Independent Public Accountants*. Deloitte & Touche LLP, who has certified or shall certify certain financial statements of the Partnership Entities and the Partnership's predecessor, whose report appears in the Prospectus and who has delivered the letters referred to in **Section 7(h)** hereof, were the independent public accountants as required by the Securities Act and the Rules and Regulations during the periods covered by the financial statements on which they reported.

(z) *Title to Properties*. At each Delivery Date, the Operating Partnership and the Operating Subsidiaries will have good and marketable title to all real property and good title to all personal property (excluding easements or rights-of-way) described in the Prospectus to be owned by the Operating Partnership and the Operating Subsidiaries, in each case free and clear of all Liens except (i) as described, and subject to the limitations contained, in the Prospectus, (ii) that arise under the Credit Agreement, and (iii) as do not materially affect the value of such property taken as a whole and do not materially interfere with the use of such properties taken as a whole as they have been used in the past and are proposed to be used in the future as described in the Prospectus; *provided* that, with respect to any real property and buildings held under lease by the Operating Partnership and the Operating Subsidiaries, such real property and buildings are held under valid and subsisting and enforceable leases with such exceptions as do not materially interfere with the use of the properties of the Partnership Entities taken as a whole as they have been used in the past as described in the Prospectus and are proposed to be used in the future as described in the Prospectus.

(aa) *Rights-of-Way*. Following consummation of the Transactions and at each Delivery Date, each of the Partnership Entities will have such easements or rights-of-way from each person (collectively, "**rights-of-way**") as are necessary to conduct its business in the manner described, and subject to the limitations contained, in the Prospectus, except for (i) qualifications, reservations and encumbrances as may be set forth in the Prospectus that would not have a Material Adverse Effect and (ii) such rights-of-way that, if not obtained, would not have, individually or in the aggregate, a Material Adverse Effect; other than as set forth, and subject to the limitations contained, in the Prospectus, each of the Partnership Entities has, or at the time of purchase following consummation of the Transactions will have, fulfilled and performed all its material obligations with respect to such rights-of-way and no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or would result in any impairment of the rights of the holder of any such rights-of-way, except for such revocations, terminations and impairments that would not have a Material Adverse Effect; and, except as described in the Prospectus, none of such rights-of-way contains any restriction that is materially burdensome to the Partnership Entities, taken as a whole.

(bb) *Insurance.* DEFS maintains insurance covering the properties, operations, personnel and businesses of the Partnership Entities against such losses and risks and in such amounts as is reasonably adequate for the conduct of their respective businesses and the value of their respective properties and generally consistent with the insurance coverage maintained by DEFS with respect to its businesses and properties. Neither DEFS nor any of the Partnership Entities has received notice from any insurer or agent of such insurer that substantial capital improvements or other expenditures will have to be made in order to continue such insurance (including after giving effect to the Transactions), and all such insurance is outstanding and duly in force on the date hereof and will be outstanding and duly in force on each Delivery Date.

(cc) *Intellectual Property.* Each of the Partnership Entities owns or possesses adequate rights to use all material patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) necessary for the conduct of their respective businesses and have no reason to believe that the conduct of their respective businesses will conflict with, and have not received any notice of any claim of conflict with, any such rights of others.

(dd) *Legal Proceedings or Contracts to be Described or Filed.* There are no legal or governmental proceedings pending or, to the knowledge of the DCP Parties, threatened against any of the Partnership Entities, or to which any of the Partnership Entities is a party, or to which any of their respective properties is subject, that are required to be described in the Registration Statement or Prospectus and are not described as required; and there are no agreements, contracts, indentures, leases or other instruments that are required to be described in the Registration Statement or Prospectus or to be filed as exhibits to the Registration Statement by the Securities Act or by the Rules and Regulations that have not been described in the Registration Statement or Prospectus as required or filed as exhibits to the Registration Statement as required.

(ee) *Certain Relationships and Related Transactions.* No relationship, direct or indirect, exists between or among any Partnership Entity on the one hand, and the directors, officers, stockholders, affiliates, customers or suppliers of any Partnership Entity on the other hand that is required to be described in the Prospectus and is not so described.

(ff) *Sarbanes-Oxley Act of 2002.* On and after the First Delivery Date, the Partnership will be in compliance in all material respects with all applicable provisions of the Sarbanes-Oxley Act of 2002, the Rules and Regulations thereunder and the rules of the New York Stock Exchange (the "NYSE") that are effective and applicable to the Partnership.

(gg) *Loans to Directors and Officers.* The Partnership Entities have provided true, correct and complete copies of all documentation pertaining to any extension of credit in the form of a personal loan made, directly or indirectly, by any of the Partnership Entities to any director or executive officer of any of the Partnership

Entities or to any family member or affiliate of any director or executive officer of any of the Partnership Entities.

(hh) *Statistical Data*. Any statistical and market-related data included in the Registration Statement and the Prospectus are based on or derived from sources that the Partnership believes to be reliable and accurate, and the Partnership has obtained the written consent to the use of such data from such sources to the extent required.

(ii) *No Labor Dispute*. No labor dispute with the employees of DEFS or its affiliates or any Partnership Entity exists or, to the knowledge of each DCP Party, is imminent or threatened and none of the DCP Parties is aware of any existing, imminent or threatened labor disturbance by the employees of any of its lessors that would, individually or in the aggregate, be reasonably likely to result in a Material Adverse Effect.

(jj) *Tax Returns*. Each of the Partnership Entities has filed (or has obtained extensions with respect to) all material federal, state and local income and franchise tax returns required to be filed through the date of this Agreement, which returns are correct and complete in all material respects, and has timely paid all taxes due thereon, other than those (i) that are being contested in good faith and for which adequate reserves have been established in accordance with generally accepted accounting principles or (ii) that, if not paid, would not have a Material Adverse Effect.

(kk) *Books and Records*. Each Partnership Entity (i) makes and keeps books and records which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets and (ii) maintains internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management's general or specific authorization, (B) transactions are recorded as necessary to permit preparation of its financial statements in conformity with generally accepted accounting principles and to maintain accountability for its assets, (C) access to its assets is permitted only in accordance with management's general or specific authorization and (D) the reported accountability for its assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(ll) *Foreign Corrupt Practices Act, Etc.* No Partnership Entity, nor, to the knowledge of the DCP Parties, any director, officer, agent, employee or other person associated with or acting on behalf of any Partnership Entity, has used any partnership, limited liability company or corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; made any direct or indirect unlawful payment to any foreign or domestic government official or employee from partnership, limited liability company or corporate funds; violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977; or made any bribe, rebate, payoff, influence payment, kickback or other payment in violation of law.

(mm) *Environmental Compliance*. Except as disclosed in the Prospectus, the Partnership Entities (i) are in compliance with any and all applicable federal, state and

local laws and regulations relating to the protection of human health and safety and the environment or imposing liability or standards of conduct concerning any Hazardous Materials (as defined below) (“**Environmental Laws**”), (ii) have received all permits required of them under applicable Environmental Laws to conduct their respective businesses, (iii) are in compliance with all terms and conditions of any such permits and (iv) do not have any liability in connection with the release into the environment of any Hazardous Material, except where such noncompliance with Environmental Laws, failure to receive required permits, failure to comply with the terms and conditions of such permits or liability would not, individually or in the aggregate, have a Material Adverse Effect. The term “**Hazardous Material**” means (A) any “hazardous substance” as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (B) any “hazardous waste” as defined in the Resource Conservation and Recovery Act, as amended, (C) any petroleum or petroleum product, (D) any polychlorinated biphenyl, and (E) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material, waste or substance regulated under or within the meaning of any other Environmental Law.

(nn) *Effect of Environmental Laws.* In the ordinary course of business, each Partnership Entity periodically reviews the effect of Environmental Laws on its business operations and properties, in the course of which it identifies and evaluates associated costs and liabilities (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permits, license or approval, any related constraints on operating activities and any potential liabilities to third parties). On the basis of such review, each Partnership Entity has reasonably concluded that such associated costs and liabilities would not, individually or in the aggregate, have a Material Adverse Effect.

(oo) *Sufficiency of the Contribution Documents.* The Contribution Documents were or will be legally sufficient to transfer or convey to the Partnership, the Operating Partnership and to the Operating Subsidiaries satisfactory title to, or valid rights to use or manage, all properties not already held by them that are, individually or in the aggregate, required to enable the Partnership, the Operating Partnership and the Operating Subsidiaries to conduct their operations (in all material respects as contemplated by the Prospectus), subject to the conditions, reservations and limitations contained in the Contribution Documents and those set forth in the Prospectus, and all third party consents required to effect such transfers and conveyances have been obtained or will be obtained by the First Delivery Date other than any consent which, if not obtained, would not have a Material Adverse Effect. The Partnership, the Operating Partnership and each Operating Subsidiary, as the case may be, upon execution and delivery of the Contribution Documents, succeeded or will succeed in all material respects to the business, assets, properties, liabilities and operations reflected by the pro forma financial statements of the Partnership included in the Prospectus, except as disclosed in the Prospectus and the Contribution Documents.

(pp) *Permits.* Each of the Partnership Entities has, or at each Delivery Date will have, such permits, consents, licenses, franchises, certificates and authorizations of governmental or regulatory authorities (“**permits**”) as are necessary to

own or lease its properties and to conduct its business in the manner described in the Prospectus, subject to such qualifications as may be set forth in the Prospectus and except for such permits that, if not obtained, would not, individually or in the aggregate, have a Material Adverse Effect; each of the Partnership Entities has, or at each Delivery Date will have, fulfilled and performed all its material obligations with respect to such permits which are or will be due to have been fulfilled and performed by such date and no event has occurred that would prevent the permits from being renewed or reissued or which allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any impairment of the rights of the holder of any such permit, except for such non-renewals, non-issues, revocations, terminations and impairments that would not, individually or in the aggregate, have a Material Adverse Effect; and none of such permits contains, or at each Delivery Date will contain, any restriction that is materially burdensome to the Partnership Entities considered as a whole.

(qq) *ERISA*. As of each Delivery Date, and after giving effect to the Transactions, each Partnership Entity will be in compliance in all material respects with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder (“**ERISA**”); no “reportable event” (as defined in ERISA) has occurred with respect to any “pension plan” (as defined in ERISA) for which any Partnership Entity (after giving effect to the Transactions) would have any liability, excluding any reportable event for which a waiver could apply; no Partnership Entity (after giving effect to the Transactions) expects to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any “pension plan” or (ii) Sections 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the “**Code**”); and each “pension plan” for which any Partnership Entity would have any liability that is intended to be qualified under Section 401(a) of the Code has been determined by the Internal Revenue Service to be so qualified and nothing has occurred, whether by action or by failure to act, which could reasonably be expected to cause the loss of such qualification.

(rr) *Private Placement*. The sale and issuance of the Sponsor Units to DCP LP Holdings and the Incentive Distribution Rights to the General Partner are exempt from the registration requirements of the Securities Act, the Rules and Regulations and the securities laws of any state having jurisdiction with respect thereto, and none of the Partnership Entities has taken or will take any action that would cause the loss of such exemption.

(ss) *No Distribution of Other Offering Materials*. The Partnership Entities have not distributed and, prior to the later to occur of (i) the First Delivery Date and (ii) completion of the distribution of the Units, will not distribute, any prospectus (as defined under the Securities Act), including any free writing prospectus (as defined in Rule 405 of the Rules and Regulations effective as of December 1, 2005), in connection with the offering and sale of the Units other than the Registration Statement, any Preliminary Prospectus, the Prospectus or other materials, if any, permitted by the Securities Act (other than a free writing prospectus as defined in Rule 405 of the Rules

and Regulations effective as of December 1, 2005, unless permitted under **Section 5(n)**), including Rule 134 of the Rules and Regulations.

(tt) *NYSE Listing*. The Units have been approved for listing on the NYSE, subject only to official notice of issuance.

(uu) *Investment Company; Public Utility Holding Company*. None of the Partnership Entities is now, and after the sale of the Units to be sold by the Partnership hereunder and the application of the net proceeds from such sale as described in the Prospectus under the caption “Use of Proceeds” will be, (i) an “investment company” or a company “controlled by” an “investment company” within the meaning of the Investment Company Act of 1940, as amended or (ii) a “public utility company,” a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” thereof, under the Public Utility Holding Company Act of 1935, as amended.

(vv) *Directed Unit Sales*. None of the Directed Units distributed in connection with the Directed Unit Program (each as defined in **Section 3** hereof) will be offered or sold outside the United States. The DCP Parties have not offered, or caused the Underwriters to offer, Units to any person pursuant to the Directed Unit Program with the specific intent to unlawfully influence (i) a customer or supplier of the DCP Parties, to alter the customer’s or supplier’s level or type of business with the DCP Parties, or (ii) a trade journalist or publication to write or publish favorable information about the DCP Parties or their operations.

(ww) *Brokers*. Except for this Agreement and any engagement letters with the Representatives, there are no contracts, agreements or understandings between any DCP Party and any person that would give rise to a valid claim against any DCP Party or any Underwriter for a brokerage commission, finder’s fee or other like payment in connection with this offering of the Units.

(xx) *NASD Affiliations*. To the Partnership’s knowledge, there are no affiliations or associations between any member of the National Association of Securities Dealers, Inc. (“NASD”) and any of the General Partner’s or DCP Midstream GP, LLC’s officers or directors, or the Partnership’s 5% or greater securityholders, except as set forth in the Prospectus.

(yy) *Market Stabilization*. The Partnership has not taken, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in, under the Exchange Act or otherwise, stabilization or manipulation of the price of any security of the Partnership to facilitate the sale or resale of the Units.

2. *Purchase of the Units by the Underwriters*. On the basis of the representations and warranties contained in, and subject to the terms and conditions of, this Agreement, the Partnership agrees to sell Firm Units to the several Underwriters, and each of Underwriters, severally and not jointly, agrees to purchase the number of Firm Units set forth opposite that Underwriter’s name in **Schedule 1** hereto. The respective purchase obligations of

the Underwriters with respect to the Firm Units shall be rounded among the Underwriters to avoid fractional Units, as the Representatives may determine.

In addition, the Partnership grants to the Underwriters an option to purchase up to 1,350,000 Option Units. Such option is exercisable in the event that the Underwriters sell more than the number of Firm Units in the offering and is exercisable as provided in **Section 4** hereof. Each Underwriter agrees, severally and not jointly, to purchase the number of Option Units (subject to such adjustments to eliminate fractional units as the Representatives may determine) that bears the same proportion to the total number of Option Units to be sold on such Delivery Date as the number of Firm Units set forth in **Schedule 1** hereto opposite the name of such Underwriter bears to the total number of Firm Units.

The price of both the Firm Units and any Option Units shall be \$20.13 per Common Unit.

The Partnership shall not be obligated to deliver any of the Units to be delivered on any Delivery Date, except upon payment for all the Units to be purchased on such Delivery Date as provided herein.

*3. Offering of Units by the Underwriters.* Upon authorization by the Representatives of the release of the Firm Units, the several Underwriters propose to offer the Firm Units for sale upon the terms and conditions set forth in the Prospectus.

As part of the offering contemplated by this Agreement, Citigroup Global Markets Inc. has agreed to reserve out of the Firm Units set forth opposite its name on Schedule 1 to this Agreement, up to 900,000 Firm Units, for sale to the employees, officers, and directors of the Partnership Entities and other parties associated with the Partnership Entities (collectively, the “**Directed Unit Participants**”), as described in the Prospectus under the heading “Underwriting” (the “**Directed Unit Program**”). The Firm Units to be sold by Citigroup Global Markets Inc. pursuant to the Directed Unit Program (the “**Directed Units**”) will be sold by Citigroup Global Markets Inc. pursuant to this Agreement at the public offering price. Any Directed Units not orally confirmed for purchase by any Directed Unit Participants by 8:00 A.M. New York City time on the business day following the date on which this Agreement is executed will be offered to the public by Citigroup Global Markets Inc. upon the terms and conditions set forth in the Prospectus. Under no circumstances will Citigroup Global Markets Inc. or any Underwriter be liable to the DCP Parties or to any Directed Unit Participants for any action taken or omitted in good faith in connection with such Directed Unit Program. It is further understood that any Firm Units which are not purchased by Directed Unit Participants will be offered by Citigroup Global Markets Inc. to the public upon the terms and conditions set forth in the Prospectus.

*4. Delivery of and Payment for the Units.* Delivery of and payment for the Firm Units shall be made at the offices of Vinson & Elkins L.L.P., 2300 First City Tower, 1001 Fannin Street, Houston, Texas 77002-6760, at 10:00 A.M., New York City time, on December 7, 2005 or at such other date or place as shall be determined by agreement between the Representatives and the Partnership. This date and time are sometimes referred to as the “**First Delivery Date**.” Delivery of Firm Units shall be made to Lehman Brothers Inc. for the account

of each Underwriter against payment by the several Underwriters through Lehman Brothers Inc. of the respective aggregate purchase prices of the Firm Units being sold by the Partnership to or upon the order of the Partnership by wire transfer in immediately available funds to the account specified by the Partnership. Time shall be of the essence, and delivery at the time and place specified pursuant to this Agreement is a further condition of the obligation of each Underwriter hereunder. Delivery of Firm Units shall be made through the facilities of The Depository Trust Company (“DTC”) unless Lehman Brothers Inc. shall otherwise instruct.

The option granted in **Section 2** will expire 30 days after the date of this Agreement and may be exercised in whole or in part from time to time by written notice being given to the Partnership by the Representatives; *provided* that if such date falls on a day that is not a business day, the option granted in **Section 2** will expire on the next succeeding business day. Such notice shall set forth the aggregate number of Option Units as to which the option is being exercised, the names in which the Option Units are to be registered, the denominations in which the Option Units are to be issued and the date and time, as determined by the Representatives, when the Option Units are to be delivered; *provided, however,* that this date and time shall not be earlier than the First Delivery Date nor earlier than the second business day after the date on which the option shall have been exercised nor later than the fifth business day after the date on which the option shall have been exercised. The date and time the Option Units are delivered are sometimes referred to as a “**Second Delivery Date**” and the First Delivery Date and any Second Delivery Date are sometimes each referred to as a “**Delivery Date**.”

Delivery of and payment for the Option Units shall be made at the place specified in the first sentence of the first paragraph of this **Section 4** (or at such other place as shall be determined by agreement between the Representatives and the Partnership) at 10:00 A.M., New York City time, on such Second Delivery Date. Delivery of the Option Units shall be made to Lehman Brothers Inc. for the account of each Underwriter against payment by the several Underwriters through Lehman Brothers Inc. of the respective aggregate purchase prices of the Option Units being sold by the Partnership to or upon the order of the Partnership by wire transfer in immediately available funds to the account specified by the Partnership. Time shall be of the essence, and delivery at the time and place specified pursuant to this Agreement is a further condition of the obligation of each Underwriter hereunder. Delivery of Option Units shall be made through the facilities of DTC unless Lehman Brothers Inc. shall otherwise instruct.

5. *Further Agreements of the DCP Parties.* Each of the DCP Parties, jointly and severally, covenants and agrees to cause the Partnership:

(a) *Preparation of Prospectus and Registration Statement.* To prepare the Prospectus in a form approved by the Representatives and to file such Prospectus pursuant to Rule 424(b) under the Securities Act not later than the Commission’s close of business on the second business day following the execution and delivery of this Agreement or, if applicable, such earlier time as may be required by Rule 430A(a)(3) under the Securities Act; to make no further amendment or any supplement to the Registration Statement or to the Prospectus prior to the last Delivery Date except as permitted herein; to advise the Representatives, promptly after it receives notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any supplement to the Prospectus or any amended Prospectus has been filed

and to furnish the Representatives with copies thereof; to advise the Representatives, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus, of the suspension of the qualification of the Units for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or the Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus or suspending any such qualification, to use promptly commercially reasonable efforts to obtain its withdrawal.

(b) *Signed Copies of Registration Statements.* To furnish promptly to the Underwriters and to counsel for the Underwriters a signed copy of the Registration Statement as originally filed with the Commission, and each amendment thereto filed with the Commission, including all consents and exhibits filed therewith.

(c) *Copies of Documents to Underwriters.* To deliver promptly to the Underwriters such number of the following documents as the Representatives shall reasonably request: (i) conformed copies of the Registration Statement as originally filed with the Commission and each amendment thereto (in each case excluding exhibits) and (ii) each Preliminary Prospectus, the Prospectus and any amended or supplemented Prospectus; and, if the delivery of a prospectus is required at any time after the Effective Time in connection with the offering or sale of the Units and if at such time any events shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary to amend or supplement the Prospectus in order to comply with the Securities Act, to notify the Representatives and, upon their request, to file such document and to prepare and furnish without charge to each Underwriter and to any dealer in securities as many copies as the Representatives may from time to time reasonably request of an amended or supplemented Prospectus which will correct such statement or omission or effect such compliance.

(d) *Filing of Amendment or Supplement.* To file promptly with the Commission any amendment to the Registration Statement or the Prospectus or any supplement to the Prospectus that may, in the judgment of the Partnership or the Representatives, be required by the Securities Act or requested by the Commission. Prior to filing with the Commission any amendment to the Registration Statement or supplement to the Prospectus or any Prospectus pursuant to Rule 424 of the Rules and Regulations, to furnish a copy thereof to the Underwriters and counsel for the Underwriters and obtain the consent of the Representatives to the filing.

(e) *Reports to Security Holders.* As soon as practicable after the Effective Date, to make generally available to the Partnership's security holders and to deliver to the Underwriters an earnings statement of the Partnership and its subsidiaries

(which need not be audited) complying with Section 11(a) of the Securities Act and the Rules and Regulations (including, at the option of the Partnership, Rule 158).

(f) *Copies of Reports.* For a period of two years following the Effective Date, to furnish or to make available to the Underwriters via the Commission's Electronic Data Gathering, Analysis and Retrieval (EDGAR) System or on its website a copy of all materials furnished by the Partnership to its security holders (excluding any periodic income tax reporting materials) and all public reports and all reports and financial statements furnished by the Partnership to the principal national securities exchange or national securities association upon which the Common Units may be listed pursuant to requirements of or agreements with such exchange or association or to the Commission pursuant to the Exchange Act or any rule or regulation of the Commission thereunder.

(g) *Qualifications.* Promptly from time to time to take such action as the Representatives may reasonably request to qualify the Units for offering and sale under the securities laws of such jurisdictions as the Representatives may reasonably request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Units; provided that in connection therewith the Partnership shall not be required to qualify as a foreign limited partnership or to file a general consent to service of process in any jurisdiction in which it is not otherwise subject.

(h) *Lock-up Period; Lock-up Letters.* For a period commencing on the date hereof and ending on the 180th day after the date of the Prospectus (such 180-day period, the "**Lock-Up Period**"), not to, directly or indirectly, (1) offer for sale, sell, pledge or otherwise dispose of (or enter into any transaction or device which is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any Common Units or securities convertible into or exchangeable for Common Units (other than the Units and any Common Units issued pursuant to any employee benefit plans, qualified unit option plans or other employee compensation plans existing on the date hereof or pursuant to currently outstanding options, warrants or rights), or sell or grant options, rights or warrants with respect to any Common Units or securities convertible into or exchangeable for Common Units (other than the grant of any options pursuant to any option plans existing on the date hereof), (2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of such Common Units, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Units or other securities, in cash or otherwise, (3) make a demand for or exercise any right to cause, or otherwise attempt to cause, to be filed a registration statement with respect to the registration of any Common Units or securities convertible, exercisable or exchangeable into Common Units or any other securities of the Partnership or (4) publicly disclose the intention to do any of the foregoing in each case without the prior written consent of the Representatives, on behalf of the Underwriters; provided, however, that the forgoing will not apply to the offer for sale, sale or other issuance of Common Units or other securities to Duke Energy Field Services, LLC or any of its subsidiaries provided that any such recipient of Common Units or other securities enters into an agreement with the

Underwriters substantially in the form of Exhibit A hereto, and to cause DEFS, and each executive officer and director of the General Partner and DCP Midstream GP, LLC to furnish to the Underwriters, prior to the First Delivery Date, a letter or letters, substantially in the form of **Exhibit A** hereto, and to cause each of the Directed Unit Participants to furnish to Citigroup Global Markets Inc., prior to the First Delivery Date, a letter or letters, substantially in the form of Exhibit A hereto.

Notwithstanding the foregoing paragraph, if (1) during the last 17 days of the Lock-Up Period, the Partnership issues an earnings release or material news or a material event relating to the Partnership occurs or (2) prior to the expiration of the Lock-Up Period, the Partnership announces that it will release earnings results during the 16-day period beginning on the last day of the Lock-Up Period, then the restrictions imposed in the preceding paragraph shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the announcement of the material news or the occurrence of the material event, unless the Representatives, on behalf of the Underwriters, waives such extension in writing.

(i) *NYSE Listing.* To apply for the listing of the Units on the NYSE, and to use its best efforts to effect that listing, subject only to official notice of issuance, prior to the First Delivery Date.

(j) *Application of Proceeds.* To apply the net proceeds from the sale of the Units as set forth in the Prospectus.

(k) *Investment Company.* To use its best efforts to ensure that no Partnership Entity, nor any subsidiary thereof, shall become an “investment company” as defined in the Investment Company Act of 1940, as amended and the rules and regulations of the Commission thereunder for a period of five years after the latest Delivery Date.

(l) *Directed Unit Program.* The Partnership agrees to pay (i) all fees and disbursements of counsel incurred by the Underwriters in connection with the Directed Unit Program, (ii) all costs and expenses incurred by the Underwriters in connection with the printing (or reproduction) and delivery (including postage, air freight charges and charges for counting and packaging) of copies of the Directed Unit Program materials and (iii) all stamp duties, similar taxes or duties or other taxes, if any, incurred by the Underwriters in connection with the Directed Unit Program. In connection with the Directed Unit Program, to ensure that the Directed Units will be restricted to the extent required by the NASD or the rules of such association from sale, transfer, assignment, pledge or hypothecation for a period of 180 days following the date of the Prospectus, and Citigroup Global Markets Inc. will notify the Partnership as to which Directed Unit Participants will need to be so restricted. At the request of Citigroup Global Markets Inc., the Partnership will direct the transfer agent to place stop transfer restrictions upon such securities for such period of time.

(m) *Rule 463.* To file with the Commission such information on Form 10-Q or Form 10-K as may be required by Rule 463 under the Securities Act.

(n) *Free Writing Prospectus*. Not to make any offer relating to the Units that would constitute a free writing prospectus as defined in Rule 405 of the Rules and Regulations effective as of December 1, 2005 without the prior written consent of the Representatives.

Furthermore, the DCP Parties covenant with the Underwriters that the DCP Parties will comply with all applicable securities and other applicable laws, rules and regulations in each foreign jurisdiction in which the Directed Units are offered in connection with the Directed Unit Program.

6. *Expenses*. Each of the DCP Parties covenants and agrees, whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, that the Partnership will pay or cause to be paid all costs, expenses, fees and taxes incident to and in connection with (a) the authorization, issuance, sale and delivery of the Units and any taxes payable in that connection; (b) the preparation, printing and filing under the Securities Act of the Registration Statement and any amendments and exhibits thereto, any Preliminary Prospectus, the Prospectus and any amendment or supplement to the Prospectus; (c) the distribution of the Registration Statement as originally filed and each amendment thereto and any post-effective amendments thereof (including, in each case, exhibits), any Preliminary Prospectus, the Prospectus and any amendment or supplement to the Prospectus, all as provided in this Agreement; (d) the preparation, printing, authentication, issuance and delivery of certificates for the Units, including any stamp or transfer taxes in connection with the original issuance and sale of the Units; (e) services provided by the transfer agent or registrar; (f) the production and distribution of this Agreement, any supplemental agreement among the Underwriters and any other related documents in connection with the offering, purchase, sale and delivery of the Units; (g) any required review by the NASD of the terms of sale of the Units; (h) the listing of the Units on the NYSE; (i) the qualification of the Units under the securities laws of the several jurisdictions as provided in **Section 5(g)** and of preparing, printing and distributing a Blue Sky Memorandum (including related fees and expenses of counsel to the Underwriters); (j) the investor presentations on any “road show” undertaken in connection with the marketing of the Units, including, without limitation, expenses associated with any Internet road show, travel and lodging expenses of the representatives and officers of the appropriate DCP Parties and the cost of any aircraft chartered in connection with the road show; and (k) all other costs and expenses incident to the performance of the obligations of the DCP Parties under this Agreement; *provided* that, except as provided in this **Section 6** and in **Section 11**, the Underwriters shall pay their own costs and expenses, including the costs and expenses of their counsel, any transfer taxes on the Units which they may sell and the expenses of advertising any offering of the Units made by the Underwriters. The Underwriters will reimburse the Partnership for expenses that are incurred by the Partnership in connection with transactions contemplated hereby in an amount of up to 0.25% of the gross proceeds from the sale of Units (including from the sale of any Option Units). Such reimbursement may be made by wire transfer of immediately available funds to such account or accounts designated by the Partnership or such other method as agreed to by the Parties following delivery of reasonably satisfactory documentation of the expenses to the Representatives.

7. *Conditions of Underwriters’ Obligations*. The respective obligations of the Underwriters hereunder are subject to the accuracy, when made and on each Delivery Date,

of the representations and warranties of the DCP Parties contained herein, to the performance by the DCP Parties of their obligations hereunder, and to each of the following additional terms and conditions:

- (a) The Prospectus shall have been timely filed with the Commission in accordance with **Section 5(a)** hereof; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission; and any request of the Commission for inclusion of additional information in the Registration Statement or the Prospectus or otherwise shall have been complied with.
- (b) No Underwriter shall have discovered and disclosed to any of the DCP Parties on or prior to such Delivery Date that the Preliminary Prospectus dated November 23, 2005 provided to the Underwriters for use in connection with the public offering of the Units, the Registration Statement or the Prospectus or any amendment or supplement thereto contains an untrue statement of a fact which, in the opinion of Baker Botts L.L.P., counsel for the Underwriters, is material or omits to state a fact which, in the opinion of such counsel, is material and is required to be stated therein or is necessary to make the statements therein not misleading; except, in the case of such Preliminary Prospectus, that the price of the Units and disclosures directly relating thereto and derived therefrom are included on the cover page of the Prospectus or under the captions "Use of Proceeds," "Capitalization" or "Underwriting" in the Prospectus or in the unaudited pro forma financial information included therein.
- (c) All corporate, partnership and limited liability company proceedings and other legal matters incident to the authorization, form and validity of this Agreement, the Operative Agreements, the Common Units, the Subordinated Units, the Registration Statement and the Prospectus, and all other legal matters relating to this Agreement, the transactions contemplated hereby and the Transactions shall be reasonably satisfactory in all material respects to counsel for the Underwriters, and the DCP Parties shall have furnished to such counsel all documents and information that they may reasonably request to enable them to pass upon such matters.
- (d) Vinson & Elkins L.L.P. shall have furnished to you, as Representatives of the Underwriters, their written opinions, as special counsel to the Partnership Entities, addressed to the Underwriters and dated such Delivery Date, in form and substance satisfactory to the Representatives to the effect set forth on **Exhibit B** hereto.
- (e) Brent Backes, Vice President, General Counsel and Secretary of DEFS, shall have furnished to you, as Representatives of the Underwriters, his written opinion, addressed to the Underwriters and dated such Delivery Date, in form and substance satisfactory to the Representatives to the effect set forth on **Exhibit C** hereto.
- (f) Kantraw Spaht Weaver & Blitzer (A Professional Law Corporation), special Louisiana counsel for the Partnership Entities, shall have furnished to you, as Representatives of the Underwriters, their written opinion regarding matters

involving the law of Louisiana, addressed to you, as Representatives of the Underwriters, and dated such Delivery Date, in form and substance satisfactory to the Representatives, substantially to the effect set forth on **Exhibit D** hereto.

(g) You shall have received from Baker Botts L.L.P., counsel for the Underwriters, such opinion or opinions, dated such Delivery Date, with respect to the issuance and sale of the Units, the Preliminary Prospectus dated November 23, 2005 provided to the Underwriters for use in connection with the public offering of the Units, the Registration Statement, the Prospectus and other related matters as you may reasonably require, and the DCP Parties shall have furnished to such counsel such documents as they reasonably request for the purpose of enabling them to pass upon such matters.

(h) At the time of execution of this Agreement, the Underwriters shall have received from Deloitte & Touche LLP a letter or letters, in form and substance satisfactory to the Representatives, addressed to you, as Representatives of the Underwriters, and dated the date hereof (i) confirming that they are independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X of the Commission and (ii) stating, as of the date hereof (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Prospectus, as of a date not more than three days prior to the date hereof), the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings.

(i) With respect to the letter or letters of Deloitte & Touche LLP referred to in the preceding paragraph and delivered to the Underwriters concurrently with the execution of this Agreement (the "**initial letters**"), the Partnership shall have furnished to the Underwriters a letter (the "**bring-down letter**") of such accountants, addressed to you, as Representatives of the Underwriters, and dated such Delivery Date (i) confirming that they are independent public accountants within the meaning of the Securities Act and are in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X of the Commission, (ii) stating, as of the date of the bring-down letter (or, with respect to matters involving changes or developments since the respective dates as of which specified financial information is given in the Prospectus, as of a date not more than three days prior to the date of the bring-down letter), the conclusions and findings of such firm with respect to the financial information and other matters covered by the initial letters and (iii) confirming in all material respects the conclusions and findings set forth in the initial letters.

(j) The DCP Parties shall have furnished to the Underwriters a certificate, dated such Delivery Date, signed on behalf of the Partnership by the Chief Executive Officer and Chief Financial Officer of DCP Midstream GP, LLC, stating that:

(i) the representations, warranties and agreements of the DCP Parties in **Section 1** are true and correct on and as of such Delivery Date, and the DCP Parties have complied with all their agreements contained herein and satisfied all the conditions on their part to be performed or satisfied hereunder at or prior to such Delivery Date;

(ii) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the knowledge of such officers, threatened;

(iii) no event contemplated by Subsection (k) of this **Section 7** in respect of the Partnership Entities shall have occurred; and

(iv) they have carefully examined the Preliminary Prospectus dated November 23, 2005 provided to the Underwriters for use in connection with the public offering of the Units, the Registration Statement and the Prospectus and, in their opinion (A) (1) such Preliminary Prospectus, as of the Applicable Time, (2) the Registration Statement, as of the Effective Time, and (3) the Prospectus, as of its date and as of such Delivery Date, did not and do not contain any untrue statement of a material fact and did not and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of such Preliminary Prospectus and the Prospectus, in the light of the circumstances under which they were made) not misleading, except, in the case of such Preliminary Prospectus, that the price of the Units and disclosures directly relating thereto and derived therefrom are included on the cover page of the Prospectus or under the captions "Use of Proceeds," "Capitalization" or "Underwriting" in the Prospectus or in the unaudited pro forma financial information included therein, and (B) since the Effective Time no event has occurred that should have been set forth in a supplement or amendment to the Registration Statement or the Prospectus that has not been so set forth.

(k) Since the date of the latest audited financial statements included in the Prospectus (A) none of the Partnership Entities shall have sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order, investigation or decree, otherwise than as set forth or contemplated in the Prospectus, or shall have become a party to or the subject of any litigation, court or governmental action, investigation, order or decree that is materially adverse to the Partnership Entities, taken as a whole, and (B) there shall not have been any change in the capitalization or long-term debt of any of the Partnership Entities or any change, or any development involving a prospective change, in or affecting the general affairs, management, condition (financial or otherwise), stockholders' equity, partners' equity, members' equity, results of operations, properties, business or prospects of the Partnership Entities, other than as set forth or contemplated in the Prospectus, the effect of which, in any such case described in clause (A) or (B), is, in the judgment of the Representatives, so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or

the delivery of the Units being delivered on such Delivery Date on the terms and in the manner contemplated in the Prospectus.

(l) Subsequent to the execution and delivery of this Agreement there shall not have occurred any of the following: (i) trading in securities generally on the New York Stock Exchange or the American Stock Exchange or in the over-the-counter market, or trading in any securities of the Partnership on any exchange or in the over-the-counter market, shall have been suspended or materially limited or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or such market by the Commission, by such exchange or by any other regulatory body or governmental authority having jurisdiction, (ii) a banking moratorium shall have been declared by federal or state authorities, (iii) the United States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States or there shall have been a declaration of a national emergency or war by the United States or (iv) there shall have occurred such a material adverse change in general domestic or international economic, political or financial conditions (or the effect of international conditions on the financial markets in the United States shall be such), including, without limitation, as a result of terrorist activities after the date hereof, as to make it, in the judgment of the Representatives, impracticable or inadvisable to proceed with the public offering or delivery of the Units being delivered on such Delivery Date on the terms and in the manner contemplated in the Prospectus.

(m) The NYSE shall have approved the Units for listing, subject only to official notice of issuance.

(n) The Underwriters shall have received evidence satisfactory to them that each of the Transactions shall have occurred or will occur as of the First Delivery Date, including the concurrent closing of the new credit facility pursuant to the Credit Agreement, in each case as described in the Prospectus without modification, change or waiver, except for such modifications, changes or waivers as have been specifically identified to the Representatives and which, in the judgment of the Representatives, do not make it impracticable or inadvisable to proceed with the offering and delivery of the Units on the First Delivery Date on the terms and in the manner contemplated in the Prospectus.

(o) All opinions, letters, evidence and certificates mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Underwriters.

(p) The lock-up letters referred to in **Section 5(h)** hereof shall have been delivered to the Underwriters on or before the date of this Agreement and shall be in full force and effect each such Delivery Date.

#### *8. Indemnification and Contribution.*

(a) The DCP Parties, jointly and severally, shall indemnify and hold harmless each Underwriter, its directors, officers and employees and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof (including, but not limited to, any loss, claim, damage, liability or action relating to purchases and sales of Units), to which that Underwriter, director, officer, employee or controlling person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained (A) in any Preliminary Prospectus, the Registration Statement or the Prospectus or in any amendment or supplement thereto or (B) in any materials or information provided to investors by, or with the approval of, the DCP Parties in connection with the marketing of the offering of the Units, including any road show or investor presentations made to investors by the Partnership (whether in person or electronically) (the “**Marketing Materials**”); (ii) the omission or alleged omission to state in the Registration Statement, or in any amendment or supplement thereto, any material fact required to be stated therein or necessary to make the statements therein not misleading; (iii) the omission or alleged omission to state in any Preliminary Prospectus or the Prospectus, or in any amendment or supplement thereto, or in any Marketing Materials any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; or (iv) any act or failure to act or any alleged act or failure to act by any Underwriter in connection with, or relating in any manner to, the Units or the offering contemplated hereby, and which is included as part of or referred to in any loss, claim, damage, liability or action arising out of or based upon matters covered by clause (i), (ii) or (iii) above (provided that the DCP Parties shall not be liable under this clause (iv) to the extent that it is determined in a final judgment by a court of competent jurisdiction that such loss, claim, damage, liability or action resulted directly from any such acts or failures to act undertaken or omitted to be taken by such Underwriter through its gross negligence or willful misconduct), and, subject to **Section 8(c)**, shall reimburse each Underwriter and each such director, officer, employee or controlling person promptly upon demand for any legal or other expenses reasonably incurred by that Underwriter, director, officer, employee or controlling person in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred; *provided, however,* that the DCP Parties shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Prospectus, the Registration Statement or the Prospectus, or in any such amendment or supplement, in reliance upon and in conformity with written information concerning such Underwriter furnished to the Partnership by or on behalf of any Underwriter specifically for inclusion therein which information consists solely of the information specified in **Section 8(e)**; and provided further, that this paragraph (a) with respect to any Preliminary Prospectus shall not inure to the benefit of any Underwriter on account of any loss, claim, damage, liability or action arising from the sale of Units to any person by such Underwriter if such Underwriter failed to send or give a copy of the Prospectus, as the same may be amended

or supplemented, to such person within the time required by the Securities Act and the Rules and Regulations, and the untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact in the Preliminary Prospectus was corrected in the Prospectus, unless such failure resulted from non-compliance by the Partnership with Section 5(c) hereof. The foregoing indemnity agreement is in addition to any liability which the DCP Parties may otherwise have to any Underwriter or to any director, officer, employee or controlling person of that Underwriter.

(b) Each Underwriter, severally and not jointly, shall indemnify and hold harmless the DCP Parties, their respective officers and employees, each of their respective directors and managers, and each person, if any, who controls any DCP Party within the meaning of Section 15 of the Securities Act, from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof, to which the DCP Party or any such director, manager, officer, employee or controlling person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, the Registration Statement or the Prospectus or in any amendment or supplement thereto, (ii) the omission or alleged omission to state in the Registration Statement, or in any amendment or supplement thereto, any material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) the omission or alleged omission to state in any Preliminary Prospectus or the Prospectus, or in any amendment or supplement thereto, or in any Marketing Materials any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, but in each case only to the extent that the untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information concerning such Underwriter furnished to the Partnership by Lehman Brothers Inc. on behalf of that Underwriter specifically for inclusion therein, which information is limited to the information set forth in **Section 8(e)**, and, subject to **Section 8(c)**, shall reimburse the DCP Party and any such director, manager, officer, employee or controlling person for any legal or other expenses reasonably incurred by the DCP Party or any such director, manager, officer, employee or controlling person in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred. The foregoing indemnity agreement is in addition to any liability which any Underwriter may otherwise have to the DCP Parties or any such director, manager, officer, employee or controlling person.

(c) Promptly after receipt by an indemnified party under this **Section 8** of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under this **Section 8**, notify the indemnifying party in writing of the claim or the commencement of that action; *provided, however,* that the failure to notify the indemnifying party shall not relieve it from any liability which it may have under this **Section 8** except to the extent it has been materially prejudiced by such failure and, *provided further,* that the failure to notify the indemnifying party shall not relieve it from any liability which it may have to an indemnified party otherwise than under this **Section 8**. If any such claim or action

shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel reasonably satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this **Section 8** for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; *provided, however*, that Lehman Brothers Inc. shall have the right to employ counsel to represent jointly Lehman Brothers Inc. and the other Underwriters and their respective directors, officers, employees and controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Underwriters against the DCP Parties under this **Section 8** if, (i) the DCP Parties and the Underwriters shall have so mutually agreed; (ii) the DCP Parties have failed within a reasonable time to retain counsel reasonably satisfactory to the Underwriters; (iii) the Underwriters or any of their respective directors, officers, employees and controlling persons shall have reasonably concluded that there may be legal defenses available to them that are different from or in addition to those available to the DCP Parties; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Underwriters or their respective directors, officers, employees or controlling persons, on the one hand, and any of the DCP Parties, on the other hand, and representation of both sets of parties by the same counsel would be inappropriate due to actual or potential differing interests between them, and in any such event the fees and expenses of such separate counsel shall be paid by the DCP Parties. Notwithstanding anything contained herein to the contrary, if indemnity may be sought pursuant to **Section 8(a)**, then in addition to such separate firm for the indemnified parties, the indemnifying party shall be liable for the fees and expenses of not more than one separate firm (in addition to any local counsel) for the Citigroup Entities (as defined in **Section 8(f)**) for the defense of any loss, claim, damage, liability or action arising out of the Directed Unit Program. No indemnifying party shall (i) without the prior written consent of the indemnified parties (which consent shall not be unreasonably withheld), settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include any findings of fact or admissions of fault or culpability as to the indemnified party, or (ii) be liable for any settlement of any such action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with the consent of the indemnifying party or if there be a final judgment of plaintiff in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement.

(d) If the indemnification provided for in this **Section 8** shall for any reason be unavailable to or insufficient to hold harmless an indemnified party under **Section 8(a)**, **8(b)** or **8(f)** in respect of any loss, claim, damage or liability, or any action

in respect thereof, referred to therein, then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, (i) in such proportion as shall be appropriate to reflect the relative benefits received by the DCP Parties on the one hand and the Underwriters on the other from the offering of the Units or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the DCP Parties on the one hand and the Underwriters on the other with respect to the statements or omissions which resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations. The relative benefits received by the DCP Parties on the one hand and the Underwriters on the other with respect to such offering shall be deemed to be in the same proportion as the total net proceeds from the offering of the Units purchased under this Agreement (before deducting expenses) received by the Partnership, as set forth in the table on the cover page of the Prospectus, on the one hand, and the total underwriting discounts and commissions received by the Underwriters with respect to the Units purchased under this Agreement, on the other hand, bear to the total gross proceeds from the offering of the Units under this Agreement, as set forth in the table on the cover page of the Prospectus, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the DCP Parties or the Underwriters, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The DCP Parties and the Underwriters agree that it would not be just and equitable if contributions pursuant to this **Section 8(d)** were to be determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this **Section 8(d)** shall be deemed to include, for purposes of this **Section 8(d)**, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this **Section 8(d)**, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Units underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise paid or become liable to pay by reason of any untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute as provided in this **Section 8(d)** are several in proportion to their respective underwriting obligations and not joint.

(e) The Underwriters severally confirm and the DCP Parties acknowledge that the statements with respect to the public offering of the Units by the Underwriters set forth on the cover page of the Prospectus, the statements in the table

following the first paragraph and the concession and reallowance figures in the fourth paragraph and the statements in the eleventh, fifteenth, eighteenth and twenty-first paragraphs appearing under the caption "Underwriting" in the Prospectus are correct and constitute the only information concerning such Underwriters furnished in writing to the DCP Parties by or on behalf of the Underwriters specifically for inclusion in the Registration Statement and the Prospectus.

(f) The DCP Parties, jointly and severally, agree to indemnify and hold harmless Citigroup Global Markets Inc., the directors, officers, employees and agents of Citigroup Global Markets Inc. and each person, who controls Citigroup Global Markets Inc. within the meaning of either the Securities Act or the Exchange Act (collectively, the "**Citigroup Entities**"), from and against any and all losses, claims, damages and liabilities to which they may become subject under the Securities Act, the Exchange Act or other Federal or state statutory law or regulation, at common law or otherwise (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim), insofar as such losses, claims damages or liabilities (or actions in respect thereof) (i) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any material prepared by or with the approval of any DCP Party for distribution to Directed Unit Participants in connection with the Directed Unit Program or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; (ii) caused by the failure of any Directed Unit Participant to pay for and accept delivery of the Directed Units which immediately following the Effective Date of the Registration Statement, were subject to a properly confirmed agreement to purchase; or (iii) related to, arising out of, or in connection with the Directed Unit Program, except that this clause (iii) shall not apply to the extent that such loss, claim, damage or liability is finally judicially determined to have resulted primarily from the gross negligence or willful misconduct of the Citigroup Entities.

#### *9. Defaulting Underwriters.*

If, on either Delivery Date, any Underwriter defaults in the performance of its obligations under this Agreement, the remaining non-defaulting Underwriters shall be obligated to purchase the Units which the defaulting Underwriter agreed but failed to purchase on such Delivery Date in the respective proportions which the number of Firm Units set opposite the name of each remaining non-defaulting Underwriter in **Schedule 1** hereto bears to the total number of Firm Units set opposite the names of all the remaining non-defaulting Underwriters in **Schedule 1** hereto; *provided, however,* that the remaining non-defaulting Underwriters shall not be obligated to purchase any of the Units on such Delivery Date if the total number of Units which the defaulting Underwriter or Underwriters agreed but failed to purchase on such date exceeds 9.09% of the total number of Units to be purchased on such Delivery Date, and any remaining non-defaulting Underwriter shall not be obligated to purchase more than 110% of the number of Units which it agreed to purchase on such Delivery Date pursuant to the terms of **Section 2**. If the foregoing maximums are exceeded, the remaining non-defaulting Underwriters, or those other underwriters satisfactory to the Representatives who so agree, shall have the right, but shall not be obligated, to purchase, in such proportion as may be agreed upon among them,

all the Units to be purchased on such Delivery Date. If the remaining Underwriters or other underwriters satisfactory to the Representatives do not elect to purchase the Units which the defaulting Underwriter or Underwriters agreed but failed to purchase on such Delivery Date, this Agreement (or, with respect to the Second Delivery Date, the obligation of the Underwriters to purchase, and of the Partnership to sell, the Option Units) shall terminate without liability on the part of any non-defaulting Underwriter or the DCP Parties, except that the Partnership will continue to be liable for the payment of expenses to the extent set forth in **Sections 6 and 11**. As used in this Agreement, the term "**Underwriter**" includes, for all purposes of this Agreement unless the context requires otherwise, any party not listed in **Schedule 1** hereto who, pursuant to this **Section 9**, purchases Units which a defaulting Underwriter agreed but failed to purchase.

Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Partnership for damages caused by its default. If other Underwriters are obligated or agree to purchase the Units of a defaulting or withdrawing Underwriter, either the non-defaulting Underwriters or the Partnership may postpone the Delivery Date for up to seven full business days in order to effect any changes that in the opinion of counsel for the Partnership or counsel for the Underwriters may be necessary in the Registration Statement, the Prospectus or in any other document or arrangement.

**10. Termination.** The obligations of the Underwriters hereunder may be terminated by the Representatives by notice given to and received by the Partnership prior to delivery of and payment for the Firm Units if, prior to that time, any of the events described in **Sections 7(k) or 7(l)**, shall have occurred or if the Underwriters shall decline to purchase the Units for any reason permitted under this Agreement.

**11. Reimbursement of Underwriters' Expenses.** If the sale of the Units provided for herein is not consummated because any condition to the obligations of the Underwriters set forth in Section 7 hereof is not satisfied, because of any termination pursuant to Section 10 hereof or because of any refusal, inability or failure on the part of the DCP Parties to perform any agreement herein or comply with any provision hereof other than by reason of a default by any of the Underwriters, the DCP Parties covenant and agree that the Partnership will reimburse the Underwriters severally through the Representatives on demand for all out-of-pocket expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by the Underwriters in connection with the proposed purchase and sale of the Units; provided, however, if the Underwriters are entitled to reimbursement under this **Section 11** as a result of the occurrence of any of the events described in Section 7(l), the DCP Parties shall not be obligated to reimburse the Underwriters in an aggregate amount in excess of \$500,000 under the terms of this **Section 11**. If this Agreement is terminated pursuant to **Section 9** by reason of the default of one or more Underwriters, the DCP Parties shall not be obligated to reimburse any defaulting Underwriter on account of those expenses.

**12. Research Independence.** In addition, the DCP Parties acknowledge that the Underwriters' research analysts and research departments are required to be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and that such Underwriters' research analysts may hold and make statements or investment recommendations and/or publish research reports with respect to the Partnership and/or the offering of the Units that differ from the views of its investment bankers. The DCP

Parties hereby waive and release, to the fullest extent permitted by law, any claims that the DCP Parties may have against the Underwriters with respect to any conflict of interest that may arise from the fact that the views expressed by their independent research analysts and research departments may be different from or inconsistent with the views or advice communicated to the DCP Parties by such Underwriters' investment banking divisions. The DCP Parties acknowledge that each of the Underwriters is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the Partnership or DEFS.

**13. No Fiduciary Duty.** Each of the DCP Parties acknowledges and agrees that in connection with this offering, sale of the Units or any other services the Underwriters may be deemed to be providing hereunder, notwithstanding any preexisting relationship, advisory or otherwise, between the parties or any oral representations or assurances previously or subsequently made by the Underwriters: (i) no fiduciary or agency relationship between any of the DCP Parties and any other person, on the one hand, and the Underwriters, on the other, exists; (ii) the Underwriters are not acting as advisors, expert or otherwise, to any of the DCP Parties including, without limitation, with respect to the determination of the public offering price of the Units, and such relationship between the DCP Parties, on the one hand, and the Underwriters, on the other, is entirely and solely commercial, based on arms-length negotiations; (iii) any duties and obligations that the Underwriters may have to any of the DCP Parties shall be limited to those duties and obligations specifically stated herein; and (iv) the Underwriters and their respective affiliates may have interests that differ from those of the DCP Parties. Each of the DCP Parties hereby waives any claims that any of the DEFS Parties may have against the Underwriters with respect to any breach or alleged breach of fiduciary duty in connection with the Offering of the Units.

**14. Notices, Etc.** All statements, requests, notices and agreements hereunder shall be in writing, and:

(a) if to any of the DCP Parties, shall be delivered or sent by mail, telex or facsimile transmission to the address of the Partnership set forth in the Registration Statement, Attention: General Counsel;

(b) if to the Underwriters, shall be (i) delivered or sent by mail, telex or facsimile transmission to Lehman Brothers Inc., 745 Seventh Avenue, New York, New York 10019, Attention: Syndicate Registration (Fax: 646.497.4815), with a copy, in the case of any notice pursuant to **Section 8(c)**, to the Director of Litigation, Office of the General Counsel, Lehman Brothers Inc., 399 Park Avenue, 10th Floor, New York, New York 10022, and (ii) mailed, delivered or telefaxed to Citigroup Global Markets Inc. General Counsel (Fax No.: 212.816.7912) and confirmed to the General Counsel, Citigroup Global Markets Inc., at 388 Greenwich Street, New York, New York, 10013, Attention: General Counsel; *provided, however,* that any notice to an Underwriter pursuant to **Section 8(c)** shall be delivered or sent by mail, telex or facsimile transmission to such Underwriter at its address set forth in its acceptance telex to Lehman Brothers Inc., which address will be supplied to any other party hereto by Lehman Brothers Inc. upon request. Any such statements, requests, notices or agreements shall take effect at

the time of receipt thereof. The DCP Parties shall be entitled to act and rely upon any request, consent, notice or agreement given or made on behalf of the Underwriters by Lehman Brothers Inc.

15. *Persons Entitled to Benefit of Agreement.* This Agreement shall inure to the benefit of and be binding upon the Underwriters, the DCP Parties, and their respective successors. This Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except that (A) the representations, warranties, indemnities and agreements of the DCP Parties contained in this Agreement shall also be deemed to be for the benefit of the directors, officers and the person or persons, if any, who control any Underwriter within the meaning of Section 15 of the Securities Act, and (B) the indemnity agreement of the Underwriters contained in **Section 8(b)** of this Agreement shall be deemed to be for the benefit of directors and managers of the DCP Parties, officers of the DCP Parties who have signed the Registration Statement and any person controlling the DCP Parties within the meaning of Section 15 of the Securities Act. Nothing in this Agreement is intended or shall be construed to give any person, other than the persons referred to in this **Section 15**, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

16. *Survival.* The respective indemnities, representations, warranties and agreements of the DCP Parties and the Underwriters contained in this Agreement or made by or on behalf on them, respectively, pursuant to this Agreement, shall survive the delivery of and payment for the Units and shall remain in full force and effect, regardless of any investigation made by or on behalf of any of them or any person controlling any of them.

17. *Definition of the Terms “Business Day” and “Subsidiary.”* For purposes of this Agreement, (a) “**business day**” means each Monday, Tuesday, Wednesday, Thursday or Friday which is not a day on which banking institutions in New York are generally authorized or obligated by law or executive order to close and (b) “**subsidiary**” has the meaning set forth in Rule 405 of the Rules and Regulations.

18. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of New York.

19. *Counterparts.* This Agreement may be executed in one or more counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original but all such counterparts shall together constitute one and the same instrument.

20. *Headings.* The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

If the foregoing correctly sets forth the agreement between the DCP Parties and the Underwriters, please indicate your acceptance in the space provided for that purpose below.

Very truly yours,

**DUKE ENERGY FIELD SERVICES, LLC**

By: /s/ Brent L. Backes

Name: Brent L. Backes

Title: Vice President, General Counsel &  
Secretary

**DCP MIDSTREAM PARTNERS, LP**

By: DCP Midstream GP, LP  
its general partner

By: DCP Midstream GP, LLC  
its general partner

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

**DCP MIDSTREAM GP, LP**

By: DCP Midstream GP, LLC  
its general partner

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

**DCP MIDSTREAM GP, LLC**

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

**DCP MIDSTREAM OPERATING, LP**

By: DCP Midstream Operating, LLC  
its general partner

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

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Accepted:

LEHMAN BROTHERS INC.

CITIGROUP GLOBAL MARKETS INC.

As Representatives of the several

Underwriters named in Schedule 1 hereto,

BY: LEHMAN BROTHERS INC.

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

BY: CITIGROUP GLOBAL MARKETS INC.

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

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**SCHEDULE 1**

<b>Underwriter</b>	<b>Number of Firm Units to Be Purchased</b>
Lehman Brothers Inc.	2,880,000
Citigroup Global Markets Inc.	2,880,000
UBS Securities, LLC	1,035,000
Wachovia Capital Markets, LLC	1,035,000
A.G. Edwards & Sons, Inc.	720,000
KeyBanc Capital Markets, a Division of McDonald Investments Inc.	<u>450,000</u>
<b>TOTAL:</b>	<b><u>9,000,000</u></b>

**SCHEDULE 2**

DCP Assets Holdings GP, LLC  
DCP Black Lake Holdings, LLC  
Black Lake Pipe Line Company<sup>1</sup>  
DCP Assets Holdings, LP  
Associated Louisiana Intrastate Pipe Line, LLC  
Duke Energy Intrastate Pipeline, LLC  
PanEnergy Louisiana Intrastate LLC

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<sup>1</sup> DCP Black Lake Holdings, LLC will own a 45% interest in Black Lake Pipe Line Company at the time of each Delivery Date.

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**Exhibit A**  
**LOCK-UP LETTER AGREEMENT**

Lehman Brothers Inc.  
Citigroup Global Markets Inc.  
As Representatives of the several  
Underwriters named in Schedule 1

c/o Lehman Brothers Inc.  
745 Seventh Avenue  
New York, New York 10019

Ladies and Gentlemen:

The undersigned understands that you (the "**Representatives**") and certain other firms propose to enter into an Underwriting Agreement (the "**Underwriting Agreement**") providing for the purchase by you and such other firms (the "**Underwriters**") of common units (the "**Common Units**") representing limited partner interests in DCP Midstream Partners, LP, a Delaware limited partnership (the "**Partnership**"), and that the Underwriters propose to reoffer the Common Units to the public (the "**Offering**").

In consideration of the execution of the Underwriting Agreement by the Representatives on behalf of the Underwriters and for other good and valuable consideration, the undersigned hereby irrevocably agrees that, without the prior written consent of the Representatives, on behalf of the Underwriters, the undersigned will not, directly or indirectly, (1) offer for sale, sell, pledge, or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any Common Units (including, without limitation, Common Units that may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and Common Units that may be issued upon exercise of any option or warrant) or securities convertible into or exchangeable for Common Units owned by the undersigned on the date of execution of this Lock-Up Letter Agreement or on the date of the completion of the Offering, or (2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of such Common Units, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Units or other securities, in cash or otherwise, (3) make a demand for or exercise any right to cause, or otherwise attempt to cause, to be filed a registration statement with respect to the registration of any Common Units or securities convertible, exercisable or exchangeable into Common Units or any other securities of the Partnership or (4) publicly disclose the intention to do any of the foregoing, for a period commencing on the date hereof and ending on the 180th day after the date of the final prospectus relating to the Offering (such 180-day period, the "**Lock-Up Period**"); provided, however, that the foregoing shall not apply to any Common Units acquired through the Directed Unit Program (as defined in the

Underwriting Agreement), which Common Units will be the subject of a separate letter agreement.

Notwithstanding the foregoing, if (1) during the last 17 days of the Lock-Up Period, the Partnership issues an earnings release or material news or a material event relating to the Partnership occurs or (2) prior to the expiration of the Lock-Up Period, the Partnership announces that it will release earnings results during the 16-day period beginning on the last day of the Lock-Up Period, then the restrictions imposed by this Lock-Up Letter Agreement shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the announcement of the material news or the occurrence of the material event, unless the Representatives waive such extension in writing. The undersigned hereby further agrees that, prior to engaging in any transaction or taking any other action that is subject to the terms of this Lock-Up Letter Agreement during the period from the date of this Lock-Up Letter Agreement to and including the 34th day following the expiration of the Lock-Up Period, it will give notice thereof to the Partnership and will not consummate such transaction or take any such action unless it has received written confirmation from the Partnership that the Lock-Up Period (as such may have been extended pursuant to this paragraph) has expired.

In furtherance of the foregoing, the Partnership and its transfer agent are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Letter Agreement.

It is understood that, if the Partnership notifies you that it does not intend to proceed with the Offering, if the Underwriting Agreement does not become effective, or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Common Units, the undersigned will be released from his obligations under this Lock-Up Letter Agreement.

The undersigned understands that the Partnership and the Underwriters will proceed with the Offering in reliance on this Lock-Up Letter Agreement.

Whether or not the Offering actually occurs depends on a number of factors, including market conditions. Any Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Partnership and the Underwriters.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Letter Agreement and that, upon request, the undersigned will execute any additional documents necessary in connection with the enforcement hereof. Any obligations of the undersigned shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

Very truly yours,

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

Name:

Title:

Dated: \_\_\_\_\_, 2005

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## **Exhibit B**

### **Opinion of Vinson & Elkins L.L.P.**

**1. Formation and Qualification of the Partnership, the General Partner, the Operating Partnership, DCP Midstream GP, LLC, the OLP GP and the Operating Subsidiaries.** Each of the Partnership, the General Partner, the Operating Partnership, DCP Midstream GP, LLC and the OLP GP, and each of the Operating Subsidiaries has been duly formed or incorporated and is validly existing in good standing as a limited partnership, limited liability company or corporation under the laws of the State of Delaware with full partnership, limited liability company or corporate power and authority, as the case may be, necessary to own or lease its properties currently owned or leased or to be owned or leased at each Delivery Date, to assume the liabilities assumed or to be assumed by it pursuant to the Contribution Documents and to conduct its business as currently conducted or to be conducted at each Delivery Date, in each case in all material respects as described in the Registration Statement and the Prospectus, and each of them is duly registered or qualified to do business and is in good standing as a foreign limited partnership, limited liability company or corporation in each jurisdiction set forth under its name on **Annex 1** to this opinion.

**2. Ownership of the General Partner Interest in the Partnership.** The General Partner is the sole general partner of the Partnership with a 2.0% general partner interest in the Partnership; such general partner interest has been duly authorized and validly issued in accordance with the Partnership Agreement; and the General Partner owns such general partner interest free and clear of all Liens (except restrictions on transferability as described in the Prospectus or the Partnership Agreement), (i) in respect of which a financing statement under the Uniform Commercial Code of the State of Delaware naming the General Partner as debtor is on file as of a recent date in the office of the Secretary of State of the State of Delaware or (ii) otherwise known to such counsel, without independent investigation, other than those created by or arising under the Delaware LP Act or contained in the Partnership Agreement.

**3. Ownership of the Sponsor Units and the Incentive Distribution Rights.** The Sponsor Units, the Incentive Distribution Rights and the limited partner interests represented thereby have been duly authorized and validly issued in accordance with the Partnership Agreement, and are fully paid (to the extent required under the Partnership Agreement) and nonassessable (except as such nonassessability may be affected by Section 17-607 of the Delaware LP Act and otherwise by matters described in the Prospectus under the caption “The Partnership Agreement—Limited Liability”); and DCP LP Holdings owns 1,357,143 Common Units and 7,142,857 Subordinated Units and the General Partner owns 100% of the Incentive Distribution Rights, in each case, free and clear of all Liens (except restrictions on transferability as described in the Prospectus, (i) in respect of which a financing statement under the Uniform Commercial Code of the state of organization of DCP LP Holdings or the General Partner naming any of them as debtor is on file as of a recent date in the applicable office of the respective states of their organization, or (ii) otherwise known to such counsel, without independent investigation, other than those created by or arising under the Delaware LP Act or contained in the Partnership Agreement.

*4. Valid Issuance of the Units.* The Units to be issued and sold to the Underwriters by the Partnership pursuant to this Agreement and the limited partner interests represented thereby have been duly and validly authorized by the Partnership Agreement and, when issued and delivered to the Underwriters against payment therefor in accordance with the terms of this Agreement, will be validly issued, fully paid (to the extent required under the Partnership Agreement) and nonassessable (except as such nonassessability may be affected by Section 17-607 of the Delaware LP Act and otherwise by matters described in the Prospectus under the caption "The Partnership Agreement—Limited Liability"); and, other than the Sponsor Units owned by DCP LP Holdings and the Incentive Distribution Rights owned by the General Partner, the Units will be the only limited partner interests of the Partnership issued and outstanding at the applicable Delivery Date.

*5. Ownership of the General Partner.* DCP Midstream GP, LLC is the sole general partner of the General Partner with a 0.001% general partner interest in the General Partner; such general partner interest has been duly authorized and validly issued in accordance with the GP Partnership Agreement; and DCP Midstream GP, LLC owns such general partner interest free and clear of all Liens (except restrictions on transferability as described in the Prospectus or contained in the Omnibus Agreement or the GP Partnership Agreement), (i) in respect of which a financing statement under the Uniform Commercial Code of the state of Delaware, naming it as debtor is on file as of a recent date in the office of the Secretary of State of the State of Delaware or (ii) otherwise known to such counsel, without independent investigation, other than those created by or arising under the Delaware LP Act or contained in the GP Partnership Agreement. DEFS is the sole limited partner of the General Partner with a 99.999% limited partner interest in the General Partner; such limited partner interest has been duly authorized and validly issued in accordance with the GP Partnership Agreement and is fully paid (to the extent required under the GP Partnership Agreement) and nonassessable (except as such nonassessability may be affected by Section 17-607 of the Delaware LP Act and otherwise by matters described in the Prospectus under the caption "The Partnership Agreement — Limited Liability"); and DEFS owns such limited partner interest free and clear of all Liens (except restrictions on transferability as described in the Prospectus or contained in the Omnibus Agreement or the GP Partnership Agreement), (i) in respect of which a financing statement under the Uniform Commercial Code of the state of Delaware, naming it as debtor is on file as of a recent date in the office of the Secretary of State of the State of Delaware or (ii) otherwise known to such counsel, without independent investigation, other than those created by or arising under the Delaware LP Act or pursuant to the GP Partnership Agreement.

*6. Ownership of the Operating Partnership.* The OLP GP is the sole general partner of the Operating Partnership with a 0.001% general partner interest in the Operating Partnership; such general partner interest has been duly authorized and validly issued in accordance with the OLP Partnership Agreement; and the OLP GP owns such general partner interest free and clear of all Liens (except restrictions on transferability as described in the Prospectus or contained in the Omnibus Agreement or the OLP Partnership Agreement), (i) in respect of which a financing statement under the Uniform Commercial Code of the state of Delaware, naming it as debtor is on file as of a recent date in the office of the Secretary of State of the State of Delaware or (ii) otherwise known to such counsel, without independent investigation, other than those created by or arising under the Delaware LP Act or pursuant to the OLP Partnership Agreement. The Partnership is the sole limited partner of the Operating

Partnership with a 99.999% limited partner interest in the Operating Partnership; such limited partner interest has been duly authorized and validly issued in accordance with the OLP Partnership Agreement and is fully paid (to the extent required under the OLP Partnership Agreement) and nonassessable (except as such nonassessability may be affected by Section 17-607 of the Delaware LP Act and otherwise by matters described in the Prospectus under the caption "The Partnership Agreement — Limited Liability"); and the Partnership owns such limited partner interest free and clear of all Liens (except restrictions on transferability as described in the Prospectus or contained in the Omnibus Agreement or the OLP Partnership Agreement), (i) in respect of which a financing statement under the Uniform Commercial Code of the state of Delaware, naming it as debtor is on file as of a recent date in the office of the Secretary of State of the State of Delaware or (ii) otherwise known to such counsel, without independent investigation, other than those created by or arising under the Delaware LP Act or pursuant to the OLP Partnership Agreement.

*7. Ownership of DCP Midstream GP, LLC.* DEFS is the sole member of DCP Midstream GP, LLC with a 100% membership interest in DCP Midstream GP, LLC; such membership interest has been duly authorized and validly issued in accordance with the DCP Midstream GP, LLC Limited Liability Company Agreement and is fully paid (to the extent required by the DCP Midstream GP, LLC Limited Liability Company Agreement) and nonassessable (except as such nonassessability may be affected by Section 18-607 of the Delaware LLC Act); and DEFS owns such member interest free and clear of all Liens (i) in respect of which a financing statement under the Uniform Commercial Code of the state of Delaware, naming it as debtor is on file as of a recent date in the office of the Secretary of State of the State of Delaware or (ii) otherwise known to such counsel, without independent investigation other than those created by or arising under the Delaware LLC Statute or pursuant to the DCP Midstream GP, LLC Limited Liability Company Agreement.

*8. Ownership of the OLP GP.* The Partnership is the sole member of the OLP GP with a 100% membership interest in the OLP GP; such membership interest has been duly authorized and validly issued in accordance with the OLP GP Limited Liability Company Agreement and is fully paid (to the extent required by the OLP GP Limited Liability Company Agreement) and nonassessable (except as such nonassessability may be affected by Section 18-607 of the Delaware LLC Act); and the Partnership owns such member interest free and clear of all Liens (i) in respect of which a financing statement under the Uniform Commercial Code of the state of Delaware, naming it as debtor is on file as of a recent date in the office of the Secretary of State of the State of Delaware or (ii) otherwise known to such counsel, without independent investigation other than those created by or arising under the Delaware LLC Statute or pursuant to the OLP GP Limited Liability Company Agreement.

*9. Ownership of the Operating Subsidiaries.* The Operating Partnership directly or indirectly owns 100% of the outstanding capital stock, membership interests or partnership interests of each Operating Subsidiary, as the case may be; all such stock, membership interests or partnership interests have been duly authorized and validly issued in accordance with the respective Operating Subsidiaries Operative Documents and are fully paid (to the extent required under the applicable Operating Subsidiaries Operative Documents) and nonassessable (except as such nonassessability may be affected by Section 18-607 of the Delaware LLC Act or Section 17-607 of the Delaware LP Act, as applicable); and the owners

own all such stock, membership interests or partnership interests free and clear of all Liens (i) in respect of which a financing statement under the Uniform Commercial Code of the State of Delaware naming the Operating Partnership as debtor is on file as of a recent date in the office of the Secretary of State of the State of Delaware [(except for any such financing statements filed pursuant to the Credit Agreement)] or (ii) otherwise known to such counsel, without independent investigation[, other than those created pursuant to the Credit Agreement] other than those created by or arising under the Delaware LP Act or the Delaware LLC Act, as applicable, or pursuant to the applicable Operating Subsidiaries Operative Documents.

**10. No Preemptive Rights, Registration Rights or Options.** Except as described in the Prospectus, there are no preemptive rights or other rights to subscribe for or to purchase, nor any restriction upon the voting or transfer of any equity securities of any of the Partnership Entities or the Operating Subsidiaries, in each case pursuant to the Partnership Agreement, the GP Partnership Agreement, the OLP Partnership Agreement, the DCP Midstream GP, LLC Limited Liability Company Agreement, the OLP GP Limited Liability Company Agreement or the Operating Subsidiaries Operative Documents or, to the knowledge of such counsel, any other agreement or instrument listed as an exhibit to the Registration Statement to which the Partnership, the General Partner, the Operating Partnership, DCP Midstream GP, LLC, the OLP GP or the Operating Subsidiaries is a party or by which any of them may be bound. To the knowledge of such counsel, neither the filing of the Registration Statement nor the offering or sale of the Units as contemplated by this Agreement gives rise to any rights for or relating to the registration of any Units or other securities of the Partnership, the General Partner, the Operating Partnership, DCP Midstream GP, LLC, the OLP GP or the Operating Subsidiaries, other than as described in the Prospectus, provided in the Partnership Agreement or as have been waived. To such counsel's knowledge, except as described in the Prospectus, there are no outstanding options or warrants to purchase (A) any Common Units, Subordinated Units or other interests in the Partnership, (B) any partnership interests in the General Partner or the Operating Partnership, (C) any membership interests in DCP Midstream GP, LLC or the OLP GP, or (D) any shares of stock, membership interests or partnership interests, as applicable, in any Operating Subsidiary.

**11. Authority.** The Partnership has all requisite partnership power and authority to issue, sell and deliver (i) the Units, in accordance with and upon the terms and conditions set forth in this Agreement and the Partnership Agreement, and (ii) the Sponsor Units and the Incentive Distribution Rights, in accordance with and upon the terms and conditions set forth in the Partnership Agreement and the Contribution Agreement. All corporate, partnership and limited liability company action, as the case may be, required to be taken by the Partnership Entities or any of their stockholders, members or partners for the authorization, issuance, sale and delivery of the Units, the Sponsor Units and the Incentive Distribution Rights, the execution and delivery by the Partnership Entities of the Operative Agreements and the consummation of the transactions (including the Transactions) contemplated by this Agreement and the Operative Agreements, has been validly taken.

**12. Authorization, Execution and Delivery of Agreement.** This Agreement has been duly authorized, executed and delivered by each of the Partnership, the General Partner, DCP Midstream GP, LLC and the Operating Partnership.

**13. Enforceability of Other Agreements.**

- (a) The Partnership Agreement has been duly authorized, executed and delivered by the General Partner and, assuming due authorization execution and delivery by the Organizational Limited Partner (as defined in the Partnership Agreement), is a valid and legally binding agreement of the General Partner, enforceable against the General Partner in accordance with its terms;
- (b) the GP Partnership Agreement has been duly authorized, executed and delivered by DCP Midstream GP, LLC and is a valid and legally binding agreement of DCP Midstream GP, LLC, enforceable against DCP Midstream GP, LLC in accordance with its terms;
- (c) the OLP Partnership Agreement has been duly authorized, executed and delivered by the OLP GP and the Partnership and is a valid and legally binding agreement of the OLP GP and the Partnership, enforceable against the OLP GP and the Partnership in accordance with its terms;
- (e) the OLP GP Limited Liability Company Agreement has been duly authorized, executed and delivered by the Partnership and is a valid and legally binding agreement of the Partnership, enforceable against the Partnership in accordance with its terms;
- (f) the Operating Subsidiaries Operative Documents have been duly authorized, executed and delivered by the Operating Partnership and any other necessary parties, as applicable, and is a valid and legally binding agreement of the respective parties, enforceable against the respective parties in accordance with its terms;
- (g) the Omnibus Agreement has been duly authorized, executed and delivered by each of the General Partner, the Partnership, the Operating Partnership, OLP GP and DEFS and is a valid and legally binding agreement of each of them, enforceable against each of them in accordance with its terms;
- (h) the Credit Agreement have been duly authorized, executed and delivered by the Operating Partnership, the Partnership and the Operating Subsidiaries that the parties thereto and, assuming due authorization, execution and delivery by the other parties thereto, is a valid and legally binding agreement of the Operating Partnership, the Partnership and the Operating Subsidiaries that are parties thereto and, assuming due authorization, execution and delivery by the other parties thereto, enforceable against each of them in accordance with its terms; and
- (i) the Contribution Documents have been duly authorized, executed and delivered by the Partnership Entities that are parties thereto and, assuming due authorization, execution and delivery by the other parties thereto, the Contribution Documents that are governed by Delaware or New York law are

valid and legally binding obligations of each of the Partnership Entities that are parties thereto, enforceable against each of them in accordance with their terms;

*provided* that, with respect to each agreement described in this paragraph 13, the enforceability thereof may be limited by (A) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (B) public policy, applicable law relating to fiduciary duties and indemnification and contribution and an implied covenant of good faith and fair dealing.

**14. No Conflicts.** None of the offering, issuance and sale by the Partnership of the Units being delivered at such Delivery Date, the execution, delivery and performance of this Agreement or the Operative Agreements by the Partnership Entities that are parties hereto or thereto, or the consummation of the transactions contemplated hereby and thereby (including the Transactions) will conflict with, result in a breach, default or violation (and no event has occurred that, with notice or lapse of time or otherwise, would constitute such an event) or imposition of any Lien upon any property or assets of the Partnership Entities pursuant to, (i) the certificate of limited partnership, agreement of limited partnership, certificate of formation, limited liability company agreement, certificate of incorporation or bylaws of each of the Partnership Entities, (ii) the Operative Agreements or any other agreement filed as an exhibit to the Registration Statement or (iii) the Delaware LP Act, the Delaware LLC Act, the Delaware General Corporation Law (the "DGCL"), the laws of the State of Texas or federal law, which breaches, violations defaults or Liens, in the case of clauses (ii) or (iii), would reasonably be expected to have a material adverse effect, could materially impair the ability of any of the Partnership Entities to perform their obligations under this Agreement or the Operative Agreements; provided, however, that no opinion is expressed pursuant to this paragraph 14 with respect to securities and other anti-fraud statutes, rules or regulations.

**15. No Consents.** No consent, approval, authorization, order, registration, notice, filing or qualification ("consent") with any governmental authority under the Delaware LP Act, the Delaware LLC Act, the DGCL, Texas law, or federal law is required in connection with the offering, issuance and sale by the Partnership of the Units, the execution, delivery and performance of this Agreement and the Operative Agreements by the Partnership Entities that are parties hereto and thereto or the consummation by the Partnership Entities of the transactions contemplated hereby and thereby (including the Transactions) or for the conveyance of the properties located in the State of Texas purported to be conveyed by the Contribution Documents, except (i) for such consents required under the Securities Act, the Exchange Act and state securities or "Blue Sky" laws, as to which such counsel need not express any opinion, (ii) for such consents that have been obtained or made, (iii) for such consents that (A) are of a routine or administrative nature, (B) are not customarily obtained or made prior to the consummation of transactions such as those contemplated by this Agreement or the Operative Agreements and (C) are expected in the reasonable judgment of the General Partner to be obtained or made in the ordinary course of business subsequent to the consummation of the Transactions (other than those contemplated by the Credit Agreement), (iv) for such consents that, if not obtained, would not, individually or in the aggregate, have a Material Adverse Effect, or (v) as disclosed in the Prospectus.

**16. Descriptions and Summaries.** The statements in the Preliminary Prospectus dated November 23, 2005 provided to the Underwriters for use in connection with the public offering of the Units, the Registration Statement and the Prospectus under the captions “Risk Factors — Risks Related to Our Business — A change in the jurisdictional characterization of some of our assets by federal, state or local regulatory agencies or a change in policy by those agencies may result in increased regulation of our assets, which may cause our revenues to decline and operating expenses to increase,” “Our Cash Distribution Policy and Restrictions on Distributions,” “Provisions of Our Partnership Agreement Relating to Cash Distributions,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Capital Requirements — Description of Credit Agreement,” “Business — Regulation of Operations,” “Business — Environmental Matters,” “Management — Long-Term Incentive Plan,” “Certain Relationships and Related Party Transactions,” “Conflicts of Interest and Fiduciary Duties,” “Description of the Common Units,” “The Partnership Agreement” and “Investment in DCP Midstream Partners, LP by Employee Benefit Plans,” insofar as they constitute descriptions of agreements or refer to statements of law or legal conclusions are accurate and complete in all material respects; and the Common Units, the Subordinated Units and the Incentive Distribution Rights conform in all material respects to the descriptions thereof contained in the Registration Statement and the Prospectus under the captions “Summary — The Offering,” “Our Cash Distribution Policy and Restrictions on Distributions,” “Provisions of Our Partnership Agreement Relating to Cash Distributions,” “Description of the Common Units” and “The Partnership Agreement.”

**17. Legal Proceedings or Contracts to be Described or Filed.** To the knowledge of such counsel, (i) there are no legal or governmental proceedings pending or threatened to which any of the Partnership Entities is a party or to which any of their respective properties is subject that are required to be described in the Registration Statement or the Prospectus but are not so described as required, and (ii) there are no agreements, contracts, indentures, leases or other instruments that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement that are not described or filed as required by the Securities Act.

**18. Tax Opinion.** The opinion of Vinson & Elkins L.L.P. that is filed as Exhibit 8.1 to the Registration Statement is confirmed, and the Underwriters may rely upon such opinion as if it were addressed to them.

**19. Effectiveness of Registration Statement.** The Registration Statement was declared effective under the Securities Act on December 1, 2005; to the knowledge of such counsel, no stop order suspending the effectiveness of the Registration Statement [or the Rule 462(b) Registration Statement] has been issued and no proceedings for that purpose have been instituted or threatened by the Commission; and any required filing of the Prospectus pursuant to Rule 424(b) has been made in the manner and within the time period required by such Rule.

**20. Form of Registration Statement and Prospectus.** The Registration Statement and the Prospectus and any further amendments and supplements thereto made by the Partnership prior to such Delivery Date (except for the financial statements and the notes and schedules thereto, and other financial and statistical data included in the Registration Statement

or the Prospectus, as to which such counsel need not express any opinion) comply as to form in all material respects with the requirements of the Securities Act and the Rules and Regulations.

**21. Investment Company; Public Utility Holding Company.** None of the Partnership Entities is an “investment company” within the meaning of the Investment Company Act of 1940, as amended, or a “public utility company” or a “holding company” as such terms are defined in the Public Utility Holding Company Act of 1935, as amended.

In addition, such counsel shall state that they have participated in conferences with officers and other representatives of the DCP Parties, representatives of the independent public accountants of the Partnership, and representatives of the Underwriters, at which the contents of the Preliminary Prospectus dated November 23, 2005 provided to the Underwriters for use in connection with the public offering of the Units, the Registration Statement and the Prospectus and related matters were discussed, and although such counsel did not independently verify, is not passing upon and does not assume any responsibility for the accuracy, completeness or fairness of the statements contained in such Preliminary Prospectus, the Registration Statement and the Prospectus (except to the extent specified in paragraph 16 above), on the basis of the foregoing, no facts have come to the attention of such counsel which lead them to believe that (A) such Preliminary Prospectus (other than (i) the financial statements included therein, including the notes and schedules thereto and the independent registered public accounting firm’s reports thereon (ii) the other financial and statistical data included therein, as to which such counsel need express no belief) as of the Applicable Time contained an untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the price of the Units and disclosures directly relating thereto and derived therefrom are included on the cover page of the Prospectus or under the captions “Use of Proceeds,” “Capitalization” or “Underwriting” in the Prospectus or in the unaudited pro forma financial information included therein, (B) the Registration Statement (other than (i) the financial statements included therein, including the notes and schedules thereto and the independent registered public accounting firm’s reports thereon (ii) the other financial and statistical data included therein, as to which such counsel need express no belief) at the time it became effective contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (C) that the Prospectus (other than (i) the financial statements included therein, including the notes and schedules thereto and the independent registered public accounting firm’s reports thereon, and (ii) the other financial and statistical data included therein, as to which such counsel need express no belief) as of its issue date and as of such Delivery Date contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

In rendering such opinion, such counsel may (A) rely in respect of matters of fact upon certificates of officers and employees of the DCP Parties and upon information obtained from public officials, (B) assume that all documents submitted to them as originals are authentic, that all copies submitted to them conform to the originals thereof, and that the signatures on all documents examined by them are genuine, (C) state that their opinion is limited to federal laws, the Delaware LP Act, the Delaware LLC Act, the DGCL, and the laws of the State of Texas,

(D) with respect to the opinions expressed in paragraph 1 above as to the due qualification or registration as a foreign limited partnership, limited liability company or corporation, as the case may be, of the Partnership, the General Partner, the Operating Partnership, DCP Midstream GP, LLC, the OLP GP and the Operating Subsidiaries, state that such opinions are based upon certificates of foreign qualification or registration provided by the Secretary of State of the states listed on **Annex I** (each of which will be dated not more than fourteen days prior to such Delivery Date and shall be provided to the Underwriters), (E) state that they express no opinion with respect to any permits to own or operate any real or personal property, (F) state that they express no opinion with respect to the title of any of the Partnership Entities to any of their respective real or personal property purported to be transferred by the Contribution Documents nor with respect to the accuracy or descriptions of real or personal property, (G) state that they express no opinion with respect to state or local taxes or tax statutes to which any of the limited partners of the Partnership or any of the Partnership Entities may be subject, and (H) rely on a certificate of an officer of the General Partner certifying that certain financial covenants in the Credit Agreement have been met in rendering their opinions expressed in paragraph 13.

**Exhibit C**

**Opinion of Brent Backes**

1. *Formation of DEFS.* DEFS has been duly formed and is validly existing in good standing as a limited liability company under the laws of the State of Delaware with full limited liability company power and authority to enter into and perform its obligations under this Agreement.

2. *Authorization, Execution and Delivery of Agreement.* This Agreement has been duly authorized, executed and delivered by DEFS.

3. *Enforceability of Certain Agreements.*

(a) The GP Partnership Agreement has been duly authorized, executed and delivered by DEFS and, assuming due authorization, execution and delivery by the other parties thereto, is a valid and legally binding agreement of DEFS, enforceable against DEFS in accordance with its terms;

(b) The DCP Midstream GP, LLC Limited Liability Company Agreement has been duly authorized, executed and delivered by DEFS and is a valid and legally binding agreement of DEFS, enforceable against DEFS in accordance with its terms;

(c) The Omnibus Agreement has been duly authorized, executed and delivered by DEFS and, assuming due authorization, execution and delivery by the other parties thereto, is a valid and legally binding agreement of DEFS, enforceable against DEFS in accordance with its terms; and

(d) The Contribution Documents to which DEFS or any of its affiliates (other than any Partnership Entity) are a party have been duly authorized, executed and delivered by DEFS and any of its affiliates (other than any Partnership Entity), as applicable, and, assuming due authorization, execution and delivery by the other parties thereto, are valid and legally binding agreements of DEFS and its affiliates (other than any Partnership Entity) enforceable against each of them in accordance with their terms.

*provided* that, with respect to each agreement described in this paragraph 3, the enforceability thereof may be limited by (A) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (B) public policy, applicable law relating to fiduciary duties and indemnification and contribution and an implied covenant of good faith and fair dealing.

4. *Sufficiency of Contribution Documents.* Each of the Contribution Documents is in a form legally sufficient as between the parties thereto to convey to the transferee thereunder all of the right, title and interest of the transferor named therein in and to the properties located in the State of Texas as described in such Contribution Documents, subject

to the conditions, reservations and limitations contained in the Contribution Documents, except for motor vehicles or other property requiring conveyance of certificated title as to which the Contribution Documents are legally sufficient to compel delivery of such certificated title.

**5. No Conflicts.** None of the execution, delivery and performance by DEFS of this Agreement or the Operative Agreements to which DEFS is a party, or the consummation by DEFS of the transactions contemplated hereby and thereby (including the Transactions) will conflict with, result in a breach, default or violation (and no event has occurred that, with notice or lapse of time or otherwise, would constitute such an event) or imposition of any Lien upon any property or assets of the Partnership Entities pursuant to, (i) the certificate of formation and limited liability company agreement of DEFS, (ii) the Operative Agreements or any other agreement filed as an exhibit to the Registration Statement or (iii) the Delaware LP Act, the Delaware LLC Act, the DGCL, or federal law, which breaches, violations, defaults or Liens, in the case of clauses (ii) or (iii), would reasonably be expected to have a Material Adverse Effect, or could materially impair the ability of any of DEFS or any of the Partnership Entities to perform their obligations under this Agreement or the Operative Agreements; provided, however, that no opinion is expressed pursuant to this paragraph 4 with respect to securities and other anti-fraud statutes, rules or regulations. None of the offering, issuance and sale by the Partnership of the Units being delivered at such Delivery Date, the execution, delivery and performance of this Agreement, the Contribution Documents or the Credit Agreement by DEFS or any of the Partnership Entities that are parties thereto and the consummation of the transactions contemplated hereby and thereby (including the Transactions) will conflict with, result in a breach, default (and no event has occurred that, with notice or lapse of time or otherwise, would constitute such an event) or violation or imposition of any Lien (other than those arising under the Credit Agreement) upon any property or assets of the Partnership Entities pursuant to, (i) any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument known to such counsel (excluding the Operative Agreements and any other agreements and instruments listed as exhibits to the Registration Statement) to which any of DEFS or the Partnership Entities or their properties may be bound, or (ii) any order, judgment, decree or injunction known to such counsel of any court or governmental agency or body to which DEFS or any of the Partnership Entities or any of their properties is subject, which breaches, violations or defaults would reasonably be expected to have a Material Adverse Effect, could materially impair the ability of any of DEFS or any of the Partnership Entities to perform their obligations under this Agreement or the Operative Agreements; or subject the limited partners of the Partnership to any material liability or disability.

**6. No Preemptive Rights, Registration Rights or Options.** Except as described in the Prospectus, there are no preemptive rights or other rights to subscribe for or to purchase, nor any restriction upon the voting or transfer of any equity securities of any of the Partnership Entities or the Operating Subsidiaries, in each case pursuant to any agreement or instrument to which DEFS or any of its affiliates (other than any Partnership Entity) is a party or by which DEFS or any of its affiliates (other than any Partnership Entity) may be bound (other than the GP Partnership Agreement, the Partnership Agreement, the Operating Partnership Agreement, the Operating Subsidiaries Operative Documents and those agreements and instruments listed as exhibits to the Registration Statement). To the knowledge of such counsel, neither the filing of the Registration Statement nor the offering or sale of the Units as contemplated by this Agreement gives rise to any rights for or relating to the registration of any

Units or other securities of the Partnership, the General Partner, the Operating Partnership, DCP Midstream GP, LLC, the OLP GP or the Operating Subsidiaries, other than as described in the Prospectus, provided in the Partnership Agreement or as have been waived. To such counsel's knowledge, except as described in the Prospectus, there are no outstanding options or warrants to purchase (A) any Common Units, Subordinated Units or other interests in the Partnership, (B) any partnership interests in the General Partner or the Operating Partnership, (C) any membership interests in DCP Midstream GP, LLC or the OLP GP, or (D) any shares of stock, membership interests or partnership interests, as applicable, in any Operating Subsidiary.

**7. Litigation.** Except as described in the Prospectus, to the knowledge of such counsel, there is no litigation, proceeding or governmental investigation pending or threatened against any of the Partnership Entities or to which any of the Partnership Entities is a party or to which any of their respective operations, assets or properties (as described in the prospectus) are subject, which, if adversely determined, would reasonably be expected to have a Material Adverse Effect.

In addition, such counsel shall state that he has participated in conferences with officers and other representatives of the DCP Parties, representatives of the independent public accountants of the Partnership, and representatives of the Underwriters, at which the contents of the Preliminary Prospectus dated November 23, 2005 provided to the Underwriters for use in connection with the public offering of the Units, the Registration Statement and the Prospectus and related matters were discussed, and although such counsel did not independently verify, is not passing upon and does not assume any responsibility for the accuracy, completeness or fairness of the statements contained in such Preliminary Prospectus, the Registration Statement and the Prospectus, on the basis of the foregoing, no facts have come to the attention of such counsel which lead him to believe that (A) such Preliminary Prospectus (other than (i) the financial statements included therein, including the notes and schedules thereto and the independent registered public accounting firm's reports thereon (ii) the other financial and statistical data included therein, as to which such counsel need express no belief) as of the Applicable Time contained an untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the price of the Units and disclosures directly relating thereto and derived therefrom are included on the cover page of the Prospectus or under the captions "Use of Proceeds," "Capitalization" or "Underwriting" in the Prospectus or in the unaudited pro forma financial information included therein, (B) the Registration Statement (other than (i) the financial statements included therein, including the notes and schedules thereto and the independent registered public accounting firm's reports thereon and (ii) the other financial and statistical data included therein, as to which such counsel need express no belief) at the time it became effective contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (C) that the Prospectus (other than (i) the financial statements included therein, including the notes and schedules thereto and the independent registered public accounting firm's reports thereon, and (ii) the other financial and statistical data included therein, as to which such counsel need express no belief) as of its issue date and as of such Delivery Date contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

In rendering such opinion, such counsel may (A) rely in respect of matters of fact upon certificates of officers and employees of the DCP Parties and upon information obtained from public officials, (B) assume that all documents submitted to them as originals are authentic, that all copies submitted to them conform to the originals thereof, and that the signatures on all documents examined by them are genuine, (C) state that their opinion is limited to Federal laws, the Delaware LP Act, the Delaware LLC Act, the DGCL and the laws of the State of Colorado, (D) state that they express no opinion with respect to the title of any of the DCP Parties to any of their respective real or personal property purported to be transferred by the Contribution Documents nor with respect to the accuracy or descriptions of real or personal property, and (E) state that they express no opinion with respect to state or local taxes or tax statutes to which any of the limited partners of the Partnership or any of the Partnership Entities may be subject.

**Exhibit D**

**Form of Local Counsel Opinion**

**[Letterhead of Local Counsel]**

**1. Qualification of the General Partner, the Partnership, DCP Midstream GP, LLC, the OLP GP and the Operating Partnership.** The General Partner, the Partnership, DCP Midstream GP, LLC, the OLP GP and the Operating Partnership are each qualified and registered as a foreign limited partnership or foreign limited liability company, as applicable, in the State of Louisiana and are qualified to transact business in the State of Louisiana.

**2. Limited Liability.** Upon the consummation of the Transactions, pursuant to the express provisions of La. R.S. 9:3425, (i) the liability of the Partnership for the liabilities of the Operating Partnership or the Operating Subsidiaries arising solely from the status of the Partnership as a limited partner of the Operating Partnership will be governed by the laws of the State of Delaware and (ii) the liability of Unitholders for the liabilities of the Partnership, the Operating Partnership or the Operating Subsidiaries arising solely from the status of the Unitholders as limited partners of the Partnership will be governed by the laws of the State of Delaware.

**3. Enforceability of Contribution Documents.** Each of the Contribution Documents governed by Applicable Louisiana Law or relating to the transfer of property located in the State of Louisiana, assuming the due authorization, execution and delivery thereof by all parties thereto (and in the case of any Contribution Document that is governed by the laws of any jurisdiction other than the State of Louisiana, to the extent that such Contribution Document is a validly and legally binding agreement under such law and that such law applies thereto) is a valid and legally binding agreement of the parties thereto under Applicable Louisiana Law, enforceable against such parties in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general application relating to or affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**4. Sufficiency of Contribution Documents.** Each of the Contribution Documents is in a form legally sufficient as between the parties thereto under Applicable Louisiana Law to convey to the transferee thereunder all of the right, title and interest of the transferor named therein in and to the properties located in the Louisiana, as described in such Contribution Document, subject to the conditions, reservations and limitations contained in the Contribution Documents, except for (i) motor vehicles or other property requiring transfer of certificated title and (ii) agreements, licenses, leases and permits which by their own terms expressly prohibit transfer, as to which such special, Louisiana counsel renders no opinion. To be effective against third persons, any Contribution Document which purports to transfer immovable property or an interest therein must be filed for registry in the conveyance records of the parish in the State of Louisiana wherein the immovable property is located. Each of the Contribution Documents which purports to transfer immovable property or an interest therein

located in the State of Louisiana is in a form legally sufficient for filing for registry in the conveyance records of the parish in the State of Louisiana wherein the immovable property is located.

*4. No Conflicts.* The offering, issuance and sale by the Partnership of the Units being delivered on any Delivery Date, the execution, delivery and performance of the Underwriting Agreement, the Contribution Documents and the Credit Agreement by each Partnership Entity that is a party thereto, and the consummation of the transactions (including the Transactions) contemplated thereby, will not conflict with, result in a breach, default (and no event has occurred that, with notice or lapse of time or otherwise, would constitute such an event) or violation or imposition of any Lien upon any property or assets of the Partnership Entities pursuant to: (a) any order, judgment, decree or injunction known to such special Louisiana counsel of any Louisiana Governmental Authority to which any of the Partnership Entities or any of their properties is subject; or (b) any Applicable Louisiana Law, which conflicts, breaches, violations, defaults or Liens would reasonably be expected to have a Material Adverse Effect.

*5. No Consents.* No consent, approval, authorization, order, registration, notice, filing or qualification (“**Consents**”) of, with, to or at the direction of any Louisiana Governmental Authorities under Applicable Louisiana Law is required in connection with the offering, issuance and sale by the Partnership of the Units, delivery and performance of the Underwriting Agreement, the Contribution Documents or the Credit Agreement by each Partnership Entity that is a party thereto, or the consummation of the Transactions by the Partnership Entities, except (i) for such Consents that have been obtained or made, (ii) for such Consents that (A) are of a routine or administrative nature, (B) are not customarily obtained or made prior to the consummation of transactions such as those contemplated by the Underwriting Agreement, the Contribution Documents or the Credit Agreement and (C) are expected to be obtained or made in the ordinary course of business subsequent to the consummation of the Transactions, (iii) for the recording or filing of mortgages, deeds of trust, financing statements and other documents as contemplated by the Credit Agreement, (iv) for such Consents that, if not obtained, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or (v) as otherwise provided for or disclosed in the Prospectus.

In rendering such opinion, such special Louisiana counsel may (A) rely in respect of matters of fact upon certificates of officers and employees of the DCP Parties and upon information obtained from public officials, (B) assume that all documents submitted to them as originals are authentic, that all copies submitted to them conform to the originals thereof, and that the signatures on all documents examined by them are genuine, (C) state that their opinion is limited to the laws of the State of Louisiana, (D) with respect to the opinions expressed in paragraph 1 above as to (i) the due qualification or registration as a foreign limited partnership or foreign limited liability company, as the case may be, of the Partnership, the General Partner, the Operating Partnership, DCP Midstream GP, LLC, and the OLP GP, and (ii) the qualification to transact business in the State of Louisiana of each of the Partnership Entities, state that such opinions are based upon certificates of foreign qualification or registration provided by the Louisiana Secretary of State (each of which will be dated not more than fourteen days prior to such Delivery Date and shall be provided to the Underwriters), (E) state that they express no opinion with respect to any permits to own or operate any real or personal property, (F) state that

they express no opinion with respect to the title of any of the Partnership Entities to any of their respective real or personal property purported to be transferred by the Contribution Documents nor with respect to the accuracy or descriptions of real or personal property, (G) state that they express no opinion with respect to state or local taxes or tax statutes to which any of the limited partners of the Partnership or any of the Partnership Entities may be subject, (H) provide that the term "**Applicable Louisiana Law**" shall mean those statutes, rules and regulations of the State of Louisiana which, in such special Louisiana counsel's experience, are customarily applicable to transactions of the type contemplated by the Transactions; provided that "**Applicable Louisiana Law**" shall not include, under any circumstances, state securities laws, broker/dealer and "Blue Sky" laws, (I) provide that the term "**Louisiana Governmental Authorities**" shall mean the governmental and regulatory authorities, bodies, instrumentalities and agencies and courts of the State of Louisiana, excluding its political subdivisions and local agencies, (J) for purposes of the opinions set forth in paragraph 3, assume that the laws of any jurisdiction governing a Contribution Document that is not governed by Louisiana law are identical in all respects to Applicable Louisiana Law, (K) provide that the term "**Contribution Document(s)**" shall be limited to those agreements specifically listed on a schedule attached to the opinion of such special Louisiana counsel, and (L) state that such opinion is subject to the additional qualifications, limitations and assumptions to be set forth in the final form of opinion to be delivered by such special Louisiana counsel.

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**EXECUTION COPY**

**FIRST AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
DCP MIDSTREAM PARTNERS, LP**

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## **FIRST AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF DCP MIDSTREAM PARTNERS, LP**

THIS FIRST AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF DCP MIDSTREAM PARTNERS, LP dated as of December 7, 2005, is entered into by and between DCP Midstream GP, LP, a Delaware limited partnership, as the General Partner, and Duke Energy Field Services, LLC, a Delaware limited liability company, as the Organizational Limited Partner, together with any other Persons who become Partners in the Partnership or parties hereto as provided herein. In consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:

### **ARTICLE I DEFINITIONS**

#### **Section 1.1 Definitions.**

The following definitions shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the terms used in this Agreement.

**“Acquisition”** means any transaction in which any Group Member acquires (through an asset acquisition, merger, stock acquisition or other form of investment) control over all or a portion of the assets, properties or business of another Person for the purpose of increasing the operating capacity or revenues of the Partnership Group from the operating capacity or revenues of the Partnership Group existing immediately prior to such transaction.

**“Additional Book Basis”** means the portion of any remaining Carrying Value of an Adjusted Property that is attributable to positive adjustments made to such Carrying Value as a result of Book-Up Events. For purposes of determining the extent that Carrying Value constitutes Additional Book Basis:

(a) Any negative adjustment made to the Carrying Value of an Adjusted Property as a result of either a Book-Down Event or a Book-Up Event shall first be deemed to offset or decrease that portion of the Carrying Value of such Adjusted Property that is attributable to any prior positive adjustments made thereto pursuant to a Book-Up Event or Book-Down Event.

(b) If Carrying Value that constitutes Additional Book Basis is reduced as a result of a Book-Down Event and the Carrying Value of other property is increased as a result of such Book-Down Event, an allocable portion of any such increase in Carrying Value shall be treated as Additional Book Basis; *provided*, that the amount treated as Additional Book Basis pursuant hereto as a result of such Book-Down Event shall not exceed the amount by which the Aggregate Remaining Net Positive Adjustments after such Book-Down Event exceeds the remaining Additional Book Basis attributable to all of the Partnership’s Adjusted Property after such Book-Down Event (determined without regard to the application of this clause (b) to such Book-Down Event).

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**“Additional Book Basis Derivative Items”** means any Book Basis Derivative Items that are computed with reference to Additional Book Basis. To the extent that the Additional Book Basis attributable to all of the Partnership’s Adjusted Property as of the beginning of any taxable period exceeds the Aggregate Remaining Net Positive Adjustments as of the beginning of such period (the “**Excess Additional Book Basis**”), the Additional Book Basis Derivative Items for such period shall be reduced by the amount that bears the same ratio to the amount of Additional Book Basis Derivative Items determined without regard to this sentence as the Excess Additional Book Basis bears to the Additional Book Basis as of the beginning of such period.

**“Adjusted Capital Account”** means the Capital Account maintained for each Partner as of the end of each fiscal year of the Partnership, (a) increased by any amounts that such Partner is obligated to restore under the standards set by Treasury Regulation Section 1.704-1(b)(2)(ii)(c) (or is deemed obligated to restore under Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5)) and (b) decreased by (i) the amount of all losses and deductions that, as of the end of such fiscal year, are reasonably expected to be allocated to such Partner in subsequent years under Sections 704(e)(2) and 706(d) of the Code and Treasury Regulation Section 1.751-1(b)(2)(ii), and (ii) the amount of all distributions that, as of the end of such fiscal year, are reasonably expected to be made to such Partner in subsequent years in accordance with the terms of this Agreement or otherwise to the extent they exceed offsetting increases to such Partner’s Capital Account that are reasonably expected to occur during (or prior to) the year in which such distributions are reasonably expected to be made (other than increases as a result of a minimum gain chargeback pursuant to Section 6.1(d)(i) or 6.1(d)(ii)). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith. The “Adjusted Capital Account” of a Partner in respect of a General Partner Unit, a Common Unit, a Subordinated Unit, a Class B Unit or an Incentive Distribution Right or any other Partnership Interest shall be the amount that such Adjusted Capital Account would be if such General Partner Unit, Common Unit, Subordinated Unit, Class B Unit, Incentive Distribution Right or other Partnership Interest were the only interest in the Partnership held by such Partner from and after the date on which such General Partner Unit, Common Unit, Class B Unit, Subordinated Unit, Incentive Distribution Right or other Partnership Interest was first issued.

**“Adjusted Operating Surplus”** means, with respect to any period, Operating Surplus generated with respect to such period (a) less any net decrease in cash reserves for Operating Expenditures with respect to such period not relating to an Operating Expenditure made with respect to such period, and (b) plus (i) any net decrease made in subsequent periods in cash reserves for Operating Expenditures initially established with respect to such period and (ii) any net increase in cash reserves for Operating Expenditures with respect to such period required by any debt instrument for the repayment of principal, interest or premium. Adjusted Operating Surplus does not include that portion of Operating Surplus included in clause (a)(i) of the definition of Operating Surplus.

**“Adjusted Property”** means any property the Carrying Value of which has been adjusted pursuant to Section 5.5(d)(i) or 5.5(d)(ii).

**“Affiliate”** means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with,

the Person in question; *provided* that, for the avoidance of doubt, the term “Affiliate” includes any Person that, directly or indirectly, is the beneficial owner of 25% or more of the equity interests in DEFS or has the right to appoint 25% or more of the members of the board of directors of DEFS. As used herein, the term “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Aggregate Remaining Net Positive Adjustments” means, as of the end of any taxable period, the sum of the Remaining Net Positive Adjustments of all the Partners.

“Agreed Allocation” means any allocation, other than a Required Allocation, of an item of income, gain, loss or deduction pursuant to the provisions of Section 6.1, including a Curative Allocation (if appropriate to the context in which the term “Agreed Allocation” is used).

“Agreed Value” of any Contributed Property means the fair market value of such property or other consideration at the time of contribution as determined by the General Partner. The General Partner shall use such method as it determines to be appropriate to allocate the aggregate Agreed Value of Contributed Properties contributed to the Partnership in a single or integrated transaction among each separate property on a basis proportional to the fair market value of each Contributed Property.

“Agreement” means this First Amended and Restated Agreement of Limited Partnership of DCP Midstream Partners, LP, as it may be amended, supplemented or restated from time to time.

“Associate” means, when used to indicate a relationship with any Person, (a) any corporation or organization of which such Person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock or other voting interest; (b) any trust or other estate in which such Person has at least a 20% beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity; and (c) any relative or spouse of such Person, or any relative of such spouse, who has the same principal residence as such Person.

“Available Cash” means, with respect to any Quarter ending prior to the Liquidation Date:

(a) the sum of (i) all cash and cash equivalents of the Partnership Group on hand at the end of such Quarter, and (ii) if the General Partner so determines, all or any portion of any additional cash and cash equivalents of the Partnership Group on hand on the date of determination of Available Cash with respect to such Quarter, less

(b) the amount of any cash reserves established by the General Partner to (i) provide for the proper conduct of the business of the Partnership Group (including reserves for future capital expenditures and for anticipated future credit needs of the Partnership Group) subsequent to such Quarter, (ii) comply with applicable law or any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which any Group Member is a party or by which it is bound or its assets are subject or (iii) provide funds for distributions under Section 6.4 or 6.5 in respect of any one or more of the next four Quarters;

*provided, however,* that the General Partner may not establish cash reserves pursuant to (iii) above if the effect of such reserves would be that the Partnership is unable to distribute the Minimum Quarterly Distribution on all Common Units, plus any Cumulative Common Unit Arrearage on all Common Units, with respect to such Quarter; and, *provided further*, that disbursements made by a Group Member or cash reserves established, increased or reduced after the end of such Quarter but on or before the date of determination of Available Cash with respect to such Quarter shall be deemed to have been made, established, increased or reduced, for purposes of determining Available Cash, within such Quarter if the General Partner so determines.

Notwithstanding the foregoing, “*Available Cash*” with respect to the Quarter in which the Liquidation Date occurs and any subsequent Quarter shall equal zero.

“*Board of Directors*” means, with respect to the Board of Directors of the General Partner, its board of directors or managers, as applicable, if a corporation or limited liability company, or if a limited partnership, the board of directors or board of managers of the general partner of the General Partner.

“*Book Basis Derivative Items*” means any item of income, deduction, gain or loss included in the determination of Net Income or Net Loss that is computed with reference to the Carrying Value of an Adjusted Property (e.g., depreciation, depletion, or gain or loss with respect to an Adjusted Property).

“*Book-Down Event*” means an event that triggers a negative adjustment to the Capital Accounts of the Partners pursuant to Section 5.5(d).

“*Book-Tax Disparity*” means with respect to any item of Contributed Property or Adjusted Property, as of the date of any determination, the difference between the Carrying Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for federal income tax purposes as of such date. A Partner’s share of the Partnership’s Book-Tax Disparities in all of its Contributed Property and Adjusted Property will be reflected by the difference between such Partner’s Capital Account balance as maintained pursuant to Section 5.5 and the hypothetical balance of such Partner’s Capital Account computed as if it had been maintained strictly in accordance with federal income tax accounting principles.

“*Book-Up Event*” means an event that triggers a positive adjustment to the Capital Accounts of the Partners pursuant to Section 5.5(d).

“*Business Day*” means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States of America or the State of Colorado shall not be regarded as a Business Day.

“*Capital Account*” means the capital account maintained for a Partner pursuant to Section 5.5. The “*Capital Account*” of a Partner in respect of a General Partner Unit, a Common Unit, a Subordinated Unit, a Class B Unit, an Incentive Distribution Right or any Partnership Interest shall be the amount that such Capital Account would be if such General Partner Unit, Common Unit, Subordinated Unit, Class B Unit, Incentive Distribution Right or other Partnership Interest were the only interest in the Partnership held by such Partner from and after

the date on which such General Partner Unit, Common Unit, Class B Unit, Subordinated Unit, Incentive Distribution Right or other Partnership Interest was first issued.

*“Capital Contribution”* means any cash, cash equivalents or the Net Agreed Value of Contributed Property that a Partner contributes to the Partnership.

*“Capital Improvement”* means any (a) addition or improvement to the capital assets owned by any Group Member, (b) acquisition of existing, or the construction of new, capital assets (including, without limitation, gathering lines, treating facilities, processing plants, fractionation facilities, pipelines, terminals, docks, truck racks, tankage and other storage, distribution or transportation facilities and related or similar midstream assets) or (c) capital contributions by a Group Member to a Person in which a Group Member has an equity interest to fund such Group Member’s pro rata share of the cost of the acquisition of existing, or the construction of new, capital assets (including, without limitation, gathering lines, treating facilities, processing plants, fractionation facilities, pipelines, terminals, docks, truck racks, tankage and other storage, distribution or transportation facilities and related or similar midstream assets) by such Person, in each case if such addition, improvement, acquisition or construction is made to increase the operating capacity or revenues of the Partnership Group, in the case of clauses (a) and (b), or such Person, in the case of clause (c), from the operating capacity or revenues of the Partnership Group or such Person, as the case may be, existing immediately prior to such addition, improvement, acquisition or construction.

*“Capital Surplus”* has the meaning assigned to such term in Section 6.3(a).

*“Carrying Value”* means (a) with respect to a Contributed Property, the Agreed Value of such property reduced (but not below zero) by all depreciation, amortization and cost recovery deductions charged to the Partners’ Capital Accounts in respect of such Contributed Property, and (b) with respect to any other Partnership property, the adjusted basis of such property for federal income tax purposes, all as of the time of determination. The Carrying Value of any property shall be adjusted from time to time in accordance with Sections 5.5(d)(i) and 5.5(d)(ii) and to reflect changes, additions or other adjustments to the Carrying Value for dispositions and acquisitions of Partnership properties, as deemed appropriate by the General Partner.

*“Cause”* means a court of competent jurisdiction has entered a final, non-appealable judgment finding the General Partner liable for actual fraud or willful misconduct in its capacity as a general partner of the Partnership.

*“Certificate”* means (a) a certificate (i) substantially in the form of Exhibit A to this Agreement, (ii) issued in global form in accordance with the rules and regulations of the Depositary or (iii) in such other form as may be adopted by the General Partner, issued by the Partnership evidencing ownership of one or more Common Units or (b) a certificate, in such form as may be adopted by the General Partner, issued by the Partnership evidencing ownership of one or more other Partnership Securities.

*“Certificate of Limited Partnership”* means the Certificate of Limited Partnership of the Partnership filed with the Secretary of State of the State of Delaware as referenced in

Section 7.2, as such Certificate of Limited Partnership may be amended, supplemented or restated from time to time.

*“Citizenship Certification”* means a properly completed certificate in such form as may be specified by the General Partner by which a Limited Partner certifies that he (and if he is a nominee holding for the account of another Person, that to the best of his knowledge such other Person) is an Eligible Citizen.

*“claim”* (as used in Section 7.12(d)) has the meaning assigned to such term in Section 7.12(d).

*“Class B Units”* means a Partnership Security representing a fractional part of the Partnership Interests of all Limited Partners, and having the rights and obligations specified with respect to Class B Units in this Agreement.

*“Closing Date”* means the first date on which Common Units are sold by the Partnership to the Underwriters pursuant to the provisions of the Underwriting Agreement.

*“Closing Price”* has the meaning assigned to such term in Section 15.1(a).

*“Code”* means the Internal Revenue Code of 1986, as amended and in effect from time to time. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of any successor law.

*“Combined Interest”* has the meaning assigned to such term in Section 11.3(a).

*“Commission”* means the United States Securities and Exchange Commission.

*“Common Unit”* means a Partnership Security representing a fractional part of the Partnership Interests of all Limited Partners and Assignees, and having the rights and obligations specified with respect to Common Units in this Agreement. The term “Common Unit” does not include a Subordinated Unit or Class B Unit prior to its conversion into a Common Unit pursuant to the terms hereof.

*“Common Unit Arrearage”* means, with respect to any Common Unit, whenever issued, as to any Quarter within the Subordination Period, the excess, if any, of (a) the Minimum Quarterly Distribution with respect to a Common Unit in respect of such Quarter over (b) the sum of all Available Cash distributed with respect to a Common Unit in respect of such Quarter pursuant to Section 6.4(a)(i).

*“Conflicts Committee”* means a committee of the Board of Directors of the General Partner composed entirely of two or more directors, each of whom (a) is not a security holder, officer or employee of the General Partner, (b) is not an officer, director or employee of any Affiliate of the General Partner, (c) is not a holder of any ownership interest in the Partnership Group other than Common Units and (d) meets the independence standards required of directors who serve on an audit committee of a board of directors established by the Securities Exchange Act and the rules and regulations of the Commission thereunder and by the National Securities Exchange on which the Common Units are listed or admitted to trading.

*“Contributed Property”* means each property or other asset, in such form as may be permitted by the Delaware Act, but excluding cash, contributed to the Partnership. Once the Carrying Value of a Contributed Property is adjusted pursuant to Section 5.5(d), such property shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.

*“Contribution Agreement”* means that certain Contribution and Conveyance Agreement, dated as of the Closing Date, among the General Partner, the Partnership, the Operating Partnership and certain other parties, together with the additional conveyance documents and instruments contemplated or referenced thereunder, as such may be amended, supplemented or restated from time to time.

*“Converted Common Units”* has the meaning assigned to such term in Section 6.1(d)(x)(B).

*“Credit Agreement”* means the Credit Agreement, dated as of December 7, 2005, among the OLP, the MLP, the subsidiaries of the MLP, and Wachovia Bank, National Association, as administrative agent for the lenders named therein.

*“Cumulative Common Unit Arrearage”* means, with respect to any Common Unit, whenever issued, and as of the end of any Quarter, the excess, if any, of (a) the sum resulting from adding together the Common Unit Arrearage as to an Initial Common Unit for each of the Quarters within the Subordination Period ending on or before the last day of such Quarter over (b) the sum of any distributions theretofore made pursuant to Section 6.4(a)(ii) and the second sentence of Section 6.5 with respect to an Initial Common Unit (including any distributions to be made in respect of the last of such Quarters).

*“Curative Allocation”* means any allocation of an item of income, gain, deduction, loss or credit pursuant to the provisions of Section 6.1(d)(xi).

*“Current Market Price”* has the meaning assigned to such term in Section 15.1(a).

*“DEFS”* means Duke Energy Field Services, LLC, a Delaware limited liability company.

*“Delaware Act”* means the Delaware Revised Uniform Limited Partnership Act, 6 Del C. Section 17-101, et seq., as amended, supplemented or restated from time to time, and any successor to such statute.

*“Departing General Partner”* means a former General Partner from and after the effective date of any withdrawal or removal of such former General Partner pursuant to Section 11.1 or Section 11.2.

*“Depository”* means, with respect to any Units issued in global form, The Depository Trust Company and its successors and permitted assigns.

*“Economic Risk of Loss”* has the meaning set forth in Treasury Regulation Section 1.752-2(a).

*“Eligible Citizen”* means a Person qualified to own interests in real property in jurisdictions in which any Group Member does business or proposes to do business from time to time, and whose status as a Limited Partner the General Partner determines does not or would not subject such Group Member to a significant risk of cancellation or forfeiture of any of its properties or any interest therein.

*“Estimated Incremental Quarterly Tax Amount”* has the meaning assigned to such term in Section 6.9.

*“Event of Withdrawal”* has the meaning assigned to such term in Section 11.1(a).

*“Expansion Capital Expenditures”* means cash expenditures for Acquisitions or Capital Improvements, and shall not include Maintenance Capital Expenditures.

*“Final Subordinated Units”* has the meaning assigned to such term in Section 6.1(d)(x).

*“First Liquidation Target Amount”* has the meaning assigned to such term in Section 6.1(c)(i)(D).

*“First Target Distribution”* means \$0.4025 per Unit per Quarter (or, with respect to the period commencing on the Closing Date and ending on December 31, 2005, it means the product of \$0.4025 multiplied by a fraction of which the numerator is the number of days in such period, and of which the denominator is 92), subject to adjustment in accordance with Sections 5.11, 6.6 and 6.9.

*“Fully Diluted Basis”* means, when calculating the number of Outstanding Units for any period, a basis that includes, in addition to the Outstanding Units, all Partnership Securities and options, rights, warrants and appreciation rights relating to an equity interest in the Partnership (a) that are convertible into or exercisable or exchangeable for Units that are senior to or pari passu with the Subordinated Units, (b) whose conversion, exercise or exchange price is less than the Current Market Price on the date of such calculation, (c) that may be converted into or exercised or exchanged for such Units prior to or during the Quarter immediately following the end of the period for which the calculation is being made without the satisfaction of any contingency beyond the control of the holder other than the payment of consideration and the compliance with administrative mechanics applicable to such conversion, exercise or exchange and (d) that were not converted into or exercised or exchanged for such Units during the period for which the calculation is being made; *provided, however,* that for purposes of determining the number of Outstanding Units on a Fully Diluted Basis when calculating whether the Subordination Period has ended or Subordinated Units are entitled to convert into Common Units pursuant to Section 5.7, such Partnership Securities, options, rights, warrants and appreciation rights shall be deemed to have been Outstanding Units only for the four Quarters that comprise the last four Quarters of the measurement period; *provided, further,* that if consideration will be paid to any Group Member in connection with such conversion, exercise or exchange, the number of Units to be included in such calculation shall be that number equal to the difference between (i) the number of Units issuable upon such conversion, exercise or exchange and (ii) the number of Units that such consideration would purchase at the Current Market Price.

**“General Partner”** means DCP Midstream GP, LP, a Delaware limited partnership, and its successors and permitted assigns that are admitted to the Partnership as general partner of the Partnership, in its capacity as general partner of the Partnership (except as the context otherwise requires).

**“General Partner Interest”** means the ownership interest of the General Partner in the Partnership (in its capacity as a general partner without reference to any Limited Partner Interest held by it), which is evidenced by General Partner Units, and includes any and all benefits to which the General Partner is entitled as provided in this Agreement, together with all obligations of the General Partner to comply with the terms and provisions of this Agreement.

**“General Partner Unit”** means a fractional part of the General Partner Interest having the rights and obligations specified with respect to the General Partner Interest. A General Partner Unit is not a Unit.

**“Group”** means a Person that with or through any of its Affiliates or Associates has any contract, arrangement, understanding or relationship for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent given to such Person in response to a proxy or consent solicitation made to 10 or more Persons), exercising investment power or disposing of any Partnership Interests with any other Person that beneficially owns, or whose Affiliates or Associates beneficially own, directly or indirectly, Partnership Interests.

**“Group Member”** means a member of the Partnership Group.

**“Group Member Agreement”** means the partnership agreement of any Group Member, other than the Partnership, that is a limited or general partnership, the limited liability company agreement of any Group Member that is a limited liability company, the certificate of incorporation and bylaws or similar organizational documents of any Group Member that is a corporation, the joint venture agreement or similar governing document of any Group Member that is a joint venture and the governing or organizational or similar documents of any other Group Member that is a Person other than a limited or general partnership, limited liability company, corporation or joint venture, as such may be amended, supplemented or restated from time to time.

**“Holder”** as used in Section 7.12, has the meaning assigned to such term in Section 7.12(a).

**“Incentive Distribution Right”** means a non-voting Limited Partner Interest issued to the General Partner in connection with the transfer of all of its interests in DCP Assets Holdings, LP to the Partnership pursuant to the Contribution Agreement, which Limited Partner Interest will confer upon the holder thereof only the rights and obligations specifically provided in this Agreement with respect to Incentive Distribution Rights (and no other rights otherwise available to or other obligations of a holder of a Partnership Interest). Notwithstanding anything in this Agreement to the contrary, the holder of an Incentive Distribution Right shall not be entitled to vote such Incentive Distribution Right on any Partnership matter except as may otherwise be required by law.

*"Incentive Distributions"* means any amount of cash distributed to the holders of the Incentive Distribution Rights pursuant to Sections 6.4(a)(v), (vi) and (vii) and 6.4(b)(iii), (iv) and (v).

*"Indemnified Persons"* has the meaning assigned to such term in Section 7.12(d).

*"Indemnitee"* means (a) the General Partner, (b) any Departing General Partner, (c) any Person who is or was an Affiliate of the General Partner or any Departing General Partner, (d) any Person who is or was a member, partner, director, officer, fiduciary or trustee of any Group Member, the General Partner or any Departing General Partner or any Affiliate of any Group Member, the General Partner or any Departing General Partner, (e) any Person who is or was serving at the request of the General Partner or any Departing General Partner or any Affiliate of the General Partner or any Departing General Partner as an officer, director, member, partner, fiduciary or trustee of another Person; *provided* that a Person shall not be an Indemnitee by reason of providing, on a fee-for-services basis, trustee, fiduciary or custodial services, and (f) any Person the General Partner designates as an "Indemnitee" for purposes of this Agreement.

*"Initial Common Units"* means the Common Units sold in the Initial Offering.

*"Initial Limited Partner"* means DEFS LP Holdings, LP (with respect to the Common Units, Subordinated Units and Incentive Distribution Rights received by it pursuant to Section 5.2) and the Underwriters upon the issuance by the Partnership of Common Units as described in Section 5.3 in connection with the Initial Offering.

*"Initial Offering"* means the initial offering and sale of Common Units to the public, as described in the Registration Statement.

*"Initial Unit Price"* means (a) with respect to the Common Units, the initial public offering price per Common Unit at which the Underwriters offered the Common Units to the public for sale as set forth on the cover page of the prospectus included as part of the Registration Statement and first issued at or after the time the Registration Statement first became effective or (b) with respect to any other class or series of Units, the price per Unit at which such class or series of Units is initially sold by the Partnership, as determined by the General Partner, in each case adjusted as the General Partner determines to be appropriate to give effect to any distribution, subdivision or combination of Units.

*"Interim Capital Transactions"* means the following transactions if they occur prior to the Liquidation Date: (a) borrowings, refinancings or refundings of indebtedness (other than for items purchased on open account in the ordinary course of business) by any Group Member and sales of debt securities of any Group Member; (b) sales of equity interests of any Group Member (including the Common Units sold to the Underwriters pursuant to the exercise of the Over-Allotment Option); (c) sales or other voluntary or involuntary dispositions of any assets of any Group Member other than (i) sales or other dispositions of inventory, accounts receivable and other assets in the ordinary course of business, and (ii) sales or other dispositions of assets as part of normal retirements or replacements; (d) the termination of interest rate swap agreements; (e) capital contributions; or (f) corporate reorganizations or restructurings.

*“Issue Price”* means the price at which a Unit is purchased from the Partnership, net of any sales commission or underwriting discount charged to the Partnership.

*“Limited Partner”* means, unless the context otherwise requires, the Organizational Limited Partner prior to its withdrawal from the Partnership, each Initial Limited Partner, each additional Person that becomes a Limited Partner pursuant to the terms of this Agreement and any Departing General Partner upon the change of its status from General Partner to Limited Partner pursuant to Section 11.3, in each case, in such Person’s capacity as limited partner of the Partnership; *provided, however,* that when the term “Limited Partner” is used herein in the context of any vote or other approval, including Articles XIII and XIV, such term shall not, solely for such purpose, include any holder of an Incentive Distribution Right (solely with respect to its Incentive Distribution Rights and not with respect to any other Limited Partner Interest held by such Person) except as may otherwise be required by law.

*“Limited Partner Interest”* means the ownership interest of a Limited Partner in the Partnership, which may be evidenced by Common Units, Class B Units, Subordinated Units, Incentive Distribution Rights or other Partnership Securities or a combination thereof or interest therein, and includes any and all benefits to which such Limited Partner is entitled as provided in this Agreement, together with all obligations of such Limited Partner to comply with the terms and provisions of this Agreement; *provided, however,* that when the term “Limited Partner Interest” is used herein in the context of any vote or other approval, including Articles XIII and XIV, such term shall not, solely for such purpose, include any Incentive Distribution Right except as may otherwise be required by law.

*“Liquidation Date”* means (a) in the case of an event giving rise to the dissolution of the Partnership of the type described in clauses (a) and (b) of the first sentence of Section 12.2, the date on which the applicable time period during which the holders of Outstanding Units have the right to elect to continue the business of the Partnership has expired without such an election being made, and (b) in the case of any other event giving rise to the dissolution of the Partnership, the date on which such event occurs.

*“Liquidator”* means one or more Persons selected by the General Partner to perform the functions described in Section 12.4 as liquidating trustee of the Partnership within the meaning of the Delaware Act.

*“Maintenance Capital Expenditures”* means cash expenditures (including expenditures for the addition or improvement to the capital assets owned by any Group Member or for the acquisition of existing, or the construction of new, capital assets) if such expenditures are made to maintain, including over the long term, the operating capacity or revenues of the Partnership Group.

*“Merger Agreement”* has the meaning assigned to such term in Section 14.1.

*“Minimum Quarterly Distribution”* means \$0.35 per Unit per Quarter (or with respect to the period commencing on the Closing Date and ending on December 31, 2005, it means the product of \$0.35 multiplied by a fraction of which the numerator is the number of days in such

period and of which the denominator is 92), subject to adjustment in accordance with Sections 6.6 and 6.9.

*"National Securities Exchange"* means an exchange registered with the Commission under Section 6(a) of the Securities Exchange Act, and any successor to such statute, or the Nasdaq Stock Market or any successor thereto.

*"Net Agreed Value"* means, (a) in the case of any Contributed Property, the Agreed Value of such property reduced by any liabilities either assumed by the Partnership upon such contribution or to which such property is subject when contributed, (b) in the case of any property distributed to a Partner by the Partnership, the Partnership's Carrying Value of such property (as adjusted pursuant to Section 5.5(d)(ii)) at the time such property is distributed, reduced by any indebtedness either assumed by such Partner or Assignee upon such distribution or to which such property is subject at the time of distribution, in either case, as determined under Section 752 of the Code, and (c) in the case of a contribution of Common Units by the General Partner to the Partnership as a Capital Contribution pursuant to Section 5.2(b), an amount per Common Unit contributed equal to the Current Market Price per Common Unit as of the date of the contribution.

*"Net Income"* means, for any taxable year, the excess, if any, of the Partnership's items of income and gain (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year over the Partnership's items of loss and deduction (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year. The items included in the calculation of Net Income shall be determined in accordance with Section 5.5(b) and shall not include any items specially allocated under Section 6.1(d); *provided*, that the determination of the items that have been specially allocated under Section 6.1(d) shall be made as if Section 6.1(d)(xii) were not in this Agreement.

*"Net Loss"* means, for any taxable year, the excess, if any, of the Partnership's items of loss and deduction (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year over the Partnership's items of income and gain (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year. The items included in the calculation of Net Loss shall be determined in accordance with Section 5.5(b) and shall not include any items specially allocated under Section 6.1(d); *provided*, that the determination of the items that have been specially allocated under Section 6.1(d) shall be made as if Section 6.1(d)(xii) were not in this Agreement.

*"Net Positive Adjustments"* means, with respect to any Partner, the excess, if any, of the total positive adjustments over the total negative adjustments made to the Capital Account of such Partner pursuant to Book-Up Events and Book-Down Events.

*"Net Termination Gain"* means, for any taxable year, the sum, if positive, of all items of income, gain, loss or deduction recognized by the Partnership after the Liquidation Date. The items included in the determination of Net Termination Gain shall be determined in accordance

with Section 5.5(b) and shall not include any items of income, gain or loss specially allocated under Section 6.1(d).

*“Net Termination Loss”* means, for any taxable year, the sum, if negative, of all items of income, gain, loss or deduction recognized by the Partnership after the Liquidation Date. The items included in the determination of Net Termination Loss shall be determined in accordance with Section 5.5(b) and shall not include any items of income, gain or loss specially allocated under Section 6.1(d).

*“Non-citizen Assignee”* means a Person whom the General Partner has determined does not constitute an Eligible Citizen and as to whose Partnership Interest the General Partner has become the Substituted Limited Partner, pursuant to Section 4.9.

*“Nonrecourse Built-in Gain”* means with respect to any Contributed Properties or Adjusted Properties that are subject to a mortgage or pledge securing a Nonrecourse Liability, the amount of any taxable gain that would be allocated to the Partners pursuant to Sections 6.2(b)(i)(A), 6.2(b)(ii)(A) and 6.2(b)(iii) if such properties were disposed of in a taxable transaction in full satisfaction of such liabilities and for no other consideration.

*“Nonrecourse Deductions”* means any and all items of loss, deduction or expenditure (including any expenditure described in Section 705(a)(2)(B) of the Code) that, in accordance with the principles of Treasury Regulation Section 1.704-2(b), are attributable to a Nonrecourse Liability.

*“Nonrecourse Liability”* has the meaning set forth in Treasury Regulation Section 1.752-1(a)(2).

*“Notice of Election to Purchase”* has the meaning assigned to such term in Section 15.1(b).

*“Omnibus Agreement”* means that certain Omnibus Agreement, dated as of the Closing Date, among DEFS, the General Partner, the Partnership, the Operating Company and certain other parties thereto, as such may be amended, supplemented or restated from time to time.

*“Operating Expenditures”* means all Partnership Group cash expenditures, including, but not limited to, taxes, reimbursements of the General Partner in accordance with this Agreement, interest payments, Maintenance Capital Expenditures and non-Pro Rata repurchases of Units (other than those made with the proceeds of an Interim Capital Transaction), but excluding, subject to the following:

(a) payments (including prepayments and prepayment penalties) of principal of and premium on indebtedness shall not constitute Operating Expenditures; and

(b) Operating Expenditures shall not include (i) Expansion Capital Expenditures, (ii) payment of transaction expenses (including taxes) relating to Interim Capital Transactions or (iii) distributions to Partners. Where capital expenditures consist of both Maintenance Capital Expenditures and Expansion Capital Expenditures, the General Partner, with the concurrence of the Conflicts Committee, shall determine the allocation between the

portion consisting of Maintenance Capital Expenditures and the portion consisting of Expansion Capital Expenditures and, with respect to the part of such capital expenditures consisting of Maintenance Capital Expenditures, the period over which the capital expenditures made for other purposes will be deducted as an Operating Expenditure in calculating Operating Surplus.

“*Operating Partnership*” means DCP Midstream Operating, LP, a Delaware limited partnership, and any successors thereto.

“*Operating Surplus*” means, with respect to any period ending prior to the Liquidation Date, on a cumulative basis and without duplication,

(a) the sum of (i) an amount equal to four times the amount needed for any one Quarter for the Partnership to pay a distribution on all Units, the General Partner Units and the Incentive Distribution Rights at the same per Unit amount as was distributed immediately preceding the date of determination, and (ii) all cash receipts of the Partnership Group for the period beginning on the Closing Date and ending on the last day of such period, but excluding cash receipts from Interim Capital Transactions (except to the extent specified in Section 6.5) (or with respect to the period commencing on the Closing Date and ending on December 31, 2005, it means the product of (i) \$1.40 multiplied by (ii) a fraction of which the numerator is the number of days in such period and the denominator is 92 multiplied by (iii) the number of Units and General Partner Units Outstanding on the Record Date with respect to such period), less

(b) the sum of (i) Operating Expenditures for the period beginning on the Closing Date and ending on the last day of such period and (ii) the amount of cash reserves established by the General Partner to provide funds for future Operating Expenditures; *provided, however*, that disbursements made (including contributions to a Group Member or disbursements on behalf of a Group Member) or cash reserves established, increased or reduced after the end of such period but on or before the date of determination of Available Cash with respect to such period shall be deemed to have been made, established, increased or reduced, for purposes of determining Operating Surplus, within such period if the General Partner so determines.

Notwithstanding the foregoing, “*Operating Surplus*” with respect to the Quarter in which the Liquidation Date occurs and any subsequent Quarter shall equal zero.

“*Opinion of Counsel*” means a written opinion of counsel (who may be regular counsel to the Partnership or the General Partner or any of its Affiliates) acceptable to the General Partner.

“*Option Closing Date*” means the date or dates on which any Common Units are sold by the Partnership to the Underwriters upon exercise of the Over-Allotment Option.

“*Organizational Limited Partner*” means DEFS in its capacity as the organizational limited partner of the Partnership pursuant to this Agreement.

“*Outstanding*” means, with respect to Partnership Securities, all Partnership Securities that are issued by the Partnership and reflected as outstanding on the Partnership’s books and records as of the date of determination; *provided, however*, that if at any time any Person or Group (other than the General Partner or its Affiliates) beneficially owns 20% or more of the Outstanding Partnership Securities of any class then Outstanding, all Partnership Securities

owned by such Person or Group shall not be voted on any matter and shall not be considered to be Outstanding when sending notices of a meeting of Limited Partners to vote on any matter (unless otherwise required by law), calculating required votes, determining the presence of a quorum or for other similar purposes under this Agreement, except that Units so owned shall be considered to be Outstanding for purposes of Section 11.1(b)(iv) (such Units shall not, however, be treated as a separate class of Partnership Securities for purposes of this Agreement); *provided*, further, that the foregoing limitation shall not apply to (i) any Person or Group who acquired 20% or more of the Outstanding Partnership Securities of any class then Outstanding directly from the General Partner or its Affiliates, (ii) any Person or Group who acquired 20% or more of the Outstanding Partnership Securities of any class then Outstanding directly or indirectly from a Person or Group described in clause (i) *provided* that the General Partner shall have notified such Person or Group in writing that such limitation shall not apply, or (iii) any Person or Group who acquired 20% or more of any Partnership Securities issued by the Partnership with the prior approval of the Board of Directors.

*“Over-Allotment Option”* means the over-allotment option granted to the Underwriters by the Partnership pursuant to the Underwriting Agreement.

*“Partner Nonrecourse Debt”* has the meaning set forth in Treasury Regulation Section 1.704-2(b)(4).

*“Partner Nonrecourse Debt Minimum Gain”* has the meaning set forth in Treasury Regulation Section 1.704-2(i)(2).

*“Partner Nonrecourse Deductions”* means any and all items of loss, deduction or expenditure (including any expenditure described in Section 705(a)(2)(B) of the Code) that, in accordance with the principles of Treasury Regulation Section 1.704-2(i), are attributable to a Partner Nonrecourse Debt.

*“Partners”* means the General Partner and the Limited Partners.

*“Partnership”* means DCP Midstream Partners, LP, a Delaware limited partnership.

*“Partnership Group”* means the Partnership and its Subsidiaries treated as a single consolidated entity.

*“Partnership Interest”* means an interest in the Partnership, which shall include the General Partner Interest and Limited Partner Interests.

*“Partnership Minimum Gain”* means that amount determined in accordance with the principles of Treasury Regulation Section 1.704-2(d).

*“Partnership Security”* means any class or series of equity interest in the Partnership (but excluding any options, rights, warrants and appreciation rights relating to an equity interest in the Partnership), including Common Units, Class B Units, Subordinated Units, General Partner Units and Incentive Distribution Rights.

*"Per Unit Capital Amount"* means, as of any date of determination, the Capital Account, stated on a per Unit basis, underlying any Unit held by a Person other than the General Partner or any Affiliate of the General Partner who holds Units.

*"Percentage Interest"* means as of any date of determination (a) as to the General Partner with respect to General Partner Units and as to any Unitholder with respect to Units, the product obtained by multiplying (i) 100% less the percentage applicable to clause (b) below by (ii) the quotient obtained by dividing (A) the number of General Partner Units held by the General Partner or the number of Units held by such Unitholder, as the case may be, by (B) the total number of Outstanding Units and General Partner Units, and (b) as to the holders of other Partnership Securities issued by the Partnership in accordance with Section 5.6, the percentage established as a part of such issuance. The Percentage Interest with respect to an Incentive Distribution Right shall at all times be zero.

*"Person"* means an individual or a corporation, firm, limited liability company, partnership, joint venture, trust, unincorporated organization, association, government agency or political subdivision thereof or other entity.

*"Pro Rata"* means (a) when used with respect to Units or any class thereof, apportioned equally among all designated Units in accordance with their relative Percentage Interests, (b) when used with respect to Partners and Assignees or Record Holders, apportioned among all Partners and Assignees or Record Holders in accordance with their relative Percentage Interests and (c) when used with respect to holders of Incentive Distribution Rights, apportioned equally among all holders of Incentive Distribution Rights in accordance with the relative number or percentage of Incentive Distribution Rights held by each such holder.

*"Purchase Date"* means the date determined by the General Partner as the date for purchase of all Outstanding Limited Partner Interests of a certain class (other than Limited Partner Interests owned by the General Partner and its Affiliates) pursuant to Article XV.

*"Quarter"* means, unless the context requires otherwise, a fiscal quarter of the Partnership, or, with respect to the first fiscal quarter of the Partnership after the Closing Date, the portion of such fiscal quarter after the Closing Date.

*"Recapture Income"* means any gain recognized by the Partnership (computed without regard to any adjustment required by Section 734 or Section 743 of the Code) upon the disposition of any property or asset of the Partnership, which gain is characterized as ordinary income because it represents the recapture of deductions previously taken with respect to such property or asset.

*"Record Date"* means the date established by the General Partner or otherwise in accordance with this Agreement for determining (a) the identity of the Record Holders entitled to notice of, or to vote at, any meeting of Limited Partners or entitled to vote by ballot or give approval of Partnership action in writing without a meeting or entitled to exercise rights in respect of any lawful action of Limited Partners or (b) the identity of Record Holders entitled to receive any report or distribution or to participate in any offer.

*“Record Holder”* means the Person in whose name a Common Unit is registered on the books of the Transfer Agent as of the opening of business on a particular Business Day, or with respect to other Partnership Interests, the Person in whose name any such other Partnership Interest is registered on the books that the General Partner has caused to be kept as of the opening of business on such Business Day.

*“Redeemable Interests”* means any Partnership Interests for which a redemption notice has been given, and has not been withdrawn, pursuant to Section 4.10.

*“Registration Statement”* means the Registration Statement on Form S-1 as it has been or as it may be amended or supplemented from time to time, filed by the Partnership with the Commission under the Securities Act to register the offering and sale of the Common Units in the Initial Offering.

*“Remaining Net Positive Adjustments”* means as of the end of any taxable period, (i) with respect to the Unitholders holding Common Units, Class B Units or Subordinated Units, the excess of (a) the Net Positive Adjustments of the Unitholders holding Common Units, Class B Units or Subordinated Units as of the end of such period over (b) the sum of those Partners’ Share of Additional Book Basis Derivative Items for each prior taxable period, (ii) with respect to the General Partner (as holder of the General Partner Units), the excess of (a) the Net Positive Adjustments of the General Partner as of the end of such period over (b) the sum of the General Partner’s Share of Additional Book Basis Derivative Items with respect to the General Partner Units for each prior taxable period, and (iii) with respect to the holders of Incentive Distribution Rights, the excess of (a) the Net Positive Adjustments of the holders of Incentive Distribution Rights as of the end of such period over (b) the sum of the Share of Additional Book Basis Derivative Items of the holders of the Incentive Distribution Rights for each prior taxable period.

*“Required Allocations”* means (a) any limitation imposed on any allocation of Net Losses or Net Termination Losses under Section 6.1(b) or Section 6.1(c) (ii) and (b) any allocation of an item of income, gain, loss or deduction pursuant to Section 6.1(d)(i), Section 6.1(d)(ii), Section 6.1(d)(iv), Section 6.1(d)(vii) or Section 6.1(d)(ix).

*“Residual Gain” or “Residual Loss”* means any item of gain or loss, as the case may be, of the Partnership recognized for federal income tax purposes resulting from a sale, exchange or other disposition of a Contributed Property or Adjusted Property, to the extent such item of gain or loss is not allocated pursuant to Section 6.2(b)(i)(A) or Section 6.2(b)(ii)(A), respectively, to eliminate Book-Tax Disparities.

*“Retained Converted Subordinated Unit”* has the meaning assigned to such term in Section 5.5(c)(ii).

*“Second Liquidation Target Amount”* has the meaning assigned to such term in Section 6.1(c)(i)(E).

*“Second Target Distribution”* means \$0.4375 per Unit per Quarter (or, with respect to the period commencing on the Closing Date and ending on December 31, 2005, it means the product of \$0.4375 multiplied by a fraction of which the numerator is equal to the number of days in

such period and of which the denominator is 92), subject to adjustment in accordance with Section 5.11, Section 6.6 and Section 6.9.

“*Securities Act*” means the Securities Act of 1933, as amended, supplemented or restated from time to time and any successor to such statute.

“*Securities Exchange Act*” means the Securities Exchange Act of 1934, as amended, supplemented or restated from time to time and any successor to such statute.

“*Share of Additional Book Basis Derivative Items*” means in connection with any allocation of Additional Book Basis Derivative Items for any taxable period, (i) with respect to the Unitholders holding Common Units, Class B Units or Subordinated Units, the amount that bears the same ratio to such Additional Book Basis Derivative Items as the Unitholders’ Remaining Net Positive Adjustments as of the end of such period bears to the Aggregate Remaining Net Positive Adjustments as of that time, (ii) with respect to the General Partner (as holder of the General Partner Units), the amount that bears the same ratio to such Additional Book Basis Derivative Items as the General Partner’s Remaining Net Positive Adjustments as of the end of such period bears to the Aggregate Remaining Net Positive Adjustment as of that time, and (iii) with respect to the Partners holding Incentive Distribution Rights, the amount that bears the same ratio to such Additional Book Basis Derivative Items as the Remaining Net Positive Adjustments of the Partners holding the Incentive Distribution Rights as of the end of such period bears to the Aggregate Remaining Net Positive Adjustments as of that time.

“*Special Approval*” means approval by a majority of the members of the Conflicts Committee.

“*Subordinated Unit*” means a Partnership Security representing a fractional part of the Partnership Interests of all Limited Partners and Assignees and having the rights and obligations specified with respect to Subordinated Units in this Agreement. The term “*Subordinated Unit*” does not include a Common Unit or Class B Unit. A Subordinated Unit that is convertible into a Common Unit shall not constitute a Common Unit until such conversion occurs.

“*Subordination Period*” means the period commencing on the Closing Date and ending on the first to occur of the following dates:

(a) the first day of any Quarter beginning after December 31, 2010 in respect of which (i) (A) distributions of Available Cash from Operating Surplus on each of the Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units with respect to each of the three consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded the sum of the Minimum Quarterly Distribution on all Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units during such periods and (B) the Adjusted Operating Surplus for each of the three consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded the sum of the Minimum Quarterly Distribution on all of the Common Units, Subordinated Units and any other Units that are senior or equal in right of distribution to the Subordinated Units that

were Outstanding during such periods on a Fully Diluted Basis, plus the related distribution on the General Partner Units, with respect to each such period and  
(ii) there are no Cumulative Common Unit Arrearages;

(b) the first date on which there are no longer outstanding any Subordinated Units due to the conversion of Subordinated Units into Common Units pursuant to Section 5.7 or otherwise; and

(c) the date on which the General Partner is removed as general partner of the Partnership upon the requisite vote by holders of Outstanding Units under circumstances where Cause does not exist and Units held by the General Partner and its Affiliates are not voted in favor of such removal.

*“Subsidiary”* means, with respect to any Person, (a) a corporation of which more than 50% of the voting power of shares entitled (without regard to the occurrence of any contingency) to vote in the election of directors or other governing body of such corporation is owned, directly or indirectly, at the date of determination, by such Person, by one or more Subsidiaries of such Person or a combination thereof, (b) a partnership (whether general or limited) in which such Person or a Subsidiary of such Person is, at the date of determination, a general or limited partner of such partnership, but only if more than 50% of the partnership interests of such partnership (considering all of the partnership interests of the partnership as a single class) is owned, directly or indirectly, at the date of determination, by such Person, by one or more Subsidiaries of such Person, or a combination thereof, or (c) any other Person (other than a corporation or a partnership) in which such Person, one or more Subsidiaries of such Person, or a combination thereof, directly or indirectly, at the date of determination, has (i) at least a majority ownership interest or (ii) the power to elect or direct the election of a majority of the directors or other governing body of such Person.

*“Surviving Business Entity”* has the meaning assigned to such term in Section 14.2(b).

*“Target Distribution”* means, collectively, the First Target Distribution, Second Target Distribution and Third Target Distribution.

*“Third Liquidation Target Amount”* has the meaning assigned to such term in Section 6.1(c)(i)(F).

*“Third Target Distribution”* means \$0.525 per Unit per Quarter (or, with respect to the period commencing on the Closing Date and ending on December 31, 2005, it means the product of \$0.525 multiplied by a fraction of which the numerator is equal to the number of days in such period and of which the denominator is 92), subject to adjustment in accordance with Sections 5.11, 6.6 and 6.9.

*“Trading Day”* has the meaning assigned to such term in Section 15.1(a).

*“transfer”* has the meaning assigned to such term in Section 4.4(a).

*“Transfer Agent”* means such bank, trust company or other Person (including the General Partner or one of its Affiliates) as shall be appointed from time to time by the General Partner to

act as registrar and transfer agent for the Common Units; *provided*, that if no Transfer Agent is specifically designated for any other Partnership Securities, the General Partner shall act in such capacity.

“*Underwriter*” means each Person named as an underwriter in Schedule I to the Underwriting Agreement who purchases Common Units pursuant thereto.

“*Underwriting Agreement*” means that certain Underwriting Agreement dated as of December 1, 2005 among the Underwriters, DEFS, the Partnership, the General Partner, the Operating Partnership and other parties thereto, providing for the purchase of Common Units by the Underwriters.

“*Unit*” means a Partnership Security that is designated as a “Unit” and shall include Common Units, Class B Units and Subordinated Units but shall not include (i) General Partner Units (or the General Partner Interest represented thereby) or (ii) Incentive Distribution Rights.

“*Unit Majority*” means (i) during the Subordination Period, at least a majority of the Outstanding Common Units (excluding Common Units owned by the General Partner and its Affiliates), voting as a class, and at least a majority of the Outstanding Subordinated Units, voting as a class, and (ii) after the end of the Subordination Period, at least a majority of the Outstanding Common Units and Class B Units, if any, voting as a single class.

“*Unitholders*” means the holders of Units.

“*Unpaid MQD*” has the meaning assigned to such term in Section 6.1(c)(i)(B).

“*Unrealized Gain*” attributable to any item of Partnership property means, as of any date of determination, the excess, if any, of (a) the fair market value of such property as of such date (as determined under Section 5.5(d)) over (b) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 5.5(d) as of such date).

“*Unrealized Loss*” attributable to any item of Partnership property means, as of any date of determination, the excess, if any, of (a) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 5.5(d) as of such date) over (b) the fair market value of such property as of such date (as determined under Section 5.5(d)).

“*Unrecovered Initial Unit Price*” means at any time, with respect to a Unit, the Initial Unit Price less the sum of all distributions constituting Capital Surplus theretofore made in respect of an Initial Common Unit and any distributions of cash (or the Net Agreed Value of any distributions in kind) in connection with the dissolution and liquidation of the Partnership theretofore made in respect of an Initial Common Unit, adjusted as the General Partner determines to be appropriate to give effect to any distribution, subdivision or combination of such Units.

“*U.S. GAAP*” means United States generally accepted accounting principles consistently applied.

*“Withdrawal Opinion of Counsel”* has the meaning assigned to such term in Section 11.1(b).

**Section 1.2 Construction.**

Unless the context requires otherwise: (a) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; (c) the terms “include”, “includes”, “including” or words of like import shall be deemed to be followed by the words “without limitation”; and (d) the terms “hereof”, “herein” or “hereunder” refer to this Agreement as a whole and not to any particular provision of this Agreement. The table of contents and headings contained in this Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement.

**ARTICLE II**  
**ORGANIZATION**

**Section 2.1 Formation.**

The General Partner and the Organizational Limited Partner have previously formed the Partnership as a limited partnership pursuant to the provisions of the Delaware Act and hereby amend and restate the original Agreement of Limited Partnership of DCP Midstream Partners, LP in its entirety. This amendment and restatement shall become effective on the date of this Agreement. Except as expressly provided to the contrary in this Agreement, the rights, duties (including fiduciary duties), liabilities and obligations of the Partners and the administration, dissolution and termination of the Partnership shall be governed by the Delaware Act. All Partnership Interests shall constitute personal property of the owner thereof for all purposes.

**Section 2.2 Name.**

The name of the Partnership shall be “DCP Midstream Partners, LP.” The Partnership’s business may be conducted under any other name or names as determined by the General Partner, including the name of the General Partner. The words “Limited Partnership,” “L.P.” “Ltd.” or similar words or letters shall be included in the Partnership’s name where necessary for the purpose of complying with the laws of any jurisdiction that so requires. The General Partner may change the name of the Partnership at any time and from time to time and shall notify the Limited Partners of such change in the next regular communication to the Limited Partners.

**Section 2.3 Registered Office; Registered Agent; Principal Office; Other Offices**

Unless and until changed by the General Partner, the registered office of the Partnership in the State of Delaware shall be located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808-1645, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office shall be Corporation Service Company. The principal office of the Partnership shall be located at 370 17th Street, Suite 2775, Denver, Colorado 80202, or such other place as the General Partner may from time to time designate by notice to the

Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner shall determine necessary or appropriate. The address of the General Partner shall be 370 17th Street, Suite 2775, Denver, Colorado 80202, or such other place as the General Partner may from time to time designate by notice to the Limited Partners.

#### Section 2.4 Purpose and Business.

The purpose and nature of the business to be conducted by the Partnership shall be to (a) engage directly in, or enter into or form, hold and dispose of any corporation, partnership, joint venture, limited liability company or other arrangement to engage indirectly in, any business activity that is approved by the General Partner and that lawfully may be conducted by a limited partnership organized pursuant to the Delaware Act and, in connection therewith, to exercise all of the rights and powers conferred upon the Partnership pursuant to the agreements relating to such business activity, and (b) do anything necessary or appropriate to the foregoing, including the making of capital contributions or loans to a Group Member; *provided, however*, that the General Partner shall not cause the Partnership to engage, directly or indirectly, in any business activity that the General Partner determines would cause the Partnership to be treated as an association taxable as a corporation or otherwise taxable as an entity for federal income tax purposes. To the fullest extent permitted by law, the General Partner shall have no duty or obligation to propose or approve, and may decline to propose or approve, the conduct by the Partnership of any business free of any fiduciary duty or obligation whatsoever to the Partnership or any Limited Partner and, in declining to so propose or approve, shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any Group Member Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity.

#### Section 2.5 Powers.

The Partnership shall be empowered to do any and all acts and things necessary or appropriate for the furtherance and accomplishment of the purposes and business described in Section 2.4 and for the protection and benefit of the Partnership.

#### Section 2.6 Power of Attorney.

(a) Each Limited Partner hereby constitutes and appoints the General Partner and, if a Liquidator shall have been selected pursuant to Section 12.3, the Liquidator (and any successor to the Liquidator by merger, transfer, assignment, election or otherwise) and each of their authorized officers and attorneys-in-fact, as the case may be, with full power of substitution, as his true and lawful agent and attorney-in-fact, with full power and authority in his name, place and stead, to:

(i) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (A) all certificates, documents and other instruments (including this Agreement and the Certificate of Limited Partnership and all amendments or restatements hereof or thereof) that the General Partner or the Liquidator determines to be necessary or appropriate to form, qualify or continue the existence or qualification of the Partnership

as a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware and in all other jurisdictions in which the Partnership may conduct business or own property; (B) all certificates, documents and other instruments that the General Partner or the Liquidator determines to be necessary or appropriate to reflect, in accordance with its terms, any amendment, change, modification or restatement of this Agreement; (C) all certificates, documents and other instruments (including conveyances and a certificate of cancellation) that the General Partner or the Liquidator determines to be necessary or appropriate to reflect the dissolution and liquidation of the Partnership pursuant to the terms of this Agreement; (D) all certificates, documents and other instruments relating to the admission, withdrawal, removal or substitution of any Partner pursuant to, or other events described in, Article IV, Article X, Article XI or Article XII; (E) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges of any class or series of Partnership Securities issued pursuant to Section 5.6; and (F) all certificates, documents and other instruments (including agreements and a certificate of merger) relating to a merger, consolidation or conversion of the Partnership pursuant to Article XIV; and

(ii) execute, swear to, acknowledge, deliver, file and record all ballots, consents, approvals, waivers, certificates, documents and other instruments that the General Partner or the Liquidator determines to be necessary or appropriate to (A) make, evidence, give, confirm or ratify any vote, consent, approval, agreement or other action that is made or given by the Partners hereunder or is consistent with the terms of this Agreement or (B) effectuate the terms or intent of this Agreement; *provided*, that when required by Section 13.3 or any other provision of this Agreement that establishes a percentage of the Limited Partners or of the Limited Partners of any class or series required to take any action, the General Partner and the Liquidator may exercise the power of attorney made in this Section 2.6(a)(ii) only after the necessary vote, consent or approval of the Limited Partners or of the Limited Partners of such class or series, as applicable.

Nothing contained in this Section 2.6(a) shall be construed as authorizing the General Partner to amend this Agreement except in accordance with Article XIII or as may be otherwise expressly provided for in this Agreement.

(b) The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest, and it shall survive and, to the maximum extent permitted by law, not be affected by the subsequent death, incompetency, disability, incapacity, dissolution, bankruptcy or termination of any Limited Partner and the transfer of all or any portion of such Limited Partner's Partnership Interest and shall extend to such Limited Partner's heirs, successors, assigns and personal representatives. Each such Limited Partner hereby agrees to be bound by any representation made by the General Partner or the Liquidator acting in good faith pursuant to such power of attorney; and each such Limited Partner, to the maximum extent permitted by law, hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the General Partner or the Liquidator taken in good faith under such power of attorney. Each Limited Partner shall execute and deliver to the General Partner or the Liquidator, within 15 days after receipt of the request therefor, such further designation, powers

of attorney and other instruments as the General Partner or the Liquidator may request in order to effectuate this Agreement and the purposes of the Partnership.

**Section 2.7 Term.**

The term of the Partnership commenced upon the filing of the Certificate of Limited Partnership in accordance with the Delaware Act and shall continue in existence until the dissolution of the Partnership in accordance with the provisions of Article XII. The existence of the Partnership as a separate legal entity shall continue until the cancellation of the Certificate of Limited Partnership as provided in the Delaware Act.

**Section 2.8 Title to Partnership Assets.**

Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually or collectively, shall have any ownership interest in such Partnership assets or any portion thereof. Title to any or all of the Partnership assets may be held in the name of the Partnership, the General Partner, one or more of its Affiliates or one or more nominees, as the General Partner may determine. The General Partner hereby declares and warrants that any Partnership assets for which record title is held in the name of the General Partner or one or more of its Affiliates or one or more nominees shall be held by the General Partner or such Affiliate or nominee for the use and benefit of the Partnership in accordance with the provisions of this Agreement; *provided, however,* that the General Partner shall use reasonable efforts to cause record title to such assets (other than those assets in respect of which the General Partner determines that the expense and difficulty of conveyancing makes transfer of record title to the Partnership impracticable) to be vested in the Partnership as soon as reasonably practicable; *provided*, further, that, prior to the withdrawal or removal of the General Partner or as soon thereafter as practicable, the General Partner shall use reasonable efforts to effect the transfer of record title to the Partnership and, prior to any such transfer, will provide for the use of such assets in a manner satisfactory to the General Partner. All Partnership assets shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which record title to such Partnership assets is held.

**ARTICLE III**  
**RIGHTS OF LIMITED PARTNERS**

**Section 3.1 Limitation of Liability.**

The Limited Partners shall have no liability under this Agreement except as expressly provided in this Agreement or the Delaware Act.

**Section 3.2 Management of Business.**

No Limited Partner, in its capacity as such, shall participate in the operation, management or control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. Any action taken by any Affiliate of the General Partner or any officer, director,

employee, manager, member, general partner, agent or trustee of the General Partner or any of its Affiliates, or any officer, director, employee, manager, member, general partner, agent or trustee of a Group Member, in its capacity as such, shall not be deemed to be participation in the control of the business of the Partnership by a limited partner of the Partnership (within the meaning of Section 17-303(a) of the Delaware Act) and shall not affect, impair or eliminate the limitations on the liability of the Limited Partners under this Agreement.

### *Section 3.3 Outside Activities of the Limited Partners.*

Subject to the provisions of Section 7.5, which shall continue to be applicable to the Persons referred to therein, regardless of whether such Persons shall also be Limited Partners, any Limited Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including business interests and activities in direct competition with the Partnership Group. Neither the Partnership nor any of the other Partners shall have any rights by virtue of this Agreement in any business ventures of any Limited Partner.

### *Section 3.4 Rights of Limited Partners.*

(a) In addition to other rights provided by this Agreement or by applicable law, and except as limited by Section 3.4(b), each Limited Partner shall have the right, for a purpose reasonably related to such Limited Partner's interest as a Limited Partner in the Partnership, upon reasonable written demand stating the purpose of such demand, and at such Limited Partner's own expense:

- (i) to obtain true and full information regarding the status of the business and financial condition of the Partnership;
- (ii) promptly after its becoming available, to obtain a copy of the Partnership's federal, state and local income tax returns for each year;
- (iii) to obtain a current list of the name and last known business, residence or mailing address of each Partner;
- (iv) to obtain a copy of this Agreement and the Certificate of Limited Partnership and all amendments thereto, together with copies of the executed copies of all powers of attorney pursuant to which this Agreement, the Certificate of Limited Partnership and all amendments thereto have been executed;
- (v) to obtain true and full information regarding the amount of cash and a description and statement of the Net Agreed Value of any other Capital Contribution by each Partner and that each Partner has agreed to contribute in the future, and the date on which each became a Partner; and
- (vi) to obtain such other information regarding the affairs of the Partnership as is just and reasonable.

(b) The General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable, (i) any information that the General Partner reasonably believes to be in the nature of trade secrets or (ii) other information the disclosure of which the General Partner in good faith believes (A) is not in the best interests of the Partnership Group, (B) could damage the Partnership Group or its business or (C) that any Group Member is required by law or by agreement with any third party to keep confidential (other than agreements with Affiliates of the Partnership the primary purpose of which is to circumvent the obligations set forth in this Section 3.4).

## ARTICLE IV

### **CERTIFICATES; RECORD HOLDERS; TRANSFER OF PARTNERSHIP INTERESTS; REDEMPTION OF PARTNERSHIP INTERESTS**

#### *Section 4.1 Certificates.*

Upon the Partnership's issuance of Common Units, Subordinated Units or Class B Units to any Person, the Partnership shall issue, upon the request of such Person, one or more Certificates in the name of such Person evidencing the number of such Units being so issued. In addition, (a) upon the General Partner's request, the Partnership shall issue to it one or more Certificates in the name of the General Partner evidencing its General Partner Units and (b) upon the request of any Person owning Incentive Distribution Rights or any other Partnership Securities other than Common Units, Subordinated Units or Class B Units, the Partnership shall issue to such Person one or more certificates evidencing such Incentive Distribution Rights or other Partnership Securities other than Common Units, Subordinated Units or Class B Units. Certificates shall be executed on behalf of the Partnership by the Chairman of the Board, President or any Executive Vice President, Senior Vice President or Vice President and the Secretary or any Assistant Secretary of the General Partner. No Common Unit Certificate shall be valid for any purpose until it has been countersigned by the Transfer Agent; *provided, however,* that if the General Partner elects to issue Common Units in global form, the Common Unit Certificates shall be valid upon receipt of a certificate from the Transfer Agent certifying that the Common Units have been duly registered in accordance with the directions of the Partnership. Subject to the requirements of Section 6.7(c) and Section 6.7(e), the Partners holding Certificates evidencing Subordinated Units may exchange such Certificates for Certificates evidencing Common Units on or after the date on which such Subordinated Units are converted into Common Units pursuant to the terms of Section 5.7. Subject to the requirements of Section 6.7(e), the Partners holding Certificates evidencing Class B Units may exchange such Certificates for Certificates evidencing Common Units on or after the period set forth in Section 5.11(f) pursuant to the terms of Section 5.11.

#### *Section 4.2 Mutilated, Destroyed, Lost or Stolen Certificates.*

(a) If any mutilated Certificate is surrendered to the Transfer Agent (for Common Units) or the General Partner (for Partnership Securities other than Common Units), the appropriate officers of the General Partner on behalf of the Partnership shall execute, and the Transfer Agent (for Common Units) or the General Partner (for Partnership Securities other than

Common Units) shall countersign and deliver in exchange therefor, a new Certificate evidencing the same number and type of Partnership Securities as the Certificate so surrendered.

(b) The appropriate officers of the General Partner on behalf of the Partnership shall execute and deliver, and the Transfer Agent (for Common Units) shall countersign, a new Certificate in place of any Certificate previously issued if the Record Holder of the Certificate:

- (i) makes proof by affidavit, in form and substance satisfactory to the General Partner, that a previously issued Certificate has been lost, destroyed or stolen;
- (ii) requests the issuance of a new Certificate before the General Partner has notice that the Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;
- (iii) if requested by the General Partner, delivers to the General Partner a bond, in form and substance satisfactory to the General Partner, with surety or sureties and with fixed or open penalty as the General Partner may direct to indemnify the Partnership, the Partners, the General Partner and the Transfer Agent against any claim that may be made on account of the alleged loss, destruction or theft of the Certificate; and
- (iv) satisfies any other reasonable requirements imposed by the General Partner.

If a Limited Partner fails to notify the General Partner within a reasonable period of time after he has notice of the loss, destruction or theft of a Certificate, and a transfer of the Limited Partner Interests represented by the Certificate is registered before the Partnership, the General Partner or the Transfer Agent receives such notification, the Limited Partner shall be precluded from making any claim against the Partnership, the General Partner or the Transfer Agent for such transfer or for a new Certificate.

(c) As a condition to the issuance of any new Certificate under this Section 4.2, the General Partner may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Transfer Agent) reasonably connected therewith.

#### **Section 4.3 Record Holders.**

The Partnership shall be entitled to recognize the Record Holder as the Partner with respect to any Partnership Interest and, accordingly, shall not be bound to recognize any equitable or other claim to, or interest in, such Partnership Interest on the part of any other Person, regardless of whether the Partnership shall have actual or other notice thereof, except as otherwise provided by law or any applicable rule, regulation, guideline or requirement of any National Securities Exchange on which such Partnership Interests are listed or admitted to trading. Without limiting the foregoing, when a Person (such as a broker, dealer, bank, trust company or clearing corporation or an agent of any of the foregoing) is acting as nominee, agent or in some other representative capacity for another Person in acquiring and/or holding Partnership Interests, as between the Partnership on the one hand, and such other Persons on the other, such representative Person shall be the Record Holder of such Partnership Interest.

#### **Section 4.4 Transfer Generally.**

(a) The term "transfer," when used in this Agreement with respect to a Partnership Interest, shall be deemed to refer to a transaction (i) by which the General Partner assigns its General Partner Units to another Person or by which a holder of Incentive Distribution Rights assigns its Incentive Distribution Rights to another Person, and includes a sale, assignment, gift, pledge, encumbrance, hypothecation, mortgage, exchange or any other disposition by law or otherwise or (ii) by which the holder of a Limited Partner Interest (other than an Incentive Distribution Right) assigns such Limited Partner Interest to another Person who is or becomes a Limited Partner, and includes a sale, assignment, gift, exchange or any other disposition by law or otherwise, including any transfer upon foreclosure of any pledge, encumbrance, hypothecation or mortgage.

(b) No Partnership Interest shall be transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article IV. Any transfer or purported transfer of a Partnership Interest not made in accordance with this Article IV shall be null and void.

(c) Nothing contained in this Agreement shall be construed to prevent a disposition by any stockholder, member, partner or other owner of the General Partner of any or all of the shares of stock, membership interests, partnership interests or other ownership interests in the General Partner.

#### **Section 4.5 Registration and Transfer of Limited Partner Interests.**

(a) The General Partner shall keep or cause to be kept on behalf of the Partnership a register in which, subject to such reasonable regulations as it may prescribe and subject to the provisions of Section 4.5(b), the Partnership will provide for the registration and transfer of Limited Partner Interests. The Transfer Agent is hereby appointed registrar and transfer agent for the purpose of registering Common Units and transfers of such Common Units as herein provided. The Partnership shall not recognize transfers of Certificates evidencing Limited Partner Interests unless such transfers are effected in the manner described in this Section 4.5. Upon surrender of a Certificate for registration of transfer of any Limited Partner Interests evidenced by a Certificate, and subject to the provisions of Section 4.5(b), the appropriate officers of the General Partner on behalf of the Partnership shall execute and deliver, and in the case of Common Units, the Transfer Agent shall countersign and deliver, in the name of the holder or the designated transferee or transferees, as required pursuant to the holder's instructions, one or more new Certificates evidencing the same aggregate number and type of Limited Partner Interests as was evidenced by the Certificate so surrendered.

(b) Except as otherwise provided in Section 4.9, the General Partner shall not recognize any transfer of Limited Partner Interests until the Certificates evidencing such Limited Partner Interests are surrendered for registration of transfer. No charge shall be imposed by the General Partner for such transfer; *provided*, that as a condition to the issuance of any new Certificate under this Section 4.5, the General Partner may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed with respect thereto.

(c) Subject to (i) the foregoing provisions of this Section 4.5, (ii) Section 4.3, (iii) Section 4.8, (iv) with respect to any class or series of Limited Partner Interests, the provisions of any statement of designations or an amendment to this Agreement establishing such class or series, (v) any contractual provisions binding on any Limited Partner and (vi) provisions of applicable law including the Securities Act, Limited Partner Interests (other than the Incentive Distribution Rights) shall be freely transferable.

(d) The General Partner and its Affiliates shall have the right at any time to transfer their Subordinated Units, Class B Units and Common Units (whether issued upon conversion of the Subordinated Units or otherwise) to one or more Persons.

#### *Section 4.6 Transfer of the General Partner's General Partner Interest.*

(a) Subject to Section 4.6(c) below, prior to December 31, 2015, the General Partner shall not transfer all or any part of its General Partner Interest (represented by General Partner Units) to a Person unless such transfer (i) has been approved by the prior written consent or vote of the holders of at least a majority of the Outstanding Common Units (excluding Common Units held by the General Partner and its Affiliates) or (ii) is of all, but not less than all, of its General Partner Interest to (A) an Affiliate of the General Partner (other than an individual) or (B) another Person (other than an individual) in connection with the merger or consolidation of the General Partner with or into such other Person or the transfer by the General Partner of all or substantially all of its assets to such other Person.

(b) Subject to Section 4.6(c) below, on or after December 31, 2015, the General Partner may transfer all or any of its General Partner Interest without Unitholder approval.

(c) Notwithstanding anything herein to the contrary, no transfer by the General Partner of all or any part of its General Partner Interest to another Person shall be permitted unless (i) the transferee agrees to assume the rights and duties of the General Partner under this Agreement and to be bound by the provisions of this Agreement, (ii) the Partnership receives an Opinion of Counsel that such transfer would not result in the loss of limited liability of any Limited Partner under the Delaware Act or cause the Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed) and (iii) such transferee also agrees to purchase all (or the appropriate portion thereof, if applicable) of the partnership or membership interest of the General Partner as the general partner or managing member, if any, of each other Group Member. In the case of a transfer pursuant to and in compliance with this Section 4.6, the transferee or successor (as the case may be) shall, subject to compliance with the terms of Section 10.3, be admitted to the Partnership as the General Partner immediately prior to the transfer of the General Partner Interest, and the business of the Partnership shall continue without dissolution.

#### *Section 4.7 Transfer of Incentive Distribution Rights.*

Prior to December 31, 2015, a holder of Incentive Distribution Rights may transfer any or all of the Incentive Distribution Rights held by such holder without any consent of the Unitholders to (a) an Affiliate of such holder (other than an individual) or (b) another Person

(other than an individual) in connection with (i) the merger or consolidation of such holder of Incentive Distribution Rights with or into such other Person, (ii) the transfer by such holder of all or substantially all of its assets to such other Person or (iii) the sale of all the ownership interests in such holder. Any other transfer of the Incentive Distribution Rights prior to December 31, 2015 shall require the prior approval of holders of at least a majority of the Outstanding Common Units (excluding Common Units held by the General Partner and its Affiliates). On or after September 30, 2015, the General Partner or any other holder of Incentive Distribution Rights may transfer any or all of its Incentive Distribution Rights without Unitholder approval. Notwithstanding anything herein to the contrary, (i) the transfer of Class B Units issued pursuant to Section 5.11, or the transfer of Common Units issued upon conversion of the Class B Units, shall not be treated as a transfer of all or any part of the Incentive Distribution Rights and (ii) no transfer of Incentive Distribution Rights to another Person shall be permitted unless the transferee agrees to be bound by the provisions of this Agreement.

#### Section 4.8 *Restrictions on Transfers*.

(a) Except as provided in Section 4.8(d) below, but notwithstanding the other provisions of this Article IV, no transfer of any Partnership Interests shall be made if such transfer would (i) violate the then applicable federal or state securities laws or rules and regulations of the Commission, any state securities commission or any other governmental authority with jurisdiction over such transfer, (ii) terminate the existence or qualification of the Partnership under the laws of the jurisdiction of its formation, or (iii) cause the Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed).

(b) The General Partner may impose restrictions on the transfer of Partnership Interests if it receives an Opinion of Counsel that such restrictions are necessary to avoid a significant risk of the Partnership becoming taxable as a corporation or otherwise becoming taxable as an entity for federal income tax purposes. The General Partner may impose such restrictions by amending this Agreement; *provided, however*, that any amendment that would result in the delisting or suspension of trading of any class of Limited Partner Interests on the principal National Securities Exchange on which such class of Limited Partner Interests is then listed or admitted to trading must be approved, prior to such amendment being effected, by the holders of at least a majority of the Outstanding Limited Partner Interests of such class.

(c) The transfer of a Subordinated Unit that has converted into a Common Unit shall be subject to the restrictions imposed by Section 6.7(c).

(d) The transfer of a Class B Unit that has converted into a Common Unit shall be subject to the restrictions imposed by Section 6.7(e).

(e) Nothing contained in this Article IV, or elsewhere in this Agreement, shall preclude the settlement of any transactions involving Partnership Interests entered into through the facilities of any National Securities Exchange on which such Partnership Interests are listed or admitted to trading.

(f) Each certificate evidencing Partnership Interests shall bear a conspicuous legend in substantially the following form:

THE HOLDER OF THIS SECURITY ACKNOWLEDGES FOR THE BENEFIT OF DCP MIDSTREAM PARTNERS, LP THAT THIS SECURITY MAY NOT BE SOLD, OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED IF SUCH TRANSFER WOULD (A) VIOLATE THE THEN APPLICABLE FEDERAL OR STATE SECURITIES LAWS OR RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER GOVERNMENTAL AUTHORITY WITH JURISDICTION OVER SUCH TRANSFER, (B) TERMINATE THE EXISTENCE OR QUALIFICATION OF DCP MIDSTREAM PARTNERS, LP UNDER THE LAWS OF THE STATE OF DELAWARE, OR (C) CAUSE DCP MIDSTREAM PARTNERS, LP TO BE TREATED AS AN ASSOCIATION TAXABLE AS A CORPORATION OR OTHERWISE TO BE TAXED AS AN ENTITY FOR FEDERAL INCOME TAX PURPOSES (TO THE EXTENT NOT ALREADY SO TREATED OR TAXED). DCP MIDSTREAM GP LLC, THE GENERAL PARTNER OF DCP MIDSTREAM PARTNERS, LP, MAY IMPOSE ADDITIONAL RESTRICTIONS ON THE TRANSFER OF THIS SECURITY IF IT RECEIVES AN OPINION OF COUNSEL THAT SUCH RESTRICTIONS ARE NECESSARY TO AVOID A SIGNIFICANT RISK OF DCP MIDSTREAM PARTNERS, LP BECOMING TAXABLE AS A CORPORATION OR OTHERWISE BECOMING TAXABLE AS AN ENTITY FOR FEDERAL INCOME TAX PURPOSES. THE RESTRICTIONS SET FORTH ABOVE SHALL NOT PRECLUDE THE SETTLEMENT OF ANY TRANSACTIONS INVOLVING THIS SECURITY ENTERED INTO THROUGH THE FACILITIES OF ANY NATIONAL SECURITIES EXCHANGE ON WHICH THIS SECURITY IS LISTED OR ADMITTED TO TRADING.

*Section 4.9 Citizenship Certificates; Non-citizen Assignees.*

(a) If any Group Member is or becomes subject to any federal, state or local law or regulation that the General Partner determines would create a substantial risk of cancellation or forfeiture of any property in which the Group Member has an interest based on the nationality, citizenship or other related status of a Limited Partner, the General Partner may request any Limited Partner to furnish to the General Partner, within 30 days after receipt of such request, an executed Citizenship Certification or such other information concerning his nationality, citizenship or other related status (or, if the Limited Partner is a nominee holding for the account of another Person, the nationality, citizenship or other related status of such Person) as the General Partner may request. If a Limited Partner fails to furnish to the General Partner within the aforementioned 30-day period such Citizenship Certification or other requested information or if upon receipt of such Citizenship Certification or other requested information the General Partner determines that a Limited Partner is not an Eligible Citizen, the Limited Partner Interests owned by such Limited Partner shall be subject to redemption in accordance with the provisions of Section 4.10. In addition, the General Partner may require that the status of any such Limited Partner be changed to that of a Non-citizen Assignee and, thereupon, the General Partner shall be substituted for such Non-citizen Assignee as the Limited Partner in respect of the Non-citizen Assignee's Limited Partner Interests.

(b) The General Partner shall, in exercising voting rights in respect of Limited Partner Interests held by it on behalf of Non-citizen Assignees, distribute the votes in the same ratios as the votes of Partners (including the General Partner) in respect of Limited Partner Interests other than those of Non-citizen Assignees are cast, either for, against or abstaining as to the matter.

(c) Upon dissolution of the Partnership, a Non-citizen Assignee shall have no right to receive a distribution in kind pursuant to Section 12.4 but shall be entitled to the cash equivalent thereof, and the Partnership shall provide cash in exchange for an assignment of the Non-citizen Assignee's share of any distribution in kind. Such payment and assignment shall be treated for Partnership purposes as a purchase by the Partnership from the Non-citizen Assignee of his Limited Partner Interest (representing his right to receive his share of such distribution in kind).

(d) At any time after he can and does certify that he has become an Eligible Citizen, a Non-citizen Assignee may, upon application to the General Partner, request that with respect to any Limited Partner Interests of such Non-citizen Assignee not redeemed pursuant to Section 4.10, such Non-citizen Assignee be admitted as a Limited Partner, and upon approval of the General Partner, such Non-citizen Assignee shall be admitted as a Limited Partner and shall no longer constitute a Non-citizen Assignee and the General Partner shall cease to be deemed to be the Limited Partner in respect of the Non-citizen Assignee's Limited Partner Interests.

#### *Section 4.10 Redemption of Partnership Interests of Non-citizen Assignees.*

(a) If at any time a Limited Partner fails to furnish a Citizenship Certification or other information requested within the 30-day period specified in Section 4.9(a), or if upon receipt of such Citizenship Certification or other information the General Partner determines, with the advice of counsel, that a Limited Partner is not an Eligible Citizen, the Partnership may, unless the Limited Partner establishes to the satisfaction of the General Partner that such Limited Partner is an Eligible Citizen or has transferred his Partnership Interests to a Person who is an Eligible Citizen and who furnishes a Citizenship Certification to the General Partner prior to the date fixed for redemption as provided below, redeem the Limited Partner Interest of such Limited Partner as follows:

(i) The General Partner shall, not later than the 30th day before the date fixed for redemption, give notice of redemption to the Limited Partner, at his last address designated on the records of the Partnership or the Transfer Agent, by registered or certified mail, postage prepaid. The notice shall be deemed to have been given when so mailed. The notice shall specify the Redeemable Interests, the date fixed for redemption, the place of payment, that payment of the redemption price will be made upon surrender of the Certificate evidencing the Redeemable Interests and that on and after the date fixed for redemption no further allocations or distributions to which the Limited Partner would otherwise be entitled in respect of the Redeemable Interests will accrue or be made.

(ii) The aggregate redemption price for Redeemable Interests shall be an amount equal to the Current Market Price (the date of determination of which shall be the date fixed for redemption) of Limited Partner Interests of the class to be so redeemed multiplied by the number of Limited Partner Interests of each such class included among the Redeemable Interests. The redemption price shall be paid, as determined by the

General Partner, in cash or by delivery of a promissory note of the Partnership in the principal amount of the redemption price, bearing interest at the rate of 5% annually and payable in three equal annual installments of principal together with accrued interest, commencing one year after the redemption date.

(iii) Upon surrender by or on behalf of the Limited Partner, at the place specified in the notice of redemption, of the Certificate evidencing the Redeemable Interests, duly endorsed in blank or accompanied by an assignment duly executed in blank, the Limited Partner or his duly authorized representative shall be entitled to receive the payment therefor.

(iv) After the redemption date, Redeemable Interests shall no longer constitute issued and Outstanding Limited Partner Interests.

(b) The provisions of this Section 4.10 shall also be applicable to Limited Partner Interests held by a Limited Partner as nominee of a Person determined to be other than an Eligible Citizen.

(c) Nothing in this Section 4.10 shall prevent the recipient of a notice of redemption from transferring his Limited Partner Interest before the redemption date if such transfer is otherwise permitted under this Agreement. Upon receipt of notice of such a transfer, the General Partner shall withdraw the notice of redemption, *provided* the transferee of such Limited Partner Interest certifies to the satisfaction of the General Partner that he is an Eligible Citizen. If the transferee fails to make such certification, such redemption shall be effected from the transferee on the original redemption date.

## **ARTICLE V** **CAPITAL CONTRIBUTIONS AND ISSUANCE OF PARTNERSHIP INTERESTS**

### **Section 5.1 Organizational Contributions.**

In connection with the formation of the Partnership under the Delaware Act, the General Partner made an initial Capital Contribution to the Partnership in the amount of \$40.00, for a 2% General Partner Interest in the Partnership and has been admitted as the General Partner of the Partnership, and the Organizational Limited Partner made an initial Capital Contribution to the Partnership in the amount of \$1,960.00 for a 98% Limited Partner Interest in the Partnership and has been admitted as a Limited Partner of the Partnership. As of the Closing Date, the interest of the Organizational Limited Partner shall be redeemed as provided in the Contribution Agreement; and the initial Capital Contribution of the Organizational Limited Partner shall thereupon be refunded. Ninety-eight percent of any interest or other profit that may have resulted from the investment or other use of such initial Capital Contributions shall be allocated and distributed to the Organizational Limited Partner, and the balance thereof shall be allocated and distributed to the General Partner.

**Section 5.2 Contributions by the General Partner and its Affiliates.**

(a) On the Closing Date and pursuant to the Contribution Agreement: (i) the General Partner shall contribute to the Partnership, as a Capital Contribution, all of its ownership interests in DCP Assets Holdings, LP, a Delaware limited partnership (“**DCP LP Holdings**”), in exchange for (A) 357,143 General Partner Units representing a continuation of its 2% General Partner Interest, subject to all of the rights, privileges and duties of the General Partner under this Agreement, (B) the Incentive Distribution Rights, (C) the right to receive \$4.3 million to reimburse the General Partner for certain capital expenditures and (D) the right to receive \$183.0 million from the net proceeds of borrowings by the OLP on the Closing Date pursuant to the Credit Agreement; and (ii) DCP LP Holdings shall contribute to the Partnership, as a Capital Contribution, all of (A) its limited partner interests in DCP Assets Holdings, LP, a Delaware limited partnership and (B) all of its member interest in Duke Energy Guadalupe Pipeline, LLC, a Delaware limited liability company, in exchange for 1,357,143 Common Units, 7,142,857 Subordinated Units and the right to receive \$4.3 million in reimbursement for certain capital expenditures.

(b) Upon the issuance of any additional Limited Partner Interests by the Partnership (other than the Common Units issued in the Initial Offering, the Common Units issued pursuant to the Over-Allotment Option, the Common Units and Subordinated Units issued pursuant to Section 5.2(a), any Class B Units issued pursuant to Section 5.11 and any Common Units issued upon conversion of Class B Units), the General Partner may, in exchange for a proportionate number of General Partner Units, make additional Capital Contributions in an amount equal to the product obtained by multiplying (i) the quotient determined by dividing (A) the General Partner’s Percentage Interest by (B) 100 less the General Partner’s Percentage Interest times (ii) the amount contributed to the Partnership by the Limited Partners in exchange for such additional Limited Partner Interests. Except as set forth in Article XII, the General Partner shall not be obligated to make any additional Capital Contributions to the Partnership.

**Section 5.3 Contributions by Initial Limited Partners.**

(a) On the Closing Date and pursuant to the Underwriting Agreement, each Underwriter shall contribute to the Partnership cash in an amount equal to the Issue Price per Initial Common Unit, multiplied by the number of Common Units specified in the Underwriting Agreement to be purchased by such Underwriter at the Closing Date. In exchange for such Capital Contributions by the Underwriters, the Partnership shall issue Common Units to each Underwriter on whose behalf such Capital Contribution is made in an amount equal to the quotient obtained by dividing (i) the cash contribution to the Partnership by or on behalf of such Underwriter by (ii) the Issue Price per Initial Common Unit.

(b) Upon the exercise of the Over-Allotment Option, each Underwriter shall contribute to the Partnership cash in an amount equal to the Issue Price per Initial Common Unit, multiplied by the number of Common Units to be purchased by such Underwriter at the Option Closing Date. In exchange for such Capital Contributions by the Underwriters, the Partnership shall issue Common Units to each Underwriter on whose behalf such Capital Contribution is made in an amount equal to the quotient obtained by dividing (i) the cash contributions to the Partnership by or on behalf of such Underwriter by (ii) the Issue Price per Initial Common Unit.

Upon receipt by the Partnership of the Capital Contributions from the Underwriters as provided in this Section 5.3(b), the Partnership shall use such cash to purchase United States Treasury and other qualifying securities, which will be assigned as collateral to secure borrowings that are, in turn, used to redeem at the Issue Price per Initial Common Unit, on a Pro Rata basis, from DCP LP :Holdings, LP that number of Common Units held by DCP LP Holdings, LP equal to the number of Common Units issued to the Underwriters as provided in this Section 5.3(b).

(c) No Limited Partner Interests will be issued or issuable as of or at the Closing Date other than (i) the Common Units issuable pursuant to subparagraph (a) hereof in aggregate number equal to 9,000,000, (ii) the “Option Units” as such term is used in the Underwriting Agreement in an aggregate number up to 1,350,000 issuable upon exercise of the Over-Allotment Option pursuant to subparagraph (b) hereof, (iii) the 7,142,857 Subordinated Units issuable to pursuant to Section 5.2 hereof, (iv) the 1,357,143 Common Units issuable pursuant to Section 5.2 hereof, and (v) the Incentive Distribution Rights.

#### *Section 5.4 Interest and Withdrawal.*

No interest shall be paid by the Partnership on Capital Contributions. No Partner or Assignee shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent, if any, that distributions made pursuant to this Agreement or upon termination of the Partnership may be considered as such by law and then only to the extent provided for in this Agreement. Except to the extent expressly provided in this Agreement, no Partner shall have priority over any other Partner or Assignee either as to the return of Capital Contributions or as to profits, losses or distributions. Any such return shall be a compromise to which all Partners agree within the meaning of Section 17-502(b) of the Delaware Act.

#### *Section 5.5 Capital Accounts.*

(a) The Partnership shall maintain for each Partner (or a beneficial owner of Partnership Interests held by a nominee in any case in which the nominee has furnished the identity of such owner to the Partnership in accordance with Section 6031(c) of the Code or any other method acceptable to the General Partner) owning a Partnership Interest a separate Capital Account with respect to such Partnership Interest in accordance with the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). Such Capital Account shall be increased by (i) the amount of all Capital Contributions made to the Partnership with respect to such Partnership Interest and (ii) all items of Partnership income and gain (including income and gain exempt from tax) computed in accordance with Section 5.5(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1, and decreased by (x) the amount of cash or Net Agreed Value of all actual and deemed distributions of cash or property made with respect to such Partnership Interest and (y) all items of Partnership deduction and loss computed in accordance with Section 5.5(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1.

(b) For purposes of computing the amount of any item of income, gain, loss or deduction which is to be allocated pursuant to Article VI and is to be reflected in the Partners’ Capital Accounts, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes

(including any method of depreciation, cost recovery or amortization used for that purpose), *provided*, that:

(i) Solely for purposes of this Section 5.5, the Partnership shall be treated as owning directly its proportionate share (as determined by the General Partner based upon the provisions of the applicable Group Member Agreement or governing, organizational or similar documents) of all property owned by any other Group Member that is classified as a partnership for federal income tax purposes and (y) any other partnership, limited liability company, unincorporated business or other entity classified as a partnership for federal income tax purposes of which a Group Member is, directly or indirectly, a partner.

(ii) All fees and other expenses incurred by the Partnership to promote the sale of (or to sell) a Partnership Interest that can neither be deducted nor amortized under Section 709 of the Code, if any, shall, for purposes of Capital Account maintenance, be treated as an item of deduction at the time such fees and other expenses are incurred and shall be allocated among the Partners pursuant to Section 6.1.

(iii) Except as otherwise provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(m), the computation of all items of income, gain, loss and deduction shall be made without regard to any election under Section 754 of the Code which may be made by the Partnership and, as to those items described in Section 705(a)(1)(B) or 705(a)(2)(B) of the Code, without regard to the fact that such items are not includable in gross income or are neither currently deductible nor capitalized for federal income tax purposes. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment in the Capital Accounts shall be treated as an item of gain or loss.

(iv) Any income, gain or loss attributable to the taxable disposition of any Partnership property shall be determined as if the adjusted basis of such property as of such date of disposition were equal in amount to the Partnership's Carrying Value with respect to such property as of such date.

(v) In accordance with the requirements of Section 704(b) of the Code, any deductions for depreciation, cost recovery or amortization attributable to any Contributed Property shall be determined as if the adjusted basis of such property on the date it was acquired by the Partnership were equal to the Agreed Value of such property. Upon an adjustment pursuant to Section 5.5(d) to the Carrying Value of any Partnership property subject to depreciation, cost recovery or amortization, any further deductions for such depreciation, cost recovery or amortization attributable to such property shall be determined as if the adjusted basis of such property were equal to the Carrying Value of such property immediately following such adjustment.

(vi) If the Partnership's adjusted basis in a depreciable or cost recovery property is reduced for federal income tax purposes pursuant to Section 48(q)(1) or

48(q)(3) of the Code, the amount of such reduction shall, solely for purposes hereof, be deemed to be an additional depreciation or cost recovery deduction in the year such property is placed in service and shall be allocated among the Partners pursuant to Section 6.1. Any restoration of such basis pursuant to Section 48(q)(2) of the Code shall, to the extent possible, be allocated in the same manner to the Partners to whom such deemed deduction was allocated.

(c) (i) A transferee of a Partnership Interest shall succeed to a pro rata portion of the Capital Account of the transferor relating to the Partnership Interest so transferred.

(ii) Subject to Section 6.7(c), immediately prior to the transfer of a Subordinated Unit or of a Subordinated Unit that has converted into a Common Unit pursuant to Section 5.7 by a holder thereof (other than a transfer to an Affiliate unless the General Partner elects to have this subparagraph 5.5(c)(ii) apply), the Capital Account maintained for such Person with respect to its Subordinated Units or converted Subordinated Units will (A) first, be allocated to the Subordinated Units or converted Subordinated Units to be transferred in an amount equal to the product of (x) the number of such Subordinated Units or converted Subordinated Units to be transferred and (y) the Per Unit Capital Amount for a Common Unit, and (B) second, any remaining balance in such Capital Account will be retained by the transferor, regardless of whether it has retained any Subordinated Units or converted Subordinated Units ("**Retained Converted Subordinated Units**"). Following any such allocation, the transferor's Capital Account, if any, maintained with respect to the retained Subordinated Units or Retained Converted Subordinated Units, if any, will have a balance equal to the amount allocated under clause (B) hereinabove, and the transferee's Capital Account established with respect to the transferred Subordinated Units or converted Subordinated Units will have a balance equal to the amount allocated under clause (A) hereinabove.

(d) (i) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), on an issuance of additional Partnership Interests for cash or Contributed Property, the issuance of Partnership Interests as consideration for the provision of services or the conversion of the General Partner's Combined Interest to Common Units pursuant to Section 11.3(b), the Capital Account of all Partners and the Carrying Value of each Partnership property immediately prior to such issuance shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property, as if such Unrealized Gain or Unrealized Loss had been recognized on an actual sale of each such property immediately prior to such issuance and had been allocated to the Partners at such time pursuant to Section 6.1 in the same manner as any item of gain or loss actually recognized during such period would have been allocated. In determining such Unrealized Gain or Unrealized Loss, the aggregate cash amount and fair market value of all Partnership assets (including cash or cash equivalents) immediately prior to the issuance of additional Partnership Interests shall be determined by the General Partner using such method of valuation as it may adopt; *provided, however*, that the General Partner, in arriving at such valuation, must take fully into account the fair market value of the Partnership Interests of all Partners at such time. The General Partner shall allocate such aggregate value among the assets of the Partnership (in such manner as it determines) to arrive at a fair market value for individual properties.

(ii) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), immediately prior to any actual or deemed distribution to a Partner of any Partnership property (other than a distribution of cash that is not in redemption or retirement of a Partnership Interest), the Capital Accounts of all Partners and the Carrying Value of all Partnership property shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property, as if such Unrealized Gain or Unrealized Loss had been recognized in a sale of such property immediately prior to such distribution for an amount equal to its fair market value, and had been allocated to the Partners, at such time, pursuant to Section 6.1 in the same manner as any item of gain or loss actually recognized during such period would have been allocated. In determining such Unrealized Gain or Unrealized Loss the aggregate cash amount and fair market value of all Partnership assets (including cash or cash equivalents) immediately prior to a distribution shall (A) in the case of an actual distribution that is not made pursuant to Section 12.4 or in the case of a deemed distribution, be determined and allocated in the same manner as that provided in Section 5.5(d)(i) or (B) in the case of a liquidating distribution pursuant to Section 12.4, be determined and allocated by the Liquidator using such method of valuation as it may adopt.

**Section 5.6 Issuances of Additional Partnership Securities.**

(a) The Partnership may issue additional Partnership Securities and options, rights, warrants and appreciation rights relating to the Partnership Securities for any Partnership purpose at any time and from time to time to such Persons for such consideration and on such terms and conditions as the General Partner shall determine, all without the approval of any Limited Partners.

(b) Each additional Partnership Security authorized to be issued by the Partnership pursuant to Section 5.6(a) may be issued in one or more classes, or one or more series of any such classes, with such designations, preferences, rights, powers and duties (which may be senior to existing classes and series of Partnership Securities), as shall be fixed by the General Partner, including (i) the right to share in Partnership profits and losses or items thereof; (ii) the right to share in Partnership distributions; (iii) the rights upon dissolution and liquidation of the Partnership; (iv) whether, and the terms and conditions upon which, the Partnership may redeem the Partnership Security; (v) whether such Partnership Security is issued with the privilege of conversion or exchange and, if so, the terms and conditions of such conversion or exchange; (vi) the terms and conditions upon which each Partnership Security will be issued, evidenced by certificates and assigned or transferred; (vii) the method for determining the Percentage Interest as to such Partnership Security; and (viii) the right, if any, of each such Partnership Security to vote on Partnership matters, including matters relating to the relative rights, preferences and privileges of such Partnership Security.

(c) The General Partner shall take all actions that it determines to be necessary or appropriate in connection with (i) each issuance of Partnership Securities and options, rights, warrants and appreciation rights relating to Partnership Securities pursuant to this Section 5.6, (ii) the conversion of the General Partner Interest (represented by General Partner Units) or any Incentive Distribution Rights into Units pursuant to the terms of this Agreement, (iii) the issuance of Class B Units pursuant to Section 5.11 and the conversion of Class B Units into

Common Units pursuant to the terms of this Agreement, (iv) reflecting admission of such additional Limited Partners in the books and records of the Partnership as the Record Holder of such Limited Partner Interest and (v) all additional issuances of Partnership Securities. The General Partner shall determine the relative rights, powers and duties of the holders of the Units or other Partnership Securities being so issued. The General Partner shall do all things necessary to comply with the Delaware Act and is authorized and directed to do all things that it determines to be necessary or appropriate in connection with any future issuance of Partnership Securities or in connection with the conversion of the General Partner Interest or any Incentive Distribution Rights into Units pursuant to the terms of this Agreement, including compliance with any statute, rule, regulation or guideline of any federal, state or other governmental agency or any National Securities Exchange on which the Units or other Partnership Securities are listed or admitted to trading.

(d) No fractional Units shall be issued by the Partnership.

*Section 5.7 Conversion of Subordinated Units.*

(a) A total of 50% of the Outstanding Subordinated Units will convert into Common Units on a one-for-one basis on the second Business Day following the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of any Quarter ending on or after December 31, 2007, in respect of which:

(i) distributions of Available Cash from Operating Surplus under Section 6.4(a) on each of the Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units with respect to each of the two consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded the sum of the Minimum Quarterly Distribution on all of the Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units during such periods;

(ii) the Adjusted Operating Surplus for each of the two consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded the sum of the Minimum Quarterly Distribution on all of the Common Units, Subordinated Units and any other Units that are senior or equal in right of distribution to the Subordinated Units that were Outstanding during such periods on a Fully Diluted Basis and the General Partner Units, with respect to such periods; and

(iii) there are no Cumulative Common Unit Arrearages.

(b) An additional 50% of the Outstanding Subordinated Units will convert into Common Units on a one-for-one basis on the second Business Day following the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of any Quarter ending on or after December 31, 2008, in respect of which:

(i) distributions of Available Cash from Operating Surplus under Section 6.4(a) on each of the Outstanding Common Units and Subordinated Units and

any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units with respect to each of the two consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded 125% of the sum of the Minimum Quarterly Distribution on all of the Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units and the General Partner Units during such periods;

(ii) the Adjusted Operating Surplus for each of the two consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded 125% of the sum of the Minimum Quarterly Distribution on all of the Common Units, Subordinated Units and any other Units that are senior or equal in right of distribution to the Subordinated Units that were Outstanding during such periods on a Fully Diluted Basis and the General Partner Units, with respect to such periods; and

(iii) there are no Cumulative Common Unit Arrearages;

*provided, however,* that the conversion of Subordinated Units pursuant to this Section 5.7(b) may not occur until at least one year following the end of the last four-Quarter period in respect of which conversion of Subordinated Units pursuant to Section 5.7(a) occurred.

(c) In the event that less than all of the Outstanding Subordinated Units shall convert into Common Units pursuant to Section 5.7(a) or (b) at a time when there shall be more than one holder of Subordinated Units, then, unless all of the holders of Subordinated Units shall agree to a different allocation, the Subordinated Units that are to be converted into Common Units shall be allocated among the holders of Subordinated Units pro rata based on the number of Subordinated Units held by each such holder.

(d) Any Subordinated Units that are not converted into Common Units pursuant to Section 5.7(a) or (b) shall convert into Common Units on a one-for-one basis on the second Business Day following the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of the final Quarter of the Subordination Period.

(e) Notwithstanding any other provision of this Agreement, all the then Outstanding Subordinated Units will automatically convert into Common Units on a one-for-one basis as set forth in, and pursuant to the terms of, Section 11.4.

(f) A Subordinated Unit that has converted into a Common Unit shall be subject to the provisions of Section 6.7(b) and Section 6.7(c).

#### **Section 5.8 Limited Preemptive Right.**

Except as provided in this Section 5.8 and in Section 5.2, no Person shall have any preemptive, preferential or other similar right with respect to the issuance of any Partnership Security, whether unissued, held in the treasury or hereafter created. The General Partner shall have the right, which it may from time to time assign in whole or in part to any of its Affiliates, to purchase Partnership Securities from the Partnership whenever, and on the same terms that, the Partnership issues Partnership Securities to Persons other than the General Partner and its

Affiliates, to the extent necessary to maintain the Percentage Interests of the General Partner and its Affiliates equal to that which existed immediately prior to the issuance of such Partnership Securities.

*Section 5.9 Splits and Combinations.*

(a) Subject to Section 5.9(d), Section 6.6 and Section 6.9 (dealing with adjustments of distribution levels), the Partnership may make a Pro Rata distribution of Partnership Securities to all Record Holders or may effect a subdivision or combination of Partnership Securities so long as, after any such event, each Partner shall have the same Percentage Interest in the Partnership as before such event, and any amounts calculated on a per Unit basis (including any Common Unit Arrearage or Cumulative Common Unit Arrearage) or stated as a number of Units (including the number of Subordinated Units that may convert prior to the end of the Subordination Period) are proportionately adjusted.

(b) Whenever such a distribution, subdivision or combination of Partnership Securities is declared, the General Partner shall select a Record Date as of which the distribution, subdivision or combination shall be effective and shall send notice thereof at least 20 days prior to such Record Date to each Record Holder as of a date not less than 10 days prior to the date of such notice. The General Partner also may cause a firm of independent public accountants selected by it to calculate the number of Partnership Securities to be held by each Record Holder after giving effect to such distribution, subdivision or combination. The General Partner shall be entitled to rely on any certificate provided by such firm as conclusive evidence of the accuracy of such calculation.

(c) Promptly following any such distribution, subdivision or combination, the Partnership may issue Certificates to the Record Holders of Partnership Securities as of the applicable Record Date representing the new number of Partnership Securities held by such Record Holders, or the General Partner may adopt such other procedures that it determines to be necessary or appropriate to reflect such changes. If any such combination results in a smaller total number of Partnership Securities Outstanding, the Partnership shall require, as a condition to the delivery to a Record Holder of such new Certificate, the surrender of any Certificate held by such Record Holder immediately prior to such Record Date.

(d) The Partnership shall not issue fractional Units upon any distribution, subdivision or combination of Units. If a distribution, subdivision or combination of Units would result in the issuance of fractional Units but for the provisions of this Section 5.9(d), each fractional Unit shall be rounded to the nearest whole Unit (and a 0.5 Unit shall be rounded to the next higher Unit).

*Section 5.10 Fully Paid and Non-Assessable Nature of Limited Partner Interests.*

All Limited Partner Interests issued pursuant to, and in accordance with the requirements of, this Article V shall be fully paid and non-assessable Limited Partner Interests in the Partnership, except as such non-assessability may be affected by Section 17-607 of the Delaware Act.

#### Section 5.11 Issuance of Class B Units in Connection with Reset of Incentive Distribution Rights.

(a) Subject to the provisions of this Section 5.11, the holder of the Incentive Distribution Rights (or, if there is more than one holder of the Incentive Distribution Rights, the holders of a majority in interest of the Incentive Distribution Rights) shall have the right, at any time when there are no Subordinated Units outstanding and the Partnership has made a distribution pursuant to Section 6.4(b)(v) for each of the four most recently completed Quarters and the amount of each such distribution did not exceed Adjusted Operating Surplus for such Quarter, to make an election (the “**IDR Reset Election**”) to cause the Minimum Quarterly Distribution and the Target Distributions to be reset in accordance with the provisions of Section 5.11(e) and, in connection therewith, the holder or holders of the Incentive Distribution Rights will become entitled to receive their respective proportionate share of a number of Class B Units derived by dividing (i) the average amount of cash distributions made by the Partnership for the two full Quarters immediately preceding the giving of the Reset Notice (as defined in Section 5.11(b)) in respect of the Incentive Distribution Rights by (ii) the average of the cash distributions made by the Partnership in respect of each Common Unit for the two full Quarters immediately preceding the giving of the Reset Notice (the number of Class B Units determined by such quotient is referred to herein as the “**Aggregate Quantity of Class B Units**”). The making of the IDR Reset Election in the manner specified in Section 5.11(b) shall cause the Minimum Quarterly Distribution and the Target Distributions to be reset in accordance with the provisions of Section 5.11(e) and, in connection therewith, the holder or holders of the Incentive Distribution Rights will become entitled to receive Class B Units on the basis specified above, without any further approval required by the General Partner or the Unitholders, at the time specified in Section 5.11(c) unless the IDR Reset Election is rescinded pursuant to Section 5.11(d).

(b) To exercise the right specified in Section 5.11(a), the holder of the Incentive Distribution Rights (or, if there is more than one holder of the Incentive Distribution Rights, the holders of a majority in interest of the Incentive Distribution Rights) shall deliver a written notice (the “**Reset Notice**”) to the Partnership. Within 10 Business Days after the receipt by the Partnership of such Reset Notice, as the case may be, the Partnership shall deliver a written notice to the holder or holders of the Incentive Distribution Rights of the Partnership’s determination of the aggregate number of Class B Units which each holder of Incentive Distribution Rights will be entitled to receive.

(c) The holder or holders of the Incentive Distribution Rights will be entitled to receive the Aggregate Quantity of Class B Units on the fifteenth Business Day after receipt by the Partnership of the Reset Notice, and the Partnership shall issue Certificates for the Class B Units to the holder or holders of the Incentive Distribution Rights; *provided, however,* that the issuance of Class B Units to the holder or holders of the Incentive Distribution Rights shall not occur prior to the approval of the listing or admission for trading of the Common Units into which the Class B Units are convertible pursuant to Section 5.11(f) by the principal National Securities Exchange upon which the Common Units are then listed or admitted for trading if any such approval is required pursuant to the rules and regulations of such National Securities Exchange.

(d) In the event that the principal National Securities Exchange upon which the Common Units are then traded have not approved the listing or admission for trading of the Common Units into which the Class B Units are convertible pursuant to Section 5.11(f) on or before the 30th calendar day following the Partnership's receipt of the Reset Notice and such approval is required by the rules and regulations of such National Securities Exchange, then the holder of the Incentive Distribution Rights (or, if there is more than one holder of the Incentive Distribution Rights, the holders of a majority in interest of the Incentive Distribution Rights) shall have the right to either rescind the IDR Reset Election or elect to receive other Partnership Securities having such terms as the General Partner may approve, with the approval of the Conflicts Committee, that will provide (i) the same economic value, in the aggregate, as the Aggregate Quantity of Class B Units would have had at the time of the Partnership's receipt of the Reset Notice, as determined by the General Partner, and (ii) for the subsequent conversion of such Partnership Securities into Common Units within not more than 12 months following the Partnership's receipt of the Reset Notice upon the satisfaction of one or more conditions that are reasonably acceptable to the holder of the Incentive Distribution Rights (or, if there is more than one holder of the Incentive Distribution Rights, the holders of a majority in interest of the Incentive Distribution Rights).

(e) The Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution and Third Target Distribution shall be adjusted at the time of the issuance of Common Units or other Partnership Securities pursuant to this Section 5.11 such that (i) the Minimum Quarterly Distribution shall be reset to equal to the average cash distribution amount per Common Unit for the two Quarters immediately prior to the Partnership's receipt of the Reset Notice (the "**Reset MQD**"), (ii) the First Target Distribution shall be reset to equal 115% of the Reset MQD, (iii) the Second Target Distribution shall be reset to equal to 125% of the Reset MQD and (iv) the Third Target Distribution shall be reset to equal 150% of the Reset MQD.

(f) Any holder of Class B Units shall have the right to elect, by giving written notice to the General Partner, to convert all or a portion of the Class B Units held by such holder, at any time following the first anniversary of the issuance of such Class B Units, into Common Units on a one-for-one basis, such conversion to be effective on the second Business Day following the General Partner's receipt of such written notice.

## **ARTICLE VI** **ALLOCATIONS AND DISTRIBUTIONS**

### *Section 6.1 Allocations for Capital Account Purposes.*

For purposes of maintaining the Capital Accounts and in determining the rights of the Partners among themselves, the Partnership's items of income, gain, loss and deduction (computed in accordance with Section 5.5(b)) shall be allocated among the Partners in each taxable year (or portion thereof) as provided herein below.

(a) *Net Income.* After giving effect to the special allocations set forth in Section 6.1(d), Net Income for each taxable year and all items of income, gain, loss and

deduction taken into account in computing Net Income for such taxable year shall be allocated as follows:

(i) First, 100% to the General Partner, in an amount equal to the aggregate Net Losses allocated to the General Partner pursuant to Section 6.1(b)(iii) for all previous taxable years until the aggregate Net Income allocated to the General Partner pursuant to this Section 6.1(a)(i) for the current taxable year and all previous taxable years is equal to the aggregate Net Losses allocated to the General Partner pursuant to Section 6.1(b)(iii) for all previous taxable years;

(ii) Second, 100% to the General Partner and the Unitholders, in accordance with their respective Percentage Interests, until the aggregate Net Income allocated to such Partners pursuant to this Section 6.1(a)(ii) for the current taxable year and all previous taxable years is equal to the aggregate Net Losses allocated to such Partners pursuant to Section 6.1(b)(ii) for all previous taxable years; and

(iii) Third, the balance, if any, 100% to the General Partner and the Unitholders, in accordance with their respective Percentage Interests.

(b) *Net Losses.* After giving effect to the special allocations set forth in Section 6.1(d), Net Losses for each taxable period and all items of income, gain, loss and deduction taken into account in computing Net Losses for such taxable period shall be allocated as follows:

(i) First, 100% to the General Partner and the Unitholders, in accordance with their respective Percentage Interests, until the aggregate Net Losses allocated pursuant to this Section 6.1(b)(i) for the current taxable year and all previous taxable years is equal to the aggregate Net Income allocated to such Partners pursuant to Section 6.1(a)(iii) for all previous taxable years, *provided* that the Net Losses shall not be allocated pursuant to this Section 6.1(b)(i) to the extent that such allocation would cause any Unitholder to have a deficit balance in its Adjusted Capital Account at the end of such taxable year (or increase any existing deficit balance in its Adjusted Capital Account);

(ii) Second, 100% to the General Partner and the Unitholders, in accordance with their respective Percentage Interests; *provided*, that Net Losses shall not be allocated pursuant to this Section 6.1(b)(ii) to the extent that such allocation would cause any Unitholder to have a deficit balance in its Adjusted Capital Account at the end of such taxable year (or increase any existing deficit balance in its Adjusted Capital Account); and

(iii) Third, the balance, if any, 100% to the General Partner.

(c) *Net Termination Gains and Losses.* After giving effect to the special allocations set forth in Section 6.1(d), all items of income, gain, loss and deduction taken into account in computing Net Termination Gain or Net Termination Loss for such taxable period shall be allocated in the same manner as such Net Termination Gain or Net Termination Loss is allocated hereunder. All allocations under this Section 6.1(c) shall be made after Capital Account balances have been adjusted by all other allocations provided under this Section 6.1 and after all

distributions of Available Cash provided under Section 6.4 and Section 6.5 have been made; *provided, however,* that solely for purposes of this Section 6.1(c), Capital Accounts shall not be adjusted for distributions made pursuant to Section 12.4.

(i) If a Net Termination Gain is recognized (or deemed recognized pursuant to Section 5.5(d)), such Net Termination Gain shall be allocated among the Partners in the following manner (and the Capital Accounts of the Partners shall be increased by the amount so allocated in each of the following subclauses, in the order listed, before an allocation is made pursuant to the next succeeding subclause):

(A) First, to each Partner having a deficit balance in its Capital Account, in the proportion that such deficit balance bears to the total deficit balances in the Capital Accounts of all Partners, until each such Partner has been allocated Net Termination Gain equal to any such deficit balance in its Capital Account;

(B) Second, (x) to the General Partner in accordance with its Percentage Interest and (y) to all Unitholders holding Common Units, Pro Rata, a percentage equal to 100% less the percentage applicable to subclause (x) of this clause (B), until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) its Unrecovered Initial Unit Price, (2) the Minimum Quarterly Distribution for the Quarter during which the Liquidation Date occurs, reduced by any distribution pursuant to Section 6.4(a)(i) or Section 6.4(b)(i) with respect to such Common Unit for such Quarter (the amount determined pursuant to this clause (2) is hereinafter defined as the “Unpaid MQD”) and (3) any then existing Cumulative Common Unit Arrearage;

(C) Third, if such Net Termination Gain is recognized (or is deemed to be recognized) prior to the conversion of the last Outstanding Class B Unit, (x) to the General Partner in accordance with its Percentage Interest and (y) to all Unitholders holding Class B Units, Pro Rata, a percentage equal to 100% less the percentage applicable to subclause (x) of this clause (C), until the Capital Account in respect of each Class B Unit then Outstanding equals the sum of (1) its Unrecovered Initial Unit Price, and (2) the Minimum Quarterly Distribution for the Quarter during which the Liquidation Date occurs, reduced by any distribution pursuant to Section 6.4(b)(i) with respect to such Class B Unit for such Quarter;

(D) Fourth, if such Net Termination Gain is recognized (or is deemed to be recognized) prior to the conversion of the last Outstanding Subordinated Unit, (x) to the General Partner in accordance with its Percentage Interest and (y) to all Unitholders holding Subordinated Units, Pro Rata, a percentage equal to 100% less the percentage applicable to subclause (x) of this clause (D), until the Capital Account in respect of each Subordinated Unit then Outstanding equals the sum of (1) its Unrecovered Initial Unit Price, determined for the taxable year (or portion thereof) to which this allocation of gain relates, and (2) the Minimum Quarterly Distribution for the Quarter during which the Liquidation Date occurs,

reduced by any distribution pursuant to Section 6.4(a)(iii) with respect to such Subordinated Unit for such Quarter;

(E) Fifth, 100% to the General Partner and all Unitholders in accordance with their respective Percentage Interests, until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) its Unrecovered Initial Unit Price, (2) the Unpaid MQD, (3) any then existing Cumulative Common Unit Arrearage, and (4) the excess of (aa) the First Target Distribution less the Minimum Quarterly Distribution for each Quarter of the Partnership's existence over (bb) the cumulative per Unit amount of any distributions of Available Cash that is deemed to be Operating Surplus made pursuant to Section 6.4(a)(iv) and Section 6.4(b)(ii) (the sum of (1), (2), (3) and (4) is hereinafter defined as the "*First Liquidation Target Amount*");

(F) Sixth, (x) to the General Partner in accordance with its Percentage Interest, (y) 13% to the holders of the Incentive Distribution Rights, Pro Rata, and (z) to all Unitholders, Pro Rata, a percentage equal to 100% less the sum of the percentages applicable to subclause (x) and (y) of this clause (F), until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) the First Liquidation Target Amount, and (2) the excess of (aa) the Second Target Distribution less the First Target Distribution for each Quarter of the Partnership's existence over (bb) the cumulative per Unit amount of any distributions of Available Cash that is deemed to be Operating Surplus made pursuant to Section 6.4(a)(v) and Section 6.4(b)(iii) (the sum of (1) and (2) is hereinafter defined as the "*Second Liquidation Target Amount*");

(G) Seventh, (x) to the General Partner in accordance with its Percentage Interest, (y) 23% to the holders of the Incentive Distribution Rights, Pro Rata, and (z) to all Unitholders, Pro Rata, a percentage equal to 100% less the sum of the percentages applicable to subclause (x) and (y) of this clause (G), until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) the Second Liquidation Target Amount, and (2) the excess of (aa) the Third Target Distribution less the Second Target Distribution for each Quarter of the Partnership's existence over (bb) the cumulative per Unit amount of any distributions of Available Cash that is deemed to be Operating Surplus made pursuant to Section 6.4(a)(vi) and Section 6.4(b)(iv) (the sum of (1) and (2) is hereinafter defined as the "*Third Liquidation Target Amount*"); and

(H) Finally, (x) to the General Partner in accordance with its Percentage Interest, (y) 48% to the holders of the Incentive Distribution Rights, Pro Rata, and (z) to all Unitholders, Pro Rata, a percentage equal to 100% less the sum of the percentages applicable to subclause (x) and (y) of this clause (H).

(ii) If a Net Termination Loss is recognized (or deemed recognized pursuant to Section 5.5(d)), such Net Termination Loss shall be allocated among the Partners in the following manner:

(A) First, if such Net Termination Loss is recognized (or is deemed to be recognized) prior to the conversion of the last Outstanding Subordinated Unit, (x) to the General Partner in accordance with its Percentage Interest and (y) to all Unitholders holding Subordinated Units, Pro Rata, a percentage equal to 100% less the percentage applicable to subclause (x) of this clause (A), until the Capital Account in respect of each Subordinated Unit then Outstanding has been reduced to zero;

(B) Second, (x) to the General Partner in accordance with its Percentage Interest and (y) to the Class B Unitholders, Pro Rata, a percentage equal to 100% less the percentage applicable to subclause (x) of this clause (B) until the Capital Account in respect of each Class B Unit then Outstanding has been reduced to zero;

(C) Third, (x) to the General Partner in accordance with its Percentage Interest and (y) to all Unitholders, Pro Rata, a percentage equal to 100% less the percentage applicable to subclause (x) of this clause (B) until the Capital Account in respect of each Unit then Outstanding has been reduced to zero; and

(D) Fourth, the balance, if any, 100% to the General Partner.

(d) *Special Allocations.* Notwithstanding any other provision of this Section 6.1, the following special allocations shall be made for such taxable period:

(i) *Partnership Minimum Gain Chargeback.* Notwithstanding any other provision of this Section 6.1, if there is a net decrease in Partnership Minimum Gain during any Partnership taxable period, each Partner shall be allocated items of Partnership income and gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(f)(6), 1.704-2(g)(2) and 1.704-2(j)(2)(i), or any successor provision. For purposes of this Section 6.1(d), each Partner's Adjusted Capital Account balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 6.1(d) with respect to such taxable period (other than an allocation pursuant to Section 6.1(d)(vi) and Section 6.1(d)(vii)). This Section 6.1(d)(i) is intended to comply with the Partnership Minimum Gain chargeback requirement in Treasury Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) *Chargeback of Partner Nonrecourse Debt Minimum Gain.* Notwithstanding the other provisions of this Section 6.1 (other than Section 6.1(d)(i)), except as provided in Treasury Regulation Section 1.704-2(i)(4), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain during any Partnership taxable period, any Partner with a share of Partner Nonrecourse Debt Minimum Gain at the beginning of such taxable period shall be allocated items of Partnership income and gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii), or any successor provisions. For purposes of this Section 6.1(d), each Partner's Adjusted Capital Account

balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 6.1(d), other than Section 6.1(d)(i) and other than an allocation pursuant to Section 6.1(d)(vi) and Section 6.1(d)(vii), with respect to such taxable period. This Section 6.1(d)(ii) is intended to comply with the chargeback of items of income and gain requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) *Priority Allocations.*

(A) If the amount of cash or the Net Agreed Value of any property distributed (except cash or property distributed pursuant to Section 12.4) to any Unitholder with respect to its Units for a taxable year is greater (on a per Unit basis) than the amount of cash or the Net Agreed Value of property distributed to the other Unitholders with respect to their Units (on a per Unit basis), then (1) there shall be allocated income and gain to each Unitholder receiving such greater cash or property distribution until the aggregate amount of such items allocated pursuant to this Section 6.1(d)(iii) (A) for the current taxable year and all previous taxable years is equal to the product of (aa) the amount by which the distribution (on a per Unit basis) to such Unitholder exceeds the distribution (on a per Unit basis) to the Unitholders receiving the smallest distribution and (bb) the number of Units owned by the Unitholder receiving the greater distribution; and (2) the General Partner shall be allocated income and gain in an aggregate amount equal to the product obtained by multiplying (aa) the quotient determined by dividing (x) the General Partner's Percentage Interest at the time in which the greater cash or property distribution occurs by (y) the sum of 100 less the General Partner's Percentage Interest at the time in which the greater cash or property distribution occurs times (bb) the sum of the amounts allocated in clause (1) above.

(B) After the application of Section 6.1(d)(iii)(A), all or any portion of the remaining items of Partnership income or gain for the taxable period, if any, shall be allocated (1) to the holders of Incentive Distribution Rights, Pro Rata, until the aggregate amount of such items allocated to the holders of Incentive Distribution Rights pursuant to this Section 6.1(d)(iii)(B) for the current taxable year and all previous taxable years is equal to the cumulative amount of all Incentive Distributions made to the holders of Incentive Distribution Rights from the Closing Date to a date 45 days after the end of the current taxable year; and (2) to the General Partner an amount equal to the product of (aa) an amount equal to the quotient determined by dividing (x) the General Partner's Percentage Interest by (y) the sum of 100 less the General Partner's Percentage Interest times (bb) the sum of the amounts allocated in clause (1) above.

(iv) *Qualified Income Offset.* In the event any Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Partnership income and gain shall be specially allocated to such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations

promulgated under Section 704(b) of the Code, the deficit balance, if any, in its Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible unless such deficit balance is otherwise eliminated pursuant to Section 6.1(d)(i) or Section 6.1(d)(ii).

(v) *Gross Income Allocations.* In the event any Partner has a deficit balance in its Capital Account at the end of any Partnership taxable period in excess of the sum of (A) the amount such Partner is required to restore pursuant to the provisions of this Agreement and (B) the amount such Partner is deemed obligated to restore pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), such Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible; *provided*, that an allocation pursuant to this Section 6.1(d)(v) shall be made only if and to the extent that such Partner would have a deficit balance in its Capital Account as adjusted after all other allocations provided for in this Section 6.1 have been tentatively made as if this Section 6.1(d)(v) were not in this Agreement.

(vi) *Nonrecourse Deductions.* Nonrecourse Deductions for any taxable period shall be allocated to the Partners in accordance with their respective Percentage Interests. If the General Partner determines that the Partnership's Nonrecourse Deductions should be allocated in a different ratio to satisfy the safe harbor requirements of the Treasury Regulations promulgated under Section 704(b) of the Code, the General Partner is authorized, upon notice to the other Partners, to revise the prescribed ratio to the numerically closest ratio that does satisfy such requirements.

(vii) *Partner Nonrecourse Deductions.* Partner Nonrecourse Deductions for any taxable period shall be allocated 100% to the Partner that bears the Economic Risk of Loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulation Section 1.704-2(i). If more than one Partner bears the Economic Risk of Loss with respect to a Partner Nonrecourse Debt, such Partner Nonrecourse Deductions attributable thereto shall be allocated between or among such Partners in accordance with the ratios in which they share such Economic Risk of Loss.

(viii) *Nonrecourse Liabilities.* For purposes of Treasury Regulation Section 1.752-3(a)(3), the Partners agree that Nonrecourse Liabilities of the Partnership in excess of the sum of (A) the amount of Partnership Minimum Gain and (B) the total amount of Nonrecourse Built-in Gain shall be allocated among the Partners in accordance with their respective Percentage Interests.

(ix) *Code Section 754 Adjustments.* To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such item of gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which

their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

(x) *Economic Uniformity*.

(A) At the election of the General Partner with respect to any taxable period ending upon, or after, the termination of the Subordination Period, all or a portion of the remaining items of Partnership income or gain for such taxable period, after taking into account allocations pursuant to Section 6.1(d)(iii), shall be allocated 100% to each Partner holding Subordinated Units that are Outstanding as of the termination of the Subordination Period (“**Final Subordinated Units**”) in the proportion of the number of Final Subordinated Units held by such Partner to the total number of Final Subordinated Units then Outstanding, until each such Partner has been allocated an amount of income or gain that increases the Capital Account maintained with respect to such Final Subordinated Units to an amount equal to the product of (A) the number of Final Subordinated Units held by such Partner and (B) the Per Unit Capital Amount for a Common Unit. The purpose of this allocation is to establish uniformity between the Capital Accounts underlying Final Subordinated Units and the Capital Accounts underlying Common Units held by Persons other than the General Partner and its Affiliates immediately prior to the conversion of such Final Subordinated Units into Common Units. This allocation method for establishing such economic uniformity will be available to the General Partner only if the method for allocating the Capital Account maintained with respect to the Subordinated Units between the transferred and retained Subordinated Units pursuant to Section 5.5(c)(ii) does not otherwise provide such economic uniformity to the Final Subordinated Units.

(B) At the election of the General Partner with respect to any taxable period ending upon, or after, the conversion of the Class B Units pursuant to Section 5.11(f), all or a portion of the remaining items of Partnership income or gain for such taxable period, after taking into account allocations pursuant to Section 6.1(d)(iii) and Section 6.1(d)(x)(A), shall be allocated 100% to the holder or holders of the Common Units resulting from the conversion pursuant to Section 5.11(f) (“**Converted Common Units**”) in the proportion of the number of the Converted Common Units held by such holder or holders to the total number of Converted Common Units then Outstanding, until each such holder has been allocated an amount of income or gain that increases the Capital Account maintained with respect to such Converted Common Units to an amount equal to the product of (A) the number of Converted Common Units held by such holder and (B) the Per Unit Capital Amount for a Common Unit. The purpose of this allocation is to establish uniformity between the Capital Accounts underlying Converted Common Units and the Capital Accounts underlying Common Units held by Persons other than the General Partner and its Affiliates immediately prior to the receipt of Common Units pursuant to Section 5.11(f).

(xi) *Curative Allocation.*

(A) Notwithstanding any other provision of this Section 6.1, other than the Required Allocations, the Required Allocations shall be taken into account in making the Agreed Allocations so that, to the extent possible, the net amount of items of income, gain, loss and deduction allocated to each Partner pursuant to the Required Allocations and the Agreed Allocations, together, shall be equal to the net amount of such items that would have been allocated to each such Partner under the Agreed Allocations had the Required Allocations and the related Curative Allocation not otherwise been provided in this Section 6.1. Notwithstanding the preceding sentence, Required Allocations relating to (1) Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partnership Minimum Gain and (2) Partner Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partner Nonrecourse Debt Minimum Gain. Allocations pursuant to this Section 6.1(d)(xi)(A) shall only be made with respect to Required Allocations to the extent the General Partner determines that such allocations will otherwise be inconsistent with the economic agreement among the Partners. Further, allocations pursuant to this Section 6.1(d)(xi)(A) shall be deferred with respect to allocations pursuant to clauses (1) and (2) hereof to the extent the General Partner determines that such allocations are likely to be offset by subsequent Required Allocations.

(B) The General Partner shall, with respect to each taxable period, (1) apply the provisions of Section 6.1(d)(xi)(A) in whatever order is most likely to minimize the economic distortions that might otherwise result from the Required Allocations, and (2) divide all allocations pursuant to Section 6.1(d)(xi)(A) among the Partners in a manner that is likely to minimize such economic distortions.

(xii) *Corrective Allocations.* In the event of any allocation of Additional Book Basis Derivative Items or any Book-Down Event or any recognition of a Net Termination Loss, the following rules shall apply:

(A) In the case of any allocation of Additional Book Basis Derivative Items (other than an allocation of Unrealized Gain or Unrealized Loss under Section 5.5(d) hereof), the General Partner shall allocate additional items of income and gain away from the holders of Incentive Distribution Rights to the Unitholders and the General Partner, or additional items of deduction and loss away from the Unitholders and the General Partner to the holders of Incentive Distribution Rights, to the extent that the Additional Book Basis Derivative Items allocated to the Unitholders or the General Partner exceed their Share of Additional Book Basis Derivative Items. For this purpose, the Unitholders and the General Partner shall be treated as being allocated Additional Book Basis Derivative Items to the extent that such Additional Book Basis Derivative Items have reduced the amount of income that would otherwise have been allocated to the Unitholders or the General Partner under the Partnership Agreement (e.g., Additional Book Basis Derivative Items taken into account in computing cost of

goods sold would reduce the amount of book income otherwise available for allocation among the Partners). Any allocation made pursuant to this Section 6.1(d)(xii)(A) shall be made after all of the other Agreed Allocations have been made as if this Section 6.1(d)(xii) were not in this Agreement and, to the extent necessary, shall require the reallocation of items that have been allocated pursuant to such other Agreed Allocations.

(B) In the case of any negative adjustments to the Capital Accounts of the Partners resulting from a Book-Down Event or from the recognition of a Net Termination Loss, such negative adjustment (1) shall first be allocated, to the extent of the Aggregate Remaining Net Positive Adjustments, in such a manner, as determined by the General Partner, that to the extent possible the aggregate Capital Accounts of the Partners will equal the amount that would have been the Capital Account balance of the Partners if no prior Book-Up Events had occurred, and (2) any negative adjustment in excess of the Aggregate Remaining Net Positive Adjustments shall be allocated pursuant to Section 6.1(c) hereof.

(C) In making the allocations required under this Section 6.1(d)(xii), the General Partner may apply whatever conventions or other methodology it determines will satisfy the purpose of this Section 6.1(d)(xii).

## *Section 6.2 Allocations for Tax Purposes.*

(a) Except as otherwise provided herein, for federal income tax purposes, each item of income, gain, loss and deduction shall be allocated among the Partners in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Section 6.1.

(b) In an attempt to eliminate Book-Tax Disparities attributable to a Contributed Property or Adjusted Property, items of income, gain, loss, depreciation, amortization and cost recovery deductions shall be allocated for federal income tax purposes among the Partners as follows:

(i) (A) In the case of a Contributed Property, such items attributable thereto shall be allocated among the Partners in the manner provided under Section 704(c) of the Code that takes into account the variation between the Agreed Value of such property and its adjusted basis at the time of contribution; and (B) any item of Residual Gain or Residual Loss attributable to a Contributed Property shall be allocated among the Partners in the same manner as its correlative item of "book" gain or loss is allocated pursuant to Section 6.1.

(ii) (A) In the case of an Adjusted Property, such items shall (1) first, be allocated among the Partners in a manner consistent with the principles of Section 704(c) of the Code to take into account the Unrealized Gain or Unrealized Loss attributable to such property and the allocations thereof pursuant to Section 5.5(d)(i) or Section 5.5(d)(ii), and (2) second, in the event such property was originally a Contributed Property, be allocated among the Partners in a manner consistent with Section 6.2(b)(i)(A); and (B) any item of Residual Gain or Residual Loss attributable to an

Adjusted Property shall be allocated among the Partners in the same manner as its correlative item of “book” gain or loss is allocated pursuant to Section 6.1.

(iii) The General Partner shall apply the principles of Treasury Regulation Section 1.704-3(d) to eliminate Book-Tax Disparities, except with respect to goodwill contributed to the Partnership upon formation.

(c) For the proper administration of the Partnership and for the preservation of uniformity of the Limited Partner Interests (or any class or classes thereof), the General Partner shall (i) adopt such conventions as it deems appropriate in determining the amount of depreciation, amortization and cost recovery deductions; (ii) make special allocations for federal income tax purposes of income (including gross income) or deductions; and (iii) amend the provisions of this Agreement as appropriate (x) to reflect the proposal or promulgation of Treasury Regulations under Section 704(b) or Section 704(c) of the Code or (y) otherwise to preserve or achieve uniformity of the Limited Partner Interests (or any class or classes thereof). The General Partner may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 6.2(c) only if such conventions, allocations or amendments would not have a material adverse effect on the Partners, the holders of any class or classes of Limited Partner Interests issued and Outstanding or the Partnership, and if such allocations are consistent with the principles of Section 704 of the Code.

(d) The General Partner may determine to depreciate or amortize the portion of an adjustment under Section 743(b) of the Code attributable to unrealized appreciation in any Adjusted Property (to the extent of the unamortized Book-Tax Disparity) using a predetermined rate derived from the depreciation or amortization method and useful life applied to the Partnership’s common basis of such property, despite any inconsistency of such approach with Treasury Regulation Section 1.167(c)-1(a)(6) or any successor regulations thereto. If the General Partner determines that such reporting position cannot reasonably be taken, the General Partner may adopt depreciation and amortization conventions under which all purchasers acquiring Limited Partner Interests in the same month would receive depreciation and amortization deductions, based upon the same applicable rate as if they had purchased a direct interest in the Partnership’s property. If the General Partner chooses not to utilize such aggregate method, the General Partner may use any other depreciation and amortization conventions to preserve the uniformity of the intrinsic tax characteristics of any Limited Partner Interests, so long as such conventions would not have a material adverse effect on the Limited Partners or the Record Holders of any class or classes of Limited Partner Interests.

(e) In accordance with Treasury Regulation Section 1.1245-1(e), any gain allocated to the Partners upon the sale or other taxable disposition of any Partnership asset shall, to the extent possible, after taking into account other required allocations of gain pursuant to this Section 6.2, be characterized as Recapture Income in the same proportions and to the same extent as such Partners (or their predecessors in interest) have been allocated any deductions directly or indirectly giving rise to the treatment of such gains as Recapture Income.

(f) All items of income, gain, loss, deduction and credit recognized by the Partnership for federal income tax purposes and allocated to the Partners in accordance with the provisions hereof shall be determined without regard to any election under Section 754 of the

Code that may be made by the Partnership; *provided, however*, that such allocations, once made, shall be adjusted (in the manner determined by the General Partner) to take into account those adjustments permitted or required by Sections 734 and 743 of the Code.

(g) Each item of Partnership income, gain, loss and deduction, for federal income tax purposes, shall be determined on an annual basis and prorated on a monthly basis and shall be allocated to the Partners as of the opening of the New York Stock Exchange on the first Business Day of each month; *provided, however*, such items for the period beginning on the Closing Date and ending on the last day of the month in which the Option Closing Date or the expiration of the Over-Allotment Option occurs shall be allocated to the Partners as of the opening of the New York Stock Exchange on the first Business Day of the next succeeding month; and *provided, further*, that gain or loss on a sale or other disposition of any assets of the Partnership or any other extraordinary item of income or loss realized and recognized other than in the ordinary course of business, as determined by the General Partner, shall be allocated to the Partners as of the opening of the New York Stock Exchange on the first Business Day of the month in which such gain or loss is recognized for federal income tax purposes. The General Partner may revise, alter or otherwise modify such methods of allocation to the extent permitted or required by Section 706 of the Code and the regulations or rulings promulgated thereunder.

(h) Allocations that would otherwise be made to a Limited Partner under the provisions of this Article VI shall instead be made to the beneficial owner of Limited Partner Interests held by a nominee in any case in which the nominee has furnished the identity of such owner to the Partnership in accordance with Section 6031(c) of the Code or any other method determined by the General Partner.

#### *Section 6.3 Requirement and Characterization of Distributions; Distributions to Record Holders.*

(a) Within 45 days following the end of each Quarter commencing with the Quarter ending on December 31, 2005, an amount equal to 100% of Available Cash with respect to such Quarter shall, subject to Section 17-607 of the Delaware Act, be distributed in accordance with this Article VI by the Partnership to the Partners as of the Record Date selected by the General Partner. All amounts of Available Cash distributed by the Partnership on any date from any source shall be deemed to be Operating Surplus until the sum of all amounts of Available Cash theretofore distributed by the Partnership to the Partners pursuant to Section 6.4 equals the Operating Surplus from the Closing Date through the close of the immediately preceding Quarter. Any remaining amounts of Available Cash distributed by the Partnership on such date shall, except as otherwise provided in Section 6.5, be deemed to be "Capital Surplus." All distributions required to be made under this Agreement shall be made subject to Section 17-607 of the Delaware Act.

(b) Notwithstanding Section 6.3(a), in the event of the dissolution and liquidation of the Partnership, all receipts received during or after the Quarter in which the Liquidation Date occurs shall be applied and distributed solely in accordance with, and subject to the terms and conditions of, Section 12.4.

(c) The General Partner may treat taxes paid by the Partnership on behalf of, or amounts withheld with respect to, all or less than all of the Partners, as a distribution of Available Cash to such Partners.

(d) Each distribution in respect of a Partnership Interest shall be paid by the Partnership, directly or through the Transfer Agent or through any other Person or agent, only to the Record Holder of such Partnership Interest as of the Record Date set for such distribution. Such payment shall constitute full payment and satisfaction of the Partnership's liability in respect of such payment, regardless of any claim of any Person who may have an interest in such payment by reason of an assignment or otherwise.

*Section 6.4 Distributions of Available Cash from Operating Surplus.*

(a) *During Subordination Period.* Available Cash with respect to any Quarter within the Subordination Period that is deemed to be Operating Surplus pursuant to the provisions of Section 6.3 or 6.5 shall, subject to Section 17-607 of the Delaware Act, be distributed as follows, except as otherwise contemplated by Section 5.6 in respect of other Partnership Securities issued pursuant thereto:

(i) First, to the General Partner and the Unitholders holding Common Units, in accordance with their respective Percentage Interests, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Minimum Quarterly Distribution for such Quarter;

(ii) Second, to the General Partner and the Unitholders holding Common Units, in accordance with their respective Percentage Interests, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Cumulative Common Unit Arrearage existing with respect to such Quarter;

(iii) Third, to the General Partner and the Unitholders holding Subordinated Units, in accordance with their respective Percentage Interests, until there has been distributed in respect of each Subordinated Unit then Outstanding an amount equal to the Minimum Quarterly Distribution for such Quarter;

(iv) Fourth, to the General Partner and all Unitholders, in accordance with their respective Percentage Interests, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the First Target Distribution over the Minimum Quarterly Distribution for such Quarter;

(v) Fifth, (A) to the General Partner in accordance with its Percentage Interest; (B) 13% to the holders of the Incentive Distribution Rights, Pro Rata; and (C) to all Unitholders, Pro Rata, a percentage equal to 100% less the sum of the percentages applicable to subclauses (A) and (B) of this clause (v) until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the Second Target Distribution over the First Target Distribution for such Quarter;

(vi) Sixth, (A) to the General Partner in accordance with its Percentage Interest, (B) 23% to the holders of the Incentive Distribution Rights, Pro Rata; and (C) to

all Unitholders, Pro Rata, a percentage equal to 100% less the sum of the percentages applicable to subclauses (A) and (B) of this subclause (vi), until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the Third Target Distribution over the Second Target Distribution for such Quarter; and

(vii) Thereafter, (A) to the General Partner in accordance with its Percentage Interest; (B) 48% to the holders of the Incentive Distribution Rights, Pro Rata; and (C) to all Unitholders, Pro Rata, a percentage equal to 100% less the sum of the percentages applicable to subclauses (A) and (B) of this clause (vii);

*provided, however, if the Minimum Quarterly Distribution, the First Target Distribution, the Second Target Distribution and the Third Target Distribution have been reduced to zero pursuant to the second sentence of Section 6.6(a), the distribution of Available Cash that is deemed to be Operating Surplus with respect to any Quarter will be made solely in accordance with Section 6.4(a)(vii).*

(b) *After Subordination Period.* Available Cash with respect to any Quarter after the Subordination Period that is deemed to be Operating Surplus pursuant to the provisions of Section 6.3 or Section 6.5, subject to Section 17-607 of the Delaware Act, shall be distributed as follows, except as otherwise required by Section 5.6(b) in respect of additional Partnership Securities issued pursuant thereto:

(i) First, 100% to the General Partner and the Unitholders in accordance with their respective Percentage Interests, until there has been distributed in respect of each Unit then Outstanding an amount equal to the Minimum Quarterly Distribution for such Quarter;

(ii) Second, 100% to the General Partner and the Unitholders in accordance with their respective Percentage Interests, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the First Target Distribution over the Minimum Quarterly Distribution for such Quarter;

(iii) Third, (A) to the General Partner in accordance with its Percentage Interest; (B) 13% to the holders of the Incentive Distribution Rights, Pro Rata; and (C) to all Unitholders, Pro Rata, a percentage equal to 100% less the sum of the percentages applicable to subclauses (A) and (B) of this clause (iii), until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the Second Target Distribution over the First Target Distribution for such Quarter;

(iv) Fourth, (A) to the General Partner in accordance with its Percentage Interest; (B) 23% to the holders of the Incentive Distribution Rights, Pro Rata; and (C) to all Unitholders, Pro Rata, a percentage equal to 100% less the sum of the percentages applicable to subclause (A) and (B) of this clause (iv), until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the Third Target Distribution over the Second Target Distribution for such Quarter; and

(v) Thereafter, (A) to the General Partner in accordance with its Percentage Interest; (B) 48% to the holders of the Incentive Distribution Rights, Pro Rata; and (C) to

all Unitholders, Pro Rata, a percentage equal to 100% less the sum of the percentages applicable to subclauses (A) and (B) of this clause (v); provided, however, if the Minimum Quarterly Distribution, the First Target Distribution, the Second Target Distribution and the Third Target Distribution have been reduced to zero pursuant to the second sentence of Section 6.6(a), the distribution of Available Cash that is deemed to be Operating Surplus with respect to any Quarter will be made solely in accordance with Section 6.4(b)(v).

#### *Section 6.5 Distributions of Available Cash from Capital Surplus.*

Available Cash that is deemed to be Capital Surplus pursuant to the provisions of Section 6.3(a) shall, subject to Section 17-607 of the Delaware Act, be distributed, unless the provisions of Section 6.3 require otherwise, 100% to the General Partner and the Unitholders in accordance with their respective Percentage Interests, until a hypothetical holder of a Common Unit acquired on the Closing Date has received with respect to such Common Unit, during the period since the Closing Date through such date, distributions of Available Cash that are deemed to be Capital Surplus in an aggregate amount equal to the Initial Unit Price. Available Cash that is deemed to be Capital Surplus shall then be distributed to the General Partner and all Unitholders holding Common Units, in accordance with their respective Percentage Interests, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Cumulative Common Unit Arrearage. Thereafter, all Available Cash shall be distributed as if it were Operating Surplus and shall be distributed in accordance with Section 6.4.

#### *Section 6.6 Adjustment of Minimum Quarterly Distribution and Target Distribution Levels.*

(a) The Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution, Third Target Distribution, Common Unit Arrearages and Cumulative Common Unit Arrearages shall be proportionately adjusted in the event of any distribution, combination or subdivision (whether effected by a distribution payable in Units or otherwise) of Units or other Partnership Securities in accordance with Section 5.9. In the event of a distribution of Available Cash that is deemed to be from Capital Surplus, the then applicable Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution and Third Target Distribution, shall be adjusted proportionately downward to equal the product obtained by multiplying the otherwise applicable Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution and Third Target Distribution, as the case may be, by a fraction of which the numerator is the Unrecovered Initial Unit Price of the Common Units immediately after giving effect to such distribution and of which the denominator is the Unrecovered Initial Unit Price of the Common Units immediately prior to giving effect to such distribution.

(b) The Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution and Third Target Distribution, shall also be subject to adjustment pursuant to Section 5.11 and Section 6.9.

## **Section 6.7 Special Provisions Relating to the Holders of Subordinated Units and Class B Units.**

(a) Except with respect to the right to vote on or approve matters requiring the vote or approval of a percentage of the holders of Outstanding Common Units and the right to participate in allocations of income, gain, loss and deduction and distributions made with respect to Common Units, the holder of a Subordinated Unit shall have all of the rights and obligations of a Unitholder holding Common Units hereunder; *provided, however*, that immediately upon the conversion of Subordinated Units into Common Units pursuant to Section 5.7, the Unitholder holding a Subordinated Unit shall possess all of the rights and obligations of a Unitholder holding Common Units hereunder, including the right to vote as a Common Unitholder and the right to participate in allocations of income, gain, loss and deduction and distributions made with respect to Common Units; *provided, however*, that such converted Subordinated Units shall remain subject to the provisions of Sections 5.5(c)(ii), 6.1(d)(x)(A), 6.7(b) and 6.7(c).

(b) A Unitholder shall not be permitted to transfer a Subordinated Unit or a Subordinated Unit that has converted into a Common Unit pursuant to Section 5.7 (other than a transfer to an Affiliate) if the remaining balance in the transferring Unitholder's Capital Account with respect to the retained Subordinated Units or Retained Converted Subordinated Units would be negative after giving effect to the allocation under Section 5.5(c)(ii)(B).

(c) The Unitholder holding a Common Unit that has resulted from the conversion of a Subordinated Unit pursuant to Section 5.7 shall not be issued a Common Unit Certificate pursuant to Section 4.1, and shall not be permitted to transfer such Common Units to a Person that is not an Affiliate of the holder until such time as the General Partner determines, based on advice of counsel, that each such Common Unit should have, as a substantive matter, like intrinsic economic and federal income tax characteristics, in all material respects, to the intrinsic economic and federal income tax characteristics of an Initial Common Unit. In connection with the condition imposed by this Section 6.7(c), the General Partner may take whatever steps are required to provide economic uniformity to such Common Units in preparation for a transfer of such Common Units, including the application of Sections 5.5(c)(ii), 6.1(d)(x) and 6.7(b); *provided, however*, that no such steps may be taken that would have a material adverse effect on the Unitholders holding Common Units represented by Common Unit Certificates.

(d) Except with respect to the right to vote on or approve matters requiring the vote or approval of a percentage of the holders of Outstanding Common Units and the right to participate in allocations of income, gain, loss and deduction and distributions made with respect to Common Units, the holders of Class B Units shall have all the rights and obligations of a Unitholder holding Common Units; *provided, however*, that immediately upon the conversion of Class B Units into Common Units pursuant to Section 5.11, the Unitholders holding a Class B Unit shall possess all the rights and obligations of a Unitholder holding Common Units hereunder, including the right to vote as a Common Unitholder and the right to participate in allocations of income, gain, loss and deduction and distributions made with respect to Common Units; *provided, however*, that such converted Class B Units shall remain subject to the provisions of Sections 6.1(d)(x)(B) and 6.7(e).

(e) The holder or holders of Common Units resulting from the conversion pursuant to Section 5.11(f) of any Class B Units pursuant to Section 5.11 shall not be issued a Common Unit Certificate pursuant to Section 4.1, and shall not be permitted to transfer such Common Units until such time as the General Partner determines, based on advice of counsel, that each such Common Unit should have, as a substantive matter, like intrinsic economic and federal income tax characteristics, in all material respects, to the intrinsic economic and federal income tax characteristics of an Initial Common Unit. In connection with the condition imposed by this Section 6.7(d), the General Partner may take whatever steps are required to provide economic uniformity to such Common Units, including the application of Section 6.1(d)(x)(B); *provided, however,* that no such steps may be taken that would have a material adverse effect on the Unitholders holding Common Units represented by Common Unit Certificates.

#### *Section 6.8 Special Provisions Relating to the Holders of Incentive Distribution Rights.*

Notwithstanding anything to the contrary set forth in this Agreement, the holders of the Incentive Distribution Rights (a) shall (i) possess the rights and obligations provided in this Agreement with respect to a Limited Partner pursuant to Article III and Article VII and (ii) have a Capital Account as a Partner pursuant to Section 5.5 and all other provisions related thereto and (b) shall not (i) be entitled to vote on any matters requiring the approval or vote of the holders of Outstanding Units, except as provided by law, (ii) be entitled to any distributions other than as provided in Sections 6.4(a)(v), (vi) and (vii), Section 6.4(b) (iii), (iv) and (v), and Section 12.4 or (iii) be allocated items of income, gain, loss or deduction other than as specified in this Article VI.

#### *Section 6.9 Entity-Level Taxation.*

If legislation is enacted or the interpretation of existing language is modified by a governmental taxing authority so that a Group Member is treated as an association taxable as a corporation or is otherwise subject to an entity-level tax for federal, state or local income tax purposes, then the General Partner shall estimate for each Quarter the Partnership Group's aggregate liability (the "**Estimated Incremental Quarterly Tax Amount**") for all such income taxes that are payable by reason of any such new legislation or interpretation; *provided* that any difference between such estimate and the actual tax liability for such Quarter that is owed by reason of any such new legislation or interpretation shall be taken into account in determining the Estimated Incremental Quarterly Tax Amount with respect to each Quarter in which any such difference can be determined. For each such Quarter, the Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution and Third Target Distribution, shall be the product obtained by multiplying (a) the amounts therefor that are set out herein prior to the application of this Section 6.9 times (b) the quotient obtained by dividing (i) Available Cash with respect to such Quarter by (ii) the sum of Available Cash with respect to such Quarter and the Estimated Incremental Quarterly Tax Amount for such Quarter, as determined by the General Partner. For purposes of the foregoing, Available Cash with respect to a Quarter will be deemed reduced by the Estimated Incremental Quarterly Tax Amount for that Quarter.

**ARTICLE VII**  
**MANAGEMENT AND OPERATION OF BUSINESS**

**Section 7.1 Management.**

(a) The General Partner shall conduct, direct and manage all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and no Limited Partner shall have any management power over the business and affairs of the Partnership. In addition to the powers now or hereafter granted a general partner of a limited partnership under applicable law or that are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to Section 7.3, shall have full power and authority to do all things and on such terms as it determines to be necessary or appropriate to conduct the business of the Partnership, to exercise all powers set forth in Section 2.5 and to effectuate the purposes set forth in Section 2.4, including the following:

(i) the making of any expenditures, the lending or borrowing of money, the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness, including indebtedness that is convertible into Partnership Securities, and the incurring of any other obligations;

(ii) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Partnership;

(iii) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any or all of the assets of the Partnership or the merger or other combination of the Partnership with or into another Person (the matters described in this clause (iii) being subject, however, to any prior approval that may be required by Section 7.3 and Article XIV);

(iv) the use of the assets of the Partnership (including cash on hand) for any purpose consistent with the terms of this Agreement, including the financing of the conduct of the operations of the Partnership Group; subject to Section 7.6(a), the lending of funds to other Persons (including other Group Members); the repayment or guarantee of obligations of any Group Member; and the making of capital contributions to any Group Member;

(v) the negotiation, execution and performance of any contracts, conveyances or other instruments (including instruments that limit the liability of the Partnership under contractual arrangements to all or particular assets of the Partnership, with the other party to the contract to have no recourse against the General Partner or its assets other than its interest in the Partnership, even if same results in the terms of the transaction being less favorable to the Partnership than would otherwise be the case);

(vi) the distribution of Partnership cash;

(vii) the selection and dismissal of employees (including employees having titles such as “president,” “vice president,” “secretary” and “treasurer”) and agents, outside attorneys, accountants, consultants and contractors and the determination of their compensation and other terms of employment or hiring;

(viii) the maintenance of insurance for the benefit of the Partnership Group, the Partners and Indemnitees;

(ix) the formation of, or acquisition of an interest in, and the contribution of property and the making of loans to, any further limited or general partnerships, joint ventures, corporations, limited liability companies or other relationships (including the acquisition of interests in, and the contributions of property to, any Group Member from time to time) subject to the restrictions set forth in Section 2.4;

(x) the control of any matters affecting the rights and obligations of the Partnership, including the bringing and defending of actions at law or in equity and otherwise engaging in the conduct of litigation, arbitration or mediation and the incurring of legal expense and the settlement of claims and litigation;

(xi) the indemnification of any Person against liabilities and contingencies to the extent permitted by law;

(xii) the entering into of listing agreements with any National Securities Exchange and the delisting of some or all of the Limited Partner Interests from, or requesting that trading be suspended on, any such exchange (subject to any prior approval that may be required under Section 4.8);

(xiii) the purchase, sale or other acquisition or disposition of Partnership Securities, or the issuance of options, rights, warrants and appreciation rights relating to Partnership Securities;

(xiv) the undertaking of any action in connection with the Partnership’s participation in any Group Member; and

(xv) the entering into of agreements with any of its Affiliates to render services to a Group Member or to itself in the discharge of its duties as General Partner of the Partnership.

(b) Notwithstanding any other provision of this Agreement, any Group Member Agreement, the Delaware Act or any applicable law, rule or regulation, each of the Partners and the Assignees and each other Person who may acquire an interest in Partnership Securities hereby (i) approves, ratifies and confirms the execution, delivery and performance by the parties thereto of this Agreement and the Group Member Agreement of each other Group Member, the Underwriting Agreement, the Omnibus Agreement, the Contribution Agreement, any Group Member Agreement and the other agreements described in or filed as exhibits to the Registration Statement that are related to the transactions contemplated by the Registration Statement; (ii) agrees that the General Partner (on its own or through any officer of the Partnership) is authorized to execute, deliver and perform the agreements referred to in clause (i) of this

sentence and the other agreements, acts, transactions and matters described in or contemplated by the Registration Statement on behalf of the Partnership without any further act, approval or vote of the Partners or the Assignees or the other Persons who may acquire an interest in Partnership Securities; and (iii) agrees that the execution, delivery or performance by the General Partner, any Group Member or any Affiliate of any of them of this Agreement or any agreement authorized or permitted under this Agreement (including the exercise by the General Partner or any Affiliate of the General Partner of the rights accorded pursuant to Article XV) shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Limited Partners or any other Persons under this Agreement (or any other agreements) or of any duty stated or implied by law or equity.

#### *Section 7.2 Certificate of Limited Partnership.*

The General Partner has caused the Certificate of Limited Partnership to be filed with the Secretary of State of the State of Delaware as required by the Delaware Act. The General Partner shall use all reasonable efforts to cause to be filed such other certificates or documents that the General Partner determines to be necessary or appropriate for the formation, continuation, qualification and operation of a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware or any other state in which the Partnership may elect to do business or own property. To the extent the General Partner determines such action to be necessary or appropriate, the General Partner shall file amendments to and restatements of the Certificate of Limited Partnership and do all things to maintain the Partnership as a limited partnership (or a partnership or other entity in which the limited partners have limited liability) under the laws of the State of Delaware or of any other state in which the Partnership may elect to do business or own property. Subject to the terms of Section 3.4(a), the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate of Limited Partnership, any qualification document or any amendment thereto to any Limited Partner.

#### *Section 7.3 Restrictions on the General Partner's Authority.*

Except as provided in Article XII and Article XIV, the General Partner may not sell, exchange or otherwise dispose of all or substantially all of the assets of the Partnership Group, taken as a whole, in a single transaction or a series of related transactions (including by way of merger, consolidation, other combination or sale of ownership interests of the Partnership's Subsidiaries) without the approval of holders of a Unit Majority; *provided, however*, that this provision shall not preclude or limit the General Partner's ability to mortgage, pledge, hypothecate or grant a security interest in all or substantially all of the assets of the Partnership Group and shall not apply to any forced sale of any or all of the assets of the Partnership Group pursuant to the foreclosure of, or other realization upon, any such encumbrance. Without the approval of holders of a Unit Majority, the General Partner shall not, on behalf of the Partnership, except as permitted under Section 4.6, 11.1 and Section 11.2, elect or cause the Partnership to elect a successor general partner of the Partnership.

#### *Section 7.4 Reimbursement of the General Partner.*

(a) Except as provided in this Section 7.4 and elsewhere in this Agreement, the General Partner shall not be compensated for its services as a general partner or managing member of any Group Member.

(b) The General Partner shall be reimbursed on a monthly basis, or such other basis as the General Partner may determine, for (i) all direct and indirect expenses it incurs or payments it makes on behalf of the Partnership Group (including salary, bonus, incentive compensation and other amounts paid to any Person, including Affiliates of the General Partner to perform services for the Partnership Group or for the General Partner in the discharge of its duties to the Partnership Group), and (ii) all other expenses allocable to the Partnership Group or otherwise incurred by the General Partner in connection with operating the Partnership Group's business (including expenses allocated to the General Partner by its Affiliates). The General Partner shall determine the expenses that are allocable to the Partnership Group. Reimbursements pursuant to this Section 7.4 shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to Section 7.7.

(c) The General Partner, without the approval of the Limited Partners (who shall have no right to vote in respect thereof), may propose and adopt on behalf of the Partnership employee benefit plans, employee programs and employee practices (including plans, programs and practices involving the issuance of Partnership Securities or options to purchase or rights, warrants or appreciation rights relating to Partnership Securities), or cause the Partnership to issue Partnership Securities in connection with, or pursuant to, any employee benefit plan, employee program or employee practice maintained or sponsored by the General Partner, Group Member or any Affiliates in each case for the benefit of employees of the General Partner or any of its Affiliates, in respect of services performed, directly or indirectly, for the benefit of the Partnership Group. The Partnership agrees to issue and sell to the General Partner or any of its Affiliates any Partnership Securities that the General Partner or such Affiliates are obligated to provide to any employees pursuant to any such employee benefit plans, employee programs or employee practices. Expenses incurred by the General Partner in connection with any such plans, programs and practices (including the net cost to the General Partner or such Affiliates of Partnership Securities purchased by the General Partner or such Affiliates from the Partnership to fulfill options or awards under such plans, programs and practices) shall be reimbursed in accordance with Section 7.4(b). Any and all obligations of the General Partner under any employee benefit plans, employee programs or employee practices adopted by the General Partner as permitted by this Section 7.4(c) shall constitute obligations of the General Partner hereunder and shall be assumed by any successor General Partner approved pursuant to Section 11.1 or Section 11.2 or the transferee of or successor to all of the General Partner's General Partner Interest (represented by General Partner Units) pursuant to Section 4.6.

#### *Section 7.5 Outside Activities.*

(a) After the Closing Date, the General Partner, for so long as it is the General Partner of the Partnership (i) agrees that its sole business will be to act as a general partner or managing member, as the case may be, of the Partnership and any other partnership or limited liability company of which the Partnership is, directly or indirectly, a partner or member and to

undertake activities that are ancillary or related thereto (including being a limited partner in the Partnership) and (ii) shall not engage in any business or activity or incur any debts or liabilities except in connection with or incidental to (A) its performance as general partner or managing member, if any, of one or more Group Members or as described in or contemplated by the Registration Statement or (B) the acquiring, owning or disposing of debt or equity securities in any Group Member.

(b) Each Indemnitee (other than the General Partner) shall have the right to engage in businesses of every type and description and other activities for profit and to engage in and possess an interest in other business ventures of any and every type or description, whether in businesses engaged in or anticipated to be engaged in by any Group Member, independently or with others, including business interests and activities in direct competition with the business and activities of any Group Member, and none of the same shall constitute a breach of this Agreement or any duty expressed or implied by law to any Group Member or any Partner or Assignee. None of any Group Member, any Limited Partner or any other Person shall have any rights by virtue of this Agreement, any Group Member Agreement, or the partnership relationship established hereby in any business ventures of any Indemnitee.

(c) Notwithstanding anything to the contrary in this Agreement, (i) the engaging in competitive activities by any Indemnitees (other than the General Partner) in accordance with the provisions of this Section 7.5 is hereby approved by the Partnership and all Partners, (ii) it shall be deemed not to be a breach of any fiduciary duty or any other obligation of any type whatsoever of any Indemnitee for the Indemnitees (other than the General Partner) to engage in such business interests and activities in preference to or to the exclusion of the Partnership and (iii) the Indemnitees shall have no obligation hereunder or as a result of any duty expressed or implied by law to present business opportunities to the Partnership. Notwithstanding anything to the contrary in this Agreement, the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to any Indemnitee (including the General Partner). No Indemnitee (including the General Partner) who acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Partnership, shall have any duty to communicate or offer such opportunity to the Partnership, and such Indemnitee (including the General Partner) shall not be liable to the Partnership, to any Limited Partner or any other Person for breach of any fiduciary or other duty by reason of the fact that such Indemnitee (including the General Partner) pursues or acquires for itself, directs such opportunity to another Person or does not communicate such opportunity or information to the Partnership.

(d) The General Partner and each of its Affiliates may acquire Units or other Partnership Securities in addition to those acquired on the Closing Date and, except as otherwise provided in this Agreement, shall be entitled to exercise, at their option, all rights relating to all Units or other Partnership Securities acquired by them. The term "Affiliates" when used in this Section 7.5(d) with respect to the General Partner shall not include any Group Member.

(e) Notwithstanding anything to the contrary in this Agreement, to the extent that any provision of this Agreement purports or is interpreted to have the effect of restricting the fiduciary duties that might otherwise, as a result of Delaware or other applicable law, be owed by the General Partner to the Partnership and its Limited Partners, or to constitute a waiver or consent by the Limited Partners to any such restriction, such provisions shall be inapplicable and

have no effect in determining whether the General Partner has complied with its fiduciary duties in connection with determinations made by it under this Section 7.5.

**Section 7.6 Loans from the General Partner; Loans or Contributions from the Partnership or Group Members.**

(a) The General Partner or any of its Affiliates may lend to any Group Member, and any Group Member may borrow from the General Partner or any of its Affiliates, funds needed or desired by the Group Member for such periods of time and in such amounts as the General Partner may determine; *provided, however,* that in any such case the lending party may not charge the borrowing party interest at a rate greater than the rate that would be charged the borrowing party or impose terms less favorable to the borrowing party than would be charged or imposed on the borrowing party by unrelated lenders on comparable loans made on an arm's-length basis (without reference to the lending party's financial abilities or guarantees), all as determined by the General Partner. The borrowing party shall reimburse the lending party for any costs (other than any additional interest costs) incurred by the lending party in connection with the borrowing of such funds. For purposes of this Section 7.6(a) and Section 7.6(b), the term "Group Member" shall include any Affiliate of a Group Member that is controlled by the Group Member.

(b) The Partnership may lend or contribute to any Group Member, and any Group Member may borrow from the Partnership, funds on terms and conditions determined by the General Partner. No Group Member may lend funds to the General Partner or any of its Affiliates (other than another Group Member).

(c) No borrowing by any Group Member or the approval thereof by the General Partner shall be deemed to constitute a breach of any duty, expressed or implied, of the General Partner or its Affiliates to the Partnership or the Limited Partners by reason of the fact that the purpose or effect of such borrowing is directly or indirectly to (i) enable distributions to the General Partner or its Affiliates (including in their capacities as Limited Partners) to exceed the General Partner's Percentage Interest of the total amount distributed to all partners or (ii) hasten the expiration of the Subordination Period or the conversion of any Subordinated Units into Common Units.

**Section 7.7 Indemnification.**

(a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, all Indemnitees shall be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements or other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as an Indemnitee; *provided,* that the Indemnitee shall not be indemnified and held harmless if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Section 7.7, the Indemnitee acted in bad faith or engaged in fraud, willful misconduct or, in the

case of a criminal matter, acted with knowledge that the Indemnitee's conduct was unlawful; *provided*, further, no indemnification pursuant to this Section 7.7 shall be available to the General Partner or its Affiliates (other than a Group Member) with respect to its or their obligations incurred pursuant to the Underwriting Agreement, the Omnibus Agreement or the Contribution Agreement (other than obligations incurred by the General Partner on behalf of the Partnership). Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Partnership, it being agreed that the General Partner shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate such indemnification.

(b) To the fullest extent permitted by law, expenses (including legal fees and expenses) incurred by an Indemnitee who is indemnified pursuant to Section 7.7(a) in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Partnership prior to a determination that the Indemnitee is not entitled to be indemnified upon receipt by the Partnership of any undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined that the Indemnitee is not entitled to be indemnified as authorized in this Section 7.7.

(c) The indemnification provided by this Section 7.7 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, pursuant to any vote of the holders of Outstanding Limited Partner Interests, as a matter of law or otherwise, both as to actions in the Indemnitee's capacity as an Indemnitee and as to actions in any other capacity (including any capacity under the Underwriting Agreement), and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

(d) The Partnership may purchase and maintain (or reimburse the General Partner or its Affiliates for the cost of) insurance, on behalf of the General Partner, its Affiliates and such other Persons as the General Partner shall determine, against any liability that may be asserted against, or expense that may be incurred by, such Person in connection with the Partnership's activities or such Person's activities on behalf of the Partnership, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(e) For purposes of this Section 7.7, the Partnership shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Partnership also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute "fines" within the meaning of Section 7.7(a); and action taken or omitted by it with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the best interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose that is in the best interests of the Partnership.

(f) In no event may an Indemnitee subject the Limited Partners to personal liability by reason of the indemnification provisions set forth in this Agreement.

(g) An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.7 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(h) The provisions of this Section 7.7 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

(i) No amendment, modification or repeal of this Section 7.7 or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnitee to be indemnified by the Partnership, nor the obligations of the Partnership to indemnify any such Indemnitee under and in accordance with the provisions of this Section 7.7 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

#### *Section 7.8 Liability of Indemnitees.*

(a) Notwithstanding anything to the contrary set forth in this Agreement, no Indemnitee shall be liable for monetary damages to the Partnership, the Limited Partners, or any other Persons who have acquired interests in the Partnership Securities, for losses sustained or liabilities incurred as a result of any act or omission of an Indemnitee unless there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter in question, the Indemnitee acted in bad faith or engaged in fraud, willful misconduct or, in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was criminal.

(b) Subject to its obligations and duties as General Partner set forth in Section 7.1(a), the General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and the General Partner shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the General Partner in good faith.

(c) To the extent that, at law or in equity, an Indemnitee has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or to the Partners, the General Partner and any other Indemnitee acting in connection with the Partnership's business or affairs shall not be liable to the Partnership or to any Partner for its good faith reliance on the provisions of this Agreement.

(d) Any amendment, modification or repeal of this Section 7.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the liability of the Indemnitees under this Section 7.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

**Section 7.9 Resolution of Conflicts of Interest; Standards of Conduct and Modification of Duties.**

(a) Unless otherwise expressly provided in this Agreement or any Group Member Agreement, whenever a potential conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership, any Group Member or any Partner, on the other, any resolution or course of action by the General Partner or its Affiliates in respect of such conflict of interest shall be permitted and deemed approved by all Partners, and shall not constitute a breach of this Agreement, of any Group Member Agreement, of any agreement contemplated herein or therein, or of any duty stated or implied by law or equity, if the resolution or course of action in respect of such conflict of interest is (i) approved by Special Approval, (ii) approved by the vote of a majority of the Common Units (excluding Common Units owned by the General Partner and its Affiliates), (iii) on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties or (iv) fair and reasonable to the Partnership, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership). The General Partner shall be authorized but not required in connection with its resolution of such conflict of interest to seek Special Approval of such resolution, and the General Partner may also adopt a resolution or course of action that has not received Special Approval. If Special Approval is not sought and the Board of Directors determines that the resolution or course of action taken with respect to a conflict of interest satisfies either of the standards set forth in clauses (iii) or (iv) above, then it shall be presumed that, in making its decision, the Board of Directors acted in good faith, and in any proceeding brought by any Limited Partner or by or on behalf of such Limited Partner or any other Limited Partner or the Partnership challenging such approval, the Person bringing or prosecuting such proceeding shall have the burden of overcoming such presumption. Notwithstanding anything to the contrary in this Agreement or any duty otherwise existing at law or equity, the existence of the conflicts of interest described in the Registration Statement are hereby approved by all Partners and shall not constitute a breach of this Agreement.

(b) Whenever the General Partner makes a determination or takes or declines to take any other action, or any of its Affiliates causes it to do so, in its capacity as the general partner of the Partnership as opposed to in its individual capacity, whether under this Agreement, any Group Member Agreement or any other agreement contemplated hereby or otherwise, then, unless another express standard is provided for in this Agreement, the General Partner, or such Affiliates causing it to do so, shall make such determination or take or decline to take such other action in good faith and shall not be subject to any other or different standards imposed by this Agreement, any Group Member Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity. In order for a determination or other action to be in "good faith" for purposes of this Agreement, the Person or Persons making such determination or taking or declining to take such other action must believe that the determination or other action is in the best interests of the Partnership.

(c) Whenever the General Partner makes a determination or takes or declines to take any other action, or any of its Affiliates causes it to do so, in its individual capacity as opposed to in its capacity as the general partner of the Partnership, whether under this Agreement, any Group Member Agreement or any other agreement contemplated hereby or otherwise, then the

General Partner, or such Affiliates causing it to do so, are entitled to make such determination or to take or decline to take such other action free of any fiduciary duty or obligation whatsoever to the Partnership, any Limited Partner, and the General Partner, or such Affiliates causing it to do so, shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any Group Member Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity. By way of illustration and not of limitation, whenever the phrase, "at the option of the General Partner," or some variation of that phrase, is used in this Agreement, it indicates that the General Partner is acting in its individual capacity. For the avoidance of doubt, whenever the General Partner votes or transfers its Partnership Interests, or refrains from voting or transferring its Partnership Interests, it shall be acting in its individual capacity. The General Partner's organizational documents may provide that determinations to take or decline to take any action in its individual, rather than representative, capacity may or shall be determined by its members, if the General Partner is a limited liability company, stockholders, if the General Partner is a corporation, or the members or stockholders of the General Partner's general partner, if the General Partner is a partnership.

(d) Notwithstanding anything to the contrary in this Agreement, the General Partner and its Affiliates shall have no duty or obligation, express or implied, to (i) sell or otherwise dispose of any asset of the Partnership Group other than in the ordinary course of business or (ii) permit any Group Member to use any facilities or assets of the General Partner and its Affiliates, except as may be provided in contracts entered into from time to time specifically dealing with such use. Any determination by the General Partner or any of its Affiliates to enter into such contracts shall be at its option.

(e) Except as expressly set forth in this Agreement, neither the General Partner nor any other Indemnitee shall have any duties or liabilities, including fiduciary duties, to the Partnership or any Limited Partner and the provisions of this Agreement, to the extent that they restrict, eliminate or otherwise modify the duties and liabilities, including fiduciary duties, of the General Partner or any other Indemnitee otherwise existing at law or in equity, are agreed by the Partners to replace such other duties and liabilities of the General Partner or such other Indemnitee.

(f) The Unitholders hereby authorize the General Partner, on behalf of the Partnership as a partner or member of a Group Member, to approve of actions by the general partner or managing member of such Group Member similar to those actions permitted to be taken by the General Partner pursuant to this Section 7.9.

#### *Section 7.10 Other Matters Concerning the General Partner.*

(a) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the opinion (including an Opinion of

Counsel) of such Persons as to matters that the General Partner reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.

(c) The General Partner shall have the right, in respect of any of its powers or obligations hereunder, to act through any of its duly authorized officers, a duly appointed attorney or attorneys-in-fact or the duly authorized officers of the Partnership.

#### *Section 7.11 Purchase or Sale of Partnership Securities.*

The General Partner may cause the Partnership to purchase or otherwise acquire Partnership Securities; *provided* that, except as permitted pursuant to Section 4.10, the General Partner may not cause any Group Member to purchase Subordinated Units during the Subordination Period. Such Partnership Securities shall be held by the Partnership as treasury securities unless they are expressly cancelled by action of an appropriate officer of the General Partner. As long as Partnership Securities are held by any Group Member, such Partnership Securities shall not be considered Outstanding for any purpose, except as otherwise provided herein. The General Partner or any Affiliate of the General Partner may also purchase or otherwise acquire and sell or otherwise dispose of Partnership Securities for its own account, subject to the provisions of Articles IV and X.

#### *Section 7.12 Registration Rights of the General Partner and its Affiliates.*

(a) If (i) the General Partner or any Affiliate of the General Partner (including for purposes of this Section 7.12, any Person that is an Affiliate of the General Partner at the date hereof notwithstanding that it may later cease to be an Affiliate of the General Partner) holds Partnership Securities that it desires to sell and (ii) Rule 144 of the Securities Act (or any successor rule or regulation to Rule 144) or another exemption from registration is not available to enable such holder of Partnership Securities (the "**Holder**") to dispose of the number of Partnership Securities it desires to sell at the time it desires to do so without registration under the Securities Act, then at the option and upon the request of the Holder, the Partnership shall file with the Commission as promptly as practicable after receiving such request, and use all commercially reasonable efforts to cause to become effective and remain effective for a period of not less than six months following its effective date or such shorter period as shall terminate when all Partnership Securities covered by such registration statement have been sold, a registration statement under the Securities Act registering the offering and sale of the number of Partnership Securities specified by the Holder; *provided, however,* that the Partnership shall not be required to effect more than three registrations pursuant to Section 7.12(a) and Section 7.12(b); and *provided further, however,* that if the Conflicts Committee determines in good faith that the requested registration would be materially detrimental to the Partnership and its Partners because such registration would (x) materially interfere with a significant acquisition, reorganization or other similar transaction involving the Partnership, (y) require premature disclosure of material information that the Partnership has a bona fide business purpose for preserving as confidential or (z) render the Partnership unable to comply with requirements under applicable securities laws, then the Partnership shall have the right to postpone such requested registration for a period of not more than six months after receipt of the Holder's request, such right pursuant to this Section 7.12(a) or Section 7.12(b) not to be utilized more than

once in any twelve-month period. Except as provided in the preceding sentence, the Partnership shall be deemed not to have used all commercially reasonable efforts to keep the registration statement effective during the applicable period if it voluntarily takes any action that would result in Holders of Partnership Securities covered thereby not being able to offer and sell such Partnership Securities at any time during such period, unless such action is required by applicable law. In connection with any registration pursuant to the first sentence of this Section 7.12(a), the Partnership shall (i) promptly prepare and file (A) such documents as may be necessary to register or qualify the securities subject to such registration under the securities laws of such states as the Holder shall reasonably request; *provided, however,* that no such qualification shall be required in any jurisdiction where, as a result thereof, the Partnership would become subject to general service of process or to taxation or qualification to do business as a foreign corporation or partnership doing business in such jurisdiction solely as a result of such registration, and (B) such documents as may be necessary to apply for listing or to list the Partnership Securities subject to such registration on such National Securities Exchange as the Holder shall reasonably request, and (ii) do any and all other acts and things that may be necessary or appropriate to enable the Holder to consummate a public sale of such Partnership Securities in such states. Except as set forth in Section 7.12(d), all costs and expenses of any such registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.

(b) If any Holder holds Partnership Securities that it desires to sell and Rule 144 of the Securities Act (or any successor rule or regulation to Rule 144) or another exemption from registration is not available to enable such Holder to dispose of the number of Partnership Securities it desires to sell at the time it desires to do so without registration under the Securities Act, then at the option and upon the request of the Holder, the Partnership shall file with the Commission as promptly as practicable after receiving such request, and use all reasonable efforts to cause to become effective and remain effective for a period of not less than six months following its effective date or such shorter period as shall terminate when all Partnership Securities covered by such shelf registration statement have been sold, a "shelf" registration statement covering the Partnership Securities specified by the Holder on an appropriate form under Rule 415 under the Securities Act, or any similar rule that may be adopted by the Commission; *provided, however,* that the Partnership shall not be required to effect more than three registrations pursuant to Section 7.12(a) and this Section 7.12(b); and *provided further, however,* that if the Conflicts Committee determines in good faith that any offering under, or the use of any prospectus forming a part of, the shelf registration statement would be materially detrimental to the Partnership and its Partners because such offering or use would (x) materially interfere with a significant acquisition, reorganization or other similar transaction involving the Partnership, (y) require premature disclosure of material information that the Partnership has a bona fide business purpose for preserving as confidential or (z) render the Partnership unable to comply with requirements under applicable securities laws, then the Partnership shall have the right to suspend such offering or use for a period of not more than six months after receipt of the Holder's request, such right pursuant to Section 7.12(a) or this Section 7.12(b) not to be utilized more than once in any twelve-month period. Except as provided in the preceding sentence, the Partnership shall be deemed not to have used all reasonable efforts to keep the shelf registration statement effective during the applicable period if it voluntarily takes any action that would result in Holders of Partnership Securities covered thereby not being able to offer and sell such Partnership Securities at any time during such period, unless such action is required by

applicable law. In connection with any shelf registration pursuant to this Section 7.12(b), the Partnership shall (i) promptly prepare and file (A) such documents as may be necessary to register or qualify the securities subject to such shelf registration under the securities laws of such states as the Holder shall reasonably request; *provided, however,* that no such qualification shall be required in any jurisdiction where, as a result thereof, the Partnership would become subject to general service of process or to taxation or qualification to do business as a foreign corporation or partnership doing business in such jurisdiction solely as a result of such shelf registration, and (B) such documents as may be necessary to apply for listing or to list the Partnership Securities subject to such shelf registration on such National Securities Exchange as the Holder shall reasonably request, and (ii) do any and all other acts and things that may be necessary or appropriate to enable the Holder to consummate a public sale of such Partnership Securities in such states. Except as set forth in Section 7.12(d), all costs and expenses of any such shelf registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.

(c) If the Partnership shall at any time propose to file a registration statement under the Securities Act for an offering of equity securities of the Partnership for cash (other than an offering relating solely to an employee benefit plan), the Partnership shall use all reasonable efforts to include such number or amount of securities held by the Holder in such registration statement as the Holder shall request; *provided*, that the Partnership is not required to make any effort or take any action to so include the securities of the Holder once the registration statement is declared effective by the Commission or otherwise becomes effective, including any registration statement providing for the offering from time to time of securities pursuant to Rule 415 of the Securities Act. If the proposed offering pursuant to this Section 7.12(c) shall be an underwritten offering, then, in the event that the managing underwriter or managing underwriters of such offering advise the Partnership and the Holder in writing that in their opinion the inclusion of all or some of the Holder's Partnership Securities would adversely and materially affect the success of the offering, the Partnership shall include in such offering only that number or amount, if any, of securities held by the Holder that, in the opinion of the managing underwriter or managing underwriters, will not so adversely and materially affect the offering. Except as set forth in Section 7.12(d), all costs and expenses of any such registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.

(d) If underwriters are engaged in connection with any registration referred to in this Section 7.12, the Partnership shall provide indemnification, representations, covenants, opinions and other assurance to the underwriters in form and substance reasonably satisfactory to such underwriters. Further, in addition to and not in limitation of the Partnership's obligation under Section 7.7, the Partnership shall, to the fullest extent permitted by law, indemnify and hold harmless the Holder, its officers, directors and each Person who controls the Holder (within the meaning of the Securities Act) and any agent thereof (collectively, "Indemnified Persons") from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements or other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnified Person may be involved, or is threatened to be involved, as a party or otherwise, under the Securities Act or otherwise (hereinafter referred to in this Section 7.12(d) as a "claim" and in the plural as "claims") based

upon, arising out of or resulting from any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which any Partnership Securities were registered under the Securities Act or any state securities or Blue Sky laws, in any preliminary prospectus (if used prior to the effective date of such registration statement), or in any summary or final prospectus or in any amendment or supplement thereto (if used during the period the Partnership is required to keep the registration statement current), or arising out of, based upon or resulting from the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements made therein not misleading; *provided, however,* that the Partnership shall not be liable to any Indemnified Person to the extent that any such claim arises out of, is based upon or results from an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, such preliminary, summary or final prospectus or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Partnership by or on behalf of such Indemnified Person specifically for use in the preparation thereof.

(e) The provisions of Section 7.12(a), Section 7.12(b) and Section 7.12(c) shall continue to be applicable with respect to the General Partner (and any of the General Partner's Affiliates) after it ceases to be a general partner of the Partnership, during a period of two years subsequent to the effective date of such cessation and for so long thereafter as is required for the Holder to sell all of the Partnership Securities with respect to which it has requested during such two-year period inclusion in a registration statement otherwise filed or that a registration statement be filed; *provided, however,* that the Partnership shall not be required to file successive registration statements covering the same Partnership Securities for which registration was demanded during such two-year period. The provisions of Section 7.12(d) shall continue in effect thereafter.

(f) The rights to cause the Partnership to register Partnership Securities pursuant to this Section 7.12 may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such Partnership Securities, provided (i) the Partnership is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the Partnership Securities with respect to which such registration rights are being assigned; and (ii) such transferee or assignee agrees in writing to be bound by and subject to the terms set forth in this Section 7.12.

(g) Any request to register Partnership Securities pursuant to this Section 7.12 shall (i) specify the Partnership Securities intended to be offered and sold by the Person making the request, (ii) express such Person's present intent to offer such Partnership Securities for distribution, (iii) describe the nature or method of the proposed offer and sale of Partnership Securities, and (iv) contain the undertaking of such Person to provide all such information and materials and take all action as may be required in order to permit the Partnership to comply with all applicable requirements in connection with the registration of such Partnership Securities.

#### *Section 7.13 Reliance by Third Parties.*

Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner and any officer of the General Partner authorized by the General Partner to act on behalf of and in the name of the Partnership

has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any authorized contracts on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner or any such officer as if it were the Partnership's sole party in interest, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the General Partner or any such officer in connection with any such dealing. In no event shall any Person dealing with the General Partner or any such officer or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the General Partner or any such officer or its representatives. Each and every certificate, document or other instrument executed on behalf of the Partnership by the General Partner or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Partnership and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

## **ARTICLE VIII**

### **BOOKS, RECORDS, ACCOUNTING AND REPORTS**

#### *Section 8.1 Records and Accounting.*

The General Partner shall keep or cause to be kept at the principal office of the Partnership appropriate books and records with respect to the Partnership's business, including all books and records necessary to provide to the Limited Partners any information required to be provided pursuant to Section 3.4(a). Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including the record of the Record Holders of Units or other Partnership Securities, books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard drives, punch cards, magnetic tape, photographs, micrographics or any other information storage device; *provided*, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial reporting purposes, on an accrual basis in accordance with U.S. GAAP.

#### *Section 8.2 Fiscal Year.*

The fiscal year of the Partnership shall be a fiscal year ending December 31.

#### *Section 8.3 Reports.*

(a) As soon as practicable, but in no event later than 120 days after the close of each fiscal year of the Partnership, the General Partner shall cause to be mailed or made available, by any reasonable means (including posting on or accessible through the Partnership's website) to each Record Holder of a Unit as of a date selected by the General Partner, an annual report

containing financial statements of the Partnership for such fiscal year of the Partnership, presented in accordance with U.S. GAAP, including a balance sheet and statements of operations, Partnership equity and cash flows, such statements to be audited by a firm of independent public accountants selected by the General Partner.

(b) As soon as practicable, but in no event later than 90 days after the close of each Quarter except the last Quarter of each fiscal year, the General Partner shall cause to be mailed or made available, by any reasonable means (including posting on or accessible through the Partnership's website) to each Record Holder of a Unit, as of a date selected by the General Partner, a report containing unaudited financial statements of the Partnership and such other information as may be required by applicable law, regulation or rule of any National Securities Exchange on which the Units are listed or admitted to trading, or as the General Partner determines to be necessary or appropriate.

## **ARTICLE IX**

### **TAX MATTERS**

#### *Section 9.1 Tax Returns and Information.*

The Partnership shall timely file all returns of the Partnership that are required for federal, state and local income tax purposes on the basis of the accrual method and the taxable year or years that it is required by law to adopt, from time to time, as determined by the General Partner. In the event the Partnership is required to use a taxable year other than a year ending on December 31, the General Partner shall use reasonable efforts to change the taxable year of the Partnership to a year ending on December 31. The tax information reasonably required by Record Holders for federal and state income tax reporting purposes with respect to a taxable year shall be furnished to them within 90 days of the close of the calendar year in which the Partnership's taxable year ends. The classification, realization and recognition of income, gain, losses and deductions and other items shall be on the accrual method of accounting for federal income tax purposes.

#### *Section 9.2 Tax Elections.*

(a) The Partnership shall make the election under Section 754 of the Code in accordance with applicable regulations thereunder, subject to the reservation of the right to seek to revoke any such election upon the General Partner's determination that such revocation is in the best interests of the Limited Partners. Notwithstanding any other provision herein contained, for the purposes of computing the adjustments under Section 743(b) of the Code, the General Partner shall be authorized (but not required) to adopt a convention whereby the price paid by a transferee of a Limited Partner Interest will be deemed to be the lowest quoted closing price of the Limited Partner Interests on any National Securities Exchange on which such Limited Partner Interests are listed or admitted to trading during the calendar month in which such transfer is deemed to occur pursuant to Section 6.2(g) without regard to the actual price paid by such transferee.

(b) Except as otherwise provided herein, the General Partner shall determine whether the Partnership should make any other elections permitted by the Code.

#### Section 9.3 *Tax Controversies*.

Subject to the provisions hereof, the General Partner is designated as the Tax Matters Partner (as defined in the Code) and is authorized and required to represent the Partnership (at the Partnership's expense) in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner and to do or refrain from doing any or all things reasonably required by the General Partner to conduct such proceedings.

#### Section 9.4 *Withholding*.

Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that may be required to cause the Partnership and other Group Members to comply with any withholding requirements established under the Code or any other federal, state or local law including pursuant to Sections 1441, 1442, 1445 and 1446 of the Code. To the extent that the Partnership is required or elects to withhold and pay over to any taxing authority any amount resulting from the allocation or distribution of income to any Partner or Assignee (including by reason of Section 1446 of the Code), the General Partner may treat the amount withheld as a distribution of cash pursuant to Section 6.3 in the amount of such withholding from such Partner.

## **ARTICLE X** **ADMISSION OF PARTNERS**

#### Section 10.1 *Admission of Limited Partners*.

(a) By acceptance of the transfer of any Limited Partner Interests in accordance with Article IV or the acceptance of any Limited Partner Interests issued pursuant to Article V or pursuant to a merger or consolidation pursuant to Article XIV, and except as provided in Section 4.9, each transferee of, or other such Person acquiring, a Limited Partner Interest (including any nominee holder or an agent or representative acquiring such Limited Partner Interests for the account of another Person) (i) shall be admitted to the Partnership as a Limited Partner with respect to the Limited Partner Interests so transferred or issued to such Person when any such transfer, issuance or admission is reflected in the books and records of the Partnership and such Limited Partner becomes the Record Holder of the Limited Partner Interests so transferred, (ii) shall become bound by the terms of this Agreement, (iii) represents that the transferee has the capacity, power and authority to enter into this Agreement, (iv) grants the powers of attorney set forth in this Agreement and (v) makes the consents and waivers contained in this Agreement, all with or without execution of this Agreement by such Person. The transfer of any Limited Partner Interests and the admission of any new Limited Partner shall not constitute an amendment to this Agreement. A Person may become a Limited Partner or Record Holder of a Limited Partner Interest without the consent or approval of any of the Partners. A Person may not become a

Limited Partner without acquiring a Limited Partner Interest and until such Person is reflected in the books and records of the Partnership as the Record Holder of such Limited Partner Interest. The rights and obligations of a Person who is a Non-citizen Assignee shall be determined in accordance with Section 4.9 hereof.

(b) The name and mailing address of each Limited Partner shall be listed on the books and records of the Partnership maintained for such purpose by the Partnership or the Transfer Agent. The General Partner shall update the books and records of the Partnership from time to time as necessary to reflect accurately the information therein (or shall cause the Transfer Agent to do so, as applicable). A Limited Partner Interest may be represented by a Certificate, as provided in Section 4.1 hereof.

(c) Any transfer of a Limited Partner Interest shall not entitle the transferee to share in the profits and losses, to receive distributions, to receive allocations of income, gain, loss, deduction or credit or any similar item or to any other rights to which the transferor was entitled until the transferee becomes a Limited Partner pursuant to Section 10.2(a).

#### *Section 10.2 Admission of Successor General Partner.*

A successor General Partner approved pursuant to Section 11.1 or Section 11.2 or the transferee of or successor to all of the General Partner Interest (represented by General Partner Units) pursuant to Section 4.6 who is proposed to be admitted as a successor General Partner shall be admitted to the Partnership as the General Partner, effective immediately prior to the withdrawal or removal of the predecessor or transferring General Partner, pursuant to Section 11.1 or 11.2 or the transfer of the General Partner Interest (represented by General Partner Units) pursuant to Section 4.6, *provided, however,* that no such successor shall be admitted to the Partnership until compliance with the terms of Section 4.6 has occurred and such successor has executed and delivered such other documents or instruments as may be required to effect such admission. Any such successor shall, subject to the terms hereof, carry on the business of the members of the Partnership Group without dissolution.

#### *Section 10.3 Amendment of Agreement and Certificate of Limited Partnership.*

To effect the admission to the Partnership of any Partner, the General Partner shall take all steps necessary or appropriate under the Delaware Act to amend the records of the Partnership to reflect such admission and, if necessary, to prepare as soon as practicable an amendment to this Agreement and, if required by law, the General Partner shall prepare and file an amendment to the Certificate of Limited Partnership, and the General Partner may for this purpose, among others, exercise the power of attorney granted pursuant to Section 2.6.

**ARTICLE XI**  
**WITHDRAWAL OR REMOVAL OF PARTNERS**

**Section 11.1 Withdrawal of the General Partner.**

(a) The General Partner shall be deemed to have withdrawn from the Partnership upon the occurrence of any one of the following events (each such event herein referred to as an “Event of Withdrawal”);

(i) The General Partner voluntarily withdraws from the Partnership by giving written notice to the other Partners;

(ii) The General Partner transfers all of its rights as General Partner pursuant to Section 4.6;

(iii) The General Partner is removed pursuant to Section 11.2;

(iv) The General Partner (A) makes a general assignment for the benefit of creditors; (B) files a voluntary bankruptcy petition for relief under Chapter 7 of the United States Bankruptcy Code; (C) files a petition or answer seeking for itself a liquidation, dissolution or similar relief (but not a reorganization) under any law; (D) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (A)-(C) of this Section 11.1(a)(iv); or (E) seeks, consents to or acquiesces in the appointment of a trustee (but not a debtor-in-possession), receiver or liquidator of the General Partner or of all or any substantial part of its properties;

(v) A final and non-appealable order of relief under Chapter 7 of the United States Bankruptcy Code is entered by a court with appropriate jurisdiction pursuant to a voluntary or involuntary petition by or against the General Partner; or

(vi) (A) in the event the General Partner is a corporation, a certificate of dissolution or its equivalent is filed for the General Partner, or 90 days expire after the date of notice to the General Partner of revocation of its charter without a reinstatement of its charter, under the laws of its state of incorporation; (B) in the event the General Partner is a partnership or a limited liability company, the dissolution and commencement of winding up of the General Partner; (C) in the event the General Partner is acting in such capacity by virtue of being a trustee of a trust, the termination of the trust; (D) in the event the General Partner is a natural person, his death or adjudication of incompetency; and (E) otherwise in the event of the termination of the General Partner.

If an Event of Withdrawal specified in Section 11.1(a)(iv), (v) or (vi)(A), (B), (C) or (E) occurs, the withdrawing General Partner shall give notice to the Limited Partners within 30 days after such occurrence. The Partners hereby agree that only the Events of Withdrawal described in this Section 11.1 shall result in the withdrawal of the General Partner from the Partnership.

(b) Withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall not constitute a breach of this Agreement under the following circumstances: (i) at any time during the period beginning on the Closing Date and ending at 12:00 midnight, Mountain Standard Time, on December 31, 2015, the General Partner voluntarily withdraws by giving at least 90 days' advance notice of its intention to withdraw to the Limited Partners; provided, that prior to the effective date of such withdrawal, the withdrawal is approved by Unitholders holding at least a majority of the Outstanding Common Units (excluding Common Units held by the General Partner and its Affiliates) and the General Partner delivers to the Partnership an Opinion of Counsel ("Withdrawal Opinion of Counsel") that such withdrawal (following the selection of the successor General Partner) would not result in the loss of the limited liability of any Limited Partner or any Group Member or cause any Group Member to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed); (ii) at any time after 12:00 midnight, Eastern Standard Time, on December 31, 2015, the General Partner voluntarily withdraws by giving at least 90 days' advance notice to the Unitholders, such withdrawal to take effect on the date specified in such notice; (iii) at any time that the General Partner ceases to be the General Partner pursuant to Section 11.1(a)(ii) or is removed pursuant to Section 11.2; or (iv) notwithstanding clause (i) of this sentence, at any time that the General Partner voluntarily withdraws by giving at least 90 days' advance notice of its intention to withdraw to the Limited Partners, such withdrawal to take effect on the date specified in the notice, if at the time such notice is given one Person and its Affiliates (other than the General Partner and its Affiliates) own beneficially or of record or control at least 50% of the Outstanding Units. The withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall also constitute the withdrawal of the General Partner as general partner or managing member, if any, to the extent applicable, of the other Group Members. If the General Partner gives a notice of withdrawal pursuant to Section 11.1(a)(i), the holders of a Unit Majority, may, prior to the effective date of such withdrawal, elect a successor General Partner. The Person so elected as successor General Partner shall automatically become the successor general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. If, prior to the effective date of the General Partner's withdrawal, a successor is not selected by the Unitholders as provided herein or the Partnership does not receive a Withdrawal Opinion of Counsel, the Partnership shall be dissolved in accordance with Section 12.1. Any successor General Partner elected in accordance with the terms of this Section 11.1 shall be subject to the provisions of Section 10.3.

#### *Section 11.2 Removal of the General Partner.*

The General Partner may be removed if such removal is approved by the Unitholders holding at least 66 2/3% of the Outstanding Units (including Units held by the General Partner and its Affiliates) voting as a single class. Any such action by such holders for removal of the General Partner must also provide for the election of a successor General Partner by the Unitholders holding a majority of the outstanding Common Units and Class B Units, if any, voting as a single class and a majority of the outstanding Subordinated Units (if any Subordinated Units are then Outstanding) voting as a class (including, in each case, Units held by the General Partner and its Affiliates). Such removal shall be effective immediately following the admission of a successor General Partner pursuant to Section 10.3. The removal of the General Partner shall also automatically constitute the removal of the General Partner as general

partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. If a Person is elected as a successor General Partner in accordance with the terms of this Section 11.2, such Person shall, upon admission pursuant to Section 10.3, automatically become a successor general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. The right of the holders of Outstanding Units to remove the General Partner shall not exist or be exercised unless the Partnership has received an opinion opining as to the matters covered by a Withdrawal Opinion of Counsel. Any successor General Partner elected in accordance with the terms of this Section 11.2 shall be subject to the provisions of Section 10.3.

*Section 11.3 Interest of Departing General Partner and Successor General Partner.*

(a) In the event of (i) withdrawal of the General Partner under circumstances where such withdrawal does not violate this Agreement or (ii) removal of the General Partner by the holders of Outstanding Units under circumstances where Cause does not exist, if the successor General Partner is elected in accordance with the terms of Section 11.1 or Section 11.2, the Departing General Partner shall have the option, exercisable prior to the effective date of the departure of such Departing General Partner, to require its successor to purchase its General Partner Interest (represented by General Partner Units) and its general partner interest (or equivalent interest), if any, in the other Group Members and all of its Incentive Distribution Rights (collectively, the "Combined Interest") in exchange for an amount in cash equal to the fair market value of such Combined Interest, such amount to be determined and payable as of the effective date of its departure. If the General Partner is removed by the Unitholders under circumstances where Cause exists or if the General Partner withdraws under circumstances where such withdrawal violates this Agreement, and if a successor General Partner is elected in accordance with the terms of Section 11.1 or Section 11.2 (or if the business of the Partnership is continued pursuant to Section 12.2 and the successor General Partner is not the former General Partner), such successor shall have the option, exercisable prior to the effective date of the departure of such Departing General Partner (or, in the event the business of the Partnership is continued, prior to the date the business of the Partnership is continued), to purchase the Combined Interest for such fair market value of such Combined Interest of the Departing General Partner. In either event, the Departing General Partner shall be entitled to receive all reimbursements due such Departing General Partner pursuant to Section 7.4, including any employee-related liabilities (including severance liabilities), incurred in connection with the termination of any employees employed by the Departing General Partner or its Affiliates (other than any Group Member) for the benefit of the Partnership or the other Group Members.

For purposes of this Section 11.3(a), the fair market value of the Departing General Partner's Combined Interest shall be determined by agreement between the Departing General Partner and its successor or, failing agreement within 30 days after the effective date of such Departing General Partner's departure, by an independent investment banking firm or other independent expert selected by the Departing General Partner and its successor, which, in turn, may rely on other experts, and the determination of which shall be conclusive as to such matter. If such parties cannot agree upon one independent investment banking firm or other independent expert within 45 days after the effective date of such departure, then the Departing General Partner shall designate an independent investment banking firm or other independent expert, the

Departing General Partner's successor shall designate an independent investment banking firm or other independent expert, and such firms or experts shall mutually select a third independent investment banking firm or independent expert, which third independent investment banking firm or other independent expert shall determine the fair market value of the Combined Interest of the Departing General Partner. In making its determination, such third independent investment banking firm or other independent expert may consider the then current trading price of Units on any National Securities Exchange on which Units are then listed or admitted to trading, the value of the Partnership's assets, the rights and obligations of the Departing General Partner and other factors it may deem relevant.

(b) If the Combined Interest is not purchased in the manner set forth in Section 11.3(a), the Departing General Partner (or its transferee) shall become a Limited Partner and its Combined Interest shall be converted into Common Units pursuant to a valuation made by an investment banking firm or other independent expert selected pursuant to Section 11.3(a), without reduction in such Partnership Interest (but subject to proportionate dilution by reason of the admission of its successor). Any successor General Partner shall indemnify the Departing General Partner (or its transferee) as to all debts and liabilities of the Partnership arising on or after the date on which the Departing General Partner (or its transferee) becomes a Limited Partner. For purposes of this Agreement, conversion of the Combined Interest of the Departing General Partner to Common Units will be characterized as if the Departing General Partner (or its transferee) contributed its Combined Interest to the Partnership in exchange for the newly issued Common Units.

(c) If a successor General Partner is elected in accordance with the terms of Section 11.1 or Section 11.2 (or if the business of the Partnership is continued pursuant to Section 12.2 and the successor General Partner is not the former General Partner) and the option described in Section 11.3(a) is not exercised by the party entitled to do so, the successor General Partner shall, at the effective date of its admission to the Partnership, contribute to the Partnership cash in the amount equal to the product of the Percentage Interest of the Departing General Partner and the Net Agreed Value of the Partnership's assets on such date. In such event, such successor General Partner shall, subject to the following sentence, be entitled to its Percentage Interest of all Partnership allocations and distributions to which the Departing General Partner was entitled. In addition, the successor General Partner shall cause this Agreement to be amended to reflect that, from and after the date of such successor General Partner's admission, the successor General Partner's interest in all Partnership distributions and allocations shall be its Percentage Interest.

*Section 11.4 Termination of Subordination Period, Conversion of Subordinated Units and Extinguishment of Cumulative Common Unit Arrearages.*

Notwithstanding any provision of this Agreement, if the General Partner is removed as general partner of the Partnership under circumstances where Cause does not exist and Units held by the General Partner and its Affiliates are not voted in favor of such removal, (i) the Subordination Period will end and all Outstanding Subordinated Units will immediately and automatically convert into Common Units on a one-for-one basis, (ii) all Cumulative Common Unit Arrearages on the Common Units will be extinguished and (iii) the General Partner will have the right to convert its General Partner Interest (represented by General Partner Units) and

its Incentive Distribution Rights into Common Units or to receive cash in exchange therefor in accordance with Section 11.3.

*Section 11.5 Withdrawal of Limited Partners.*

No Limited Partner shall have any right to withdraw from the Partnership; *provided, however*, that when a transferee of a Limited Partner's Limited Partner Interest becomes a Record Holder of the Limited Partner Interest so transferred, such transferring Limited Partner shall cease to be a Limited Partner with respect to the Limited Partner Interest so transferred.

**ARTICLE XII**  
**DISSOLUTION AND LIQUIDATION**

*Section 12.1 Dissolution.*

The Partnership shall not be dissolved by the admission of additional Limited Partners or by the admission of a successor General Partner in accordance with the terms of this Agreement. Upon the removal or withdrawal of the General Partner, if a successor General Partner is elected pursuant to Section 11.1 or Section 11.2, the Partnership shall not be dissolved and such successor General Partner shall continue the business of the Partnership. The Partnership shall dissolve, and (subject to Section 12.2) its affairs shall be wound up, upon:

- (a) an Event of Withdrawal of the General Partner as provided in Section 11.1(a) (other than Section 11.1(a)(ii)), unless a successor is elected and an Opinion of Counsel is received as provided in Section 11.1(b) or 11.2 and such successor is admitted to the Partnership pursuant to Section 10.3;
- (b) an election to dissolve the Partnership by the General Partner that is approved by the holders of a Unit Majority;
- (c) the entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Delaware Act; or
- (d) at any time there are no Limited Partners, unless the Partnership is continued without dissolution in accordance with the Delaware Act.

*Section 12.2 Continuation of the Business of the Partnership After Dissolution.*

Upon (a) dissolution of the Partnership following an Event of Withdrawal caused by the withdrawal or removal of the General Partner as provided in Section 11.1(a)(i) or (iii) and the failure of the Partners to select a successor to such Departing General Partner pursuant to Section 11.1 or Section 11.2, then within 90 days thereafter, or (b) dissolution of the Partnership upon an event constituting an Event of Withdrawal as defined in Section 11.1(a)(iv), (v) or (vi), then, to the maximum extent permitted by law, within 180 days thereafter, the holders of a Unit Majority may elect to continue the business of the Partnership on the same terms and conditions set forth in this Agreement by appointing as a successor General Partner a Person approved by the holders of a Unit Majority. Unless such an election is made within the applicable time period

as set forth above, the Partnership shall conduct only activities necessary to wind up its affairs. If such an election is so made, then:

- (i) the Partnership shall continue without dissolution unless earlier dissolved in accordance with this Article XII;
- (ii) if the successor General Partner is not the former General Partner, then the interest of the former General Partner shall be treated in the manner provided in Section 11.3; and
- (iii) the successor General Partner shall be admitted to the Partnership as General Partner, effective as of the Event of Withdrawal, by agreeing in writing to be bound by this Agreement; *provided*, that the right of the holders of a Unit Majority to approve a successor General Partner and to continue the business of the Partnership shall not exist and may not be exercised unless the Partnership has received an Opinion of Counsel that (x) the exercise of the right would not result in the loss of limited liability of any Limited Partner and (y) neither the Partnership nor any Group Member would be treated as an association taxable as a corporation or otherwise be taxable as an entity for federal income tax purposes upon the exercise of such right to continue (to the extent not already so treated or taxed).

#### *Section 12.3 Liquidator.*

Upon dissolution of the Partnership, unless the business of the Partnership is continued pursuant to Section 12.2, the General Partner shall select one or more Persons to act as Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by holders of at least a majority of the Outstanding Common Units and Subordinated Units voting as a single class. The Liquidator (if other than the General Partner) shall agree not to resign at any time without 15 days' prior notice and may be removed at any time, with or without cause, by notice of removal approved by holders of at least a majority of the Outstanding Common Units, Class B Units (if any), and Subordinated Units voting as a single class. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be approved by holders of at least a majority of the Outstanding Common Units, Class B Units (if any), and Subordinated Units voting as a single class. The right to approve a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XII, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, other than the limitation on sale set forth in Section 7.3) necessary or appropriate to carry out the duties and functions of the Liquidator hereunder for and during the period of time required to complete the winding up and liquidation of the Partnership as provided for herein.

#### **Section 12.4 *Liquidation.***

The Liquidator shall proceed to dispose of the assets of the Partnership, discharge its liabilities, and otherwise wind up its affairs in such manner and over such period as determined by the Liquidator, subject to Section 17-804 of the Delaware Act and the following:

(a) The assets may be disposed of by public or private sale or by distribution in kind to one or more Partners on such terms as the Liquidator and such Partner or Partners may agree. If any property is distributed in kind, the Partner receiving the property shall be deemed for purposes of Section 12.4(c) to have received cash equal to its fair market value; and contemporaneously therewith, appropriate cash distributions must be made to the other Partners. The Liquidator may defer liquidation or distribution of the Partnership's assets for a reasonable time if it determines that an immediate sale or distribution of all or some of the Partnership's assets would be impractical or would cause undue loss to the Partners. The Liquidator may distribute the Partnership's assets, in whole or in part, in kind if it determines that a sale would be impractical or would cause undue loss to the Partners.

(b) Liabilities of the Partnership include amounts owed to the Liquidator as compensation for serving in such capacity (subject to the terms of Section 12.3) and amounts to Partners otherwise than in respect of their distribution rights under Article VI. With respect to any liability that is contingent, conditional or unmatured or is otherwise not yet due and payable, the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for its payment. When paid, any unused portion of the reserve shall be distributed as additional liquidation proceeds.

(c) All property and all cash in excess of that required to discharge liabilities as provided in Section 12.4(b) shall be distributed to the Partners in accordance with, and to the extent of, the positive balances in their respective Capital Accounts, as determined after taking into account all Capital Account adjustments (other than those made by reason of distributions pursuant to this Section 12.4(c)) for the taxable year of the Partnership during which the liquidation of the Partnership occurs (with such date of occurrence being determined pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(g)), and such distribution shall be made by the end of such taxable year (or, if later, within 90 days after said date of such occurrence).

#### **Section 12.5 *Cancellation of Certificate of Limited Partnership.***

Upon the completion of the distribution of Partnership cash and property as provided in Section 12.4 in connection with the liquidation of the Partnership, the Certificate of Limited Partnership and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware shall be canceled and such other actions as may be necessary to terminate the Partnership shall be taken.

#### **Section 12.6 *Return of Contributions.***

The General Partner shall not be personally liable for, and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate, the return of the Capital Contributions of the Limited Partners or Unitholders, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

**Section 12.7 Waiver of Partition.**

To the maximum extent permitted by law, each Partner hereby waives any right to partition of the Partnership property.

**Section 12.8 Capital Account Restoration.**

No Limited Partner shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Partnership. The General Partner shall be obligated to restore any negative balance in its Capital Account upon liquidation of its interest in the Partnership by the end of the taxable year of the Partnership during which such liquidation occurs, or, if later, within 90 days after the date of such liquidation.

**ARTICLE XIII**

**AMENDMENT OF PARTNERSHIP AGREEMENT; MEETINGS; RECORD DATE**

**Section 13.1 Amendments to be Adopted Solely by the General Partner.**

Each Partner agrees that the General Partner, without the approval of any Partner, may amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

(a) a change in the name of the Partnership, the location of the principal place of business of the Partnership, the registered agent of the Partnership or the registered office of the Partnership;

(b) admission, substitution, withdrawal or removal of Partners in accordance with this Agreement;

(c) a change that the General Partner determines to be necessary or appropriate to qualify or continue the qualification of the Partnership as a limited partnership or a partnership in which the Limited Partners have limited liability under the laws of any state or to ensure that the Group Members will not be treated as associations taxable as corporations or otherwise taxed as entities for federal income tax purposes;

(d) a change that the General Partner determines, (i) does not adversely affect the Limited Partners (including any particular class of Partnership Interests as compared to other classes of Partnership Interests) in any material respect, (ii) to be necessary or appropriate to (A) satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute (including the Delaware Act) or (B) facilitate the trading of the Units (including the division of any class or classes of Outstanding Units into different classes to facilitate uniformity of tax consequences within such classes of Units) or comply with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are or will be listed or admitted to trading, (iii) to be necessary or appropriate in connection with action taken by the General Partner pursuant to Section 5.9 or (iv) is required to effect the intent expressed in

the Registration Statement or the intent of the provisions of this Agreement or is otherwise contemplated by this Agreement;

(e) a change in the fiscal year or taxable year of the Partnership and any other changes that the General Partner determines to be necessary or appropriate as a result of a change in the fiscal year or taxable year of the Partnership including, if the General Partner shall so determine, a change in the definition of "Quarter" and the dates on which distributions are to be made by the Partnership;

(f) an amendment that is necessary, in the Opinion of Counsel, to prevent the Partnership, or the General Partner or its directors, officers, trustees or agents from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, the Investment Advisers Act of 1940, as amended, or "plan asset" regulations adopted under the Employee Retirement Income Security Act of 1974, as amended, regardless of whether such are substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor;

(g) an amendment that the General Partner determines to be necessary or appropriate in connection with the authorization of issuance of any class or series of Partnership Securities pursuant to Section 5.6, including any amendment that the General Partner determines is necessary or appropriate in connection with (i) the adjustments of the Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution and Third Target Distribution pursuant to the provisions of Section 5.11, (ii) the implementation of the provisions of Section 5.11 or (iii) any modifications to the Incentive Distribution Rights made in connection with the issuance of Partnership Securities pursuant to Section 5.6, *provided* that, with respect to this clause (iii), the modifications to the Incentive Distribution Rights and the related issuance of Partnership Securities have received Special Approval;

(h) any amendment expressly permitted in this Agreement to be made by the General Partner acting alone;

(i) an amendment effected, necessitated or contemplated by a Merger Agreement approved in accordance with Section 14.3;

(j) an amendment that the General Partner determines to be necessary or appropriate to reflect and account for the formation by the Partnership of, or investment by the Partnership in, any corporation, partnership, joint venture, limited liability company or other entity, in connection with the conduct by the Partnership of activities permitted by the terms of Section 2.4;

(k) a merger, conveyance or conversion pursuant to Section 14.3(d); or

(l) any other amendments substantially similar to the foregoing.

### **Section 13.2 Amendment Procedures.**

Except as provided in Section 13.1 and Section 13.3, all amendments to this Agreement shall be made in accordance with the following requirements. Amendments to this Agreement

may be proposed only by the General Partner; *provided, however*, that the General Partner shall have no duty or obligation to propose any amendment to this Agreement and may decline to do so free of any fiduciary duty or obligation whatsoever to the Partnership or any Limited Partner and, in declining to propose an amendment, to the fullest extent permitted by law shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any Group Member Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity. A proposed amendment shall be effective upon its approval by the General Partner and the holders of a Unit Majority, unless a greater or different percentage is required under this Agreement or by Delaware law. Each proposed amendment that requires the approval of the holders of a specified percentage of Outstanding Units shall be set forth in a writing that contains the text of the proposed amendment. If such an amendment is proposed, the General Partner shall seek the written approval of the requisite percentage of Outstanding Units or call a meeting of the Unitholders to consider and vote on such proposed amendment. The General Partner shall notify all Record Holders upon final adoption of any such proposed amendments.

### Section 13.3 *Amendment Requirements.*

(a) Notwithstanding the provisions of Section 13.1 and Section 13.2, no provision of this Agreement that establishes a percentage of Outstanding Units (including Units deemed owned by the General Partner) required to take any action shall be amended, altered, changed, repealed or rescinded in any respect that would have the effect of reducing such voting percentage unless such amendment is approved by the written consent or the affirmative vote of holders of Outstanding Units whose aggregate Outstanding Units constitute not less than the voting requirement sought to be reduced.

(b) Notwithstanding the provisions of Section 13.1 and Section 13.2, no amendment to this Agreement may (i) enlarge the obligations of any Limited Partner without its consent, unless such shall be deemed to have occurred as a result of an amendment approved pursuant to Section 13.3(c), or (ii) enlarge the obligations of, restrict in any way any action by or rights of, or reduce in any way the amounts distributable, reimbursable or otherwise payable to, the General Partner or any of its Affiliates without its consent, which consent may be given or withheld at its option.

(c) Except as provided in Section 14.3, and without limitation of the General Partner's authority to adopt amendments to this Agreement without the approval of any Partners or Assignees as contemplated in Section 13.1, any amendment that would have a material adverse effect on the rights or preferences of any class of Partnership Interests in relation to other classes of Partnership Interests must be approved by the holders of not less than a majority of the Outstanding Partnership Interests of the class affected.

(d) Notwithstanding any other provision of this Agreement, except for amendments pursuant to Section 13.1 and except as otherwise provided by Section 14.3(b), no amendments shall become effective without the approval of the holders of at least 90% of the Outstanding Units voting as a single class unless the Partnership obtains an Opinion of Counsel to the effect that such amendment will not affect the limited liability of any Limited Partner under applicable partnership law of the state under whose laws the Partnership is organized.

(e) Except as provided in Section 13.1, this Section 13.3 shall only be amended with the approval of the holders of at least 90% of the Outstanding Units.

#### *Section 13.4 Special Meetings.*

All acts of Limited Partners to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XIII. Special meetings of the Limited Partners may be called by the General Partner or by Limited Partners owning 20% or more of the Outstanding Units of the class or classes for which a meeting is proposed. Limited Partners shall call a special meeting by delivering to the General Partner one or more requests in writing stating that the signing Limited Partners wish to call a special meeting and indicating the general or specific purposes for which the special meeting is to be called. Within 60 days after receipt of such a call from Limited Partners or within such greater time as may be reasonably necessary for the Partnership to comply with any statutes, rules, regulations, listing agreements or similar requirements governing the holding of a meeting or the solicitation of proxies for use at such a meeting, the General Partner shall send a notice of the meeting to the Limited Partners either directly or indirectly through the Transfer Agent. A meeting shall be held at a time and place determined by the General Partner on a date not less than 10 days nor more than 60 days after the mailing of notice of the meeting. Limited Partners shall not vote on matters that would cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability under the Delaware Act or the law of any other state in which the Partnership is qualified to do business.

#### *Section 13.5 Notice of a Meeting.*

Notice of a meeting called pursuant to Section 13.4 shall be given to the Record Holders of the class or classes of Units for which a meeting is proposed in writing by mail or other means of written communication in accordance with Section 16.1. The notice shall be deemed to have been given at the time when deposited in the mail or sent by other means of written communication.

#### *Section 13.6 Record Date.*

For purposes of determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners or to give approvals without a meeting as provided in Section 13.11 the General Partner may set a Record Date, which shall not be less than 10 nor more than 60 days before (a) the date of the meeting (unless such requirement conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed or admitted to trading, in which case the rule, regulation, guideline or requirement of such National Securities Exchange shall govern) or (b) in the event that approvals are sought without a meeting, the date by which Limited Partners are requested in writing by the General Partner to give such approvals. If the General Partner does not set a Record Date, then (a) the Record Date for determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners shall be the close of business on the day next preceding the day on which notice is given, and (b) the Record Date for determining the Limited Partners entitled to give approvals without a meeting shall be the date the first written approval is deposited with the Partnership in care of the General Partner in accordance with Section 13.11.

### **Section 13.7 *Adjournment.***

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than 45 days. At the adjourned meeting, the Partnership may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if a new Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with this Article XIII.

### **Section 13.8 *Waiver of Notice; Approval of Meeting; Approval of Minutes.***

The transactions of any meeting of Limited Partners, however called and noticed, and whenever held, shall be as valid as if it had occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy. Attendance of a Limited Partner at a meeting shall constitute a waiver of notice of the meeting, except when the Limited Partner attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened; and except that attendance at a meeting is not a waiver of any right to disapprove the consideration of matters required to be included in the notice of the meeting, but not so included, if the disapproval is expressly made at the meeting.

### **Section 13.9 *Quorum and Voting.***

The holders of a majority of the Outstanding Units of the class or classes for which a meeting has been called (including Outstanding Units deemed owned by the General Partner) represented in person or by proxy shall constitute a quorum at a meeting of Limited Partners of such class or classes unless any such action by the Limited Partners requires approval by holders of a greater percentage of such Units, in which case the quorum shall be such greater percentage. At any meeting of the Limited Partners duly called and held in accordance with this Agreement at which a quorum is present, the act of Limited Partners holding Outstanding Units that in the aggregate represent a majority of the Outstanding Units entitled to vote and be present in person or by proxy at such meeting shall be deemed to constitute the act of all Limited Partners, unless a greater or different percentage is required with respect to such action under the provisions of this Agreement, in which case the act of the Limited Partners holding Outstanding Units that in the aggregate represent at least such greater or different percentage shall be required. The Limited Partners present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Limited Partners to leave less than a quorum, if any action taken (other than adjournment) is approved by the required percentage of Outstanding Units specified in this Agreement (including Outstanding Units deemed owned by the General Partner). In the absence of a quorum any meeting of Limited Partners may be adjourned from time to time by the affirmative vote of holders of at least a majority of the Outstanding Units entitled to vote at such meeting (including Outstanding Units deemed owned by the General Partner) represented either in person or by proxy, but no other business may be transacted, except as provided in Section 13.7.

#### *Section 13.10 Conduct of a Meeting.*

The General Partner shall have full power and authority concerning the manner of conducting any meeting of the Limited Partners or solicitation of approvals in writing, including the determination of Persons entitled to vote, the existence of a quorum, the satisfaction of the requirements of Section 13.4, the conduct of voting, the validity and effect of any proxies and the determination of any controversies, votes or challenges arising in connection with or during the meeting or voting. The General Partner shall designate a Person to serve as chairman of any meeting and shall further designate a Person to take the minutes of any meeting. All minutes shall be kept with the records of the Partnership maintained by the General Partner. The General Partner may make such other regulations consistent with applicable law and this Agreement as it may deem advisable concerning the conduct of any meeting of the Limited Partners or solicitation of approvals in writing, including regulations in regard to the appointment of proxies, the appointment and duties of inspectors of votes and approvals, the submission and examination of proxies and other evidence of the right to vote, and the revocation of approvals in writing.

#### *Section 13.11 Action Without a Meeting.*

If authorized by the General Partner, any action that may be taken at a meeting of the Limited Partners may be taken without a meeting if an approval in writing setting forth the action so taken is signed by Limited Partners owning not less than the minimum percentage of the Outstanding Units (including Units deemed owned by the General Partner) that would be necessary to authorize or take such action at a meeting at which all the Limited Partners were present and voted (unless such provision conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed or admitted to trading, in which case the rule, regulation, guideline or requirement of such National Securities Exchange shall govern). Prompt notice of the taking of action without a meeting shall be given to the Limited Partners who have not approved in writing. The General Partner may specify that any written ballot submitted to Limited Partners for the purpose of taking any action without a meeting shall be returned to the Partnership within the time period, which shall be not less than 20 days, specified by the General Partner. If a ballot returned to the Partnership does not vote all of the Units held by the Limited Partners, the Partnership shall be deemed to have failed to receive a ballot for the Units that were not voted. If approval of the taking of any action by the Limited Partners is solicited by any Person other than by or on behalf of the General Partner, the written approvals shall have no force and effect unless and until (a) they are deposited with the Partnership in care of the General Partner, (b) approvals sufficient to take the action proposed are dated as of a date not more than 90 days prior to the date sufficient approvals are deposited with the Partnership and (c) an Opinion of Counsel is delivered to the General Partner to the effect that the exercise of such right and the action proposed to be taken with respect to any particular matter (i) will not cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability, and (ii) is otherwise permissible under the state statutes then governing the rights, duties and liabilities of the Partnership and the Partners.

**Section 13.12 Right to Vote and Related Matters.**

(a) Only those Record Holders of the Units on the Record Date set pursuant to Section 13.6 (and also subject to the limitations contained in the definition of "Outstanding") shall be entitled to notice of, and to vote at, a meeting of Limited Partners or to act with respect to matters as to which the holders of the Outstanding Units have the right to vote or to act. All references in this Agreement to votes of, or other acts that may be taken by, the Outstanding Units shall be deemed to be references to the votes or acts of the Record Holders of such Outstanding Units.

(b) With respect to Units that are held for a Person's account by another Person (such as a broker, dealer, bank, trust company or clearing corporation, or an agent of any of the foregoing), in whose name such Units are registered, such other Person shall, in exercising the voting rights in respect of such Units on any matter, and unless the arrangement between such Persons provides otherwise, vote such Units in favor of, and at the direction of, the Person who is the beneficial owner, and the Partnership shall be entitled to assume it is so acting without further inquiry. The provisions of this Section 13.12(b) (as well as all other provisions of this Agreement) are subject to the provisions of Section 4.3.

**ARTICLE XIV**  
**MERGER, CONSOLIDATION OR CONVERSION**

**Section 14.1 Authority.**

The Partnership may merge or consolidate with or into one or more corporations, limited liability companies, statutory trusts or associations, real estate investment trusts, common law trusts or unincorporated businesses, including a partnership (whether general or limited (including a limited liability partnership)) or convert into any such entity, whether such entity is formed under the laws of the State of Delaware or any other state of the United States of America, pursuant to a written plan of merger or consolidation ("Merger Agreement") or a written plan of conversion ("Plan of Conversion"), as the case may be, in accordance with this Article XIV.

**Section 14.2 Procedure for Merger, Consolidation or Conversion.**

(a) Merger, consolidation or conversion of the Partnership pursuant to this Article XIV requires the prior consent of the General Partner, *provided, however,* that, to the fullest extent permitted by law, the General Partner shall have no duty or obligation to consent to any merger, consolidation or conversion of the Partnership and may decline to do so free of any fiduciary duty or obligation whatsoever to the Partnership, any Limited Partner and, in declining to consent to a merger, consolidation or conversion, shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any other agreement contemplated hereby or under the Act or any other law, rule or regulation or at equity.

(b) If the General Partner shall determine to consent to the merger or consolidation, the General partner shall approve the Merger Agreement, which shall set forth:

- (i) name and state of domicile of each of the business entities proposing to merge or consolidate;
  - (ii) the name and state of domicile of the business entity that is to survive the proposed merger or consolidation (the “**Surviving Business Entity**”);
  - (iii) the terms and conditions of the proposed merger or consolidation;
  - (iv) the manner and basis of exchanging or converting the equity securities of each constituent business entity for, or into, cash, property or interests, rights, securities or obligations of the Surviving Business Entity; and (i) if any general or limited partner interests, securities or rights of any constituent business entity are not to be exchanged or converted solely for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity, the cash, property or interests, rights, securities or obligations of any general or limited partnership, corporation, trust, limited liability company, unincorporated business or other entity (other than the Surviving Business Entity) which the holders of such general or limited partner interests, securities or rights are to receive in exchange for, or upon conversion of their interests, securities or rights, and (ii) in the case of securities represented by certificates, upon the surrender of such certificates, which cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity or any general or limited partnership, corporation, trust, limited liability company, unincorporated business or other entity (other than the Surviving Business Entity), or evidences thereof, are to be delivered;
  - (v) a statement of any changes in the constituent documents or the adoption of new constituent documents (the articles or certificate of incorporation, articles of trust, declaration of trust, certificate or agreement of limited partnership, operating agreement or other similar charter or governing document) of the Surviving Business Entity to be effected by such merger or consolidation;
  - (vi) the effective time of the merger, which may be the date of the filing of the certificate of merger pursuant to Section 14.4 or a later date specified in or determinable in accordance with the Merger Agreement (*provided*, that if the effective time of the merger is to be later than the date of the filing of such certificate of merger, the effective time shall be fixed at a date or time certain at or prior to the time of the filing of such certificate of merger and stated therein); and
  - (vii) such other provisions with respect to the proposed merger or consolidation that the General Partner determines to be necessary or appropriate.
- (c) If the General Partner shall determine to consent to the conversion, the General Partner shall approve the Plan of Conversion, which shall set forth:
- (i) the name of the converting entity and the converted entity;
  - (ii) a statement that the Partnership is continuing its existence in the organizational form of the converted entity;

- (iii) a statement as to the type of entity that the converted entity is to be and the state or country under the laws of which the converted entity is to be incorporated, formed or organized;
- (iv) the manner and basis of exchanging or converting the equity securities of each constituent business entity for, or into, cash, property or interests, rights, securities or obligations of the converted entity;
- (v) in an attachment or exhibit, the certificate of limited partnership of the Partnership; and
- (vi) in an attachment or exhibit, the certificate of limited partnership, articles of incorporation, or other organizational documents of the converted entity;
- (vii) the effective time of the conversion, which may be the date of the filing of the articles of conversion or a later date specified in or determinable in accordance with the Plan of Conversion (*provided*, that if the effective time of the conversion is to be later than the date of the filing of such articles of conversion, the effective time shall be fixed at a date or time certain at or prior to the time of the filing of such articles of conversion and stated therein); and
- (viii) such other provisions with respect to the proposed conversion that the General Partner determines to be necessary or appropriate.

#### **Section 14.3 Approval by Limited Partners.**

- (a) Except as provided in Sections 14.3(d), the General Partner, upon its approval of the Merger Agreement or the Plan of Conversion, as the case may be, shall direct that the Merger Agreement or the Plan of Conversion, as applicable, be submitted to a vote of Limited Partners, whether at a special meeting or by written consent, in either case in accordance with the requirements of Article XIII. A copy or a summary of the Merger Agreement or the Plan of Conversion, as the case may be, shall be included in or enclosed with the notice of a special meeting or the written consent.
- (b) Except as provided in Section 14.3(d), the Merger Agreement or Plan of Conversion, as the case may be, shall be approved upon receiving the affirmative vote or consent of the holders of a Unit Majority.
- (c) Except as provided in Section 14.3(d), after such approval by vote or consent of the Limited Partners, and at any time prior to the filing of the certificate of merger or articles of conversion pursuant to Section 14.4, the merger, consolidation or conversion may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement or Plan of Conversion, as the case may be.
- (d) Notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted, without Limited Partner approval, to convert the Partnership or any Group Member into a new limited liability entity, to merge the Partnership or any Group Member into, or convey all of the Partnership's assets to, another limited liability entity that shall

be newly formed and shall have no assets, liabilities or operations at the time of such conversion, merger or conveyance other than those it receives from the Partnership or other Group Member if (i) the General Partner has received an Opinion of Counsel that the conversion, merger or conveyance, as the case may be, would not result in the loss of the limited liability of any Limited Partner or cause the Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not previously treated as such), (ii) the sole purpose of such conversion, merger, or conveyance is to effect a mere change in the legal form of the Partnership into another limited liability entity and (iii) the governing instruments of the new entity provide the Limited Partners and the General Partner with the same rights and obligations as are herein contained.

(e) Additionally, notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted, without Limited Partner approval, to merge or consolidate the Partnership with or into another entity if (A) the General Partner has received an Opinion of Counsel that the merger or consolidation, as the case may be, would not result in the loss of the limited liability of any Limited Partner or cause the Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not previously treated as such), (B) the merger or consolidation would not result in an amendment to the Partnership Agreement, other than any amendments that could be adopted pursuant to Section 13.1, (C) the Partnership is the Surviving Business Entity in such merger or consolidation, (D) each Unit outstanding immediately prior to the effective date of the merger or consolidation is to be an identical Unit of the Partnership after the effective date of the merger or consolidation, and (E) the number of Partnership Securities to be issued by the Partnership in such merger or consolidation do not exceed 20% of the Partnership Securities Outstanding immediately prior to the effective date of such merger or consolidation.

(f) Pursuant to Section 17-211(g) of the Delaware Act, an agreement of merger or consolidation approved in accordance with this Article XIV may (a) effect any amendment to this Agreement or (b) effect the adoption of a new partnership agreement for the Partnership if it is the Surviving Business Entity. Any such amendment or adoption made pursuant to this Section 14.5 shall be effective at the effective time or date of the merger or consolidation.

#### *Section 14.4 Certificate of Merger.*

Upon the required approval by the General Partner and the Unitholders of a Merger Agreement or the Plan of Conversion, as the case may be, a certificate of merger or articles of conversion, as applicable, shall be executed and filed with the Secretary of State of the State of Delaware in conformity with the requirements of the Delaware Act.

#### *Section 14.5 Effect of Merger, Consolidation or Conversion.*

(a) At the effective time of the certificate of merger:

(i) all of the rights, privileges and powers of each of the business entities that has merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those business entities and all other things and causes of action belonging to each of those business entities, shall be vested in the Surviving Business Entity and after

the merger or consolidation shall be the property of the Surviving Business Entity to the extent they were of each constituent business entity;

(ii) the title to any real property vested by deed or otherwise in any of those constituent business entities shall not revert and is not in any way impaired because of the merger or consolidation;

(iii) all rights of creditors and all liens on or security interests in property of any of those constituent business entities shall be preserved unimpaired; and

(iv) all debts, liabilities and duties of those constituent business entities shall attach to the Surviving Business Entity and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

(b) At the effective time of the articles of conversion:

(i) the Partnership shall continue to exist, without interruption, but in the organizational form of the converted entity rather than in its prior organizational form;

(ii) all rights, title, and interests to all real estate and other property owned by the Partnership shall continue to be owned by the converted entity in its new organizational form without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances thereon;

(iii) all liabilities and obligations of the Partnership shall continue to be liabilities and obligations of the converted entity in its new organizational form without impairment or diminution by reason of the conversion;

(iv) all rights of creditors or other parties with respect to or against the prior interest holders or other owners of the Partnership in their capacities as such in existence as of the effective time of the conversion will continue in existence as to those liabilities and obligations and may be pursued by such creditors and obligees as if the conversion did not occur;

(v) a proceeding pending by or against the Partnership or by or against any of Partners in their capacities as such may be continued by or against the converted entity in its new organizational form and by or against the prior partners without any need for substitution of parties; and

(vi) the Partnership Units that are to be converted into partnership interests, shares, evidences of ownership, or other securities in the converted entity as provided in the plan of conversion shall be so converted, and Partners shall be entitled only to the rights provided in the Plan of Conversion.

**ARTICLE XV**  
**RIGHT TO ACQUIRE LIMITED PARTNER INTERESTS**

**Section 15.1 Right to Acquire Limited Partner Interests.**

(a) Notwithstanding any other provision of this Agreement, if at any time the General Partner and its Affiliates hold more than 80% of the total Limited Partner Interests of any class then Outstanding, the General Partner shall then have the right, which right it may assign and transfer in whole or in part to the Partnership or any Affiliate of the General Partner, exercisable at its option, to purchase all, but not less than all, of such Limited Partner Interests of such class then Outstanding held by Persons other than the General Partner and its Affiliates, at the greater of (x) the Current Market Price as of the date three days prior to the date that the notice described in Section 15.1(b) is mailed and (y) the highest price paid by the General Partner or any of its Affiliates for any such Limited Partner Interest of such class purchased during the 90-day period preceding the date that the notice described in Section 15.1(b) is mailed. As used in this Agreement, (i) "Current Market Price" as of any date of any class of Limited Partner Interests means the average of the daily Closing Prices (as hereinafter defined) per Limited Partner Interest of such class for the 20 consecutive Trading Days (as hereinafter defined) immediately prior to such date; (ii) "Closing Price" for any day means the last sale price on such day, regular way, or in case no such sale takes place on such day, the average of the closing bid and asked prices on such day, regular way, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal National Securities Exchange (other than the Nasdaq Stock Market) on which such Limited Partner Interests are listed or admitted to trading or, if such Limited Partner Interests of such class are not listed or admitted to trading on any National Securities Exchange (other than the Nasdaq Stock Market), the last quoted price on such day or, if not so quoted, the average of the high bid and low asked prices on such day in the over-the-counter market, as reported by the Nasdaq Stock Market or such other system then in use, or, if on any such day such Limited Partner Interests of such class are not quoted by any such organization, the average of the closing bid and asked prices on such day as furnished by a professional market maker making a market in such Limited Partner Interests of such class selected by the General Partner, or if on any such day no market maker is making a market in such Limited Partner Interests of such class, the fair value of such Limited Partner Interests on such day as determined by the General Partner; and (iii) "Trading Day" means a day on which the principal National Securities Exchange on which such Limited Partner Interests of any class are listed or admitted for trading is open for the transaction of business or, if Limited Partner Interests of a class are not listed or admitted for trading on any National Securities Exchange, a day on which banking institutions in New York City generally are open.

(b) If the General Partner, any Affiliate of the General Partner or the Partnership elects to exercise the right to purchase Limited Partner Interests granted pursuant to Section 15.1(a), the General Partner shall deliver to the Transfer Agent notice of such election to purchase (the "**Notice of Election to Purchase**") and shall cause the Transfer Agent to mail a copy of such Notice of Election to Purchase to the Record Holders of Limited Partner Interests of such class (as of a Record Date selected by the General Partner) at least 10, but not more than 60, days prior to the Purchase Date. Such Notice of Election to Purchase shall also be published for a period of at least three consecutive days in at least two daily newspapers of general circulation

printed in the English language and published in the Borough of Manhattan, New York. The Notice of Election to Purchase shall specify the Purchase Date and the price (determined in accordance with Section 15.1(a)) at which Limited Partner Interests will be purchased and state that the General Partner, its Affiliate or the Partnership, as the case may be, elects to purchase such Limited Partner Interests, upon surrender of Certificates representing such Limited Partner Interests in exchange for payment, at such office or offices of the Transfer Agent as the Transfer Agent may specify, or as may be required by any National Securities Exchange on which such Limited Partner Interests are listed. Any such Notice of Election to Purchase mailed to a Record Holder of Limited Partner Interests at his address as reflected in the records of the Transfer Agent shall be conclusively presumed to have been given regardless of whether the owner receives such notice. On or prior to the Purchase Date, the General Partner, its Affiliate or the Partnership, as the case may be, shall deposit with the Transfer Agent cash in an amount sufficient to pay the aggregate purchase price of all of such Limited Partner Interests to be purchased in accordance with this Section 15.1. If the Notice of Election to Purchase shall have been duly given as aforesaid at least 10 days prior to the Purchase Date, and if on or prior to the Purchase Date the deposit described in the preceding sentence has been made for the benefit of the holders of Limited Partner Interests subject to purchase as provided herein, then from and after the Purchase Date, notwithstanding that any Certificate shall not have been surrendered for purchase, all rights of the holders of such Limited Partner Interests (including any rights pursuant to Article IV, Article V, Article VI, and Article XII) shall thereupon cease, except the right to receive the purchase price (determined in accordance with Section 15.1(a)) for Limited Partner Interests therefor, without interest, upon surrender to the Transfer Agent of the Certificates representing such Limited Partner Interests, and such Limited Partner Interests shall thereupon be deemed to be transferred to the General Partner, its Affiliate or the Partnership, as the case may be, on the record books of the Transfer Agent and the Partnership, and the General Partner or any Affiliate of the General Partner, or the Partnership, as the case may be, shall be deemed to be the owner of all such Limited Partner Interests from and after the Purchase Date and shall have all rights as the owner of such Limited Partner Interests (including all rights as owner of such Limited Partner Interests pursuant to Article IV, Article V, Article VI and Article XII).

(c) At any time from and after the Purchase Date, a holder of an Outstanding Limited Partner Interest subject to purchase as provided in this Section 15.1 may surrender his Certificate evidencing such Limited Partner Interest to the Transfer Agent in exchange for payment of the amount described in Section 15.1(a), therefor, without interest thereon.

## **ARTICLE XVI**

### **GENERAL PROVISIONS**

#### *Section 16.1 Addresses and Notices.*

Any notice, demand, request, report or proxy materials required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication to the Partner at the address described below. Any notice, payment or report to be given or made to a Partner hereunder shall be deemed conclusively to have been given or made, and the obligation to give such notice or report or to make such payment shall be

deemed conclusively to have been fully satisfied, upon sending of such notice, payment or report to the Record Holder of such Partnership Securities at his address as shown on the records of the Transfer Agent or as otherwise shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in such Partnership Securities by reason of any assignment or otherwise. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 16.1 executed by the General Partner, the Transfer Agent or the mailing organization shall be *prima facie* evidence of the giving or making of such notice, payment or report. If any notice, payment or report addressed to a Record Holder at the address of such Record Holder appearing on the books and records of the Transfer Agent or the Partnership is returned by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver it, such notice, payment or report and any subsequent notices, payments and reports shall be deemed to have been duly given or made without further mailing (until such time as such Record Holder or another Person notifies the Transfer Agent or the Partnership of a change in his address) if they are available for the Partner at the principal office of the Partnership for a period of one year from the date of the giving or making of such notice, payment or report to the other Partners. Any notice to the Partnership shall be deemed given if received by the General Partner at the principal office of the Partnership designated pursuant to Section 2.3. The General Partner may rely and shall be protected in relying on any notice or other document from a Partner or other Person if believed by it to be genuine.

#### *Section 16.2 Further Action.*

The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

#### *Section 16.3 Binding Effect.*

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

#### *Section 16.4 Integration.*

This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

#### *Section 16.5 Creditors.*

None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Partnership.

#### *Section 16.6 Waiver.*

No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition.

*Section 16.7 Third-Party Beneficiaries.*

Each Partner agrees that any Indemnitee shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to such Indemnitee.

*Section 16.8 Counterparts.*

This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto or, in the case of a Person acquiring a Limited Partner Interest, pursuant to Section 10.1(a) without execution hereto.

*Section 16.9 Applicable Law.*

This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

*Section 16.10 Invalidity of Provisions.*

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

*Section 16.11 Consent of Partners.*

Each Partner hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote or consent of less than all of the Partners, such action may be so taken upon the concurrence of less than all of the Partners and each Partner shall be bound by the results of such action.

*Section 16.12 Facsimile Signatures.*

The use of facsimile signatures affixed in the name and on behalf of the transfer agent and registrar of the Partnership on certificates representing Common Units is expressly permitted by this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

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

**GENERAL PARTNER:**

DCP MIDSTREAM GP, LP

By: DCP MIDSTREAM GP, LLC

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

**ORGANIZATIONAL LIMITED PARTNER:**

DUKE ENERGY FIELD SERVICES, LLC

By: /s/ Brent L. Backes

Name: Brent L. Backes

Title: Vice President, General Counsel and Secretary

Signature Page – First Amended and Restated Agreement  
of Limited Partnership of DCP Midstream Partners, LP

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**LIMITED PARTNERS:**

All Limited Partners now and hereafter admitted as Limited Partners of the Partnership, pursuant to powers of attorney now and hereafter executed in favor of, and granted and delivered to the General Partner or without execution hereof pursuant to Section 10.2(a) hereof.

DCP LP HOLDINGS, LP

By: DUKE ENERGY FIELD SERVICES, LLC

By: /s/ Brent L. Backes

Name: Brent L. Backes

Title: Vice President, General Counsel and Secretary

Signature Page – First Amended and Restated Agreement  
of Limited Partnership of DCP Midstream Partners, LP

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**EXHIBIT A**  
**to the First Amended and Restated**  
**Agreement of Limited Partnership of**  
**DCP Midstream Partners, LP**  
**Certificate Evidencing Common Units**  
**Representing Limited Partner Interests in**  
**DCP Midstream Partners, LP**

No. \_\_\_\_\_ Common Units

In accordance with Section 4.1 of the First Amended and Restated Agreement of Limited Partnership of DCP Midstream Partners, LP, as amended, supplemented or restated from time to time (the “**Partnership Agreement**”), DCP Midstream Partners, LP, a Delaware limited partnership (the “**Partnership**”), hereby certifies that \_\_\_\_\_(the “**Holder**”) is the registered owner of Common Units representing limited partner interests in the Partnership (the “**Common Units**”) transferable on the books of the Partnership, in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. The rights, preferences and limitations of the Common Units are set forth in, and this Certificate and the Common Units represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Partnership Agreement. Copies of the Partnership Agreement are on file at, and will be furnished without charge on delivery of written request to the Partnership at, the principal office of the Partnership located at 370 17th Street, Suite 2775, Denver, Colorado 80202. Capitalized terms used herein but not defined shall have the meanings given them in the Partnership Agreement.

THE HOLDER OF THIS SECURITY ACKNOWLEDGES FOR THE BENEFIT OF DCP MIDSTREAM PARTNERS, LP THAT THIS SECURITY MAY NOT BE SOLD, OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED IF SUCH TRANSFER WOULD (A) VIOLATE THE THEN APPLICABLE FEDERAL OR STATE SECURITIES LAWS OR RULES AND REGULATIONS OF THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER GOVERNMENTAL AUTHORITY WITH JURISDICTION OVER SUCH TRANSFER, (B) TERMINATE THE EXISTENCE OR QUALIFICATION OF DCP MIDSTREAM PARTNERS, LP UNDER THE LAWS OF THE STATE OF DELAWARE, OR (C) CAUSE DCP MIDSTREAM PARTNERS, LP TO BE TREATED AS AN ASSOCIATION TAXABLE AS A CORPORATION OR OTHERWISE TO BE TAXED AS AN ENTITY FOR FEDERAL INCOME TAX PURPOSES (TO THE EXTENT NOT ALREADY SO TREATED OR TAXED). DCP MIDSTREAM GP LLC, THE GENERAL PARTNER OF DCP MIDSTREAM PARTNERS, LP, MAY IMPOSE ADDITIONAL RESTRICTIONS ON THE TRANSFER OF THIS SECURITY IF IT RECEIVES AN OPINION OF COUNSEL THAT SUCH RESTRICTIONS ARE NECESSARY TO AVOID A SIGNIFICANT RISK OF DCP MIDSTREAM PARTNERS, LP BECOMING TAXABLE AS A CORPORATION OR OTHERWISE BECOMING TAXABLE AS AN ENTITY FOR FEDERAL INCOME TAX PURPOSES. THE RESTRICTIONS SET FORTH ABOVE SHALL NOT PRECLUDE THE

SETTLEMENT OF ANY TRANSACTIONS INVOLVING THIS SECURITY ENTERED INTO THROUGH THE FACILITIES OF ANY NATIONAL SECURITIES EXCHANGE ON WHICH THIS SECURITY IS LISTED OR ADMITTED TO TRADING.

The Holder, by accepting this Certificate, is deemed to have (i) requested admission as, and agreed to become, a Limited Partner and to have agreed to comply with and be bound by and to have executed the Partnership Agreement, (ii) represented and warranted that the Holder has all right, power and authority and, if an individual, the capacity necessary to enter into the Partnership Agreement, (iii) granted the powers of attorney provided for in the Partnership Agreement and (iv) made the waivers and given the consents and approvals contained in the Partnership Agreement.

This Certificate shall not be valid for any purpose unless it has been countersigned and registered by the Transfer Agent and Registrar.

Dated: \_\_\_\_\_

DCP Midstream Partners, LP

By: DCP Midstream GP, LP

Countersigned and Registered by:

By: DCP Midstream GP, LLC,  
its General Partner

American Stock Transfer & Trust Company  
as Transfer Agent and Registrar

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

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

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

[Reverse of Certificate]

**ABBREVIATIONS**

The following abbreviations, when used in the inscription on the face of this Certificate, shall be construed as follows according to applicable laws or regulations:

TEN COM - as tenants in common  
TEN ENT - as tenants by the entireties

UNIF GIFT/TRANSFERS MIN ACT  
\_\_\_\_\_  
Custodian \_\_\_\_\_  
(Cust) \_\_\_\_\_ (Minor)  
under Uniform Gifts/Transfers to CD Minors Act (State)

JT TEN - as joint tenants with right of survivorship and not as tenants in  
common

Additional abbreviations, though not in the above list, may also be used.

**ASSIGNMENT OF COMMON UNITS OF  
DCP MIDSTREAM PARTNERS, LP**

FOR VALUE RECEIVED, \_\_\_\_\_ hereby assigns, conveys, sells and transfers unto

---

(Please print or typewrite name and address of assignee)

(Please insert Social Security or other identifying number of assignee)

\_\_\_\_\_ Common Units representing limited partner interests evidenced by this Certificate, subject to the Partnership Agreement, and does hereby irrevocably constitute and appoint \_\_\_\_\_ as its attorney-in-fact with full power of substitution to transfer the same on the books of DCP Midstream Partners, LP.

Date: \_\_\_\_\_

NOTE:

The signature to any endorsement hereon must correspond with the name as written upon the face of this Certificate in every particular, without alteration, enlargement or change.

**THE SIGNATURE(S) MUST BE GUARANTEED BY AN  
ELIGIBLE GUARANTOR INSTITUTION (BANKS,  
STOCKBROKERS, SAVINGS AND LOAN  
ASSOCIATIONS AND CREDIT UNIONS WITH  
MEMBERSHIP IN AN APPROVED SIGNATURE  
GUARANTEE MEDALLION PROGRAM), PURSUANT  
TO S.E.C. RULE 17d-15**

---

---

(Signature)

---

(Signature)

No transfer of the Common Units evidenced hereby will be registered on the books of the Partnership, unless the Certificate evidencing the Common Units to be transferred is surrendered for registration or transfer.

**FIRST AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
DCP MIDSTREAM GP, LP**

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Attachment I—Defined Terms

FIRST AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP  
OF DCP MIDSTREAM GP, LP

THIS FIRST AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF DCP MIDSTREAM GP, LP dated effective as of December 7, 2005, is entered into by and among DCP Midstream GP, LLC, a Delaware limited liability company, as the General Partner, together with any other Persons who become Partners in the Partnership or parties hereto as provided herein. In consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:

ARTICLE I  
DEFINITIONS

*1.1 Definitions.* The definitions listed on Attachment I shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the terms used in this Agreement.

*1.2 Construction.* Unless the context requires otherwise: (a) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; (c) the terms "include", "includes", "including" or words of like import shall be deemed to be followed by the words "without limitation"; and (d) the terms "hereof", "herein" or "hereunder" refer to this Agreement as a whole and not to any particular provision of this Agreement. The table of contents and headings contained in this Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement.

ARTICLE II  
ORGANIZATION

*2.1 Formation.* The Partnership has been previously formed as a limited partnership pursuant to the provisions of the Delaware Act. The General Partner and the Limited Partners hereby amend and restate in its entirety the Agreement of Limited Partnership of DCP Midstream GP, LP, dated as of August 5, 2005. Subject to the provisions of this Agreement, the General Partner and the Limited Partners hereby continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Act. This amendment and restatement shall become effective on the date of this Agreement. Except as expressly provided to the contrary in this Agreement, the rights, duties (including fiduciary duties), liabilities and obligations of the Partners and the administration, dissolution and termination of the Partnership shall be governed by the Delaware Act. All Partnership Interests shall constitute personal property of the owner thereof for all purposes.

*2.2 Name.* The name of the Partnership shall be "DCP Midstream GP, LP." The Partnership's business may be conducted under any other name or names as determined by the General Partner, including the name of the General Partner. The words "Limited Partnership," "LP," "L.P.," "Ltd." or similar words or letters shall be included in the Partnership's name where necessary for the purpose of complying with the laws of any jurisdiction that so requires. The General Partner may change the name of the Partnership at any time and from time to time and shall notify the Limited Partners of such change in the next regular communication to the Limited Partners.

*2.3 Registered Office; Registered Agent; Principal Office; Other Offices.* The registered office of the Partnership required by the Delaware Act to be maintained in the State of Delaware shall be the office of the initial registered agent for service of process named in the Certificate of Limited Partnership or such other office (which need not be a place of business of the Partnership) as the Board of Directors may designate in the manner provided by law. The registered agent for service of process of the Partnership in the State of Delaware shall be the initial registered agent for service of process named in the Certificate of Limited Partnership or such other Person or Persons as the Board of Directors may designate in the manner provided by law. The principal office of the Partnership in the United States shall be at such a place as the Board of Directors may from time to time designate, which need not be in the State of Delaware, and the Partnership shall maintain records there and shall keep the street address of such principal office at the registered

office of the Partnership in the State of Delaware. The Partnership may have such other offices as the Board of Directors may designate.

**2.4 Purpose and Business.** The purpose and nature of the business to be conducted by the Partnership shall be to engage in any business activity that is approved by the General Partner and that lawfully may be conducted by a limited partnership organized pursuant to the Delaware Act and, in connection therewith, to exercise all of the rights and powers conferred upon the Partnership pursuant to the agreements relating to such business activity; *provided, however,* that the General Partner shall not cause the Partnership to engage, directly or indirectly in any business activity that the General Partner determines would cause the Partnership or the MLP to be treated as an association taxable as a corporation or otherwise taxable as an entity for federal income tax purposes. To the fullest extent permitted by law, the General Partner shall have no duty or obligation to propose or approve, and may decline to propose or approve, the conduct by the Partnership of any business free of any fiduciary duty or obligation whatsoever to the Partnership or any Limited Partner and, in declining to so propose or approve, shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity.

**2.5 Powers.** The Partnership shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described in Section 2.4 and for the protection and benefit of the Partnership.

**2.6 Power of Attorney.**

(a) Each Limited Partner hereby constitutes and appoints the General Partner and, if a Liquidator (other than the General Partner) shall have been selected pursuant to Section 12.3, the Liquidator, severally (and any successor to either thereof by merger, transfer, assignment, election or otherwise) and each of their authorized officers and attorneys-in-fact, as the case may be, with full power of substitution, as his true and lawful agent and attorney-in-fact, with full power and authority in his name, place and stead, to:

(i) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (A) all certificates, documents and other instruments (including this Agreement and the Certificate of Limited Partnership and all amendments or restatements hereof or thereof) that the General Partner or the Liquidator determines to be necessary or appropriate to form, qualify or continue the existence or qualification of the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware and in all other jurisdictions in which the Partnership may conduct business or own property; (B) all certificates, documents and other instruments that the General Partner or the Liquidator determines to be necessary or appropriate to reflect, in accordance with its terms, any amendment, change, modification or restatement of this Agreement; (C) all certificates, documents and other instruments (including conveyances and a certificate of cancellation) that the General Partner or the Liquidator determines to be necessary or appropriate to reflect the dissolution and liquidation of the Partnership pursuant to the terms of this Agreement; (D) all certificates, documents and other instruments relating to the admission, withdrawal, removal or substitution of any Partner pursuant to, or other events described in, Article IV, Article X, Article XI or Article XII; (E) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges of any class or series of Partnership Interests issued pursuant to Section 5.6; and (F) all certificates, documents and other instruments (including agreements and a certificate of merger) relating to a merger, consolidation or conversion of the Partnership pursuant to Article XIV; and

(ii) execute, swear to, acknowledge, deliver, file and record all ballots, consents, approvals, waivers, certificates, documents and other instruments that the General Partner or the Liquidator determines to be necessary or appropriate to (A) make, evidence, give, confirm or ratify any vote, consent, approval, agreement or other action that is made or given by the Partners hereunder or is consistent with the terms of this Agreement or (B) effectuate the terms or intent of this Agreement; provided, that when required by Section 13.3 or any other provision of this Agreement

that establishes a percentage of the Limited Partners or of the Limited Partners of any class or series required to take any action, the General Partner and the Liquidator may exercise the power of attorney made in this Section 2.6(a)(ii) only after the necessary vote, consent or approval of the Limited Partners or of the Limited Partners of such class or series, as applicable.

Nothing contained in this Section 2.6(a) shall be construed as authorizing the General Partner to amend this Agreement except in accordance with Article XIII or as may be otherwise expressly provided for in this Agreement.

(b) The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest, and it shall survive and, to the maximum extent permitted by law, not be affected by the subsequent death, incompetency, disability, incapacity, dissolution, bankruptcy or termination of any Limited Partner and the transfer of all or any portion of such Limited Partner's Partnership Interest and shall extend to such Limited Partner's heirs, successors, assigns and personal representatives. Each such Limited Partner hereby agrees to be bound by any representation made by the General Partner or the Liquidator acting in good faith pursuant to such power of attorney; and each such Limited Partner, to the maximum extent permitted by law, hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the General Partner or the Liquidator taken in good faith under such power of attorney. Each Limited Partner shall execute and deliver to the General Partner or the Liquidator, within 15 days after receipt of the request therefor, such further designation, powers of attorney and other instruments as the General Partner or the Liquidator may request in order to effectuate this Agreement and the purposes of the Partnership.

**2.7 Term.** The term of the Partnership commenced upon the filing of the Certificate of Limited Partnership in accordance with the Delaware Act and shall continue in existence until the dissolution of the Partnership in accordance with the provisions of Article XII. The existence of the Partnership as a separate legal entity shall continue until the cancellation of the Certificate of Limited Partnership as provided in the Delaware Act.

**2.8 Title to Partnership Assets.** Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually or collectively, shall have any ownership interest in such Partnership assets or any portion thereof. Title to any or all of the Partnership assets may be held in the name of the Partnership, the General Partner or one or more third party nominees, as the General Partner may determine. The General Partner hereby declares and warrants that any Partnership assets for which record title is held in the name of the General Partner or one or more third party nominees shall be held by the General Partner or such third party nominee for the use and benefit of the Partnership in accordance with the provisions of this Agreement; *provided, however*, that the General Partner shall use reasonable efforts to cause record title to such assets (other than those assets in respect of which the General Partner determines that the expense and difficulty of conveyancing makes transfer of record title to the Partnership impracticable) to be vested in the Partnership as soon as reasonably practicable; *provided, further*, that, prior to the withdrawal or removal of the General Partner or as soon thereafter as practicable, the General Partner shall use reasonable efforts to effect the transfer to the Partnership of record title to all Partnership assets held by the General Partner, and, prior to any such transfer, will provide for the use of such assets in a manner satisfactory to the General Partner. All Partnership assets shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which record title to such Partnership assets is held.

**2.9 Certain Undertakings Relating to the Separateness of the Partnership.**

(a) **Separateness Generally.** The Partnership shall conduct its business and operations in accordance with this Section 2.9.

(b) **Separate Records.** The Partnership shall (i) maintain its books and records and its accounts separate from those of any other Person, (ii) maintain its financial records, which will be used by it in its ordinary course of business, showing its assets and liabilities separate and apart from those of any other Person, (iii) not have its assets and/or liabilities included in a consolidated financial statement of any Affiliate of the General Partner unless the General Partner shall cause appropriate notation to be made on such Affiliate's consolidated financial statements to indicate the separateness of the Partnership and the General Partner and

their assets and liabilities from such Affiliate and the assets and liabilities of such Affiliate, and to indicate that the assets and liabilities of the Partnership and the General Partner are not available to satisfy the debts and other obligations of such Affiliate (except to the extent specified in the Contribution Agreement), and (iv) file its own tax returns separate from those of any other Person, except to the extent that the Partnership is treated as a “disregarded entity” for tax purposes or is not otherwise required to file tax returns under applicable law or is required under applicable law to file a tax return which is consolidated with another Person.

(c) Separate Assets. The Partnership shall not commingle or pool its funds or other assets with those of any other Person, except the General Partner, and shall maintain its assets in a manner that is not costly or difficult to segregate, ascertain or otherwise identify as separate from those of any other Person.

(d) Separate Name. The Partnership shall (i) conduct its business in its own name or in the name of the General Partner, (ii) use separate stationery, invoices, and checks, (iii) correct any known misunderstanding regarding its separate identity, and (iv) generally hold itself out as an entity separate from any other Person (other than the General Partner).

(e) Separate Credit. The Partnership (i) shall pay its obligations and liabilities from its own funds (whether on hand or borrowed), (ii) shall maintain adequate capital in light of its business operations, (iii) shall not pledge its assets for the benefit of any other Person or guarantee or become obligated for the debts of any other Person (except to the extent specified in the Contribution Agreement or the Omnibus Agreement), (iv) shall not hold out its credit as being available to satisfy the obligations or liabilities of any other Person, (v) shall not acquire obligations or debt securities (except to the extent specified in the Contribution Agreement or the Omnibus Agreement) of DEFS or its Affiliates (other than the General Partner) nor the MLP or its Subsidiaries, (vi) shall not make loans, advances or capital contributions to DEFS or its Affiliates (other than the MLP or any of its Subsidiaries), and (vii) shall use its commercially reasonable efforts to cause the operative documents under which the Partnership or the General Partner borrows money, is an issuer of debt securities, or guarantees any such borrowing or issuance, to contain provisions to the effect that (A) the lenders or purchasers of debt securities, respectively, acknowledge that they have advanced funds or purchased debt securities, respectively, in reliance upon the separateness of the Partnership and the General Partner from any other Person, including any Affiliate of the General Partner and (B) the Partnership and the General Partner have assets and liabilities that are separate from those of other Persons, including any Affiliate of the General Partner; provided that, the Partnership may engage in any transaction described in clauses (v) or (vi) of this Section 2.9(e) if prior Special Approval has been obtained for such transaction and either (A) the Conflicts Committee has determined (by Special Approval) that the borrower or recipient of the credit support is not then insolvent and will not be rendered insolvent as a result of such transaction or (B) in the case of transactions described in clause (v), such transaction is completed through a public sale or a National Securities Exchange.

(f) Separate Formalities. The Partnership shall (i) observe all partnership formalities and other formalities required by its organizational documents, the laws of the jurisdiction of its formation, or other laws, rules, regulations and orders of governmental authorities exercising jurisdiction over it, (ii) engage in transactions with DEFS and its Affiliates or the MLP or its Subsidiaries in conformity with the requirements of Section 7.9, and (iii) subject to the terms of the Omnibus Agreement, promptly pay, from its own funds, and on a current basis, a fair and reasonable share of general and administrative expenses, capital expenditures, and costs for shared services performed by DEFS or Affiliates of DEFS (other than the General Partner). Each material contract between the Partnership or the General Partner, on the one hand, and DEFS or Affiliates of DEFS (other than the General Partner), on the other hand, shall be in writing.

(g) No Effect. Failure by the General Partner or the Partnership to comply with any of the obligations set forth above shall not affect the status of the Partnership as a separate legal entity, with its separate assets and separate liabilities or restrict or limit the Partnership from engaging, or contracting with DEFS and its Affiliates, for the provision of services or the purchase or sale of products, whether under the Omnibus Agreement or otherwise.

ARTICLE III  
RIGHTS OF LIMITED PARTNERS

*3.1 Limitation of Liability.* The Limited Partners shall have no liability under this Agreement except as expressly provided in this Agreement or the Delaware Act.

*3.2 Management of Business.* No Limited Partner, in its capacity as such, shall participate in the operation, management or control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. Any action taken by any Affiliate of the General Partner or any officer, director, employee, member, manager, general partner, agent or trustee of the General Partner or any of its Affiliates, or any officer, director, employee, member, manager, general partner, agent or trustee of the Partnership or its Subsidiaries, in its capacity as such, shall not be deemed to be participation in the control of the business of the Partnership by a limited partner of the Partnership (within the meaning of Section 17-303(a) of the Delaware Act) and shall not affect, impair or eliminate the limitations on the liability of the Limited Partners under this Agreement.

*3.3 Outside Activities of the Limited Partners.* Subject to the provisions of Section 7.5 and the Omnibus Agreement, which shall continue to be applicable to the Persons referred to therein, regardless of whether such Persons shall also be Limited Partners, any Limited Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including business interests and activities in direct competition with the Partnership and its Subsidiaries. Neither the Partnership nor any of the other Partners shall have any rights by virtue of this Agreement in any business ventures of any Limited Partner.

*3.4 Rights of Limited Partners.*

(a) In addition to other rights provided by this Agreement or by applicable law, and except as limited by Section 3.4(b), each Limited Partner shall have the right, for a purpose reasonably related to such Limited Partner's interest as a Limited Partner in the Partnership, upon reasonable written demand stating the purpose of such demand and at such Limited Partner's own expense:

- (i) to obtain true and full information regarding the status of the business and financial condition of the Partnership;
- (ii) promptly after its becoming available, to obtain a copy of the Partnership's state and local income tax returns for each year;
- (iii) to obtain a current list of the name and last known business, residence or mailing address of each Partner;
- (iv) to obtain a copy of this Agreement and the Certificate of Limited Partnership and all amendments thereto, together with a copy of the executed copies of all powers of attorney pursuant to which this Agreement, the Certificate of Limited Partnership and all amendments thereto have been executed;
- (v) to obtain true and full information regarding the amount of cash and a description and statement of the net agreed value of any other Capital Contribution by each Partner and that each Partner has agreed to contribute in the future, and the date on which each became a Partner; and
- (vi) to obtain such other information regarding the affairs of the Partnership as is just and reasonable.

(b) Notwithstanding any other provision of this Agreement, the General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable, (i) any information that the General Partner reasonably believes to be in the nature of trade secrets or (ii) other information the

disclosure of which the General Partner in good faith believes (A) is not in the best interests of the Partnership or its Subsidiaries, (B) could damage the Partnership's or its Subsidiaries' business or (C) that the Partnership or any of its Subsidiaries is required by law or by agreement with any third party to keep confidential (other than agreements with Affiliates of the Partnership the primary purpose of which is to circumvent the obligations set forth in this Section 3.4).

## ARTICLE IV

### TRANSFER OF PARTNERSHIP INTERESTS

#### *4.1 Transfer Generally.*

(a) The term "transfer," when used in this Agreement with respect to a Partnership Interest, shall be deemed to refer to a transaction (i) by which the General Partner assigns its General Partner Interest to another Person and includes a sale, assignment, gift, pledge, encumbrance, hypothecation, mortgage, exchange or any other disposition by law or otherwise or (ii) by which the holder of a Limited Partner Interest assigns such Limited Partner Interest to another Person who is or becomes a Limited Partner, and includes a sale, assignment, gift, exchange or any other disposition by law or otherwise, including any transfer upon foreclosure of any pledge, encumbrance, hypothecation or mortgage.

(b) No Partnership Interest shall be transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article IV. Any transfer or purported transfer of a Partnership Interest not made in accordance with this Article IV shall be null and void.

(c) Nothing contained in this Agreement shall be construed to prevent a disposition by any stockholder, member, partner or other owner of the General Partner of any or all of the issued and outstanding equity interests of the General Partner.

*4.2 Transfer of General Partner Interest.* No provision of this Agreement shall be construed to prevent (and the Limited Partners do hereby expressly consent to) (a) the transfer by the General Partner of all or a portion of its General Partner Interest, which transferred General Partner Interest, to the extent not transferred to a successor General Partner, shall constitute a Limited Partner Interest or (b) the transfer by the General Partner, in whole and not in part, of its General Partner Interest upon (i) its merger, consolidation or other combination into any other Person or the transfer by it of all or substantially all of its assets to such other Person or (ii) sale of all or substantially all of the membership interests of the General Partner by its members if, in the case of a transfer described in either clause (a) or (b) of this sentence, the rights and duties of the General Partner with respect to the General Partner Interest so transferred are assumed by the transferee and the transferee agrees to be bound by the provisions of this Agreement. In the case of a transfer pursuant to this Section 4.2 to a Person proposed as a successor general partner of the Partnership, the transferee or successor (as the case may be) shall, subject to compliance with the terms of Section 10.2, be admitted to the Partnership as the General Partner immediately prior to the transfer of the Partnership Interest, and the business of the Partnership shall continue without dissolution.

*4.3 Transfer of a Limited Partner's Partnership Interest.* A Limited Partner may transfer all, or a portion, of its Limited Partner Interest to another Person, and, following any such transfer, such Person may become a substituted Limited Partner pursuant to Section 10.01.

#### *4.4 Restrictions on Transfers.*

(a) Notwithstanding the other provisions of this Article IV, no transfer of any Partnership Interests shall be made if such transfer would (i) violate the then applicable federal or state securities laws or rules and regulations of the Commission, any state securities commission or any other governmental authority with jurisdiction over such transfer, (ii) terminate the existence or qualification of the Partnership under the laws of the jurisdiction of its formation, or (iii) cause the Partnership or the MLP to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed).

(b) The General Partner may impose restrictions on the transfer of Partnership Interests if it reviews an Opinion of Counsel that determines that such restrictions are necessary to avoid a significant risk of the Partnership or the MLP becoming taxable as a corporation or otherwise becoming taxable as an entity for federal income tax purposes. The General Partner may impose such restrictions by amending this Agreement.

## ARTICLE V CAPITAL CONTRIBUTIONS AND ISSUANCE OF PARTNERSHIP INTERESTS

### 5.1 Prior Contributions.

(a) In connection with formation of the Partnership, the General Partner made certain Capital Contributions to the Partnership in exchange for a 0.001% General Partner Interest in the Partnership and was admitted as the General Partner of the Partnership, and DEFS made certain Capital Contributions to the Partnership in exchange for a 99.999% Limited Partner Interest in the Partnership and was admitted as a Limited Partner of the Partnership.

(b) On the date of this Agreement, DEFS and its Affiliates made additional Capital Contributions to the Partnership consisting of a limited partner interest in DCP Assets Holding, LP, a Delaware limited partnership.

### 5.2 Continuation of General Partner and Limited Partner Interests; Contributions by the General Partner.

(a) The Interest of the General Partner in the Partnership shall be continued as a 0.001% General Partner Interest, subject to all of the rights, privileges and duties of the General Partner under this Agreement.

(b) Upon the issuance of any additional Limited Partner Interests by the Partnership, the General Partner shall maintain its Percentage Interest without any requirement to make additional Capital Contributions. Except as set forth in Sections 11.3 and 12.2(ii), the General Partner shall not be obligated to make any additional Capital Contributions to the Partnership.

*5.3 Interest and Withdrawal.* No interest shall be paid by the Partnership on Capital Contributions. No Partner shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent, if any, that distributions made pursuant to this Agreement or upon termination of the Partnership may be considered as such by law and then only to the extent provided for in this Agreement. Except to the extent expressly provided in this Agreement, no Partner shall have priority over any other Partner either as to the return of Capital Contributions or as to profits, losses or distributions. Any such return shall be a compromise to which all Partners agree within the meaning of Section 17-502(b) of the Delaware Act.

### 5.4 Issuances of Additional Partnership Interests.

(a) The Partnership may issue additional Partnership Interests and options, rights, warrants and appreciation rights relating to the Partnership Interests for any Partnership purpose at any time and from time to time to such Persons for such consideration and on such terms and conditions as the General Partner shall determine, all without the approval of any Limited Partners.

(b) Each additional Partnership Interest authorized to be issued by the Partnership pursuant to Section 5.4(a) may be issued in one or more classes, or one or more series of any such classes, with such designations, preferences, rights, powers and duties (which may be senior to existing classes and series of Partnership Interests), as shall be fixed by the General Partner, including (i) the right to share in Partnership profits and losses or items thereof; (ii) the right to share in Partnership distributions; (iii) the rights upon dissolution and liquidation of the Partnership; (iv) whether, and the terms and conditions upon which, the Partnership may or shall be required to redeem the Partnership Interest (including sinking fund provisions); (v) whether such Partnership Interest is issued with the privilege of conversion or exchange and, if so, the terms and conditions of such conversion or exchange; (vi) the terms and conditions upon which each Partnership Interest

will be issued, evidenced by certificates and assigned or transferred; (vii) the method for determining the Percentage Interest as to such Partnership Interest; and (viii) the right, if any, of each such Partnership Interest to vote on Partnership matters, including matters relating to the relative rights, preferences and privileges of such Partnership Interest.

(c) The General Partner is hereby authorized and directed to take all actions that it determines to be necessary or appropriate in connection with (i) each issuance of Partnership Interests and options, rights, warrants and appreciation rights relating to Partnership Interests pursuant to this Section 5.4, (ii) the admission of additional Limited Partners and (iii) all additional issuances of Partnership Interests. The General Partner shall determine the relative rights, powers and duties of the holders of the Partnership Interest or other Partnership Interests being so issued. The General Partner shall do all things necessary to comply with the Delaware Act and is authorized and directed to do all things that it determines to be necessary or appropriate in connection with any future issuance of Partnership Interests or in connection with the conversion of the General Partner Interest into Partnership Interest pursuant to the terms of this Agreement, including compliance with any statute, rule, regulation or guideline of any federal, state or other governmental agency.

(d) No fractional Partnership Interest shall be issued by the Partnership.

**5.5 Limited Preemptive Right.** Except as provided in this Section 5.5 and in Section 5.2, no Person shall have any preemptive, preferential or other similar right with respect to the issuance of any Partnership Interest, whether unissued, held in the treasury or hereafter created. The General Partner shall have the right, which it may from time to time assign in whole or in part to any of its Affiliates, to purchase Partnership Interests from the Partnership whenever, and on the same terms that, the Partnership issues Partnership Interests to Persons other than the General Partner and its Affiliates, to the extent necessary to maintain the Percentage Interests (other than the General Partner Interest) of the General Partner and its Affiliates equal to that which existed immediately prior to the issuance of such Partnership Interests.

**5.6 Fully Paid and Non-Assessable Nature of Limited Partner Interests.** All Limited Partner Interests issued pursuant to, and in accordance with the requirements of, this Article V shall be fully paid and non-assessable Limited Partner Interests in the Partnership, except as such non-assessability may be affected by Section 17-607 of the Delaware Act.

## ARTICLE VI DISTRIBUTIONS

### *6.1 Requirement and Characterization of Distributions; Distributions to Record Holders.*

(a) Within 50 days following the end of each Quarter commencing with the Quarter ending on December 31, 2005, an amount equal to 100% of Available Cash with respect to such Quarter shall, subject to Section 17-607 of the Delaware Act, be distributed in accordance with this Article VI by the Partnership to the Partners in accordance with their respective Percentage Interests as of the Record Date selected by the General Partner. All distributions required to be made under this Agreement shall be made subject to Section 17-607 of the Delaware Act.

(b) In the event of the dissolution and liquidation of the Partnership, all receipts received during or after the Quarter in which the Liquidation Date occurs shall be applied and distributed by the Partnership to the Partners solely in accordance with their respective Percentage Interests.

(c) Each distribution in respect of a Partnership Interest shall be paid by the Partnership, directly or through a Transfer Agent or through any other Person or agent, only to the Record Holder of such Partnership Interest as of the Record Date set for such distribution. Such payment shall constitute full payment and satisfaction of the Partnership's liability in respect of such payment, regardless of any claim of any Person who may have an interest in such payment by reason of an assignment or otherwise.

**ARTICLE VII**  
**MANAGEMENT AND OPERATION OF BUSINESS**

**7.1 Management.**

(a) The General Partner shall conduct, direct and manage all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and no Limited Partner shall have any management power over the business and affairs of the Partnership. In addition to the powers now or hereafter granted a general partner of a limited partnership under applicable law or that are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to Section 2.9 and Section 7.3, shall have full power and authority to do all things and on such terms as it determines to be necessary or appropriate to conduct the business of the Partnership, to exercise all powers set forth in Section 2.5 and to effectuate the purposes set forth in Section 2.4, including the following:

- (i) the making of any expenditures, the lending or borrowing of money, the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness, including indebtedness that is convertible into Partnership Interests, and the incurring of any other obligations;
- (ii) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Partnership;
- (iii) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any or all of the assets of the Partnership or the merger or other combination of the Partnership with or into another Person (the matters described in this clause (iii) being subject, however, to any prior approval that may be required by Section 7.3 and Article XIV);
- (iv) the use of the assets of the Partnership (including cash on hand) for any purpose consistent with the terms of this Agreement, including the financing of the conduct of the operations of the Partnership; subject to Section 2.9(e) and Section 7.6(a), the lending of funds to other Persons; and the repayment or guarantee of obligations of the Partnership or the General Partner;
- (v) the negotiation, execution and performance of any contracts, conveyances or other instruments (including instruments that limit the liability of the Partnership under contractual arrangements to all or particular assets of the Partnership, with the other party to the contract to have no recourse against the General Partner or its assets other than its interest in the Partnership, even if same results in the terms of the transaction being less favorable to the Partnership than would otherwise be the case);
- (vi) the distribution of Partnership cash;
- (vii) the selection and dismissal of employees (including employees having titles such as "president," "vice president," "secretary" and "treasurer") and agents, outside attorneys, accountants, consultants and contractors and the determination of their compensation and other terms of employment or hiring;
- (viii) the maintenance of such insurance for the benefit of the Partnership, the Partners and the Indemnitees as it deems necessary or appropriate;
- (ix) the formation of, or acquisition of an interest in, and the contribution of cash or property and the making of loans to, any further limited or general partnerships, joint ventures, limited liability companies, corporations or other relationships (including the acquisition of interests in the

MLP and the contributions of cash or property to the MLP from time to time) subject to the restrictions set forth in Sections 2.4 and 2.9;

(x) the control of any matters affecting the rights and obligations of the Partnership, including the bringing and defending of actions at law or in equity and otherwise engaging in the conduct of litigation, arbitration or mediation and the incurring of legal expense and the settlement of claims and litigation;

(xi) the indemnification of any Person against liabilities and contingencies to the extent permitted by law;

(xii) the entering into of listing agreements with any National Securities Exchange and the delisting of some or all of the Limited Partner Interests from, or requesting that trading be suspended on, any such exchange (subject to any prior approval that may be required under Section 7.3);

(xiii) the purchase, sale or other acquisition or disposition of Partnership Interests, or the issuance of options, rights, warrants and appreciation rights relating to Partnership Interests;

(xiv) the undertaking of any action in connection with the Partnership's participation in the management of the MLP through its ownership of certain partner interests in the MLP; and

(xv) the entering into of agreements with any of its Affiliates to render services to a Group Member in the discharge of its duties as General Partner of the Partnership.

(b) Notwithstanding any other provision of this Agreement, the Delaware Act or any applicable law, rule or regulation, each of the Partners and each other Person who may acquire an interest in Partnership Interests hereby (i) approves, ratifies and confirms the execution, delivery and performance by the parties thereto of the Contribution Agreement and the Omnibus Agreement; (ii) agrees that the General Partner (on its own or through any officer of the Partnership) is authorized to execute, deliver and perform the agreements referred to in clause (i) of this sentence and the other agreements, acts, transactions and matters described in or contemplated by the Registration Statement on behalf of the Partnership without any further act, approval or vote of the Partners or the other Persons who may acquire an interest in Partnership Interests; and (iii) agrees that the execution, delivery or performance by the General Partner, the Partnership or any Affiliate of either of them, of this Agreement or any agreement authorized or permitted under this Agreement, shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Limited Partners or any other Persons under this Agreement (or any other agreements) or of any duty stated or implied by law or equity.

*7.2 Certificate of Limited Partnership.* The General Partner has caused the Certificate of Limited Partnership to be filed with the Secretary of State of the State of Delaware as required by the Delaware Act and shall use all reasonable efforts to cause to be filed such other certificates or documents that the General Partner determines to be necessary or appropriate for the formation, continuation, qualification and operation of a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware or any other state in which the Partnership may elect to do business or own property. To the extent that the General Partner determines such action to be necessary or appropriate, the General Partner shall file amendments to and restatements of the Certificate of Limited Partnership and do all things to maintain the Partnership as a limited partnership (or a partnership or other entity in which the limited partners have limited liability) under the laws of the State of Delaware or of any other state in which the Partnership may elect to do business or own property. Subject to the terms of Section 3.4(a), the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate of Limited Partnership, any qualification document or any amendment thereto to any Limited Partner.

### **7.3 Restrictions on General Partner's Authority.**

(a) The General Partner may not, without written approval of the specific act by all the Limited Partners or by other written instrument executed and delivered by all the Limited Partners subsequent to the date of this Agreement, take any action in contravention of this Agreement, including, (i) committing any act that would make it impossible to carry on the ordinary business of the Partnership; (ii) possessing Partnership property, or assigning any rights in specific Partnership property, for other than a Partnership purpose; (iii) admitting a Person as a Partner; (iv) amending this Agreement in any manner; or (v) transferring its General Partner Interest.

(b) Without the approval of holders of a majority of Limited Partner Interests, the General Partner shall not, on behalf of the Partnership except as permitted under Section 4.2, Section 11.1 and Section 11.2, elect or cause the Partnership to elect a successor general partner of the Partnership.

(c) Without the approval of the Conflicts Committee, the General Partner shall not take any action that would result in the Partnership engaging in any business or activity or incurring any debts or liabilities except in connection with or incidental to (i) its performance as general partner of the Partnership or (ii) the acquiring, owning or disposing of debt or equity securities in the Partnership.

(d) Without obtaining Extraordinary Approval, the General Partner shall not take any action to cause either the Partnership or the MLP to (i) make or consent to a general assignment for the benefit of the Partnership's or the MLP's creditors; (ii) file or consent to the filing of any bankruptcy, insolvency or reorganization petition for relief under the United States Bankruptcy Code naming the Partnership or the MLP or otherwise seek, with respect to the Partnership or the MLP, relief from debts or protection from creditors generally; (iii) file or consent to the filing of a petition or answer seeking for the Partnership or the MLP a liquidation, dissolution, arrangement, or similar relief under any law; (iv) file an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Partnership or the MLP in a proceeding of the type described in clauses (i) – (iii) of this Section 7.3(d); (v) seek, consent to or acquiesce in the appointment of a receiver, liquidator, conservator, assignee, trustee, sequestrator, custodian or any similar official for the Partnership or the MLP or for all or any substantial portion of its properties; (vi) sell all or substantially all of its assets; (vii) dissolve or liquidate, except, with respect to the Partnership only, in accordance with Article XII; or (viii) merge or consolidate; *provided however*, that this Section 7.3(d) shall not preclude or limit the General Partner's ability to mortgage, pledge, hypothecate or grant a security interest in all or substantially all of the assets of the Partnership and shall not apply to any forced sale of any or all of the assets of the Partnership pursuant to the foreclosure of, or other realization upon, any such encumbrance.

### **7.4 Reimbursement of the General Partner.**

(a) Except as provided in this Section 7.4 and elsewhere in this Agreement, the General Partner shall not be compensated for its services as general partner of the Partnership.

(b) Subject to any applicable limitations contained in the Omnibus Agreement, the General Partner shall be reimbursed on a monthly basis, or such other basis as the General Partner may determine, for (i) all direct and indirect expenses it incurs or payments it makes on behalf of the Partnership (including amounts paid by the General Partner to DEFS under Article IV of the Omnibus Agreement and including salary, bonus, incentive compensation and other amounts paid to any Person, including Affiliates of the General Partner, to perform services for the Partnership or the General Partner in the discharge of its duties to the Partnership), and (ii) all other expenses allocable to the Partnership or otherwise incurred by the General Partner in connection with operating the Partnership's business (including expenses allocated to the General Partner by its Affiliates). The General Partner shall determine the expenses that are allocable to the Partnership. Reimbursements pursuant to this Section 7.4 shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to Section 7.7.

## **7.5 Outside Activities.**

(a) After the Closing Date, the General Partner, for so long as it is the general partner of the Partnership (i) agrees that its sole business will be to act as the general partner of the Partnership and to undertake activities that are ancillary or related thereto (including being a limited partner in the Partnership), and (ii) shall not engage in any business or activity or incur any debts or liabilities except in connection with or incidental to (A) its performance as general partner of the Partnership or (B) the acquiring, owning or disposing of debt or equity securities in the Partnership.

(b) Except as specifically restricted by Section 7.5(a), each Indemnitee shall have the right to engage in businesses of every type and description and other activities for profit and to engage in and possess an interest in other business ventures of any and every type or description, whether in businesses engaged in or anticipated to be engaged in by the Partnership or its Subsidiaries, independently or with others, including business interests and activities in direct competition with the business and activities of the Partnership or its Subsidiaries, and none of the same shall constitute a breach of this Agreement or any duty expressed or implied by law to the Partnership or its Subsidiaries or any Partner. Neither the Partnership or its Subsidiaries, any Limited Partner nor any other Person shall have any rights by virtue of this Agreement, the MLP Partnership Agreement or the partnership relationship established hereby or thereby in any business ventures of any Indemnitee.

(c) Subject to Section 7.5(a), but otherwise notwithstanding anything to the contrary in this Agreement, (i) the engaging in competitive activities by any Indemnitees (other than the General Partner) in accordance with the provisions of this Section 7.5 is hereby approved by the Partnership and all Partners, (ii) it shall be deemed not to be a breach of any fiduciary duty or any other obligation of any type whatsoever of any Indemnitee for the Indemnitees (other than the General Partner) to engage in such business interests and activities in preference to or to the exclusion of the Partnership and (iii) the General Partner and the Indemnitees shall have no obligation hereunder or as a result of any duty expressed or implied by law to present business opportunities to the Partnership.

(d) The General Partner and each of its Affiliates may acquire Partnership Interests in addition to those acquired on the Closing Date and, except as otherwise provided in this Agreement, shall be entitled to exercise, at their option, all rights of the General Partner or Limited Partner, as applicable, relating to such Partnership Interests.

## **7.6 Loans from the General Partner; Loans or Contributions from the Partnership or Group Members.**

(a) The General Partner or any of its Affiliates may lend to the Partnership or any Group Member, and the Partnership or any Group Member may borrow from the General Partner or any of its Affiliates, funds needed or desired by the Partnership or the Group Member for such periods of time and in such amounts as the General Partner may determine; *provided, however*, that in any such case the lending party may not charge the borrowing party interest at a rate greater than the rate that would be charged the borrowing party or impose terms less favorable to the borrowing party than would be charged or imposed on the borrowing party by unrelated lenders on comparable loans made on an arm's-length basis (without reference to the lending party's financial abilities or guarantees), all as determined by the General Partner. The borrowing party shall reimburse the lending party for any costs (other than any additional interest costs) incurred by the lending party in connection with the borrowing of such funds. For purposes of this Section 7.6(a) and Section 7.6(b), the term "Group Member" shall include any Affiliate of a Group Member that is controlled by the Group Member.

## *7.7 Indemnification.*

(a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, each Indemnitee shall be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements or other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any such Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as an Indemnitee; provided, that the Indemnitee shall not be indemnified and held harmless if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Section 7.7, the Indemnitee acted in bad faith or engaged in fraud, willful misconduct, or in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was unlawful; *provided, further*, no indemnification pursuant to this Section 7.7 shall be available to the General Partner or its Affiliates (other than the MLP and any Group Member) with respect to its or their obligations incurred pursuant to the Underwriting Agreement, the Omnibus Agreement or the Contribution Agreement (other than obligations incurred by the General Partner on behalf of the Partnership). The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere*, or its equivalent, shall not create a presumption that the Indemnitee acted in a manner contrary to that specified above. Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Partnership, it being agreed that the General Partner shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate such indemnification.

(b) To the fullest extent permitted by law, expenses (including legal fees and expenses) incurred by an Indemnitee who is indemnified pursuant to Section 7.7(a) in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Partnership prior to a determination that the Indemnitee is not entitled to be indemnified, upon receipt by the Partnership of any undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined that the Indemnitee is not entitled to be indemnified as authorized in this Section 7.7.

(c) The indemnification provided by this Section 7.7 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, pursuant to any vote of the holders of outstanding Limited Partner Interests entitled to vote on such matter, as a matter of law or otherwise, both as to actions in the Indemnitee's capacity as an Indemnitee, and as to actions in any other capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

(d) The Partnership may purchase and maintain (or reimburse the General Partner or its Affiliates for the cost of) insurance, on behalf of the General Partner, its Affiliates and such other Persons as the General Partner shall determine, against any liability that may be asserted against or expense that may be incurred by such Person in connection with the Partnership's activities or such Person's activities on behalf of the Partnership, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(e) For purposes of this Section 7.7, the Partnership shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Partnership also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute "fines" within the meaning of Section 7.7(a); and action taken or omitted by the Indemnitee with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the best interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose that is in the best interest of the Partnership.

(f) In no event may an Indemnitee subject the Limited Partners to personal liability by reason of the indemnification provisions set forth in this Agreement.

(g) An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.7 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(h) The provisions of this Section 7.7 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

(i) No amendment, modification or repeal of this Section 7.7 or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnitee to be indemnified by the Partnership, nor the obligations of the Partnership to indemnify any such Indemnitee under and in accordance with the provisions of this Section 7.7 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted, *provided* such Person became an Indemnitee hereunder prior to such amendment, modification or repeal.

(j) THE PROVISIONS OF THE INDEMNIFICATION PROVIDED IN THIS SECTION 7.7 ARE INTENDED BY THE PARTIES TO APPLY EVEN IF SUCH PROVISIONS HAVE THE EFFECT OF EXONERATING THE INDEMNITEE FROM LEGAL RESPONSIBILITY FOR THE CONSEQUENCES OF SUCH PERSON'S NEGLIGENCE, FAULT OR OTHER CONDUCT.

#### *7.8 Liability of Indemnitees.*

(a) Notwithstanding anything to the contrary set forth in this Agreement, no Indemnitee shall be liable for monetary damages to the Partnership, the Limited Partners or any other Persons who have acquired interests in the Partnership Interests, for losses sustained or liabilities incurred as a result of any act or omission of an Indemnitee unless there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter in question, the Indemnitee acted in bad faith or engaged in fraud, willful misconduct or, in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was criminal.

(b) Subject to its obligations and duties as General Partner set forth in Section 7.1(a), the General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and the General Partner shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the General Partner in good faith.

(c) To the extent that, at law or in equity, an Indemnitee has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or to the Partners, the General Partner and any other Indemnitee acting in connection with the Partnership's business or affairs shall not be liable to the Partnership or to any Partner for any acts or omissions taken in good faith reliance on the provisions of this Agreement.

(d) Any amendment, modification or repeal of this Section 7.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the liability of the Indemnitees under this Section 7.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

nbsp;    *7.9 Resolution of Conflicts of Interest; Standard of Conduct and Modification of Duties.*

(a) Unless otherwise expressly provided in this Agreement, whenever a potential conflict of interest exists or arises between the General Partner or any of its Affiliates (other than the Partnership, any Group Member or any Partner), on the one hand, and the Partnership, any Group Member or any Partner, on the other

hand, any resolution or course of action by the General Partner or its Affiliates in respect of such conflict of interest shall be permitted and deemed approved by all Partners, and shall not constitute a breach of this Agreement or of any agreement contemplated herein or therein, or of any duty stated or implied by law or equity, if the resolution or course of action in respect of such conflict of interest is (i) approved by Special Approval, (ii) approved by the vote of a majority of the Partnership Interests excluding Partnership Interests owned by the General Partner and its Affiliates, (iii) on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties or (iv) fair and reasonable to the Partnership, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership). The General Partner shall be authorized but not required in connection with its resolution of such conflict of interest to seek Special Approval of such resolution, and the General Partner may also adopt a resolution or course of action that has not received Special Approval. If Special Approval is not sought and the Board of Directors of the General Partner determines that the resolution or course of action taken with respect to a conflict of interest satisfies either of the standards set forth in clauses (iii) or (iv) above, then it shall be presumed that, in making its decision, the Board of Directors acted in good faith, and in any proceeding brought by any Limited Partner or by or on behalf of such Limited Partner or any other Limited Partner or the Partnership challenging such approval, the Person bringing or prosecuting such proceeding shall have the burden of overcoming such presumption.

(b) Whenever the General Partner makes a determination or takes or declines to take any other action, or any of its Affiliates causes it to do so, in its capacity as the general partner of the Partnership as opposed to in its individual capacity, whether under this Agreement, or any other agreement contemplated hereby or otherwise, then unless another express standard is provided for in this Agreement, the General Partner, or such Affiliates causing it to do so, shall make such determination or take or decline to take such other action in good faith and shall not be subject to any other or different standards imposed by this Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity. In order for a determination or other action to be in "good faith" for purposes of this Agreement, the Person or Persons making such determination or taking or declining to take such other action must believe that the determination or other action is in the best interests of the Partnership.

(c) Whenever the General Partner makes a determination or takes or declines to take any other action, or any of its Affiliates causes it to do so, in its individual capacity as opposed to in its capacity as a general partner of the Partnership, whether under this Agreement or any other agreement contemplated hereby or otherwise, then the General Partner, or such Affiliates causing it to do so, are entitled to make such determination or to take or decline to take such other action free of any fiduciary duty or obligation whatsoever to the Partnership, any Limited Partner, and the General Partner, or such Affiliates causing it to do so, shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation. By way of illustration and not of limitation, whenever the phrase, "at the option of the General Partner," or some variation of that phrase, is used in this Agreement, it indicates that the General Partner is acting in its individual capacity. For the avoidance of doubt, whenever the General Partner votes or transfers its Partnership Interests, or refrains from voting or transferring its Partnership Interests, it shall be acting in its individual capacity.

(d) Notwithstanding anything to the contrary in this Agreement, the General Partner and its Affiliates shall have no duty or obligation, express or implied, to (i) sell or otherwise dispose of any asset of the Partnership or its Subsidiaries other than in the ordinary course of business or (ii) permit the Partnership or its Subsidiaries to use any facilities or assets of the General Partner and its Affiliates, except as may be provided in contracts entered into from time to time specifically dealing with such use. Any determination by the General Partner or any of its Affiliates to enter into such contracts shall be at its option.

(e) Except as expressly set forth in this Agreement, neither the General Partner nor any other Indemnitee shall have any duties or liabilities, including fiduciary duties, to the Partnership or any Limited Partner and the provisions of this Agreement, to the extent that they restrict or otherwise modify the duties and liabilities, including fiduciary duties, of the General Partner or any other Indemnitee otherwise existing at law or in equity, are agreed by the Partners to replace such other duties and liabilities of the General Partner or such other Indemnitee.

(f) The holders of Limited Partner Interests hereby authorize the General Partner, on behalf of the Partnership as a partner of the Partnership, to approve of actions by the Partnership, in its capacity as the sole member of the Partnership, similar to those actions permitted to be taken by the General Partner pursuant to this Section 7.9.

(g) Whenever a particular transaction, arrangement or resolution of a conflict of interest is required under this Agreement to be "fair and reasonable" to any Person, the fair and reasonable nature of such transaction, arrangement or resolution shall be considered in the context of all similar or related transactions.

#### *7.10 Other Matters Concerning the General Partner.*

(a) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the opinion (including an Opinion of Counsel) of such Persons as to matters that the General Partner reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.

(c) The General Partner shall have the right, in respect of any of its powers or obligations hereunder, to act through any of its duly authorized officers, a duly appointed attorney or attorneys-in-fact or the duly authorized officers of the Partnership. Each such attorney shall, to the extent provided by the General Partner in the power of attorney, have full power and authority to do and perform each and every act and duty that is permitted or required to be done by the General Partner hereunder.

(d) Any standard of care and duty imposed by this Agreement or under the Delaware Act or any applicable law, rule or regulation shall be modified, waived or limited, to the extent permitted by law, as required to permit the General Partner to act under this Agreement and to make any decision pursuant to the authority prescribed in this Agreement, so long as such action is reasonably believed by the General Partner to be in, or not inconsistent with, the best interests of the Partnership.

(e) Any determination made by the Partnership in its individual capacity, and not in its representative capacity as the general partner of the MLP, with respect to any matter related to the MLP or any matter related to the MLP Partnership Agreement shall be determined by the General Partner in its capacity as the general partner of the Partnership.

*7.11 Reliance by Third Parties.* Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner and any officer of the General Partner authorized by the General Partner to act on behalf of and in the name of the Partnership has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any authorized contracts on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner or any such officer as if it were the Partnership's sole party in interest, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the General Partner or any such officer in connection with any such dealing. In no event shall any Person dealing with the General Partner or any such officer or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the General Partner or any such officer or its representatives. Each and every certificate, document or other instrument executed on behalf of the Partnership by the General Partner or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Partnership and

(c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

## ARTICLE VIII BOOKS, RECORDS, ACCOUNTING AND REPORTS

**8.1 Records and Accounting.** The General Partner shall keep or cause to be kept at the principal office of the Partnership appropriate books and records with respect to the Partnership's business, including all books and records necessary to provide to the Limited Partners any information required to be provided pursuant to Section 3.4(a). Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including the record of the Record Holders of Partnership Interests, books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard drives, punch cards, magnetic tape, photographs, micrographics or any other information storage device; provided, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial reporting purposes, on an accrual basis in accordance with U.S. GAAP.

**8.2 Fiscal Year.** The fiscal year of the Partnership shall be a fiscal year ending December 31.

**8.3 Reports.** The Partnership shall provide to the Partners such annual or periodic reports related to its business and financial affairs as may be required under the Delaware Act, other applicable law, or as otherwise deemed appropriate by the Board of Directors.

## ARTICLE IX TAX MATTERS

**9.1 Tax Matters.** The General Partner shall prepare and timely file (on behalf of the Partnership) all returns of the Partnership that are required for state and local income tax purposes on the basis of the accrual method and a taxable year ending on December 31. The Partnership and the Partners acknowledge that for federal income tax purposes, the Partnership will be disregarded as an entity separate from DEFS pursuant to Treasury Regulation §301.7701-3.

## ARTICLE X ADMISSION OF PARTNERS

### **10.1 Admission of Limited Partners .**

(a) By acceptance of the transfer of any Limited Partner Interests in accordance with this Section 10.1 or the issuance of any Limited Partner Interests in a merger or consolidation pursuant to Article XIV, each transferee of a Limited Partner Interest (including any nominee holder or an agent or representative acquiring such Limited Partner Interests for the account of another Person) (i) shall be admitted to the Partnership as a Limited Partner with respect to the Limited Partner Interests so transferred to such Person when any such transfer or admission is reflected in the books and records of the Partnership, with or without execution of this Agreement, (ii) shall become bound by the terms of, and shall be deemed to have executed, this Agreement, (iii) shall become the Record Holder of the Limited Partner Interests so transferred, (iv) represents that the transferee has the capacity, power and authority to enter into this Agreement, (v) grants the powers of attorney set forth in this Agreement and (vi) makes the consents and waivers contained in this Agreement. The transfer of any Limited Partner Interests and the admission of any new Limited Partner shall not constitute an amendment to this Agreement. A Person may become a Record Holder of a Limited Partner Interest without the consent or approval of any of the Partners. A Person may not become a Limited Partner without acquiring a Limited Partner Interest and until such Person is reflected in the books and records of the Partnership as the Record Holder of such Limited Partner Interest.

(b) The name and mailing address of each Limited Partner shall be listed on the books and records of the Partnership maintained for such purpose by the Partnership or the Transfer Agent. The General Partner

shall update the books and records of the Partnership from time to time as necessary to reflect accurately the information therein (or shall cause the Transfer Agent to do so, as applicable).

(c) Any transfer of a Limited Partner Interest shall not entitle the transferee to share in the profits and losses, to receive distributions, to receive allocations of income, gain, loss, deduction or credit or any similar item or to any other rights to which the transferor was entitled until the transferee becomes a Limited Partner pursuant to Section 10.1(a).

**10.2 Admission of Successor General Partner.** A successor General Partner approved pursuant to Section 11.1 or Section 11.2 or the transferee of or successor to all of the General Partner's Partnership Interest as general partner in the Partnership pursuant to Section 4.2 who is proposed to be admitted as a successor General Partner shall be admitted to the Partnership as the General Partner, effective immediately prior to the withdrawal or removal of the predecessor pursuant to Section 11.1 or Section 11.2 or the transfer of the General Partner's Partnership Interest as a general partner in the Partnership pursuant to Section 4.2; *provided, however*, that no such successor shall be admitted to the Partnership until compliance with the terms of Section 4.2 has occurred and such successor has executed and delivered such other documents or instruments as may be required to effect such admission. Any such successor shall, subject to the terms hereof, carry on the business of the Partnership without dissolution.

**10.3 Amendment of Agreement and Certificate of Limited Partnership.** To effect the admission to the Partnership of any Partner, the General Partner shall take all steps necessary and appropriate under the Delaware Act to amend the records of the Partnership to reflect such admission and, if necessary, to prepare as soon as practicable an amendment to this Agreement and, if required by law, the General Partner shall prepare and file an amendment to the Certificate of Limited Partnership, and the General Partner may for this purpose, among others, exercise the power of attorney granted pursuant to Section 2.6.

## ARTICLE XI WITHDRAWAL OR REMOVAL OF PARTNERS

### **11.1 Withdrawal of the General Partner.**

(a) The General Partner shall be deemed to have withdrawn from the Partnership upon the occurrence of any one of the following events (each such event herein referred to as an "Event of Withdrawal"):

- (i) the General Partner voluntarily withdraws from the Partnership by receiving Special Approval and giving notice to the other Partners;
- (ii) the General Partner transfers all of its rights as General Partner pursuant to Section 4.2, following the receipt of Special Approval thereof;
- (iii) the General Partner is removed pursuant to Section 11.2;
- (iv) the General Partner (A) makes a general assignment for the benefit of creditors; (B) files a voluntary bankruptcy petition for relief under Chapter 7 of the United States Bankruptcy Code; (C) files a petition or answer seeking for itself a liquidation, dissolution or similar relief (but not a reorganization) under any law; (D) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (A)-(C) of this Section 11.1(a)(iv); or (E) seeks, consents to or acquiesces in the appointment of a trustee (but not a debtor-in-possession), receiver or liquidator of the General Partner or of all or any substantial part of its properties;
- (v) a final and non-appealable order of relief under Chapter 7 of the United States Bankruptcy Code is entered by a court with appropriate jurisdiction pursuant to a voluntary or involuntary petition by or against the General Partner; or

(vi) (A) in the event the General Partner is a corporation, a certificate of dissolution or its equivalent is filed for the General Partner, or 90 days expire after the date of notice to the General Partner of revocation of its charter without a reinstatement of its charter, under the laws of its state of incorporation; (B) in the event the General Partner is a partnership or a limited liability company, the dissolution and commencement of winding up of the General Partner; (C) in the event the General Partner is acting in such capacity by virtue of being a trustee of a trust, the termination of the trust; (D) in the event the General Partner is a natural person, his death or adjudication of incompetency; and (E) otherwise in the event of the termination of the General Partner.

If an Event of Withdrawal specified in Section 11.1(a)(iv), (v) or (vi)(A), (B), (C) or (E) occurs, the withdrawing General Partner shall give notice to the Limited Partners within 30 days after such occurrence. The Partners hereby agree that only the Events of Withdrawal described in this Section 11.1 shall result in the withdrawal of the General Partner from the Partnership.

(b) Withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall not constitute a breach of this Agreement under the following circumstances: (i) at any time during the period beginning on the Closing Date and ending at 12:00 midnight, Eastern Standard Time, on June 30, 2015, the General Partner voluntarily withdraws by giving at least 90 days' advance notice of its intention to withdraw to the Limited Partners; provided that prior to the effective date of such withdrawal, the withdrawal receives Special Approval and is approved by Partners holding at least a majority of the Limited Partner Interests and the General Partner delivers to the Partnership an Opinion of Counsel ("Withdrawal Opinion of Counsel") that such withdrawal (following the selection of the successor General Partner) would not result in the loss of the limited liability of any Limited Partner or cause the Partnership or the MLP to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not previously treated as such); (ii) at any time after 12:00 midnight, Eastern Standard Time, on December 31, 2015, the General Partner voluntarily withdraws by giving at least 90 days' advance notice to the Limited Partners, such withdrawal to take effect on the date specified in such notice; (iii) at any time that the General Partner ceases to be the General Partner pursuant to Section 11.1(a)(ii) or is removed pursuant to Section 11.2; or (iv) notwithstanding clause (i) of this sentence, at any time that the General Partner voluntarily withdraws by giving at least 90 days' advance notice of its intention to withdraw to the Limited Partners, such withdrawal to take effect on the date specified in the notice, if at the time such notice is given one Person and its Affiliates (other than the General Partner and its Affiliates) own beneficially or of record or control at least 50% of the Limited Partner Interests. If the General Partner gives a notice of withdrawal pursuant to Section 11.1(a)(i), the holders of a majority of Limited Partner Interests, may, prior to the effective date of such withdrawal, elect a successor General Partner. If, prior to the effective date of the General Partner's withdrawal, a successor is not selected by the Limited Partners as provided herein or the Partnership does not receive a Withdrawal Opinion of Counsel, the Partnership shall be dissolved in accordance with Section 12.1. Any successor General Partner elected in accordance with the terms of this Section 11.1 shall be subject to the provisions of Section 10.2.

*11.2 Removal of the General Partner.* The General Partner may be removed if such removal receives Special Approval and is approved by Limited Partners holding at least 662/3 of the Limited Partner Interests voting as a single class. Any such action by such holders for removal of the General Partner must also provide for the election of a successor General Partner by the Limited Partners holding a majority of the Limited Partner Interests voting as a single class. Such removal shall be effective immediately following the admission of a successor General Partner pursuant to Section 10.3. The right of the holders of Limited Partner Interests to remove the General Partner shall not exist or be exercised unless the Partnership has received an opinion opining as to the matters covered by a Withdrawal Opinion of Counsel. Any successor General Partner elected in accordance with the terms of this Section 11.2 shall be subject to the provisions of Section 10.2.

### *11.3 Interest of Departing General Partner.*

(a) The Partnership Interest of the Departing General Partner departing as a result of withdrawal or removal pursuant to Section 11.1 or Section 11.2 shall be purchased by the successor to the Departing General

Partner for an amount in cash equal to the fair market value of such Partnership Interest, such amount to be determined and payable as of the effective date of the Departing General Partner's departure. Such purchase shall be a condition to the admission to the Partnership of the successor as the General Partner. Any successor General Partner shall indemnify the Departing General Partner as to all debts and liabilities of the Partnership arising on or after the effective date of the withdrawal or removal of the Departing General Partner.

(b) For purposes of Section 11.3(a), the fair market value of the Departing General Partner's General Partner Interest shall be determined by agreement between the Departing General Partner and its successor or, failing agreement within 30 days after the effective date of such Departing General Partner's departure, by an independent investment banking firm or other independent expert selected by the Departing General Partner and its successor, which, in turn, may rely on other experts, and the determination of which shall be conclusive as to such matter. If such parties cannot agree upon one independent investment banking firm or other independent expert within 45 days after the effective date of such departure, then the Departing General Partner shall designate an independent investment banking firm or other independent expert, the Departing General Partner's successor shall designate an independent investment banking firm or other independent expert, and such firms or experts shall mutually select a third independent investment banking firm or independent expert, which third independent investment banking firm or other independent expert shall determine the fair market value of the General Partner Interest of the Departing General Partner. In making its determination, such third independent investment banking firm or other independent expert may consider the value of the Partnership's assets, the rights and obligations of the Departing General Partner and other factors it may deem relevant.

(c) The Departing General Partner shall be entitled to receive all reimbursements due such Departing General Partner pursuant to Section 7.4, including any employee-related liabilities (including severance liabilities), incurred in connection with the termination of any employees employed by such Departing General Partner for the benefit of the Partnership.

**11.4 Withdrawal of Limited Partners.** No Limited Partner shall have any right to withdraw from the Partnership; *provided, however,* that when a transferee of a Limited Partner's Limited Partner Interest becomes a Record Holder of the Limited Partner Interest so transferred, such transferring Limited Partner shall cease to be a Limited Partner with respect to the Limited Partner Interest so transferred.

## ARTICLE XII

### DISSOLUTION AND LIQUIDATION

**12.1 Dissolution.** The Partnership shall not be dissolved by the admission of additional Limited Partners or by the admission of a successor General Partner in accordance with the terms of this Agreement. Upon the removal or withdrawal of the General Partner, if a successor General Partner is elected pursuant to Section 11.1 or 11.2, the Partnership shall not be dissolved and such successor General Partner shall continue the business of the Partnership. The Partnership shall dissolve, and (subject to Section 12.2) its affairs shall be wound up, upon:

- (a) an Event of Withdrawal of the General Partner as provided in Section 11.1(a) (other than Section 11.1(a)(ii)), unless a successor is elected and an Opinion of Counsel is received as provided in Section 11.1(b) or 11.2 and such successor is admitted to the Partnership pursuant to Section 10.2;
- (b) an election to dissolve the Partnership by the General Partner that is approved by all of the Limited Partners;
- (c) the entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Delaware Act; or
- (d) at any time there are no Limited Partners, unless the Partnership is continued without dissolution in accordance with the Delaware Act.

**12.2 Continuation of the Business of the Partnership After Dissolution.** Upon (a) dissolution of the Partnership following an Event of Withdrawal caused by the withdrawal or removal of the General Partner as provided in Section 11.1(a)(i) or (iii) and the failure of the Partners to select a successor to such Departing General Partner pursuant to Section 11.1 or 11.2, then within 90 days thereafter, or (b) dissolution of the Partnership upon an event constituting an Event of Withdrawal as defined in Section 11.1(a)(iv), (v) or (vi), then, to the maximum extent permitted by law, within 180 days thereafter, the holders of a majority in interest of the Limited Partners may elect to continue the business of the Partnership on the same terms and conditions set forth in this Agreement by appointing as the successor General Partner a Person approved by the holders of a majority in interest of the Limited Partners. Unless such an election is made within the applicable time period as set forth above, the Partnership shall conduct only activities necessary to wind up its affairs. If such an election is so made, then:

- (i) the Partnership shall continue without dissolution unless earlier dissolved in accordance with this Article XII;
- (ii) if the successor General Partner is not the former General Partner, then the interest of the former General Partner shall be treated in the manner provided in Section 11.3; and
- (iii) the successor General Partner shall be admitted to the Partnership as General Partner, effective as of the Event of Withdrawal, by agreeing in writing to be bound by this Agreement; *provided*, that the right of the holders of a majority in interest of the Limited Partners to approve a successor General Partner and to continue the business of the Partnership shall not exist and may not be exercised unless the Partnership has received an Opinion of Counsel that (A) the exercise of the right would not result in the loss of limited liability of any Limited Partner and (B) none of the Partnership or the MLP would be treated as an association taxable as a corporation or otherwise be taxable as an entity for federal income tax purposes upon the exercise of such right to continue (to the extent not already so treated or taxed).

**12.3 Liquidator.** Upon dissolution of the Partnership, unless the Partnership is continued pursuant to Section 12.2, the General Partner shall select one or more Persons to act as Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by holders of at least a majority in the interest of the Limited Partners voting as a single class. The Liquidator (if other than the General Partner) shall agree not to resign at any time without 15 days' prior notice and may be removed at any time, with or without cause, by notice of removal approved by holders of at least a majority in interest of the Limited Partners voting as a single class. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be approved by holders of at least a majority in the interest of the Limited Partners voting as a single class. The right to approve a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XII, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, other than the limitation on sale set forth in Section 7.3 necessary or appropriate to carry out the duties and functions of the Liquidator hereunder for and during the period of time required to complete the winding up and liquidation of the Partnership as provided for herein).

**12.4 Liquidation.** The Liquidator shall proceed to dispose of the assets of the Partnership, discharge its liabilities, and otherwise wind up its affairs in such manner and over such period as determined by the Liquidator, subject to Section 17-804 of the Delaware Act and the following:

**(a) Disposition of Assets.** The assets may be disposed of by public or private sale or by distribution in kind to one or more Partners on such terms as the Liquidator and such Partner or Partners may agree. If any property is distributed in kind, the Partner receiving the property shall be deemed for purposes of Section 12.4(c) to have received cash equal to its fair market value; and contemporaneously therewith, appropriate cash distributions must be made to the other Partners. The Liquidator may defer liquidation or distribution of the

Partnership's assets for a reasonable time if it determines that an immediate sale or distribution of all or some of the Partnership's assets would be impractical or would cause undue loss to the Partners. The Liquidator may distribute the Partnership's assets, in whole or in part, in kind if it determines that a sale would be impractical or would cause undue loss to the Partners.

(b) *Discharge of Liabilities.* Liabilities of the Partnership include amounts owed to the Liquidator as compensation for serving in such capacity (subject to the terms of Section 12.3) and amounts to Partners otherwise than in respect of their distribution rights under Article VI. With respect to any liability that is contingent, conditional or unmatured or is otherwise not yet due and payable, the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for its payment. When paid, any unused portion of the reserve shall be distributed as additional liquidation proceeds.

(c) *Liquidation Distributions.* All property and all cash in excess of that required to discharge liabilities as provided in Section 12.4(b) shall be distributed to the Partners in accordance with their respective Percentage Interests.

12.5 *Cancellation of Certificate of Limited Partnership.* Upon the completion of the distribution of Partnership cash and property as provided in Section 12.4 in connection with the liquidation of the Partnership, the Certificate of Limited Partnership and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware shall be canceled and such other actions as may be necessary to terminate the Partnership shall be taken.

12.6 *Return of Contributions.* The General Partner shall not be personally liable for, and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate, the return of the Capital Contributions of the Limited Partners, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

12.7 *Waiver of Partition.* To the maximum extent permitted by law, each Partner hereby waives any right to partition of the Partnership property.

## ARTICLE XIII

### AMENDMENT OF PARTNERSHIP AGREEMENT; MEETINGS; RECORD DATE

13.1 *Amendments to be Adopted Solely by the General Partner.* Each Partner agrees that the General Partner, without the approval of any Partner, may amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

(a) a change in the name of the Partnership, the location of the principal place of business of the Partnership, the registered agent of the Partnership or the registered office of the Partnership;

(b) the admission, substitution, withdrawal or removal of Partners in accordance with this Agreement;

(c) a change that the General Partner determines to be necessary or appropriate to qualify or continue the qualification of the Partnership as a limited partnership or a partnership in which the Limited Partners have limited liability under the laws of any state or to ensure that neither the Partnership nor the MLP will be treated as an association taxable as a corporation or otherwise taxed as an entity for federal income tax purposes;

(d) a change that the General Partner determines (i) does not adversely affect the Limited Partners (including any particular class of Partnership Interests as compared to other classes of Partnership Interests) in any material respect, (ii) to be necessary or appropriate to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute (including the Delaware Act) or (iii) to be required to effect the intent of the provisions of this Agreement or is otherwise contemplated by this Agreement;

(e) a change in the fiscal year or taxable year of the Partnership and any other changes that the General Partner determines to be necessary or appropriate as a result of a change in the fiscal year or taxable year of the Partnership including, if the General Partner shall so determine, a change in the definition of "Quarter" and the dates on which distributions are to be made by the Partnership;

(f) an amendment that is necessary, as documented in an Opinion of Counsel, to prevent the Partnership, the MLP, or the General Partner or its directors, officers, trustees or agents from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, the Investment Advisers Act of 1940, as amended, or "plan asset" regulations adopted under the Employee Retirement Income Security Act of 1974, as amended, regardless of whether such are substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor;

(g) an amendment that the General Partner determines to be necessary or appropriate in connection with the authorization of issuance of any class or series of Partnership Interests pursuant to Section 5.4;

(h) any amendment expressly permitted in this Agreement to be made by the General Partner acting alone;

(i) an amendment effected, necessitated or contemplated by a Merger Agreement approved in accordance with Section 14.3;

(j) an amendment that the General Partner determines to be necessary or appropriate to reflect, account for the formation by the Partnership of, or investment by the Partnership in, any corporation, partnership, joint venture, limited liability company or other entity, in connection with the conduct by the Partnership of activities permitted by the terms of Section 2.4;

(k) a merger or conveyance pursuant to Section 14.3(d); or

(l) any other amendments substantially similar to the foregoing.

**13.2 Amendment Procedures.** Except as provided in Section 13.1 and Section 13.3, all amendments to this Agreement shall be made in accordance with the following requirements. Amendments to this Agreement may be proposed only by the General Partner; *provided, however* that the General Partner shall have no duty or obligation to propose any amendment to this Agreement and may decline to do so free of any fiduciary duty or obligation whatsoever to the Partnership or any Limited Partner and, in declining to propose an amendment to the fullest extent permitted by law, shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity. A proposed amendment shall be effective upon its approval by the General Partner and the holders of a majority in interest of the Limited Partner, unless a greater or different percentage is required under this Agreement or by Delaware law. Each proposed amendment that requires the approval of the holders of a specified percentage of Limited Partner Interests shall be set forth in a writing that contains the text of the proposed amendment. If such an amendment is proposed, the General Partner shall seek the written approval of the requisite percentage Limited Partner Interests or call a meeting of the Limited Partners to consider and vote on such proposed amendment. The General Partner shall notify all Record Holders upon final adoption of any such proposed amendments. Notwithstanding the provisions of Section 13.1 and Section 13.2, no amendment of (a) the definitions of "Conflicts Committee" or "Special Approval", (b) Section 2.9, (c) Section 7.3, (d) Section 7.9(a), (e) Section 10.2, (f) Section 14.3, (g) this Section 13.2 or (h) any other provision of this Agreement requiring that Special Approval or Extraordinary Approval be obtained as a condition to any action, shall be effective without first obtaining Special Approval or Extraordinary Approval, respectively.

### **13.3 Amendment Requirements.**

(a) Notwithstanding the provisions of Section 13.1 and Section 13.2, no provision of this Agreement that establishes a percentage of Limited Partner Interests required to take any action shall be amended, altered, changed, repealed or rescinded in any respect that would have the effect of reducing such voting percentage

unless such amendment is approved by the written consent or the affirmative vote of Limited Partners whose aggregate Limited Partner Interests constitute not less than the voting requirement sought to be reduced.

(b) Notwithstanding the provisions of Section 13.1 and Section 13.2, no amendment to this Agreement may (i) enlarge the obligations of any Limited Partner without its consent, unless such shall be deemed to have occurred as a result of an amendment approved pursuant to Section 13.3(c) or (ii) enlarge the obligations of, restrict in any way any action by or rights of, or reduce in any way the amounts distributable, reimbursable or otherwise payable to, the General Partner or any of its Affiliates without its consent, which consent may be given or withheld at its option.

(c) Except as provided in Section 14.3, and without limitation of the General Partner's authority to adopt amendments to this Agreement without the approval of any Partners as contemplated in Section 13.1, any amendment that would have a material adverse effect on the rights or preferences of any class of Partnership Interests in relation to other classes of Partnership Interests must be approved by the holders of not less than a majority of the Partnership Interests of the class affected.

(d) Notwithstanding any other provision of this Agreement, except for amendments pursuant to Section 13.1 and except as otherwise provided by Section 14.3(b), no amendments shall become effective without the approval of the holders of at least 90% of the Limited Partner Interests voting as a single class unless the Partnership obtains an Opinion of Counsel to the effect that such amendment will not affect the limited liability of any Limited Partner under the Delaware Act.

(e) Except as provided in Section 13.1, this Section 13.3 shall only be amended with the approval of the holders of at least 90% of the Partnership Interests.

**13.4 Special Meetings.** All acts of Limited Partners to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XIII. Special meetings of the Limited Partners may be called by the General Partner or by Limited Partners owning 20% or more of the outstanding Limited Partner Interests of the class or classes for which a meeting is proposed. Limited Partners shall call a special meeting by delivering to the General Partner one or more requests in writing stating that the signing Limited Partners wish to call a special meeting and indicating the general or specific purposes for which the special meeting is to be called. Within 60 days after receipt of such a call from Limited Partners or within such greater time as may be reasonably necessary for the Partnership to comply with any statutes, rules, regulations, listing agreements or similar requirements governing the holding of a meeting or the solicitation of proxies for use at such a meeting, the General Partner shall send a notice of the meeting to the Limited Partners either directly or indirectly through a Transfer Agent. A meeting shall be held at a time and place determined by the General Partner on a date not less than 10 days nor more than 60 days after the mailing of notice of the meeting. Limited Partners shall not vote on matters that would cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability under the Delaware Act or the law of any other state in which the Partnership is qualified to do business.

**13.5 Notice of a Meeting.** Notice of a meeting called pursuant to Section 13.4 shall be given to the Record Holders of the class or classes of Limited Partner Interests for which a meeting is proposed in writing by mail or other means of written communication in accordance with Section 15.1. The notice shall be deemed to have been given at the time when deposited in the mail or sent by other means of written communication.

**13.6 Record Date.** For purposes of determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners or to give approvals without a meeting as provided in Section 13.11, the General Partner may set a Record Date, which shall not be less than 10 nor more than 60 days before (a) the date of the meeting or (b) in the event that approvals are sought without a meeting, the date by which Limited Partners are requested in writing by the General Partner to give such approvals.

**13.7 Adjournment.** When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than 45 days. At the adjourned meeting, the

Partnership may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if a new Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with this Article XIII.

**13.8 Waiver of Notice; Approval of Meeting; Approval of Minutes.** The transactions of any meeting of Limited Partners, however called and noticed, and whenever held, shall be as valid as if it had occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy. Attendance of a Limited Partner at a meeting shall constitute a waiver of notice of the meeting, except when the Limited Partner attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened; and except that attendance at a meeting is not a waiver of any right to disapprove the consideration of matters required to be included in the notice of the meeting, but not so included, if the disapproval is expressly made at the meeting.

**13.9 Quorum and Voting .** The holders of a majority of the Limited Partner Interests of the class or classes for which a meeting has been called represented in person or by proxy shall constitute a quorum at a meeting of Limited Partners of such class or classes unless any such action by the Limited Partners requires approval by holders of a greater percentage of such Limited Partner Interests, in which case the quorum shall be such greater percentage. At any meeting of the Limited Partners duly called and held in accordance with this Agreement at which a quorum is present, the act of Limited Partners holding Limited Partner Interests that in the aggregate represent a majority of the Limited Partner Interests entitled to vote and be present in person or by proxy at such meeting shall be deemed to constitute the act of all Limited Partners, unless a greater or different percentage is required with respect to such action under the provisions of this Agreement, in which case the act of the Limited Partners holding Limited Partner Interests that in the aggregate represent at least such greater or different percentage shall be required. The Limited Partners present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Limited Partners to leave less than a quorum, if any action taken (other than adjournment) is approved by the required percentage of Limited Partner Interests specified in this Agreement. In the absence of a quorum, any meeting of Limited Partners may be adjourned from time to time by the affirmative vote of holders of at least a majority of the Limited Partner Interests entitled to vote at such meeting represented either in person or by proxy, but no other business may be transacted, except as provided in Section 13.7.

**13.10 Conduct of a Meeting.** The General Partner shall have full power and authority concerning the manner of conducting any meeting of the Limited Partners or solicitation of approvals in writing, including the determination of Persons entitled to vote, the existence of a quorum, the satisfaction of the requirements of Section 13.4, the conduct of voting, the validity and effect of any proxies and the determination of any controversies, votes or challenges arising in connection with or during the meeting or voting. The General Partner shall designate a Person to serve as chairman of any meeting and shall further designate a Person to take the minutes of any meeting. All minutes shall be kept with the records of the Partnership maintained by the General Partner. The General Partner may make such other regulations consistent with applicable law and this Agreement as it may deem advisable concerning the conduct of any meeting of the Limited Partners or solicitation of approvals in writing, including regulations in regard to the appointment of proxies, the appointment and duties of inspectors of votes and approvals, the submission and examination of proxies and other evidence of the right to vote, and the revocation of approvals in writing.

**13.11 Action Without a Meeting.** If authorized by the General Partner, any action that may be taken at a meeting of the Limited Partners may be taken without a meeting if an approval in writing setting forth the action so taken is signed by Limited Partners owning not less than the minimum percentage of the Limited Partner Interests that would be necessary to authorize or take such action at a meeting at which all the Limited Partners were present and voted. Prompt notice of the taking of action without a meeting shall be given to the Limited Partners who have not approved in writing. The General Partner may specify that any written ballot submitted to Limited Partners for the purpose of taking any action without a meeting shall be returned to the Partnership within the time period, which shall be not less than 20 days, specified by the General Partner. If a ballot returned to the Partnership does not vote all of the Limited Partner Interests held by the Limited Partners the Partnership shall be deemed to have failed to receive a ballot for the Limited Partner Interests that were not voted. If approval of the taking of any action by the Limited Partners is solicited by any Person other than by or on behalf of the General Partner, the written approvals shall have no force and effect unless and until (a) they are deposited with the Partnership in care of the General Partner, (b) approvals sufficient to take the action proposed are dated as of a date not more than 90 days prior to the date sufficient approvals are deposited with the Partnership and

(c) an Opinion of Counsel is delivered to the General Partner to the effect that the exercise of such right and the action proposed to be taken with respect to any particular matter (i) will not cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability, and (ii) is otherwise permissible under the state statutes then governing the rights, duties and liabilities of the Partnership and the Partners.

**13.12 Voting and Other Rights.** Only those Record Holders of the applicable Limited Partner Interests on the Record Date set pursuant to Section 13.6 shall be entitled to notice of, and to vote at, a meeting of Limited Partners or to act with respect to matters as to which the holders of the applicable Limited Partner Interests have the right to vote or to act. All references in this Agreement to votes of, or other acts that may be taken by, the Limited Partner Interests shall be deemed to be references to the votes or acts of the Record Holders of such applicable Limited Partner Interests.

## ARTICLE XIV MERGER, CONSOLIDATION OR CONVERSION

**14.1 Authority.** The Partnership may merge or consolidate with one or more corporations, limited liability companies, statutory trusts or associations, real estate investment trusts, common law trusts or unincorporated businesses, including a partnership (whether general or limited (including a limited liability partnership)) or convert into any such entity, whether such entity is formed under the laws of the State of Delaware or any other state of the United States of America, pursuant to a written agreement of merger or consolidation ("Merger Agreement") or a written plan of conversion ("Plan of Conversion"), as the case may be, in accordance with this Article XIV. The surviving entity to any such merger, consolidation or conversion is referred to herein as the "Surviving Business Entity."

**14.2 Procedure for Merger, Consolidation or Conversion.**

(a) Merger, consolidation or conversion of the Partnership pursuant to this Article XIV requires the prior consent of the General Partner; *provided, however,* that, to the fullest extent permitted by law, the General Partner shall have no duty or obligation to consent to any merger, consolidation or conversion of the Partnership and may decline to do so free of any fiduciary duty or obligation whatsoever to the Partnership, any Limited Partner and, in declining to consent to a merger, consolidation or conversion, shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity.

(b) If the General Partner shall determine to consent to the merger or consolidation, the General Partner shall approve the Merger Agreement, which shall set forth:

- (i) the names and jurisdictions of formation or organization of each of the business entities proposing to merge or consolidate;
- (ii) the name and jurisdiction of formation or organization of the Surviving Business Entity;
- (iii) the terms and conditions of the proposed merger or consolidation;
- (iv) the manner and basis of exchanging or converting the equity securities of each constituent business entity for, or into, cash, property or interests, rights, securities or obligations of the Surviving Business Entity; and (A) if any general or limited partner interests, securities or rights of any constituent business entity are not to be exchanged or converted solely for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity, the cash, property or interests, rights, securities or obligations of any general or limited partnership, corporation, trust, limited liability company, unincorporated business or other entity (other than the Surviving Business Entity) which the holders of such general or limited partner interests, securities or rights are to receive in exchange for, or upon conversion of their interests, securities or rights, and (B) in the case of securities represented by certificates, upon the surrender of such certificates, which cash,

property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity or any general or limited partnership, corporation, trust, limited liability company, unincorporated business or other entity (other than the Surviving Business Entity), or evidences thereof, are to be delivered;

(v) a statement of any changes in the constituent documents or the adoption of new constituent documents (the articles or certificate of incorporation, articles of trust, declaration of trust, certificate or agreement of limited partnership, operating agreement or other similar charter or governing document) of the Surviving Business Entity to be effected by such merger or consolidation;

(vi) the effective time of the merger, which may be the date of the filing of the certificate of merger pursuant to Section 14.4 or a later date specified in or determinable in accordance with the Merger Agreement (provided, that if the effective time of the merger is to be later than the date of the filing of such certificate of merger, the effective time shall be fixed at a date or time certain at or prior to the time of the filing of such certificate of merger and stated therein); and

(vii) such other provisions with respect to the proposed merger or consolidation that the General Partner determines to be necessary or appropriate.

(c) If the General Partner shall determine to consent to the conversion, the General Partner may approve and adopt a Plan of Conversion containing such terms and conditions that the General Partner determines to be necessary or appropriate.

#### *14.3 Approval by Limited Partners.*

(a) The General Partner, upon its approval of the Merger Agreement or Plan of Conversion, as the case may be, shall direct that the Merger Agreement or the Plan of Conversion, as applicable, be submitted to a vote of Limited Partners, whether at a special meeting or by written consent, in either case in accordance with the requirements of Article XIII. A copy or a summary of the Merger Agreement or the Plan of Conversion, as applicable, shall be included in or enclosed with the notice of a special meeting or the written consent.

(b) The Merger Agreement or the Plan of Conversion, as applicable, shall be approved upon receiving the affirmative vote or consent of the holders of a majority in interest of the Limited Partners.

(c) After such approval by vote or consent of the Limited Partners, and at any time prior to the filing of the certificate of merger or a certificate of conversion pursuant to Section 14.4, the merger, consolidation or conversion may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement or the Plan of Conversion, as the case may be.

(d) Notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted without Limited Partner approval, to convert the Partnership or any Group Member into a new limited liability entity, to merge the Partnership or any Group Member into, or convey all of the Partnership's assets to, another limited liability entity which shall be newly formed and shall have no assets, liabilities or operations at the time of such conversion, merger or conveyance other than those it receives from the Partnership or other Group Member if (i) the General Partner has received an Opinion of Counsel that the merger or conveyance, as the case may be, would not result in the loss of the limited liability of any Limited Partner or cause the Partnership or the MLP to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not previously treated as such), (ii) the sole purpose of such conversion, merger or conveyance is to effect a mere change in the legal form of the Partnership into another limited liability entity and (iii) the governing instruments of the new entity provide the Limited Partners and the General Partner with the same rights and obligations as are herein contained.

(e) Additionally, notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted, without Limited Partner approval, to merge or consolidate the Partnership with or

into another entity if (i) the General Partner has received an Opinion of Counsel that the merger or consolidation, as the case may be, would not result in the loss of the limited liability of any Limited Partner or cause the Partnership to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not previously treated as such), (ii) the merger or consolidation would not result in an amendment to the Partnership Agreement, other than any amendments that could be adopted pursuant to Section 13.1, (iii) the Partnership is the Surviving Business Entity in such merger or consolidation, (iv) each Partnership Interest outstanding immediately prior to the effective date of the merger or consolidation is to be an identical Partnership Interest of the Partnership after the effective date of the merger or consolidation, and (v) the number of Partnership Interests to be issued by the Partnership in such merger or consolidation do not exceed 20% of the Partnership Interests immediately prior to the effective date of such merger or consolidation.

#### *14.4 Certificate of Merger.*

(a) Upon the required approval, if any, by the General Partner and the Limited Partners of a Merger Agreement or a Plan of Conversion, as the case may be, a certificate of merger, consolidation or conversion, as applicable, shall be executed and filed with the Secretary of State of the State of Delaware in conformity with the requirements of the Delaware Act.

(b) At the effective time of the certificate of merger or consolidation:

(i) all of the rights, privileges and powers of each of the business entities that has merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those business entities and all other things and causes of action belonging to each of those business entities, shall be vested in the Surviving Business Entity and after the merger or consolidation shall be the property of the Surviving Business Entity to the extent they were of each constituent business entity;

(ii) the title to any real property vested by deed or otherwise in any of those constituent business entities shall not revert and is not in any way impaired because of the merger or consolidation;

(iii) all rights of creditors and all liens on or security interests in property of any of those constituent business entities shall be preserved unimpaired; and

(iv) all debts, liabilities and duties of those constituent business entities shall attach to the Surviving Business Entity and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

(c) At the effective time of the certificate of conversion:

(i) the Partnership shall continue to exist, without interruption, but in the organizational form of the converted entity rather than in its prior organizational form;

(ii) all rights, title, and interests to all real estate and other property owned by the Partnership shall continue to be owned by the converted entity in its new organizational form without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances thereon;

(iii) all liabilities and obligations of the Partnership shall continue to be liabilities and obligations of the converted entity in its new organizational form without impairment or diminution by reason of the conversion;

(iv) all rights of creditors or other parties with respect to or against the prior interest holders or other owners of the Partnership in their capacities as such in existence as of the effective

time of the conversion will continue in existence as to those liabilities and obligations and may be pursued by such creditors and obligees as if the conversion did not occur;

(v) a proceeding pending by or against the Partnership or by or against any of Partners in their capacities as such may be continued by or against the converted entity in its new organizational form and by or against the prior partners without any need for substitution of parties; and

(vi) the Partnership Interests that are to be converted into partnership interests, shares, evidences of ownership, or other securities in the converted entity as provided in the Plan of Conversion or certificate of conversion shall be so converted, and Partners shall be entitled only to the rights provided in the Plan of Conversion or certificate of conversion.

(d) A merger, consolidation or conversion effected pursuant to this Article shall not be deemed to result in a transfer or assignment of assets or liabilities from one entity to another.

**14.5 Amendment of Partnership Agreement.** Pursuant to Section 17-211(g) of the Delaware Act, an agreement of merger or consolidation approved in accordance with Section 17-211(b) of the Delaware Act may (a) effect any amendment to this Agreement or (b) effect the adoption of a new partnership agreement for a limited partnership if it is the Surviving Business Entity. Any such amendment or adoption made pursuant to this Section 14.5 shall be effective at the effective time or date of the merger or consolidation.

## ARTICLE XV GENERAL PROVISIONS

**15.1 Addresses and Notices.** Any notice, demand, request, report or proxy materials required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication to the Partner at the address described below. Any notice, payment or report to be given or made to a Partner hereunder shall be deemed conclusively to have been given or made, and the obligation to give such notice or report or to make such payment shall be deemed conclusively to have been fully satisfied, upon sending of such notice, payment or report to the Record Holder of such Partnership Interests at his address as shown on the records of the Transfer Agent or as otherwise shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in such Partnership Interests by reason of any assignment or otherwise. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 15.1 executed by the General Partner, the Transfer Agent or the mailing organization shall be *prima facie* evidence of the giving or making of such notice, payment or report. If any notice, payment or report addressed to a Record Holder at the address of such Record Holder appearing on the books and records of the Transfer Agent or the Partnership is returned by the United States Post Office marked to indicate that the United States Postal Service is unable to deliver it, such notice, payment or report and any subsequent notices, payments and reports shall be deemed to have been duly given or made without further mailing (until such time as such Record Holder or another Person notifies the Transfer Agent or the Partnership of a change in his address) if they are available for the Partner at the principal office of the Partnership for a period of one year from the date of the giving or making of such notice, payment or report to the other Partners. Any notice to the Partnership shall be deemed given if received by the General Partner at the principal office of the Partnership designated pursuant to Section 2.3. The General Partner may rely and shall be protected in relying on any notice or other document from a Partner or other Person if believed by it to be genuine.

**15.2 Further Action.** The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

**15.3 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

**15.4 Integration.** This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

**15.5 Creditors.** None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Partnership.

**15.6 Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition.

**15.7 Counterparts.** This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto or, in the case of a Person acquiring a Limited Partner Interest pursuant to Section 10.1(a) without execution hereof.

**15.8 Applicable Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

**15.9 Invalidity of Provisions.** If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

**15.10 Consent of Partners.** Each Partner hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote or consent of less than all of the Partners, such action may be so taken upon the concurrence of less than all of the Partners and each Partner shall be bound by the results of such action.

**15.11 Third-Party Beneficiaries.** Each Partner agrees that any Indemnitee shall be entitled to assert rights and remedies hereunder as a third-party beneficiary hereto with respect to those provisions of this Agreement affecting a right, benefit or privilege to such Indemnitee.

[Signature page follows.]

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

GENERAL PARTNER:

DCP MIDSTREAM GP, LLC

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

LIMITED PARTNER:

DUKE ENERGY FIELD SERVICES, LLC

By: Brent L. Backes

Name: Brent L. Backes

Title: Vice President, General Counsel and  
Secretary

Signature Page — First Amended and Restated Agreement of Limited Partnership of DCP Midstream GP, LP

## **Attachment I**

### **DEFINED TERMS**

**"Affiliate"** means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the Person in question; provided that, for the avoidance of doubt, the term "Affiliate" includes any Person that, directly or indirectly, is the beneficial owner of at least 25% of the equity interests in DEFS or has the right to appoint at least 25% of the members of the board of directors of DEFS. As used herein, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

**"Agreement"** means this First Amended and Restated Agreement of Limited Partnership of DCP Midstream GP, LP, as it may be amended, supplemented or restated from time to time.

**"Associate"** means, when used to indicate a relationship with any Person, (a) any corporation or organization of which such Person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock or other voting interest; (b) any trust or other estate in which such Person has at least a 20% beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity; and (c) any relative or spouse of such Person, or any relative of such spouse, who has the same principal residence as such Person.

**"Available Cash"** means, with respect to any Quarter ending prior to the Liquidation Date,

- (a) the sum of all cash and cash equivalents of the Partnership on hand at the end of such Quarter, *less*
- (b) the amount of any cash reserves that is established by the General Partner to (i) satisfy general, administrative and other expenses and debt service requirements, (ii) permit the Partnership to make capital contributions to the MLP to maintain its 2% general partner interest upon the issuance of partnership securities by the MLP, (iii) comply with applicable law or any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which the Partnership is a party or by which it is bound or its assets are subject, (iv) provide funds for distributions under Section 6.1 in respect of any one or more of the next four Quarters; *provided, however*, that disbursements made by the Partnership or cash reserves established, increased or reduced after the end of such Quarter, but on or before the date of determination of Available Cash with respect to such Quarter, shall be deemed to have been made, established, increased or reduced, for purposes of determining Available Cash, within such Quarter if the General Partner so determines or (v) otherwise provide for the proper conduct of the business of the Partnership subsequent to such Quarter.

Notwithstanding the foregoing, "Available Cash" with respect to the Quarter in which the Liquidation Date occurs and any subsequent Quarter shall equal zero.

**"Board of Directors"** means, with respect to the Board of Directors of the General Partner, its board of directors or managers, as applicable, if a corporation or limited liability company, or if a limited partnership, the board of directors or board of managers of the general partner of the General Partner.

**"Capital Contribution"** means any cash, cash equivalents or the fair market value of property that a Partner contributes to the Partnership.

**"Certificate of Limited Partnership"** means the Certificate of Limited Partnership of the Partnership filed with the Secretary of State of the State of Delaware as referenced in Section 2.3, as such Certificate of Limited Partnership may be amended, supplemented or restated from time to time.

**"Claim"** has the meaning ascribed to such term in the MLP Partnership Agreement.

**"Closing Date"** has the meaning ascribed to such term in the MLP Partnership Agreement.

**"Commission"** means the United States Securities and Exchange Commission.

*“Conflicts Committee”* means a committee of the Board of Directors of the General Partner composed entirely of three or more directors who meet the independence, qualification and experience requirements established by the Securities Exchange Act and the rules and regulations of the Commission thereunder and by the principal National Securities Exchange upon which the common units of the MLP are then listed or admitted for trading.

*“Contribution Agreement”* has the meaning ascribed to such term in the MLP Partnership Agreement.

*“DEFS”* means Duke Energy Field Services, LLC, a Delaware limited liability company.

*“Delaware Act”* means the Delaware Revised Uniform Limited Partnership Act, 6 Del C. §17-101, et seq., as amended, supplemented or restated from time to time, and any successor to such statute.

*“Departing General Partner”* means a former General Partner from and after the effective date of any withdrawal or removal of such former General Partner pursuant to Section 11.1 or 11.2.

*“Event of Withdrawal”* has the meaning assigned to such term in Section 11.1(a).

*“Extraordinary Approval”* means the written approval of DEFS.

*“General Partner”* means DCP Midstream GP, LLC, a Delaware limited liability company, and its successors and permitted assigns that are admitted to the Partnership as general partner of the Partnership, in its capacity as general partner of the Partnership (except as the context otherwise requires).

*“General Partner Interest”* means the management and ownership interest, if any, of the General Partner in the Partnership (in its capacity as a general partner without reference to any Limited Partner Interest held by it), which may be evidenced by Partnership Interests or a combination thereof or interest therein, and includes any and all benefits to which the General Partner is entitled as provided in this Agreement, together with all obligations of the General Partner to comply with the terms and provisions of this Agreement.

*“Group”* means a Person that with or through any of its Affiliates or Associates has any contract, arrangement, understanding or relationship for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent given to such Person in response to a proxy or consent solicitation made to 10 or more Persons), exercising investment power or disposing of any Partnership Interests with any other Person that beneficially owns, or whose Affiliates or Associates beneficially own, directly or indirectly, Partnership Interests.

*“Group Member”* means a member of the Partnership Group.

*“Indemnitee”* means (a) the General Partner, any Departing General Partner and any Person who is or was an Affiliate of the General Partner or any Departing General Partner, (b) any Person who is or was a member, director, officer, fiduciary or trustee of the Partnership, (c) any Person who is or was an officer, member, partner, director, employee, agent or trustee of the General Partner or any Departing General Partner or any Affiliate of the General Partner or any Departing General Partner, or any Affiliate of any such Person, (d) any Person who is or was serving at the request of the General Partner or any Departing General Partner or any such Affiliate as a director, officer, employee, member, partner, agent, fiduciary or trustee of another Person; provided, that a Person shall not be an Indemnitee by reason of providing, on a fee-for-services basis, trustee, fiduciary or custodial services and (e) any Person the General Partner designates as an “Indemnitee” for purposes of this Agreement.

*“Initial Limited Partner”* means DEFS in its capacity as a Limited Partner.

*“Limited Partner”* means, unless the context otherwise requires, each Initial Limited Partner, each additional Person that becomes a Limited Partner pursuant to the terms of this Agreement, each additional Limited Partner and any Departing General Partner upon the change of its status from General Partner to Limited Partner pursuant to Section 11.3, in each case, in such Person’s capacity as a limited partner of the Partnership.

*"Limited Partner Interest"* means the ownership interest of a Limited Partner in the Partnership and includes any and all benefits to which such Limited Partner is entitled as provided in this Agreement, together with all obligations of such Limited Partner to comply with the terms and provisions of this Agreement.

*"Liquidation Date"* means (a) in the case of an event giving rise to the dissolution of the Partnership of the type described in clauses (a) and (b) of the first sentence of Section 12.2, the date on which the applicable time period during which the holders of outstanding Partnership Interests have the right to elect to continue the business of the Partnership has expired without such an election being made, and (b) in the case of any other event giving rise to the dissolution of the Partnership, the date on which such event occurs.

*"Liquidator"* means one or more Persons selected by the General Partner to perform the functions described in Section 12.3 as liquidating trustee of the Partnership within the meaning of the Delaware Act.

*"Merger Agreement"* has the meaning assigned to such term in Section 14.1.

*"MLP"* means DCP Midstream Partners, LP, a Delaware limited partnership, and any successors thereto.

*"MLP Partnership Agreement"* means the First Amended and Restated Agreement of Limited Partnership of the MLP, as it may be amended or restated from time to time.

*"National Securities Exchange"* has the meaning ascribed to such term in the MLP Partnership Agreement.

*"Omnibus Agreement"* means the Omnibus Agreement, dated as of December 7, 2005, among the Partnership, the General Partner and DEFS, as amended or restated from time to time.

*"Opinion of Counsel"* means a written opinion of counsel (who may be regular counsel to the Partnership or the General Partner or any of its Affiliates) acceptable to the General Partner.

*"Partners"* means the General Partner and the Limited Partners.

*"Partnership"* means DCP Midstream GP, LP, a Delaware limited partnership, and any successors thereto.

*"Partnership Group"* means the Partnership, the MLP and all Subsidiaries of the MLP.

*"Partnership Interest"* means an ownership interest in the Partnership, which shall include General Partner Interests and Limited Partner Interests.

*"Percentage Interest"* means 0.001% with respect to the General Partner and 99.999% with respect to the Limited Partners, in the aggregate.

*"Person"* means an individual or a corporation, limited liability company, partnership, joint venture, trust, unincorporated organization, association, government agency or political subdivision thereof or other entity.

*"Quarter"* means, unless the context requires otherwise, a fiscal quarter of the Partnership, or with respect to the first fiscal quarter of the Partnership after the Closing Date, the portion of such fiscal quarter after the Closing Date.

*"Record Date"* means the date established by the General Partner for determining (a) the identity of the Record Holders entitled to notice of, or to vote at, any meeting of Limited Partners or entitled to vote by ballot or give approval of Partnership action in writing without a meeting or entitled to exercise rights in respect of any lawful action of Limited Partners or (b) the identity of Record Holders entitled to receive any report or distribution or to participate in any offer.

*"Record Holder"* means the Person in whose name a Limited Partner Interest is registered on the books that the Board of Directors has caused the Partnership to be kept as of the close of business on any Record Date.

*"Registration Statement"* has the meaning ascribed to such term in the MLP Partnership Agreement.

*“Securities Exchange Act”* means the Securities Exchange Act of 1934, as amended, supplemented or restated from time to time, and any successor to such statute.

*“Special Approval”* means approval by a majority of the members of the Conflicts Committee.

*“Subsidiary”* means, with respect to any Person, (a) a corporation of which more than 50% of the voting power of shares entitled (without regard to the occurrence of any contingency) to vote in the election of directors or other governing body of such corporation is owned, directly or indirectly, at the date of determination, by such Person, by one or more Subsidiaries of such Person or a combination thereof, (b) a partnership (whether general or limited) in which such Person or a Subsidiary of such Person is, at the date of determination, a general or limited partner of such partnership, but only if more than 50% of the partnership interests of such partnership (considering all of the partnership interests of the partnership as a single class) is owned, directly or indirectly, at the date of determination, by such Person, by one or more Subsidiaries of such Person, or a combination thereof, or (c) any other Person (other than a corporation or a partnership) in which such Person, one or more Subsidiaries of such Person, or a combination thereof, directly or indirectly, at the date of determination, has (i) at least a majority ownership interest or (ii) the power to elect or direct the election of a majority of the directors or other governing body of such Person.

*“Surviving Business Entity”* has the meaning assigned to such term in Section 14.1.

*“Transfer Agent”* means such bank, trust company or other Person (including the General Partner or one of its Affiliates) as shall be appointed from time to time by the Partnership to act as registrar and transfer agent for any Partnership Interests; provided that, if no Transfer Agent is specifically designated for any such Partnership Interests, the General Partner shall act in such capacity.

*“Underwriting Agreement”* has the meaning ascribed to such term in the MLP Partnership Agreement.

*“U.S. GAAP”* means United States generally accepted accounting principles consistently applied.

*“Withdrawal Opinion of Counsel”* has the meaning assigned to such term in Section 11.1(b).

**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
DCP MIDSTREAM GP, LLC  
A Delaware Limited Liability Company**

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**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
DCP MIDSTREAM GP, LLC  
A Delaware Limited Liability Company**

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**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
DCP Midstream GP, LLC  
A Delaware Limited Liability Company**

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this “**Agreement**”) of DCP Midstream GP, LLC, a Delaware limited liability company (the “**Company**”), executed on December 7, 2005 (the “**Effective Date**”), is adopted, executed and agreed to, by Duke Energy Field Services, LLC, a Delaware limited liability company (“**DEFS**”), as the sole Member of the Company.

**RECITALS**

- A. DEFS formed the Company on August 5, 2005 as the sole member.
- B. The Limited Liability Company Agreement of DCP Midstream GP, LLC was executed effective August 5, 2005 (the “**Existing Agreement**”).
- C. DEFS, the sole Member of the Company, deems it advisable to amend and restate the limited liability company agreement of the Company in its entirety as set forth herein.

**AGREEMENTS**

For and in consideration of the premises, the covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, DEFS, as the sole Member of the Company, hereby amends and restates the Existing Agreement in its entirety as follows:

**ARTICLE 1  
DEFINITIONS**

**1.01 Definitions.** Each capitalized term used herein shall have the meaning given such term in Attachment I.

**1.02 Construction.** Unless the context requires otherwise: (a) the gender (or lack of gender) of all words used in this Agreement includes the masculine, feminine and neuter; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; (c) references to Laws refer to such Laws as they may be amended from time to time, and references to particular provisions of a Law include any corresponding provisions of any succeeding Law; (d) references to money refer to legal currency of the United States of America; (e) “including” means “including without limitation” and is a term of illustration and not of limitation; (f) all definitions set forth herein shall be deemed applicable whether the words defined are used herein in the singular or the plural; and (g) neither this Agreement nor any other agreement, document or instrument referred to herein or executed and delivered in connection herewith shall be construed against any Person as the principal draftsperson hereof or thereof.

*Signature Page — Amended and Restated Limited Agreement of DCP Midstream GP, LLC*

Amended and Restated Limited Liability Company Agreement (3)

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## ARTICLE 2 ORGANIZATION

**2.01 Formation.** The Company was organized as a Delaware limited liability company by the filing of a Certificate of Formation (“*Organizational Certificate*”) on August 5, 2005 with the Secretary of State of the State of Delaware under and pursuant to the Delaware Act.

**2.02 Name.** The name of the Company is “DCP Midstream GP, LLC” and all Company business must be conducted in that name or such other names that comply with Law as the Board of Directors may select.

**2.03 Registered Office; Registered Agent; Principal Office; Other Offices.** The registered office of the Company required by the Delaware Act to be maintained in the State of Delaware shall be the office of the initial registered agent for service of process named in the Organizational Certificate or such other office (which need not be a place of business of the Company) as the Board of Directors may designate in the manner provided by Law. The registered agent for service of process of the Company in the State of Delaware shall be the initial registered agent for service of process named in the Organizational Certificate or such other Person or Persons as the Board of Directors may designate in the manner provided by Law. The principal office of the Company in the United States shall be at such a place as the Board of Directors may from time to time designate, which need not be in the State of Delaware, and the Company shall maintain records there and shall keep the street address of such principal office at the registered office of the Company in the State of Delaware. The Company may have such other offices as the Board of Directors may designate.

**2.04 Purpose.** The purposes of the Company are the transaction of any or all lawful business for which limited liability companies may be organized under the Delaware Act.

**2.05 Term.** The period of existence of the Company commenced on August 5, 2005 and shall end at such time as a certificate of cancellation is filed in accordance with Section 9.02(c).

**2.06 No State-Law Partnership; Withdrawal.** It is the intent that the Company shall be a limited liability company formed under the Laws of the State of Delaware and shall not be a partnership (including a limited partnership) or joint venture, and that the Members not be a partner or joint venturer of any other party for any purposes other than federal and state tax purposes, and this Agreement may not be construed to suggest otherwise. A Member does not have the right to Withdraw from the Company; *provided, however,* that a Member shall have the power to Withdraw at any time in violation of this Agreement. If a Member exercises such power in violation of this Agreement, (a) such Member shall be liable to the Company and its Affiliates for all monetary damages suffered by them as a result of such Withdrawal; and (b) such Member shall not have any rights under Section 18.604 of the Delaware Act. In no event shall the Company have the right, through specific performance or otherwise, to prevent a Member from Withdrawing in violation of this Agreement.

Amended and Restated Limited Liability Company Agreement (3)

## **2.07 Certain Undertakings Relating to Separateness.**

(a) Separateness Generally. The Company shall, and shall cause DCP GP to, conduct their respective businesses and operations in accordance with this Section 2.07.

(b) Separate Records. The Company shall, and shall cause DCP GP to, (i) maintain their respective books and records and their respective accounts separate from those of any other Person, (ii) maintain their respective financial records, which will be used by them in their ordinary course of business, showing their respective assets and liabilities separate and apart from those of any other Person, except their consolidated Subsidiaries, (iii) not have their respective assets and/or liabilities included in a consolidated financial statement of any Affiliate of the Company unless appropriate notation shall be made on such Affiliate's consolidated financial statements to indicate the separateness of the Company and DCP GP and their assets and liabilities from such Affiliate and the assets and liabilities of such Affiliate, and to indicate that the assets and liabilities of the Company and DCP GP are not available to satisfy the debts and other obligations of such Affiliate, and (iv) file their respective own tax returns separate from those of any other Person, except (A) to the extent that the Company or DCP GP (x) is treated as a "disregarded entity" for tax purposes or (y) is not otherwise required to file tax returns under applicable law or (B) as may otherwise be required by applicable law.

(c) Separate Assets. The Company shall not commingle or pool, and shall cause DCP GP not to commingle or pool, their respective funds or other assets with those of any other Person, and shall maintain their respective assets in a manner that is not costly or difficult to segregate, ascertain or otherwise identify as separate from those of any other Person.

(d) Separate Name. The Company shall, and shall cause DCP GP to, (i) conduct their respective businesses in their respective own names, (ii) use separate stationery, invoices, and checks, (iii) correct any known misunderstanding regarding their respective separate identities from that of any other Person (including DEFS and its Subsidiaries other than the Company and DCP GP), and (iv) generally hold itself out as an entity separate from any other Person (including DEFS and its Subsidiaries other than the Company and DCP GP).

(e) Separate Credit. The Company shall, and shall cause DCP GP to, (i) pay their respective obligations and liabilities from their respective own funds (whether on hand or borrowed), (ii) maintain adequate capital in light of their respective business operations, (iii) not guarantee or become obligated for the debts of any other Person, other than the Company and DCP GP and except to the extent specified in the Contribution Agreement or the Omnibus Agreement, (iv) not hold out their respective credit as being available to satisfy the obligations or liabilities of any other Person except to the extent specified in the Contribution Agreement or the Omnibus Agreement, (v) not acquire debt obligations or debt securities of DEFS or its Affiliates (other than the Company and DCP GP), (vi) not pledge their assets for the benefit of any Person or make loans, advances or capital contributions to DEFS or any of its Affiliates (other than the MLP and its Subsidiaries and, with respect to the Company, other than DCP GP), or (vii) use its commercially reasonable efforts to cause the operative documents under which DCP GP borrows money, is an issuer of debt securities, or guarantees any such borrowing or issuance after the Effective Date, to contain provisions to the effect that (A) the lenders or purchasers of debt securities, respectively, acknowledge that they have advanced funds or purchased debt securities,

respectively, in reliance upon the separateness of the Company and DCP GP from each other and from any other Persons (including DEFS and its Affiliates, other than the Company and DCP GP) and (B) the Company and DCP GP have assets and liabilities that are separate from those of other persons (including DEFS and its Affiliates, other than the Company and DCP GP); provided that the Company and DCP GP may engage in any transaction described in clauses (v)-(vi) of this Section 2.07(e) if prior Special Approval has been obtained for such transaction and either (A) the Conflicts Committee has determined that the borrower or recipient of the credit support is not then insolvent and will not be rendered insolvent as a result of such transaction or (B) in the case of transactions described in clause (v), such transaction is completed through a public sale or a National Securities Exchange.

(f) **Separate Formalities.** The Company shall, and shall cause DCP GP to, (i) observe all limited liability company or partnership formalities and other formalities required by their respective organizational documents, the laws of the jurisdiction of their respective formation, or other laws, rules, regulations and orders of governmental authorities exercising jurisdiction over it, (ii) engage in transactions with DEFS and its Affiliates (other than the Company or DCP GP) in conformity with the requirements of Section 7.9 of the DCP GP Agreement, and (iii) subject to the terms of the Omnibus Agreement, promptly pay, from their respective own funds and on a timely basis, their respective allocable shares of general and administrative expenses, capital expenditures, and costs for services performed by DEFS or Affiliates of DEFS (other than the Company or DCP GP). Each material contract between the Company or DCP GP, on the one hand, and DEFS or Affiliates of DEFS (other than the Company or DCP GP), on the other hand, shall be subject to the requirements of Section 7.9 of the DCP GP Agreement, and must be (x) approved by Special Approval or (y) on terms objectively demonstrable to be no less favorable to DCP GP than those generally being provided to or available from unrelated third parties, and in any event must be in writing.

(g) **No Effect.** Failure by the Company to comply with any of the obligations set forth above shall not affect the status of the Company as a separate legal entity, with its separate assets and separate liabilities or restrict or limit the Company from engaging or contracting with DEFS and its Affiliates for the provision of services or the purchase or sale of products, whether under the Omnibus Agreement or otherwise.

## **ARTICLE 3** **MATTERS RELATING TO MEMBERS**

**3.01 Members.** DEFS has previously been admitted as a Member of the Company.

**3.02 Creation of Additional Membership Interest.** The Company may issue additional Membership Interests in the Company pursuant to this Section 3.02. The terms of admission or issuance may provide for the creation of different classes or groups of Members having different rights, powers, and duties. The creation of any new class or group of Members approved as required herein may be reflected in an amendment to this Agreement executed in accordance with Section 11.04 indicating the different rights, powers, and duties thereof. Any such admission is effective only after the new Member has executed and delivered to the Members an instrument containing the notice address of the new Member and the new Member's ratification of this Agreement and agreement to be bound by it.

Amended and Restated Limited Liability Company Agreement (3)

**3.03 Liability to Third Parties.** No Member or beneficial owner of any Membership Interest shall be liable for the Liabilities of the Company.

## **ARTICLE 4 CAPITAL CONTRIBUTIONS**

### **4.01 Capital Contributions.**

- (a) In exchange for its Membership Interest, DEFS has made certain Capital Contributions.
- (b) The amount of money and the fair market value (as of the date of contribution) of any property (other than money) contributed to the Company by a Member in respect of the issuance of a Membership Interest to such Member shall constitute a “**Capital Contribution**.” Any reference in this Agreement to the Capital Contribution of a Member shall include a Capital Contribution of its predecessors in interest.

**4.02 Loans.** If the Company does not have sufficient cash to pay its obligations, any Member that may agree to do so may, upon Special Approval, advance all or part of the needed funds for such obligation to or on behalf of the Company. An advance described in this Section 4.02 constitutes a loan from the Member to the Company, may bear interest at a rate comparable to the rate the Company could obtain from third parties, and is not a Capital Contribution.

**4.03 Return of Contributions.** A Member is not entitled to the return of any part of its Capital Contributions or to be paid interest in respect of its Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of any Member. No Member will be required to contribute or to lend any cash or property to the Company to enable the Company to return any Member’s Capital Contributions.

## **ARTICLE 5 DISTRIBUTIONS**

**5.01 Distributions.** Subject to Section 9.02, within 45 days following each Quarter other than any Quarter in which the dissolution of the Company has commenced (the “**Distribution Date**”), the Company shall distribute to the Members the Company’s Available Cash on such Distribution Date.

## **ARTICLE 6 MANAGEMENT**

### **6.01 Management.**

(a) All management powers over the business and affairs of the Company shall be exclusively vested in a Board of Directors (“**Board of Directors**” or “**Board**”) and, subject to the direction of the Board of Directors, the Officers. The Officers and Directors shall each constitute a “manager” of the Company within the meaning of the Delaware Act. Except as otherwise specifically provided in this Agreement, no Member, by virtue of having the status of

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a Member, shall have or attempt to exercise or assert any management power over the business and affairs of the Company or shall have or attempt to exercise or assert actual or apparent authority to enter into contracts on behalf of, or to otherwise bind, the Company. Except as otherwise specifically provided in this Agreement, the authority and functions of the Board of Directors on the one hand and of the Officers on the other shall be identical to the authority and functions of the board of directors and officers, respectively, of a corporation organized under the Delaware General Corporation Law. Except as otherwise specifically provided in this Agreement, the business and affairs of the Company shall be managed under the direction of the Board of Directors, and the day-to-day activities of the Company shall be conducted on the Company's behalf by the Officers, who shall be agents of the Company.

(b) In addition to the powers that now or hereafter can be granted to managers under the Delaware Act and to all other powers granted under any other provision of this Agreement, except as otherwise provided in this Agreement, the Board of Directors and the Officers shall have full power and authority to do all things as are not restricted by this Agreement, the DCP GP Agreement, the Delaware Act or applicable Law, on such terms as they may deem necessary or appropriate to conduct, or cause to be conducted, the business and affairs of the Company.

(c) Notwithstanding anything herein to the contrary, without obtaining Extraordinary Approval, the Company shall not, and shall not take any action to cause either DCP GP or the MLP to, (i) make or consent to a general assignment for the benefit of its respective creditors; (ii) file or consent to the filing of any bankruptcy, insolvency or reorganization petition for relief under the United States Bankruptcy Code naming the Company, DCP GP or the MLP, as applicable, or otherwise seek, with respect to the Company, DCP GP or the MLP, relief from debts or protection from creditors generally; (iii) file or consent to the filing of a petition or answer seeking for the Company, DCP GP or the MLP, as applicable, a liquidation, dissolution, arrangement, or similar relief under any law; (iv) file an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Company, DCP GP or the MLP, as applicable, in a proceeding of the type described in any of clauses (i) – (iii) of this Section 6.01(c); (v) seek, consent to or acquiesce in the appointment of a receiver, liquidator, conservator, assignee, trustee, sequestrator, custodian or any similar official for the Company, DCP GP or the MLP, as applicable, or for all or any substantial portion of either entity's properties; (vi) sell all or substantially all of the assets of the Company, DCP GP or the MLP; (vii) dissolve or liquidate, except in the case of DCP GP, in accordance with Article XII of the DCP GP Agreement; (viii) merge or consolidate; (ix) amend the MLP Partnership Agreement; or (x) make a material change in the amount of the quarterly distributions made on the MLP Interests or the payment of any material extraordinary distribution on the MLP Interests.

(d) Notwithstanding anything herein to the contrary, DEFS, as the sole Member of the Company, shall have exclusive authority over the business and affairs of the Company that do not relate to management and control of the MLP. The type of matter referred to in the prior sentence where DEFS, as the sole Member of the Company, shall have exclusive authority shall include, but not be limited to, (i) the amount and timing of distributions paid by the Company or DCP GP, (ii) the issuance or repurchase of any equity interests in the Company or DCP GP, (iii) the prosecution, settlement or management of any claim made directly against

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the Company or DCP GP, (iv) whether to sell, convey, transfer or pledge any asset of the Company or DCP GP, (v) whether to amend, modify or waive any rights relating to the assets of the Company or DCP GP (including the decision to amend or forego distributions in respect of the Incentive Distribution Rights), and (vi) whether to enter into any agreement to incur an obligation of the Company or DCP GP other than an agreement entered into for and on behalf of the MLP for which the Company or DCP GP are liable exclusively by virtue of DCP GP's capacity as general partner of the MLP or of any of its affiliates. Further, DEFS, as the sole Member of the Company, shall have exclusive authority to cause the Company to exercise the rights of the Company and those of DCP GP, as general partner of the MLP (or those exercisable after DCP GP ceases to be the general partner of the MLP), pursuant to the following provisions of the MLP Partnership Agreement:

- (i) Section 2.4 ("*Purpose and Business*"), with respect to decisions to propose or approve the conduct by the MLP of any business;
- (ii) Sections 4.6(a) and (b) ("*Transfer of the General Partner's General Partner Interest*") and Section 4.7 ("*Transfer of Incentive Distribution Rights*"), solely with respect to the decision by DCP GP to transfer its general partner interest in the MLP or its Incentive Distribution Rights;
- (iii) Section 5.2(b) ("*Contributions by the General Partner and its Affiliates*"), solely with respect to the decision to make additional Capital Contributions to the MLP;
- (iv) Section 5.8 ("*Limited Preemptive Right*");
- (v) Section 5.11 ("*Issuance of Class B Units in Connection with Reset of Incentive Distribution Rights*"), with respect to any decision by the Company or DCP GP thereunder as a holder of Incentive Distribution Rights or Class B Units;
- (vi) Section 7.5(d) (relating to the right of DCP GP and its Affiliates to purchase Units or other Partnership Securities and exercise rights related thereto) and Section 7.11 ("*Purchase and Sale of Partnership Securities*"), solely with respect to decisions by the Company or DCP GP to purchase or otherwise acquire and sell Partnership Securities for their own account;
- (vii) Section 7.6(a) ("*Loans from the General Partner; Loans or Contributions from the Partnership or Group Members*"), solely with respect to the decision by the Company or DCP GP to lend funds to a Group Member, subject to the provisions of Section 7.9 of the MLP Partnership Agreement;
- (viii) Section 7.7 ("*Indemnification*"), solely with respect to any decision by the Company or DCP GP to exercise their respective rights as "Indemnitees";
- (ix) Section 7.12 ("*Registration Rights of the General Partner and its Affiliates*"), solely with respect to any decision to exercise registration rights and to take actions in connection therewith;

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- (x) Section 11.1 (“*Withdrawal of the General Partner*”), solely with respect to the decision by DCP GP to withdraw as general partner of the MLP and to giving notices required thereunder;
- (xi) Section 11.3(a) and (b) (“*Interest of Departing General Partner and Successor General Partner*”); and
- (xii) Section 15.1 (“*Right to Acquire Limited Partner Interests*”).

(e) Without the approval of the Conflicts Committee of the Board of Directors of the Company, the Company shall not take any action that would result in either the Company or DCP GP engaging in any business or activity or incurring any debts or liabilities except in connection with or incidental to (i) its performance as general partner of DCP GP or (ii) the acquiring, owning or disposing of debt or equity securities of DCP GP.

#### **6.02 Board of Directors.**

(a) *Generally.* The Board of Directors shall initially consist of five natural persons and, in the discretion of DEFS, may be increased to consist of up to 10 natural persons. The members of the Board of Directors shall be appointed by DEFS, *provided* that (i) at least one member of the Board of Directors at the time of the closing of the initial public offering of common units representing limited partner interest of the MLP (the “IPO”) shall be a natural person who meets the independence, qualification and experience requirements of the New York Stock Exchange, the independence, qualification and experience requirements of Section 10A(m)(3) of the Securities Exchange Act of 1934 (or any successor Law), the rules and regulations of the SEC and other applicable Law (an “**Independent Director**”), (ii) at least two members of the Board of Directors shall be natural persons who are Independent Directors at all times from and after the 90th day following the effective date of the registration statement related to the IPO and (iii) at least three members of the Board of Directors shall be natural persons who are Independent Directors at all times from and after the first anniversary of the effective date of the registration statement relating to the IPO; *provided, however,* that if at any time the Board of Directors does not include the requisite number of Independent Directors as specified above, the Board of Directors shall still have all powers and authority granted to it hereunder, but DEFS shall endeavor to appoint one or more additional Independent Directors as necessary to come into compliance with this Section 6.02(a).

(b) *Term; Resignation; Vacancies; Removal.* Each Director, other than any Independent Director, shall hold office until December 31 of the year in which such Director is appointed, provided however, that in the event a Director, other than an Independent Director, is appointed during the month of December in any particular year, such Director shall hold office until December 31 of the year following the year in which such Director is appointed. Each Independent Director shall hold office until his successor is appointed and qualified or until his earlier resignation or removal. Any Director may resign at any time upon written notice to the Board, the Chairman of the Board, to the Chief Executive Officer or to any other Officer. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. Vacancies and newly created directorships resulting from any increase in the authorized number of Directors or from

any other cause shall be filled by DEFS. Any Director may be removed, with or without cause, by DEFS at any time, and the vacancy in the Board caused by any such removal shall be filled by DEFS in accordance with the provisions of the DEFS LLC Agreement.

(c) *Voting; Quorum.* Unless otherwise required by the Delaware Act, other Law or the provisions hereof,

(i) each member of the Board of Directors shall have one vote;

(ii) except for matters requiring Special Approval, the presence at a meeting of a majority of the members of the Board of Directors shall constitute a quorum at any such meeting for the transaction of business; and

(iii) except for matters requiring Special Approval, the act of a majority of the members of the Board of Directors present at a meeting duly called in accordance with Section 6.02(d) at which a quorum is present shall be deemed to constitute the act of the Board of Directors.

(d) *Meetings.* Regular meetings of the Board of Directors shall be held at such times and places as shall be designated from time to time by resolution of the Board of Directors. Special meetings of the Board of Directors or meetings of any committee thereof may be called by written request authorized by any member of the Board of Directors or a committee thereof on at least 48 hours prior written notice to the other members of such Board or committee. Any such notice, or waiver thereof, need not state the purpose of such meeting, except as may otherwise be required by law. Attendance of a Director at a meeting (including pursuant to the last sentence of this Section 6.02(d)) shall constitute a waiver of notice of such meeting, except where such Director attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Any action required or permitted to be taken at a meeting of the Board of Directors or any committee thereof may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, are signed by at least as many members of the Board of Directors or committee thereof as would have been required to take such action at a meeting of the Board of Directors or such committee. Members of the Board of Directors or any committee thereof may participate in and hold a meeting by means of conference telephone, video conference or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in such meetings shall constitute presence in person at the meeting.

(e) *Committees.*

(i) Subject to compliance with this Article 6, committees of the Board of Directors shall have and may exercise such of the powers and authority of the Board of Directors with respect to the management of the business and affairs of the Company as may be provided in a resolution of the Board of Directors. Any committee designated pursuant to this Section 6.02(e) shall choose its own chairman, shall keep regular minutes of its proceedings and report the same to the Board of Directors when requested, and, subject to Section 6.02(d), shall fix its own rules or procedures and shall meet at such times and at such place or places as may be

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provided by such rules or by resolution of such committee or resolution of the Board of Directors. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum and the affirmative vote of a majority of the members present shall be necessary for the adoption by it of any resolution (except for obtaining Special Approval at meetings of the Conflicts Committee, which requires the affirmative vote of a majority of the members of such committee). The Board of Directors may designate one or more Directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of such committee; *provided, however,* that any such designated alternate of the Audit Committee or the Conflicts Committee must meet the standards for an Independent Director. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member; *provided, however,* that any such replacement member of the Audit Committee or the Conflicts Committee must meet the standards for an Independent Director.

(ii) In addition to any other committees established by the Board of Directors pursuant to Section 6.02(e)(i), the Board of Directors shall maintain a “**Conflicts Committee**,” which shall be composed of at least one Independent Director. The Conflicts Committee shall be responsible for (A) approving or disapproving, as the case may be, any matters regarding the business and affairs of the Company, DCP GP or the MLP considered by, or submitted to, such Conflicts Committee at the request of the Board of Directors pursuant to the terms of the DCP GP Agreement or the MLP Partnership Agreement, (B) approving any material amendments to the Omnibus Agreement, (C) approving or disapproving, as the case may be, the entering into of any material transaction with a Member or any Affiliate of a Member, other than transactions in the ordinary course of business to the extent that the Board of Directors requests the Conflicts Committee to make such determination, (D) amending (1) Section 2.07, (2) the definitions of “Independent Director” in Section 6.02(a) or (3) this Section 6.02(e)(ii), and (E) performing such other functions as the Board may assign from time to time or as may be specified in a written charter of the Conflicts Committee. In acting or otherwise voting on the matters referred to in this Section 6.02(e)(ii), to the fullest extent permitted by law, including Section 18-1101(c) of the Delaware Act and Section 17-1101(c) of the Delaware Revised Uniform Limited Partnership Act, as amended from time to time, the Directors constituting the Conflicts Committee shall consider only the interest of the MLP, including its respective creditors.

(iii) In addition to any other committees established by the Board of Directors pursuant to Section 6.02(e)(i), the Board of Directors shall maintain an “**Audit Committee**,” which shall be composed of (A) at least one Independent Director at the time of the closing of the IPO, (B) at least two Independent Directors at all times from and after the 90th day following the effective date of the registration statement related to the IPO and (C) at least three Independent Directors at all times from and after the first anniversary of the effective date of the registration statement related to the IPO. The Audit Committee shall be responsible for (A) assisting the Board in monitoring (1) the integrity of the MLP’s financial statements, (2) the qualifications and independence of the MLP’s independent accountants, (3) the performance of the internal audit function and independent accountants of the Company, DCP GP and the MLP, and (4) the MLP’s compliance with legal and regulatory requirements and (B) preparing the report

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required by the rules of the SEC to be included in the MLP's annual report on Form 10-K. The Audit Committee shall perform such other functions as the Board may assign from time to time or as may be specified in a written charter for the Audit Committee adopted by the Board.

(iv) In addition to any other committees established by the Board of Directors pursuant to Section 6.02(e)(i), the Board of Directors shall maintain an "**Compensation Committee**," which shall be composed of at least one Independent Director. The Compensation Committee shall be responsible for setting the compensation for officers of the Company as well as administering any incentive plans adopted by the Company. The Compensation Committee shall perform such other functions as the Board may assign from time to time or as may be specified in a written charter for the Compensation Committee adopted by the Board.

#### **6.03 Officers.**

(a) *Generally.* The Board of Directors, as set forth below, shall appoint officers of the Company ("**Officers**"), who shall (together with the Directors) constitute "managers" of the Company for the purposes of the Delaware Act. Unless provided otherwise by resolution of the Board of Directors, the Officers shall have the titles, power, authority and duties described below in this Section 6.03.

(b) *Titles and Number.* The Company may appoint one or more officers including a Chairman of the Board (unless the Board of Directors provides otherwise), a Chief Executive Officer, a President, one or more Vice Presidents, a Secretary, the Chief Financial Officer, any Treasurer and one or more Assistant Secretaries and Assistant Treasurers and a General Counsel. Any person may hold more than one office.

(c) *Appointment and Term of Office.* The Officers shall be appointed by the Board of Directors at such time and for such term as the Board of Directors shall determine. Any Officer may be removed, with or without cause, only by the Board of Directors. Vacancies in any office may be filled only by the Board of Directors.

(d) *Chairman of the Board.* The Chairman of the Board shall preside at all meetings of the Board of Directors and of the unitholders of the MLP; and he shall have such other powers and duties as from time to time may be assigned to him by the Board of Directors.

(e) *Chief Executive Officer.* Subject to the limitations imposed by this Agreement, any employment agreement, any employee plan or any determination of the Board of Directors, the Chief Executive Officer, subject to the direction of the Board of Directors, shall be the chief executive officer of the Company and shall be responsible for the management and direction of the day-to-day business and affairs of the Company, its other Officers, employees and agents, shall supervise generally the affairs of the Company and shall have full authority to execute all documents and take all actions that the Company may legally take. In the absence of the Chairman of the Board, the Chief Executive Officer shall preside at all meetings of the unitholders of the MLP and at all meetings of the Board of Directors provided that he is a director of the Company. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to him by this Agreement or the Board of

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Directors, including any duties and powers provided for in any employment agreement approved by the Board of Directors.

(f) *President*. Subject to the limitations imposed by this Agreement, any employment agreement, any employee plan or any determination of the Board of Directors, the President, subject to the direction of the Board of Directors, shall be the chief executive officer of the Company in the absence of a Chief Executive Officer and shall be responsible for the management and direction of the day-to-day business and affairs of the Company, its other Officers, employees and agents, shall supervise generally the affairs of the Company and shall have full authority to execute all documents and take all actions that the Company may legally take. In the absence of the Chairman of the Board and Chief Executive Officer, the President shall preside at all meetings of the unitholders of the MLP and at all meetings of the Board of Directors provided that he is a director of the Company. The President shall exercise such other powers and perform such other duties as may be assigned to him by this Agreement or the Board of Directors, including any duties and powers provided for in any employment agreement approved by the Board of Directors.

(g) *Vice Presidents*. In the absence of a Chief Executive Officer and the President, each Vice President appointed by the Board of Directors shall have all of the powers and duties conferred upon the President, including the same power as the President to execute documents on behalf of the Company. Each such Vice President shall perform such other duties and may exercise such other powers as may from time to time be assigned to him by the Board of Directors or the President.

(h) *Secretary and Assistant Secretaries*. The Secretary shall record or cause to be recorded in books provided for that purpose the minutes of the meetings or actions of the Board of Directors, shall see that all notices are duly given in accordance with the provisions of this Agreement and as required by law, shall be custodian of all records (other than financial), shall see that the books, reports, statements, certificates and all other documents and records required by law are properly kept and filed, and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by this Agreement, the Board of Directors or the President. The Assistant Secretaries shall exercise the powers of the Secretary during that Officer's absence or inability or refusal to act.

(i) *Chief Financial Officer*. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of account of the Company and DCP GP. He shall receive and deposit all moneys and other valuables belonging to the Company in the name and to the credit of the Company and shall disburse the same and only in such manner as the Board of Directors or the appropriate Officer of the Company may from time to time determine. He shall receive and deposit all moneys and other valuables belonging to DCP GP in the name and to the credit of DCP GP and shall disburse the same and only in such manner as the Board of Directors or the Chief Executive Officer may require. He shall render to the Board of Directors and the Chief Executive Officer, whenever any of them request it, an account of all his transactions as Chief Financial Officer and of the financial condition of the Company, and shall perform such further duties as the Board of Directors or the Chief Executive Officer may require. The Chief Financial Officer shall have the same power as the Chief Executive Officer to execute documents on behalf of the Company.

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(j) *Treasurer and Assistant Treasurers.* The Treasurer shall have such duties as may be specified by the Chief Financial Officer in the performance of his duties. The Assistant Treasurers shall exercise the power of the Treasurer during that Officer's absence or inability or refusal to act. Each of the Assistant Treasurers shall possess the same power as the Treasurer to sign all certificates, contracts, obligations and other instruments of the Company. If no Treasurer or Assistant Treasurer is appointed and serving or in the absence of the appointed Treasurer and Assistant Treasurer, any Vice President, or such other Officer as the Board of Directors shall select, shall have the powers and duties conferred upon the Treasurer.

(k) *General Counsel.* The General Counsel, subject to the discretion of the Board of Directors, shall be responsible for the management and direction of the day-to-day legal affairs of the Company. The General Counsel shall perform such other duties and may exercise such other powers as may from time to time be assigned to him by the Board of Directors or the President.

(l) *Powers of Attorney.* The Company may grant powers of attorney or other authority as appropriate to establish and evidence the authority of the Officers and other persons.

(m) *Delegation of Authority.* Unless otherwise provided by resolution of the Board of Directors, no Officer shall have the power or authority to delegate to any person such Officer's rights and powers as an Officer to manage the business and affairs of the Company.

(n) *Tenure.* The Board of Directors shall appoint Officers of the Company to serve from the date hereof until the death, resignation or removal by the Board of Directors with or without cause of such Officer.

**6.04 Duties of Officers and Directors.** Except as otherwise specifically provided in this Agreement or in the MLP Partnership Agreement, the duties and obligations owed to the Company and to the Board of Directors by the Officers of the Company and by members of the Board of Directors of the Company shall be the same as the respective duties and obligations owed to a corporation organized under the Delaware General Corporation Law by its officers and directors, respectively.

**6.05 Compensation.** The members of the Board of Directors who are neither Officers nor employees of the Company shall be entitled to compensation as directors and committee members as approved by the Board and shall be reimbursed for out-of-pocket expenses incurred in connection with attending meetings of the Board of Directors or committees thereof.

**6.06 Indemnification.**

(a) To the fullest extent permitted by Law but subject to the limitations expressly provided in this Agreement, each Indemnitee shall be indemnified and held harmless by the Company from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including reasonable legal fees and expenses), judgments, fines, penalties, interest, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any such Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of such person's status as an Indemnitee; *provided, however* that the Indemnitee shall not be

indemnified and held harmless if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Section 6.06, the Indemnitee acted in bad faith or engaged in fraud, willful misconduct, or in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was unlawful; *provided, further*, no indemnification pursuant to this Section 6.06 shall be available to the Members or their Affiliates (other than the MLP and any Group Member) with respect to its or their obligations incurred pursuant to the Underwriting Agreement, the Omnibus Agreement or the Contribution Agreement. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere*, or its equivalent, shall not create a presumption that the Indemnitee acted in a manner contrary to that specified above. Any indemnification pursuant to this Section 6.06 shall be made only out of the assets of the Company, it being agreed that the Members shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Company to enable it to effectuate such indemnification.

(b) To the fullest extent permitted by law, expenses (including reasonable legal fees and expenses) incurred by an Indemnitee who is indemnified pursuant to Section 6.06(a) in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined that the Indemnitee is not entitled to be indemnified as authorized in this Section 6.06.

(c) The indemnification provided by this Section 6.06 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, as a matter of law or otherwise, both as to actions in the Indemnitee's capacity as an Indemnitee and as to actions in any other capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

(d) The Company may purchase and maintain insurance, on behalf of the members of the Board of Directors, the Officers and such other persons as the Board of Directors shall determine, against any liability that may be asserted against or expense that may be incurred by such person in connection with the Company's activities, regardless of whether the Company would have the power to indemnify such person against such liability under the provisions of this Agreement.

(e) For purposes of this Section 6.06, the Company shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by the Indemnitee of such Indemnitee's duties to the Company also imposes duties on, or otherwise involves services by, the Indemnitee to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute "fines" within the meaning of Section 6.06(a); and action taken or omitted by the Indemnitee with respect to an employee benefit plan in the performance of such Indemnitee's duties for a purpose reasonably believed by such Indemnitee to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is in, or not opposed to, the best interests of the Company.

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(f) An Indemnitee shall not be denied indemnification in whole or in part under this Section 6.06 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(g) The provisions of this Section 6.06 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

(h) No amendment, modification or repeal of this Section 6.06 or any provision hereof shall in any manner terminate, reduce or impair either the right of any past, present or future Indemnitee to be indemnified by the Company or the obligation of the Company to indemnify any such Indemnitee under and in accordance with the provisions of this Section 6.06 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted, provided such Person became an Indemnitee hereunder prior to such amendment, modification or repeal.

(i) THE PROVISIONS OF THE INDEMNIFICATION PROVIDED IN THIS SECTION 6.06 ARE INTENDED BY THE PARTIES TO APPLY EVEN IF SUCH PROVISIONS HAVE THE EFFECT OF EXCULPATING THE INDEMNITEE FROM LEGAL RESPONSIBILITY FOR THE CONSEQUENCES OF SUCH PERSON'S NEGLIGENCE, FAULT OR OTHER CONDUCT.

#### ***6.07 Liability of Indemnitees.***

(a) Notwithstanding anything to the contrary set forth in this Agreement, no Indemnitee shall be liable for monetary damages to the Company, the Members or any other Person for losses sustained or liabilities incurred as a result of any act or omission of an Indemnitee unless there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter in question, the Indemnitee acted in bad faith or engaged in fraud, willful misconduct or, in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was criminal.

(b) Subject to its obligations and duties as set forth in this Article 6, the Board of Directors and any committee thereof may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through the Company's Officers or agents, and neither the Board of Directors nor any committee thereof shall be responsible for any misconduct or negligence on the part of any such Officer or agent appointed by the Board of Directors or any committee thereof in good faith.

(c) To the extent that, at law or in equity, an Indemnitee has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or to the Partners, the General Partner and any other Indemnitee acting in connection with the Partnership's business or affairs shall not be liable to the Partnership or to any Partner for any acts or omissions taken in good faith reliance on the provisions of this Agreement.

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(d) Any amendment, modification or repeal of this Section 6.07 or any provision hereof shall be prospective only and shall not in any way affect the limitations on liability under this Section 6.07 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may be asserted.

#### **6.08 Outside Activities.**

(a) Except as specifically restricted by the provisions of the DCP GP Agreement or the MLP Partnership Agreement, each Indemnitee, other than officers or employees of the Company, shall have the right to engage in businesses of every type and description and other activities for profit and to engage in and possess an interest in other business ventures of any and every type or description, whether in businesses engaged in or anticipated to be engaged in by the Company or its Subsidiaries, independently or with others, including business interests and activities in direct competition with the business and activities of the Company or its Subsidiaries, and none of the same shall constitute a breach of this Agreement or any duty expressed or implied by Law to the Company or its Subsidiaries or any Member. Neither the Company or its Subsidiaries, any Member nor any other Person shall have any rights by virtue of this Agreement, the DCP GP Agreement or the MLP Partnership Agreement or the partnership relationship established hereby or thereby in any business ventures of any Indemnitee.

(b) Notwithstanding anything to the contrary in this Agreement, (i) the engaging in competitive activities by any Indemnitees, other than officers or employees of the Company, in accordance with the provisions of this Section 6.08 is hereby approved by the Company and all Members, (ii) it shall be deemed not to be a breach of any fiduciary duty or any other obligation of any type whatsoever of any Indemnitee, other than officers or employees of the Company, for such Indemnitees to engage in such business interests and activities in preference to or to the exclusion of the Company and (iii) the Indemnitees, other than Officers or employees of the Company, shall have no obligation hereunder or as a result of any duty expressed or implied by Law to present business opportunities to the Company, DCP GP or the MLP.

(c) Each Member and each of its Affiliates may acquire additional Membership Interests and, except as otherwise provided in this Agreement, shall be entitled to exercise, at their option, all rights relating to such Membership Interests.

#### **6.09 Resolution of Conflicts of Interest; Standard of Conduct and Modification of Duties.**

(a) Unless otherwise expressly provided in this Agreement, whenever a potential conflict of interest exists or arises between the Members or any of their Affiliates (other than the MLP or any Group Member), on the one hand, and the MLP or any Group Member, on the other hand, any resolution or course of action by the Board of Directors in respect of such conflict of interest shall be permitted and deemed approved by all Members, and shall not constitute a breach of this Agreement or of any agreement contemplated herein or therein, or of

Amended and Restated Limited Liability Company Agreement (3)

any duty stated or implied by law or equity, if the resolution or course of action in respect of such conflict of interest is (i) approved by Special Approval, (ii) approved by the vote of a majority of the Units excluding Units owned by the Members and their Affiliates, (iii) on terms no less favorable to the MLP or Group Member, as the case may be, than those generally being provided to or available from unrelated third parties or (iv) fair and reasonable to the MLP or Group Member, as the case may be, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the MLP or Group Member, as the case may be). The Board of Directors shall be authorized but not required in connection with its resolution of such conflict of interest to seek Special Approval of such resolution, and the Board of Directors may also adopt a resolution or course of action that has not received Special Approval. If Special Approval is not sought and the Board of Directors determines that the resolution or course of action taken with respect to a conflict of interest satisfies either of the standards set forth in clauses (iii) or (iv) above, then it shall be presumed that, in making its decision, the Board of Directors acted in good faith, and in any proceeding brought by any Member or by or on behalf of such Member or the MLP or Group Member, as the case may be, challenging such approval, the Person bringing or prosecuting such proceeding shall have the burden of overcoming such presumption.

(b) Whenever the Company makes a determination or takes or declines to take any other action, or any of its Affiliates causes it to do so, in its capacity as the general partner of the General Partner of the MLP as opposed to in its individual capacity, whether under this Agreement, or any other agreement contemplated hereby or otherwise, then unless another express standard is provided for in this Agreement, the Company, or such Affiliates causing it to do so, shall make such determination or take or decline to take such other action in good faith and shall not be subject to any other or different standards imposed by this Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation or at equity. In order for a determination or other action to be in "good faith" for purposes of any action taken or delivered to be taken by the Company in its capacity as the general partner of the General Partner of the MLP, the Person or Persons making such determination or taking or declining to take such other action must believe that the determination or other action is in the best interests of the MLP.

(c) Whenever the Company makes a determination or takes or declines to take any other action, or any of its Affiliates causes it to do so, in its individual capacity as opposed to in its capacity as a general partner of the General Partner of the MLP, whether under this Agreement or any other agreement contemplated hereby or otherwise, then the Company, or such Affiliates causing it to do so, are entitled to make such determination or to take or decline to take such other action free of any fiduciary duty or obligation whatsoever to the MLP or any partner thereof, and the Company, or such Affiliates causing it to do so, shall not be required to act in good faith or pursuant to any other standard imposed by this Agreement, any other agreement contemplated hereby or under the Delaware Act or any other law, rule or regulation. By way of illustration and not of limitation, whenever the phrase, "at the option of the Company," or some variation of that phrase, is used in this Agreement, it indicates that the Company is acting in its individual capacity. For the avoidance of doubt, whenever the Company votes or transfers its MLP Interests, or refrains from voting or transferring its MLP Interests, it shall be acting in its individual capacity.

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(d) Notwithstanding anything to the contrary in this Agreement, the Company and its Affiliates shall have no duty or obligation, express or implied, to (i) sell or otherwise dispose of any asset of the MLP or any Group Member or (ii) permit the MLP or any Group Member to use any facilities or assets of the Company and its Affiliates, except as may be provided in contracts entered into from time to time specifically dealing with such use. Any determination by the Company or any of its Affiliates to enter into such contracts shall be at its option.

(e) Whenever a particular transaction, arrangement or resolution of a conflict of interest is required under this Agreement to be "fair and reasonable" to any Person, the fair and reasonable nature of such transaction, arrangement or resolution shall be considered in the context of all similar or related transactions.

## **ARTICLE 7 TAX MATTERS**

### **7.01 Tax Returns and Tax Characterization.**

(a) The Board of Directors shall cause to be prepared and timely filed (on behalf of the Company) all federal, state and local tax returns required to be filed by the Company, including making all elections on such tax returns. The Company shall bear the costs of the preparation and filing of its returns.

(b) The Company and the Member acknowledge that for federal income tax purposes, the Company will be disregarded as an entity separate from the Member pursuant to Treasury Regulation §301.7701-3 as long as all of the Membership Interests in the Company are owned by DEFS.

## **ARTICLE 8 BOOKS, RECORDS, REPORTS, AND BANK ACCOUNTS**

### **8.01 Maintenance of Books.**

(a) The Board of Directors shall keep or cause to be kept at the principal office of the Company or at such other location approved by the Board of Directors complete and accurate books and records of the Company, supporting documentation of the transactions with respect to the conduct of the Company's business and minutes of the proceedings of the Board of Directors and any other books and records that are required to be maintained by applicable Law.

(b) The books of account of the Company shall be maintained on the basis of a fiscal year that is the calendar year and on an accrual basis in accordance with United States generally accepted accounting principles, consistently applied.

**8.02 Reports.** The Board of Directors shall cause to be prepared and delivered to each Member such reports, forecasts, studies, budgets and other information as the Members may reasonably request from time to time.

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**8.03 Bank Accounts.** Funds of the Company shall be deposited in such banks or other depositories as shall be designated from time to time by the Board of Directors. All withdrawals from any such depository shall be made only as authorized by the Board of Directors and shall be made only by check, wire transfer, debit memorandum or other written instruction.

## **ARTICLE 9** **DISSOLUTION, WINDING-UP AND TERMINATION**

### **9.01 Dissolution.**

(a) Subject to compliance with Section 6.01(c), the Company shall dissolve and its affairs shall be wound up on the first to occur of the following events (each a “**Dissolution Event**”):

- (i) the unanimous consent of the Board of Directors;
- (ii) the entry of a decree of judicial dissolution of the Company under Section 18-802 of the Delaware Act; and
- (iii) at any time there are no Members of the Company, unless the Company is continued in accordance with the Delaware Act or this Agreement.

(b) No other event shall cause a dissolution of the Company.

(c) Upon the occurrence of any event that causes there to be no Members of the Company, to the fullest extent permitted by law, the personal representative of the last remaining Member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such Member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute Member of the Company, effective as of the occurrence of the event that terminated the continued membership of such Member in the Company.

(d) Notwithstanding any other provision of this Agreement, the Bankruptcy of a Member shall not cause such Member to cease to be a member of the Company, and, upon the occurrence of such an event, the Company shall continue without dissolution.

### **9.02 Winding-Up and Termination.**

(a) On the occurrence of a Dissolution Event, the Board of Directors shall select one or more Persons to act as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Delaware Act. The costs of winding up shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Board of Directors. The steps to be accomplished by the liquidator are as follows:

(i) as promptly as possible after dissolution and again after final winding up, the liquidator shall cause a proper accounting to be made by a recognized firm of

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certified public accountants of the Company's assets, liabilities, and operations through the last calendar day of the month in which the dissolution occurs or the final winding up is completed, as applicable;

(ii) the liquidator shall discharge from Company funds all of the debts, liabilities and obligations of the Company or otherwise make adequate provision for payment and discharge thereof (including the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and

(iii) all remaining assets of the Company shall be distributed to the Members as follows:

(A) the liquidator may sell any or all Company property, including to Members; and

(B) Company property (including cash) shall be distributed to the Members.

(b) The distribution of cash or property to a Member in accordance with the provisions of this Section 9.02 constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its share of all the Company's property and constitutes a compromise to which all Members have consented within the meaning of Section 18-502(b) of the Delaware Act. No Member shall be required to make any Capital Contribution to the Company to enable the Company to make the distributions described in this Section 9.02.

(c) On completion of such final distribution, the liquidator shall file a certificate of cancellation with the Secretary of State of the State of Delaware and take such other actions as may be necessary to terminate the existence of the Company.

## **ARTICLE 10 MERGER, CONSOLIDATION OR CONVERSION**

**10.01 Authority.** Subject to compliance with Section 6.01(c), the Company may merge or consolidate with one or more corporations, limited liability companies, statutory trusts or associations, real estate investment trusts, common law trusts or unincorporated businesses, including a partnership (whether general or limited (including a limited liability partnership)) or convert into any such entity, whether such entity is formed under the laws of the State of Delaware or any other state of the United States of America, pursuant to a written agreement of merger or consolidation ("Merger Agreement") or a written plan of conversion ("Plan of Conversion"), as the case may be, in accordance with this Article 10. The surviving entity to any such merger, consolidation or conversion is referred to herein as the "Surviving Business Entity."

**10.02 Procedure for Merger, Consolidation or Conversion.**

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(a) The merger, consolidation or conversion of the Company pursuant to this Article 10 requires the prior approval of a majority of the Board of Directors and compliance with Section 10.03.

(b) If the Board of Directors shall determine to consent to a merger or consolidation, the Board of Directors shall approve the Merger Agreement, which shall set forth:

- (i) the names and jurisdictions of formation or organization of each of the business entities proposing to merge or consolidate;
- (ii) the name and jurisdiction of formation or organization of the Surviving Business Entity that is to survive the proposed merger or consolidation;
- (iii) the terms and conditions of the proposed merger or consolidation;
- (iv) the manner and basis of exchanging or converting the equity securities of each constituent business entity for, or into, cash, property or interests, rights, securities or obligations of the Surviving Business Entity; and (A) if any general or limited partner interests, securities or rights of any constituent business entity are not to be exchanged or converted solely for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity, the cash, property or interests, rights, securities or obligations of any general or limited partnership, corporation, trust, limited liability company, unincorporated business or other entity (other than the Surviving Business Entity) which the holders of such general or limited partner interests, securities or rights are to receive in exchange for, or upon conversion of their interests, securities or rights, and (B) in the case of securities represented by certificates, upon the surrender of such certificates, which cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity or any general or limited partnership, corporation, trust, limited liability company, unincorporated business or other entity (other than the Surviving Business Entity), or evidences thereof, are to be delivered;
- (v) a statement of any changes in the constituent documents or the adoption of new constituent documents (the articles or certificate of incorporation, articles of trust, declaration of trust, certificate or agreement of limited partnership, operating agreement or other similar charter or governing document) of the Surviving Business Entity to be effected by such merger or consolidation;
- (vi) the effective time of the merger, which may be the date of the filing of the certificate of merger pursuant to Section 10.04 or a later date specified in or determinable in accordance with the Merger Agreement (provided, that if the effective time of the merger is to be later than the date of the filing of such certificate of merger, the effective time shall be fixed at a date or time certain at or prior to the time of the filing of such certificate of merger and stated therein); and
- (vii) such other provisions with respect to the proposed merger or consolidation as are deemed necessary or appropriate by the Board of Directors.

Amended and Restated Limited Liability Company Agreement (3)

(c) If the Board of Directors shall determine to consent to the conversion, the Board of Directors shall approve and adopt a Plan of Conversion containing such terms and conditions that the Board of Directors determines to be necessary or appropriate.

**10.03 Approval by Members of Merger or Consolidation.**

(a) The Board of Directors, upon its approval of the Merger Agreement or Plan of Conversion, as the case may be, shall direct that the Merger Agreement or the Plan of Conversion, as applicable, be submitted to a vote of the Members, whether at a meeting or by written consent. A copy or a summary of the Merger Agreement or the Plan of Conversion, as applicable, shall be included in or enclosed with the notice of a special meeting or the written consent.

(b) The Merger Agreement or the Plan of Conversion, as applicable, shall be approved upon receiving the affirmative vote or consent of the holders of a majority of the Members.

(c) After such approval by vote or consent of the Limited Partners, and at any time prior to the filing of the certificate of merger, consolidation or conversion pursuant to Section 10.04, the merger, consolidation or conversion may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement or the Plan of Conversion, as the case may be.

**10.04 Certificate of Merger, Consolidation or Conversion.**

(a) Upon the required approval, if any, by the Board of Directors and the Members of a Merger Agreement or a Plan of Conversion, as the case may be, a certificate of merger, consolidation or conversion, as applicable, shall be executed and filed with the Secretary of State of the State of Delaware in conformity with the requirements of the Delaware Act.

(b) At the effective time of the certificate of merger or consolidation:

(i) all of the rights, privileges and powers of each of the business entities that has merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those business entities and all other things and causes of action belonging to each of those business entities shall be vested in the Surviving Business Entity and after the merger or consolidation shall be the property of the Surviving Business Entity to the extent they were property of each constituent business entity;

(ii) the title to any real property vested by deed or otherwise in any of those constituent business entities shall not revert and is not in any way impaired because of the merger or consolidation;

(iii) all rights of creditors and all liens on or security interest in property of any of those constituent business entities shall be preserved unimpaired; and

(iv) all debts, liabilities and duties of those constituent business entities shall attach to the Surviving Business Entity, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

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(c) At the effective time of the certificate of conversion:

(i) the Company shall continue to exist, without interruption, but in the organizational form of the converted entity rather than in its prior organizational form;

(ii) all rights, title, and interests to all real estate and other property owned by the Company shall continue to be owned by the converted entity in its new organizational form without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances thereon;

(iii) all liabilities and obligations of the Company shall continue to be liabilities and obligations of the converted entity in its new organizational form without impairment or diminution by reason of the conversion;

(iv) all rights of creditors or other parties with respect to or against the prior interest holders or other owners of the Company in their capacities as such in existence as of the effective time of the conversion will continue in existence as to those liabilities and obligations and may be pursued by such creditors and obligees as if the conversion did not occur;

(v) a proceeding pending by or against the Company or by or against any of the Members in their capacities as such may be continued by or against the converted entity in its new organizational form and by or against the prior members without any need for substitution of parties; and

(vi) the Company securities that are to be converted into partnership interests, shares, evidences of ownership, or other securities in the converted entity as provided in the Plan of Conversion or certificate of conversion shall be so converted, and the Members shall be entitled only to the rights provided in the Plan of Conversion or certificate of conversion.

(d) A merger, consolidation or conversion effected pursuant to this Article 10 shall not (i) be deemed to result in a transfer or assignment of assets or liabilities from one entity to another having occurred or (ii) require the Company (if it is not the Surviving Business Entity) to wind up its affairs, pay its liabilities or distribute its assets as required under Article 9 of this Agreement or under the applicable provisions of the Delaware Act.

## ARTICLE 11 GENERAL PROVISIONS

**11.01 Notices.** Except as expressly set forth to the contrary in this Agreement, all notices, requests or consents provided for or permitted to be given under this Agreement must be in writing and must be delivered to the recipient in person, by courier or mail or by facsimile or other electronic transmission and a notice, request or consent given under this Agreement is effective on receipt by the Person to receive it; *provided, however,* that a facsimile or other electronic transmission that is transmitted after the normal business hours of the recipient shall be deemed effective on the next Business Day. All notices, requests and consents to be sent to a Member must be sent to or made at the addresses given for that Member as that Member may specify by notice to the other Members. Any notice, request or consent to the Company must be

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given to all of the Members. Whenever any notice is required to be given by applicable Law, the Organizational Certificate or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Whenever any notice is required to be given by Law, the Organizational Certificate or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**11.02 Entire Agreement; Supersedure.** This Agreement constitutes the entire agreement of the Members and their respective Affiliates relating to the subject matter hereof and supersedes all prior contracts or agreements with respect to such subject matter, whether oral or written.

**11.03 Effect of Waiver or Consent.** Except as provided in this Agreement, a waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Except as provided in this Agreement, failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

**11.04 Amendment or Restatement.** This Agreement may be amended or restated only by a written instrument executed by all Members; *provided, however,* that notwithstanding anything to the contrary contained in this Agreement, each Member agrees that the Board of Directors, without the approval of any Member, may amend any provision of the Organizational Certificate and this Agreement, and may authorize any Officer to execute, swear to, acknowledge, deliver, file and record any such amendment and whatever documents may be required in connection therewith, to reflect any change that does not require consent or approval (or for which such consent or approval has been obtained) under this Agreement or does not materially adversely affect the rights of the Members.

**11.05 Binding Effect.** This Agreement is binding on and shall inure to the benefit of the Members and their respective heirs, legal representatives, successors and assigns.

**11.06 Governing Law; Severability.** THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Agreement and (a) any provision of the Organizational Certificate, or (b) any mandatory, non-waivable provision of the Delaware Act, such provision of the Organizational Certificate or the Delaware Act shall control. If any provision of the Delaware Act provides that it may be varied or superseded in the limited liability company agreement (or otherwise by agreement of the members or managers of a limited liability company), such provision shall be deemed superseded and waived in its entirety if this Agreement contains a provision addressing

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the same issue or subject matter. If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, (a) the remainder of this Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by Law, and (b) the Members or Directors (as the case may be) shall negotiate in good faith to replace that provision with a new provision that is valid and enforceable and that puts the Members in substantially the same economic, business and legal position as they would have been in if the original provision had been valid and enforceable.

**11.07 Further Assurances.** In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

**11.08 Offset.** Whenever the Company is to pay any sum to any Member, any amounts that a Member owes the Company may be deducted from that sum before payment.

**11.09 Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

Amended and Restated Limited Liability Company Agreement (3)

IN WITNESS WHEREOF, DEFS has executed this Agreement as the sole member as of the date first set forth above.

MEMBER:

**DUKE ENERGY FIELD SERVICES, LLC**

By: /s/ Brent L. Backes

Name: Brent L. Backes

Title: Vice President, General Counsel and Secretary

*Signature Page — Amended and Restated Limited Liability Agreement of DCP Midstream GP, LLC*

Amended and Restated Limited Liability Company Agreement (3)

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## Attachment I

### **Defined Terms**

**Affiliate** – with respect to any Person, each Person Controlling, Controlled by or under common Control with such first Person; provided that, for the evidence of doubt, the term “Affiliate,” includes any Person that, directly or indirectly, is the beneficial owner of at least 25% of the equity interest in DEFS or has the right to appoint at least 25% of the members of the board of directors of DEFS.

**Agreement** – this Amended and Restated Limited Liability Company Agreement of DCP Midstream GP, LLC, as the same may be amended, modified, supplemented or restated from time to time.

**Audit Committee** – Section 6.02(e)(iii).

**Available Cash** – as of any Distribution Date, (a) all cash and cash equivalents of the Company on hand on such date, less (b) the amount of any cash reserves determined to be appropriate by the Board of Directors.

**Bankruptcy or Bankrupt** – with respect to any Person, that (a) such Person (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is insolvent, or has entered against such Person an order for relief in any bankruptcy or insolvency proceeding; (iv) files a petition or answer seeking for such Person any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any Law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Person in a proceeding of the type described in subclauses (i) through (iv) of this clause (a); or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of such Person or of all or any substantial part of such Person’s properties; or (b) 120 Days have passed after the commencement of any proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any Law, if the proceeding has not been dismissed, or 90 Days have passed after the appointment without such Person’s consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of such Person’s properties, if the appointment is not vacated or stayed, or 90 Days have passed after the date of expiration of any such stay, if the appointment has not been vacated.

**Board of Directors or Board** – Section 6.01.

**Business Day** – any Day other than a Saturday, a Sunday or a Day on which national banking associations in the State of Texas are authorized or required by Law to close.

**Capital Contribution** – Section 4.01(b).

**Class B Units** has the meaning ascribed to such term in the MLP Partnership Agreement.

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**Commitment** – means (a) options, warrants, convertible securities, exchangeable securities, subscription rights, conversion rights, exchange rights, or other contracts, agreements or commitments that could require a Person to issue any of its Equity Interests or to sell any Equity Interests it owns in another Person; (b) any other securities convertible into, exchangeable or exercisable for, or representing the right to subscribe for any Equity Interest of a Person or owned by a Person; (c) statutory or contractual pre-emptive rights or pre-emptive rights granted under a Person's organizational or constitutive documents; and (d) stock appreciation rights, phantom stock, profit participation, or other similar rights with respect to a Person.

**Company** – initial paragraph of this Agreement.

**Compensation Committee** – Section 6.02(e)(iv)

**Conflicts Committee** – Section 6.02(e)(ii).

**Contribution Agreement** has the meaning ascribed to such term in the MLP Partnership Agreement.

**Control** – shall mean the possession, directly or indirectly, of the power and authority to direct or cause the direction of the management and policies of a Person, whether through ownership or control of Voting Stock, by contract or otherwise.

**Day** – a calendar Day; *provided, however*, that, if any period of Days referred to in this Agreement shall end on a Day that is not a Business Day, then the expiration of such period shall be automatically extended until the end of the first succeeding Business Day.

**DCP GP** – DCP Midstream GP, LP, as the general partner of the MLP.

**DCP GP Agreement** – the First Amended and Restated Agreement of Limited Partnership of DCP Midstream GP, LP, dated effective as of December 7, 2005, as amended, supplemented, amended and restated, or otherwise modified from time to time.

**DEFS** – initial paragraph of this Agreement.

**DEFS LLC Agreement** – means the Second Amended and Restated Limited Liability Company Agreement of DEFS.

**Delaware Act** – the Delaware Limited Liability Company Act and any successor statute, as amended from time to time.

**Delaware General Corporation Law** – Title 8 of the Delaware Code, as amended from time to time.

**Director** – each member of the Board of Directors elected as provided in Section 6.02.

**Dissolution Event** – Section 9.01(a).

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**Distribution Date** – Section 5.01.

**Effective Date** – initial paragraph of this Agreement.

**Equity Interest** – (a) with respect to a corporation, any and all shares of capital stock and any Commitments with respect thereto, (b) with respect to a partnership, limited liability company, trust or similar Person, any and all units, interests or other partnership, limited liability company, trust or similar interests, and any Commitments with respect thereto, and (c) any other direct or indirect equity ownership or participation in a Person (including any incentive distribution rights).

**Existing Agreement** – Recitals.

**Extraordinary Approval** – written approval of DEFS.

**Group Member** – means any of the MLP and its Subsidiaries.

**Incentive Distribution Rights** – has the meaning ascribed thereto in the MLP Partnership Agreement.

**Indemnitee** – each of (a) the Company and any Person who is or was an Affiliate of the Company, (b) any Person who is or was a member, director, officer, fiduciary or trustee of the Company, (c) any Person who is or was an officer, member, partner, director, employee, agent or trustee of the General Partner or any Affiliate of the General Partner, or any Affiliate of any such Person, and (d) any Person who is or was serving at the request of the General Partner or any such Affiliate as a director, officer, employee, member, partner, agent, fiduciary or trustee of another Person; provided, that a Person shall not be an Indemnitee by reason of providing, on a fee-for-services basis, trustee, fiduciary or custodial services and (e) any Person the Company designates as an “Indemnitee” for purposes of this Agreement.

**Independent Director** – Section 6.02(a).

**Law** – any applicable constitutional provision, statute, act, code, law, regulation, rule, ordinance, order, decree, ruling, proclamation, resolution, judgment, decision, declaration or interpretative or advisory opinion or letter of a governmental authority.

**Liability** – any liability or obligation, whether known or unknown, asserted or unasserted, absolute or contingent, matured or unmatured, conditional or unconditional, latent or patent, accrued or unaccrued, liquidated or unliquidated, or due or to become due.

**Member** – any Person executing this Agreement as of the date of this Agreement as a member or hereafter admitted to the Company as a member as provided in this Agreement, but such term does not include any Person who has ceased to be a member in the Company.

**Membership Interest** – with respect to any Member, (a) that Member’s status as a Member; (b) that Member’s share of the income, gain, loss, deduction and credits of, and the right to receive distributions from, the Company; (c) all other rights, benefits and privileges enjoyed by that Member (under the Delaware Act, this Agreement or otherwise) in its capacity as

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a Member; and (d) all obligations, duties and liabilities imposed on that Member (under the Delaware Act, this Agreement or otherwise) in its capacity as a Member, including any obligations to make Capital Contributions.

***Merger Agreement*** – Section 10.01.

***MLP*** – DCP Midstream Partners, LP, a Delaware limited partnership.

***MLP Interests*** – the limited partner interests of the MLP, regardless of class or category of limited partner interests.

***MLP Partnership Agreement*** – means the Amended and Restated Agreement of Limited Partnership of the MLP, dated as of December 7, 2005, as amended or restated from time to time.

***National Securities Exchange*** has the meaning ascribed to such term in the MLP Partnership Agreement.

***Officers*** – any person elected as an officer of the Company as provided in Section 6.03(a), but such term does not include any person who has ceased to be an officer of the Company.

***Omnibus Agreement*** – Omnibus Agreement, dated December 7, 2005, among the Company, DCP GP and DEFS, as amended or restated from time to time.

***Organizational Certificate*** – Section 2.01.

***Partnership Securities*** has the meaning ascribed to such term in the MLP Partnership Agreement.

***Person*** – a natural person, partnership (whether general or limited), limited liability company, governmental entity, trust, estate, association, corporation, venture, custodian, nominee or any other individual or entity in its own or any representative capacity.

***Plan of Conversion*** – Section 10.01.

***Quarter*** – unless the context requires otherwise, a calendar quarter.

***SEC*** – the United States Securities and Exchange Commission.

***Special Approval*** –approval by a majority of the members of the Conflicts Committee.

***Subsidiary*** – with respect to any relevant Person, (a) a corporation of which more than 50% of the Voting Stock is owned, directly or indirectly, at the date of determination, by such relevant Person, by one or more Subsidiaries of such relevant Person or a combination thereof, (b) a partnership (whether general or limited) in which such relevant Person, one or more Subsidiaries of such relevant Person or a combination thereof is, at the date of

Amended and Restated Limited Liability Company Agreement (3)

determination, a general or limited partner of such partnership, but only if more than 50% of the partnership interests of such partnership (considering all of the partnership interests of the partnership as a single class) is owned, directly or indirectly, at the date of determination, by such relevant Person, by one or more Subsidiaries of such relevant Person, or a combination thereof, or (c) any other Person (other than a corporation or a partnership) in which such relevant Person, one or more Subsidiaries of such relevant Person, or a combination thereof, directly or indirectly, at the date of determination, has (i) at least a majority ownership interest or (ii) the power to elect or direct the election of a majority of the directors or other governing body of such other Person.

***Surviving Business Entity*** – Section 10.01.

***Underwriting Agreement*** has the meaning ascribed to such term in the MLP Partnership Agreement.

***Units*** has the meaning ascribed to such term in the MLP Partnership Agreement.

***Voting Stock*** – with respect to any Person, Equity Interests in such Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of, or otherwise appoint, directors (or Persons with management authority performing similar functions) of such Person.

***Withdraw, Withdrawing and Withdrawal*** – the withdrawal, resignation or retirement of a Member from the Company as a Member.

Amended and Restated Limited Liability Company Agreement (3)

CREDIT AGREEMENT

Dated as of December 7, 2005

among

DCP MIDSTREAM OPERATING, LP  
as the Borrower,

DCP MIDSTREAM PARTNERS, LP  
and its subsidiaries  
as Guarantors,

THE LENDERS PARTY HERETO

and

WACHOVIA BANK, NATIONAL ASSOCIATION,  
as Administrative Agent

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SUNTRUST BANK,

as Syndication Agent,

and

WACHOVIA CAPITAL MARKETS, LLC

and

SUNTRUST CAPITAL MARKETS, INC.,

as Co-Lead Arrangers and Joint Book Runners

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Form of Joinder Agreement  
Form of Assignment Agreement

## CREDIT AGREEMENT

**THIS CREDIT AGREEMENT** (this “Credit Agreement”), dated as of December 7, 2005, is entered into among **DCP MIDSTREAM OPERATING, LP**, a Delaware limited partnership (the “Borrower”), **DCP MIDSTREAM PARTNERS, LP**, a Delaware limited partnership (the “Parent”) and all Subsidiaries of the Parent (collectively, the “Guarantors”), the Lenders (as defined herein) and **WACHOVIA BANK, NATIONAL ASSOCIATION**, as administrative agent for the Lenders (in such capacity, the “Agent”).

### RECITALS

**WHEREAS**, the Borrower has requested that the Lenders make available to it a credit facility in the aggregate initial amount of \$400 million for the purposes set forth herein; and

**WHEREAS**, the Lenders have agreed to provide the requested credit facility to the Borrower on the terms, and subject to the conditions, set forth herein.

**NOW, THEREFORE, IN CONSIDERATION** of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### SECTION 1.

#### DEFINITIONS AND ACCOUNTING TERMS

##### **1.1 Definitions.**

As used herein, the following terms shall have the meanings herein specified unless the context otherwise requires. Defined terms herein shall include in the singular number the plural and in the plural the singular:

“Account Control Agreement” means that certain Account Control Agreement, dated as of the Effective Date, among the Borrower (as Debtor), Intermediary (as Intermediary) and the Agent (as Bank).

“Account Designation Letter” means the Notice of Account Designation Letter dated the Closing Date from the Borrower to the Agent in substantially the form attached hereto as Exhibit 5.1.

“Acquisition” by any Person, means the acquisition by such Person, in a single transaction or in a series of related transactions, of property or assets (other than capital expenditures or acquisitions of inventory or supplies in the ordinary course of business) of, or of a business unit or division of, another Person or at least a majority of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent of another Person, in each case whether or not involving a merger or consolidation with such other Person and whether for cash, property, services, assumption of Indebtedness, securities or otherwise.

“Adjusted Base Rate” means the Base Rate plus the Applicable Margin for Base Rate Loans.

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“Adjusted Eurodollar Rate” means the Eurodollar Rate plus the Applicable Margin for Eurodollar Loans.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with such Person. A Person shall be deemed to control a corporation if such Person possesses, directly or indirectly, the power to direct or cause direction of the management and policies of such corporation, whether through the ownership of voting securities, by contract or otherwise.

“Agency Services Address” means Wachovia Bank, National Association, as Administrative Agent, 201 South College Street, CP-8, Charlotte, North Carolina 28288-0680, or such other address as may be identified by written notice from the Agent to the Borrower and the Lenders.

“Agent” means Wachovia Bank, National Association and any successors and assigns in such capacity.

“Applicable Margin” means, at any time:

(a) with respect to Term Loans, (i) for Eurodollar Loans, .15% and (ii) for Base Rate Loans, 0%.

(b) with respect to Loans (other than Term Loans) and applicable fees, if the Parent does not have a Debt Rating from S&P or Moody’s, the rate per annum set forth below based on the Consolidated Leverage Ratio:

Pricing Level	Consolidated Leverage Ratio	Applicable Margin for Facility Fees	Applicable Margin for Margin for Eurodollar Loans	Applicable Base Rate Loans
I	£ 2.75 to 1.0	.150%	.500%	0%
II	> 2.75 to 1.0 but £ 3.25 to 1.0	.175%	.575%	0%
III	>3.25 to 1.0 but £ 3.75 to 1.0	.225%	.650%	0%
IV	>3.75 to 1.0 but £ 4.25 to 1.0	.275%	.850%	0%
V	>4.25 to 1.0	.350%	1.025%	.025%

Any increase or decrease in the Applicable Margin resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the date that the officer’s certificate is required to be delivered pursuant to Section 7.1(d) evidencing calculation of the Consolidated Leverage Ratio; provided, however, that if such certificate is not delivered when due in accordance with such Section 7.1(d), then Pricing Level V shall apply as of the first Business Day after the date on which such certificate was required to have been delivered and shall continue to apply until the first Business Day immediately following the date a certificate is delivered in accordance with Section 7.1(d), whereupon the Applicable Margin shall be adjusted based upon the calculation of the Consolidated Leverage Ratio contained in such certificate. The Applicable Margin in effect from the Effective Date through the first Business Day immediately

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following the date a certificate is required to be delivered pursuant to Section 7.1(d) for the fiscal quarter ending March 31, 2006 shall be determined based upon Pricing Tier II.

(c) with respect to Loans (other than Term Loans) and applicable fees, if the Parent has at least one Debt Rating from S&P or Moody's, the rate per annum set forth in the table below opposite the Debt Rating of the Parent:

Parent's Debt Rating*	Applicable Margin for Facility Fees	Applicable Margin for Eurodollar Loans	Applicable Margin for Base Rate Loans
<sup>3</sup> BBB+/Baa1	.080%	.270%	0%
BBB/Baa2	.100%	.350%	0%
BBB-/Baa3	.125%	.500%	0%
BB+/Ba1	.150%	.600%	0%
BB/Ba2	.250%	.900%	0%

\* If any Designated Rating Agency is other than S&P and Moody's, then the equivalent Debt Rating given by such rating agency shall be used. If there is only one Designated Rating Agency it must be either S&P or Moody's.

The Applicable Margin shall, in each case, be determined and adjusted on the date on which there is a change in the Parent's Debt Rating and shall be effective until a future change in the Parent's Debt Rating.

Notwithstanding the above, if at any time (i) there is a split in Debt Ratings between the two Designated Rating Agencies, the higher Debt Rating (i.e. the lower pricing) will apply unless there is more than one level between the Debt Ratings and then one level below the higher rating will apply and (ii) the Parent is not rated by S&P or Moody's, the pricing grid above based on the Consolidated Leverage Ratio shall apply.

(d) Any adjustment in the Applicable Margin shall be applicable to all existing Eurodollar Loans and Letters of Credit as well as any new Eurodollar Loans made or Letters of Credit issued.

(e) The Borrower shall promptly deliver to the Agent, at the address set forth on Schedule 11.1 and at the Agency Services Address, information regarding any change in the Consolidated Leverage Ratio or the Parent's Debt Rating that would change the existing Pricing Level pursuant to clause (a) or (b) above.

"Approved Officer" means the president, a vice president, the treasurer or the assistant treasurer of the applicable Credit Party or such other authorized representative of such Credit Party as may be designated by any one of the foregoing.

"Assignment Agreement" means an Assignment Agreement executed and delivered pursuant to Section 11.3(b).

"Available Cash" has the meaning ascribed to such term in the First Amended and Restated Agreement of Limited Partnership of the Parent as in effect on the Effective Date, with such amendments thereto as agreed to by the Required Lenders.

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**“Bankruptcy Code”** means the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

**“Base Rate”** means, for any day, the rate per annum equal to the greater of (a) the Federal Funds Rate in effect on such day plus  $\frac{1}{2}$  of 1% or (b) the Prime Rate in effect on such day. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall be effective on the effective date of such change in the Prime Rate or the Federal Funds Rate, respectively.

**“Base Rate Loan”** means a Loan (other than a Swingline Loan) which bears interest based on the Base Rate.

**“Borrower”** means DCP Midstream Operating, LP a Delaware limited partnership.

**“Business Day”** means any day other than a Saturday, a Sunday, a legal holiday or a day on which banking institutions are authorized or required by law or other governmental action to close in New York, New York or Charlotte, North Carolina; **provided**, that in the case of Eurodollar Loans, such day is also a day on which dealings between banks are carried on in U.S. dollar deposits in the London interbank market.

**“Businesses”** has the meaning set forth in Section 6.12.

**“Capital Lease”** means, as applied to any Person, any lease of any Property (whether real, personal or mixed) by that Person as lessee that, in accordance with GAAP, is required to be accounted for as a capital lease on the balance sheet of that Person.

**“Capital Stock”** means (a) in the case of a corporation, all classes of capital stock of such corporation, (b) in the case of a partnership, partnership interests (whether general or limited), (c) in the case of a limited liability company, membership interests and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

**“Cash Collateral”** means all assets and property maintained in the Cash Collateral Account.

**“Cash Collateral Account”** means the account of the Borrower numbered 291151300 with the Intermediary.

**“Cash Equivalents”** means, as at any date, (a) securities guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition, (b) Dollar denominated time deposits and certificates of deposit of (i) any Lender, (ii) any domestic commercial bank of recognized standing having capital and surplus in excess of \$500,000,000 or (iii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody’s is at least P-1 or the equivalent thereof (any such bank being an **“Approved Bank”**), in each case with maturities of not more than 270 days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable rate notes issued by, or guaranteed by, any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody’s and maturing within six months of the date of acquisition, (d) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders)

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or recognized securities dealer having capital and surplus in excess of \$500,000,000 for direct obligations issued by or fully guaranteed by the United States in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations and (e) Investments, classified in accordance with GAAP as current assets, in money market investment programs registered under the Investment Company Act of 1940 which are administered by reputable financial institutions having capital of at least \$500,000,000 or having portfolio assets of at least \$5,000,000,000 and the portfolios of which are limited to Investments of the character described in the foregoing subdivisions (a) through (d).

**“Change of Control”** means as of any date, the failure of (a) the Parent to own, directly or indirectly, 100% of the equity of the Borrower or (b) Duke Energy Field Services, LLC to own, directly or indirectly, a majority of the voting equity of the general partner of the Parent.

**“Closing Date”** means the date hereof.

**“Code”** means the Internal Revenue Code of 1986, as amended from time to time.

**“Co-lead Arrangers”** means Wachovia Capital Markets, LLC and SunTrust Capital Markets, Inc.

**“Collateral Documents”** means (i) the Account Control Agreement and (ii) each other document executed and delivered in connection with the granting, attachment and perfection of the Agent’s security interest in the Cash Collateral, including, without limitation, Uniform Commercial Code financing statements.

**“Commitment”** means, as to each Lender, the commitment of such Lender with respect to the Revolving Committed Amount and the commitment of such Lender with respect to the Term Loan Committed Amount and **“Commitments”** means, collectively, all such commitments of the Lenders.

**“Commitment Percentage”** means, for each Lender, the percentage identified as its Commitment Percentage opposite such Lender’s name on Schedule 1.1, as such percentage may be modified by assignment or by an increase in Commitments in accordance with Section 2.10.

**“Conflicts Committee”** has the meaning ascribed thereto in the First Amended and Restated Agreement of Limited Partnership of the Parent, as amended or restated from time to time.

**“Consolidated EBITDA”** means, for any period, an amount equal to Consolidated Net Income for such period plus, to the extent deducted in determining Consolidated Net Income for such period, the aggregate amount of (a) taxes based on or measured by income, (b) Consolidated Interest Expense and (c) depreciation and amortization expense.

**“Consolidated Indebtedness”** means, without duplication, all Indebtedness of the Parent and its Subsidiaries on a consolidated basis minus the principal amount of Cash Collateral then held by the Agent.

**“Consolidated Interest Coverage Ratio”** means, as of the last day of each fiscal quarter of the Parent, the ratio of (a) Consolidated EBITDA for the period of four consecutive fiscal quarters

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ending on such day to (b) Consolidated Interest Expense for the period of four consecutive fiscal quarters ending on such day.

“Consolidated Interest Expense” means interest expense as would appear on a consolidated statement of income of the Parent and its Subsidiaries prepared in accordance with GAAP; provided, that Consolidated Interest Expense associated with the Term Loans for any period shall be reduced by any interest income earned on the Cash Collateral during such period.

“Consolidated Leverage Ratio” means, as of the last day of each fiscal quarter of the Parent, the ratio of (a) Consolidated Indebtedness on such day to (b) Consolidated EBITDA for the period of four consecutive fiscal quarters ending on such day.

“Consolidated Net Income” means, for any period, the net income of the Parent and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; provided, that Consolidated Net Income shall not include (i) extraordinary gains or extraordinary losses, (ii) net gains and losses in respect of disposition of assets other than in the ordinary course of business, (iii) gains or losses attributable to write-ups or write-downs of assets other than hedging and derivative activities in the ordinary course of business and (iv) the cumulative effect of a change in accounting principles, all as reported in the Parent’s consolidated statement(s) of income for the relevant period(s) prepared in accordance with GAAP.

“Consolidated Net Tangible Assets” means, at any date of determination, the total amount of consolidated assets of the Parent and its Subsidiaries after deducting therefrom the value (net of any applicable reserves) of all goodwill, trade names, trademarks, patents and other like intangible assets, all as set forth, or on a pro forma basis would be set forth, on the consolidated balance sheet of the Parent and its Subsidiaries for the most recently completed fiscal quarter, in accordance with GAAP.

“Credit Documents” means this Credit Agreement, the Notes, the LOC Documents, the Collateral Documents, any Notice of Borrowing, any Notice of Continuation/Conversion and all other related agreements and documents issued or delivered hereunder or thereunder or pursuant hereto or thereto.

“Credit Exposure” means, as applied to each Lender (a) at any time prior to the termination of the Commitments, the sum of (i) Commitment Percentage of such Lender multiplied by the Revolving Committed Amount plus (ii) the Commitment Percentage of such Lender multiplied by the principal balance of the outstanding Term Loans and (b) at any time after the termination of the Commitments, the sum of (i) the principal balance of the outstanding Loans of such Lender plus (ii) such Lender’s Participation Interest in the face amount of outstanding Letters of Credit and Swingline Loans.

“Credit Facility Swap Contract” means any interest rate Swap Contract entered into by a Credit Party with a Lender or an Affiliate of a Lender with respect to the Obligations.

“Credit Parties” means the Borrower and the Guarantors.

“Debt Rating” means, the long-term senior unsecured, non-credit enhanced debt rating of the Parent by the Designated Rating Agencies.

“Default” means any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

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**“Defaulting Lender”** means, at any time, any Lender that, at such time (a) has failed to make a Loan required pursuant to the term of this Credit Agreement, (b) has failed to pay to the Agent or any Lender an amount owed by such Lender pursuant to the terms of this Credit Agreement or (c) has been deemed insolvent by a court of competent jurisdiction or has become subject to a bankruptcy or insolvency proceeding or to a receiver, trustee or similar official.

**“Designated Rating Agencies”** shall mean any two of S&P, Moody’s or any other rating agency selected by the Parent which is recognized by the Securities and Exchange Commission and identified by the Parent from time to time in a Rating Agency Designation and **“Designated Rating Agency”** shall mean any one of the foregoing. Until such time as the Parent shall have delivered a Rating Agency Designation to the Agent, the Designated Rating Agencies shall be S&P and Moody’s.

**“Disposition”** or **“Dispose”** means the sale, transfer, license, lease or other disposition (including any Sale and Leaseback Transaction) of any Property by a Credit Party (including the Equity Interests of any Subsidiary), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

**“Dollars”** and **“\$”** means dollars in lawful currency of the United States of America.

**“Effective Date”** means the date on which the conditions set forth in Section 5.1 shall have been fulfilled (or waived in the sole discretion of the Lenders).

**“Eligible Assignee”** means (a) any Lender approved by the Borrower, the Agent and the Issuing Lenders, (b) any existing Lender or an Affiliate of an existing Lender and (c) any other Person approved by the Borrower, the Issuing Lenders and the Agent (in each case, which approval by the Borrower, the Issuing Lenders and the Agent shall not be unreasonably withheld or delayed); **provided**, that (A) the Borrower’s consent is not required during the existence and continuation of an Event of Default and (B) neither the Borrower nor an Affiliate of the Borrower shall qualify as an Eligible Assignee.

**“Environmental Laws”** means any legal requirement of any Governmental Authority pertaining to (a) the protection of health, safety, and the indoor or outdoor environment, (b) the conservation, management, or use of natural resources and wildlife, (c) the protection or use of surface water and groundwater or (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation or handling of, or exposure to, any hazardous or toxic substance or material or (e) pollution (including any release to land surface water and groundwater) and includes, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 USC 9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendment of 1984, 42 USC 6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 USC 1251 et seq., Clean Air Act, as amended, 42 USC 7401 et seq., Toxic Substances Control Act of 1976, 15 USC 2601 et seq., Hazardous Materials Transportation Act, 49 USC App. 1801 et seq., Occupational Safety and Health Act of 1970, as amended, 29 USC 651 et seq., Oil Pollution Act of 1990, 33 USC 2701 et seq., Emergency Planning and Community Right-to-Know Act of 1986, 42 USC 11001 et seq., National Environmental Policy Act of 1969, 42 USC 4321 et seq., Safe Drinking Water Act of 1974, as

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amended, 42 USC 300(f) et seq., any analogous implementing or successor law, and any amendment, rule, regulation, order, or directive issued thereunder.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto, as interpreted by the rules and regulations thereunder, all as the same may be in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

“ERISA Affiliate” means an entity, whether or not incorporated, which is under common control with the Parent or any of its Subsidiaries within the meaning of Section 4001(a)(14) of ERISA, or is a member of a group which includes the Parent or any of its Subsidiaries and which is treated as a single employer under Sections 414(b), (c), (m), or (o) of the Code.

“Eurodollar Loan” means a Loan bearing interest at the Adjusted Eurodollar Rate.

“Eurodollar Rate” means with respect to any Eurodollar Loan, for the Interest Period applicable thereto, a rate per annum equal to the London Interbank Offered Rate.

“Eurodollar Reserve Percentage” means, for any day, that percentage (expressed as a decimal) which is in effect from time to time under Regulation D as the maximum reserve requirement (including, without limitation, any basic, supplemental, emergency, special, or marginal reserves) applicable with respect to Eurocurrency liabilities, as that term is defined in Regulation D (or against any other category of liabilities that includes deposits by reference to which the interest rate of Eurodollar Loans is determined).

“Event of Default” has the meaning specified in Section 9.1.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as amended, modified, succeeded or replaced from time to time.

“Extension of Credit” means, as to any Lender, the making of a Loan by such Lender (or a participation therein by a Lender) or the issuance of, or participation in, a Letter of Credit by such Lender.

“Facility Fee” has the meaning specified in Section 3.4(a).

“Fee Letter” means that certain letter agreement, dated as of November 1, 2005, among the Agent, Wachovia Capital Markets, LLC and the Borrower, as amended, modified, supplemented or replaced from time to time.

“Federal Funds Rate” means for any day the rate per annum (rounded upward to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to the Agent on such day on such transactions as determined by the Agent.

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“GAAP” means generally accepted accounting principles in the United States applied on a consistent basis and subject to Section 1.3.

“Government Acts” has the meaning specified in Section 2.2(k).

“Governmental Authority” means any Federal, state, local or foreign court, monetary authority or governmental agency, authority, instrumentality or regulatory body.

“Guarantor” means (a) the Parent, (b) each Subsidiary of the Parent in existence as of the Effective Date (other than the Borrower) and (c) any Person which becomes a “Guarantor” pursuant to Section 7.11 hereof, in each case, together with their successors and permitted assigns.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services purchased, (c) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to the property acquired, (d) all obligations of such Person under lease obligations which shall have been, or should be, in accordance with GAAP, recorded as capital leases in respect of which such Person is liable as lessee, (e) the face amount of all letter of credit indebtedness available to be drawn (other than letter of credit obligations relating to indebtedness included in Indebtedness pursuant to another clause of this definition) and, without duplication, the unreimbursed amount of all drafts drawn thereunder, (f) obligations of others secured by a Lien on property or assets of such Person, whether or not assumed (but in any event not exceeding the fair market value of the property or asset), (g) all guarantees of Indebtedness referred to in clauses (a) through (f) above, (h) all amounts payable by such Person in connection with mandatory redemptions or repurchases of preferred stock, (i) any obligations of such Person (in the nature of principal or interest) in respect of acceptances or similar obligations issued or created for the account of such Person, (j) all Off Balance Sheet Indebtedness of such Person and (k) obligations (contingent or otherwise) existing or arising under any interest rate Swap Contract, to the extent such obligations are classified as “indebtedness” for purposes of GAAP.

“Initial Asset Acquisition” has the meaning set forth in Section 5.1(d).

“Interest Payment Date” means (a) as to Base Rate Loans and Swingline Loans, the first day of each calendar quarter of the Borrower and the Maturity Date and (b) as to Eurodollar Loans, the last day of each applicable Interest Period and the Maturity Date and, in addition, where the applicable Interest Period for a Eurodollar Loan is greater than three months, then also on the last day of each three-month period during such Interest Period. If an Interest Payment Date falls on a date which is not a Business Day, such Interest Payment Date shall be deemed to be the next succeeding Business Day, except that in the case of Eurodollar Loans where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day.

“Interest Period” means, with respect to Eurodollar Loans, a period of one, two, three or six months’ duration, as the Borrower may elect, commencing, in each case, on the date of the borrowing (including continuations and conversions of Eurodollar Loans); provided, however, (a) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day (except that where the next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day), (b) no Interest Period shall extend beyond the Maturity Date and (c) where an Interest Period begins on a day for which there is no numerically corresponding day in the calendar month

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in which the Interest Period is to end, such Interest Period shall end on the last Business Day of such calendar month.

**“Intermediary”** means Wachovia Bank, National Association, as Intermediary under the Account Control Agreement.

**“Investment”** means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of the Capital Stock of another Person, (b) an Acquisition or (c) a loan, advance or capital contribution to, guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor guarantees Indebtedness of such other Person.

**“Investment Grade Rating”** means BBB- or better from S&P or Baa3 or better from Moody’s.

**“Investment Grade Rating Date”** means the date on which the Parent first achieves an Investment Grade Rating.

**“Issuing Lender”** means Wachovia Bank, National Association or any other Lender as requested by the Borrower and agreed to by such Lender.

**“Issuing Lender Fees”** has the meaning set forth in Section 3.4(b)(ii).

**“Letter of Credit”** means a Letter of Credit issued for the account of the Borrower or one of its Subsidiaries by an Issuing Lender pursuant to Section 2.2, as such Letter of Credit may be amended, modified, extended, renewed or replaced.

**“Letter of Credit Fees”** shall have the meaning assigned to such term in Section 3.4(b)(i).

**“Lender”** means any Person identified as a Lender on the signature pages hereto and any Eligible Assignee which may become a Lender by way of assignment in accordance with the terms hereof, together with their successors or permitted assigns.

**“Lien”** means any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise), preference, priority or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the Uniform Commercial Code as adopted and in effect in the relevant jurisdiction or other similar recording or notice statute, and any lease in the nature thereof).

**“Loans”** means the Revolving Loans, the Swingline Loans and the Term Loans.

**“LOC Documents”** means, with respect to any Letter of Credit, such Letter of Credit, any amendments thereto, any documents delivered in connection therewith, any application therefor, and any agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (a) the rights and obligations of the parties concerned or at risk or (b) any collateral security for such obligations.

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**"LOC Obligations"** means, at any time, the sum of (a) the maximum amount which is then available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referred to in such Letters of Credit plus (b) the aggregate amount of all drawings under Letters of Credit honored by an Issuing Lender but not theretofore reimbursed.

**"London Interbank Offered Rate"** means, with respect to any Eurodollar Loan for the Interest Period applicable thereto, the rate of interest per annum appearing on Telerate Page 3750 (or any successor page) as the London interbank offered rate for deposits in Dollars at approximately 11:00 A.M. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period; provided, however, if more than one rate is specified on Telerate Page 3750, the applicable rate shall be the arithmetic mean of all such rates. If, for any reason, such rate is not available, the term "London Interbank Offered Rate" shall mean, with respect to any Eurodollar Loan for the Interest Period applicable thereto, the rate of interest per annum appearing on such other service as may be nominated by the British Bankers' Association as the London interbank offered rate for deposits in Dollars at approximately 11:00 A.M. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period; provided, however, if more than one rate is specified, the applicable rate shall be the arithmetic mean of all such rates.

**"Mandatory Borrowing"** has the meaning specified in Section 2.2(e).

**"Material Adverse Effect"** means a material adverse effect on the business, financial positions or results of operations of the Parent and its Subsidiaries taken as a whole.

**"Maturity Date"** means December 7, 2010.

**"Moody's"** means Moody's Investors Service, Inc., or any successor or assignee of the business of such company in the business of rating securities.

**"Multiemployer Plan"** means a Plan covered by Title IV of ERISA which is a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA.

**"Multiple Employer Plan"** means a Plan covered by Title IV of ERISA, other than a Multiemployer Plan, which the Parent or any ERISA Affiliate and at least one employer other than the Parent or any ERISA Affiliate are contributing sponsors.

**"Non-Excluded Taxes"** has the meaning specified in Section 4.4(a).

**"Notes"** means the Revolving Notes, the Term Loan Notes and the Swingline Loan Notes, if any.

**"Notice of Borrowing"** means a request by the Borrower for a Loan in the form of Exhibit 2.3.

**"Notice of Continuation/Conversion"** means a request by the Borrower for the continuation or conversion of a Loan in the form of Exhibit 2.5.

**"Obligations"** means, without duplication, all of the obligations of the Credit Parties to the Lenders and the Agent, whenever arising, under this Credit Agreement, the Notes, the LOC

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Documents, the Collateral Documents, Credit Facility Swap Contracts, Treasury Management Agreements or any of the other Credit Documents.

**Off Balance Sheet Indebtedness** means any obligation of a Person that would be considered indebtedness for tax purposes but is not set forth on the balance sheet of such Person, including, but not limited to, (a) any synthetic lease, tax retention operating lease, off balance sheet loan or similar off-balance sheet financing product of such Person, (b) the aggregate amount of uncollected accounts receivables of such Person subject at such time to a sale of receivables (or similar transaction) and (c) obligations of any partnership or joint venture that is recourse to such Person.

**Original Revolving Commitment** means, as to each applicable Lender (including any Lender that purchases any portion of the Original Revolving Commitment by assignment), the Dollar commitment of such Lender with respect to the Original Revolving Committed Amount, as such Original Revolving Commitment may be modified by assignment.

**Original Revolving Commitment Percentage** means, for each applicable Lender, the percentage identified as its Original Revolving Commitment Percentage opposite such Lender's name on Schedule 1.1 (or on the applicable Assignment Agreement), as such percentage may be modified by assignment.

**Original Revolving Committed Amount** means, the dollar amount of the Revolving Committed Amount as of the Effective Date (without giving effect to any increase in the Revolving Committed Amount pursuant to Section 2.10).

**Parent** means DCP Midstream Partners, LP, a Delaware limited partnership.

**Participation Interest** means the Extension of Credit by a Lender by way of a purchase or deemed purchase of a participation in Letters of Credit or LOC Obligations as provided in Section 2.2 or in any Swingline Loans as provided in Section 2.8 or in any Loans as provided in Section 3.8.

**Payment Date** has the meaning set forth in Section 2.2(d).

**PBGC** means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA and any successor thereto.

**Permitted Acquisitions** means (a) the Initial Asset Acquisition and (b) any other Acquisition by any Credit Party, so long as (i) no Default or Event of Default is in existence or would be created thereby, (ii) the Person or assets being acquired by such Credit Party are in the midstream energy business, (iii) such Acquisition has been approved by the Board of Directors or similar governing body of the target of such Acquisition (if required or applicable) and (iv) immediately after giving effect to such acquisition, the Borrower is in compliance with Section 7.10 on a pro forma basis.

**Permitted Cash Collateral** means each of the following instruments and securities to the extent having maturities (for purposes of this definition, "maturity" shall mean (i) weighted average life for asset-backed securities, mortgage-backed securities, commercial mortgage-backed securities and collateralized mortgage obligations, and the next reset date for auction rate securities and (ii) with respect to mutual funds, the weighted average maturity of the investments it owns) not greater than six months from the date of acquisition thereof:

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- (a) cash,
- (b) investments in money market mutual funds that are registered with the SEC and subject to Rule 2a-7 of the Investment Company Act of 1940 and have a net asset value of 1.0,
- (c) U.S. Treasury Notes,
- (d) direct obligations of the United States (including obligations of agencies and sponsored enterprises of the United States) and other obligations whose principal and interest is fully guaranteed by the United States,
- (e) money market instruments (including, but not limited to, commercial paper, banker's acceptances, time deposits and certificates of deposits) rated at least A-1 by S&P or P-1 by Moody's at the time of purchase,
- (f) obligations of corporations or other business entities (including, bonds, notes and other structured obligations) rated at least AAA by S&P, Aaa by Moody's or AAA by Fitch at the time of purchase,
- (g) asset-backed securities rated at least AAA by S&P, Aaa by Moody's or AAA by Fitch at the time of purchase,
- (h) mortgage-backed securities, commercial mortgage-backed securities and collateralized mortgage obligations rated at least AAA by S&P, Aaa by Moody's or AAA by Fitch at the time of purchase,
- (i) repurchase obligations that are collateralized no less than 102% of market value (including accrued interest) by obligations of the U.S. government or one of its sponsored enterprises or agencies,
- (j) municipal obligations issued by any state of the United States of America or any municipality or other political subdivision of any such state rated at least AAA by S&P, Aaa by Moody's or AAA by Fitch at the time of purchase,
- (k) 7, 28 or 35 day auction rate securities rated at least AAA by S&P, Aaa by Moody's or AAA by Fitch at the time of purchase and
- (l) shares in bond mutual funds that are registered under the Investment Company Act of 1940 that invest solely in the items set forth in (a)-(k) above and maintain an average credit quality of at least AAA by S&P, Aaa by Moody's or AAA by Fitch at the time of purchase,

in each case above which is held in the Cash Collateral Account and is subject to the Account Control Agreement and in which the Agent has, on behalf of the Lenders, a first priority perfected security interest.

Notwithstanding the above, at the time of purchase, no one issuer will be more than 5% of the value of the Permitted Cash Collateral. This rule excludes direct obligations of the United States, United States sponsored agencies and enterprises, money market funds,

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repurchase agreements and securities that have an effective maturity no longer than the next business day. United States sponsored agencies and enterprises are limited to 40% of the value of the Permitted Cash Collateral at time of purchase, per issuer. For purposes of calculating the amount of Permitted Cash Collateral on deposit in the Cash Collateral Account hereunder, Permitted Cash Collateral of an issuer that exceeds the 5% or 40% thresholds set forth above shall be excluded from such calculation.

**“Person”** means any individual, partnership, joint venture, firm, corporation, association, trust, limited liability company or other enterprise (whether or not incorporated), or any government or political subdivision or any agency, department or instrumentality thereof.

**“Plan”** means any employee pension benefit plan (as defined in Section 3(2) of ERISA) which is covered by ERISA and with respect to which the Parent or any ERISA Affiliate is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an “employer” within the meaning of Section 3(5) of ERISA.

**“Prime Rate”** means the per annum rate of interest established from time to time by the Agent at its principal office in Charlotte, North Carolina as its Prime Rate. Any change in the interest rate resulting from a change in the Prime Rate shall become effective as of 12:01 a.m. of the Business Day on which each change in the Prime Rate is announced by the Agent. The Prime Rate is a reference rate used by the Agent in determining interest rates on certain loans and is not intended to be the lowest rate of interest charged on any extension of credit to any debtor.

**“Properties”** has the meaning set forth in Section 6.12.

**“Qualified Acquisition”** means a Permitted Acquisition, the aggregate purchase price for which, when combined with the aggregate purchase price for all other Permitted Acquisitions in any rolling 12-month period, is greater than or equal to \$25,000,000.

**“Rating Agency Designation”** means a written notice in the form of Exhibit 1.1 provided from time to time by the Parent to the Administrative Agent setting forth the two current Designated Rating Agencies.

**“Register”** has the meaning set forth in Section 11.3(c).

**“Regulation A, D, T, U, or X”** means Regulation A, D, T, U or X, respectively, of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

**“Reportable Event”** means a “reportable event” as defined in Section 4043 of ERISA with respect to which the notice requirements to the PBGC have not been waived.

**“Required Collateral Amount”** has the meaning specified in Section 7.13(b).

**“Required Lenders”** means Lenders whose aggregate Credit Exposure constitutes more than 50% of the aggregate Credit Exposure of all Lenders at such time; provided, however, that if any Lender shall be a Defaulting Lender at such time then there shall be excluded from the determination of Required Lenders the aggregate principal amount of Credit Exposure of such Lender at such time.

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“Responsible Officer” means the president, chief financial officer, treasurer or assistant treasurer of the applicable Credit Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to Capital Stock of a Credit Party or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Capital Stock or on account of any return of capital to a Credit Party’s stockholders, partners or members (or the equivalent Person thereof), or any setting apart of funds or assets for any of the foregoing.

“Revolving Committed Amount” means TWO HUNDRED FIFTY MILLION Dollars (\$250,000,000) as such amount may be reduced in accordance with Section 2.7 or increased pursuant to Section 2.10.

“Revolving Loans” has the meaning set forth in Section 2.1(a).

“Revolving Notes” means the promissory notes of the Borrower in favor of each of the Lenders evidencing the Loans provided pursuant to Section 2.1(a), individually or collectively, as appropriate, as such notes may be amended or modified from time to time and substantially in the form of Exhibit 2.9(a).

“S&P” means Standard & Poor’s Ratings Group, a division of McGraw Hill, Inc., or any successor or assignee of the business of such division in the business of rating securities.

“Sale and Leaseback Transaction” means, with respect to a Credit Party or any Subsidiary, any arrangement, directly or indirectly, with any Person whereby a Credit Party or such Subsidiary shall sell or transfer any assets used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such assets or other assets that it intends to use for substantially the same purpose or purposes as the assets being sold or transferred.

“Sanctioned Country” means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/sanctions/index.html> or as otherwise published from time to time.

“Sanctioned Person” means (a) a Person named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/index.html>, or as otherwise published from time to time or (b) (i) an agency of the government of a Sanctioned Country, (ii) an organization controlled by a Sanctioned Country or (iii) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC.

“Single Employer Plan” means any Plan which is covered by Title IV of ERISA, but which is not a Multiemployer Plan or a Multiple Employer Plan.

“Solvent” means, with respect to any Person as of a particular date, that on such date (a) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature in their ordinary course, (c) such Person is not engaged in a business or a

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transaction, and is not about to engage in a business or a transaction, for which such Person's assets would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (d) the fair value of the assets of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person and (e) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed as the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

**“Subsidiary”** means, as to any Person, (a) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time, any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries, (b) any partnership, association, joint venture, limited liability company or other entity in which such person directly or indirectly through Subsidiaries has more than 50% equity interest at any time and (c) any other Person that is controlled by such Person and who for GAAP purposes is required to be consolidated into such Person's consolidated financial statements. Unless otherwise provided, as used herein, “**Subsidiary**” shall refer to a Subsidiary of the Parent.

**“Swap Contract”** means, to the extent entered into on a fair market value basis at the time of entry, (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

**“Swingline Committed Amount”** means TWENTY MILLION DOLLARS (\$20,000,000).

**“Swingline Lender”** means Wachovia Bank, National Association or any successor Swingline Lender.

**“Swingline Loan”** or **“Swingline Loans”** has the meaning set forth in Section 2.8(a).

**“Swingline Note”** means the promissory note of the Borrower in favor of the Swingline Lender evidencing the Swingline Loans provided pursuant to Section 2.8, as such promissory note may be amended or modified, from time to time and substantially in the form of Exhibit 2.9(c).

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**“Termination Event”** means (a) with respect to any Single Employer Plan, the occurrence of a Reportable Event or the substantial cessation of operations (within the meaning of Section 4062(e) of ERISA), (b) the withdrawal of the Parent or any ERISA Affiliate from a Multiple Employer Plan during a plan year in which it was a substantial employer (as such term is defined in Section 4001(a)(2) of ERISA), or the termination of a Multiple Employer Plan, (c) the distribution of a notice of intent to terminate or the actual termination of a Plan pursuant to Section 4041(a)(2) or 4041A of ERISA, (d) the institution of proceedings to terminate or the actual termination of a Plan by the PBGC under Section 4042 of ERISA, (e) any event or condition which might reasonably constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or (f) the complete or partial withdrawal of the Borrower or any ERISA Affiliate from a Multiemployer Plan.

**“Term Loans”** has the meaning specified in Section 2.01(b).

**“Term Loan Committed Amount”** means ONE HUNDRED FIFTY MILLION DOLLARS (\$150,000,000.00).

**“Term Loan Note”** means the promissory notes of the Borrower in favor of each of the Lenders evidencing the Loans provided pursuant to Section 2.1(b), individually or collectively, as appropriate, as such notes may be amended or modified from time to time and substantially in the form of Exhibit 2.9(b).

**“Tier 1 Permitted Cash Collateral”** means Permitted Cash Collateral with maturities of not more than 30 days from the date of acquisition with the exception of auction rate securities which may have a re-set date of 35 days or less.

**“Tier 2 Permitted Cash Collateral”** means Permitted Cash Collateral with maturities more than 30 days from the date of acquisition but not more than 90 days from the date of acquisition.

**“Tier 3 Permitted Cash Collateral”** means Permitted Cash Collateral with maturities more than 90 days from the date of acquisition but not more than 180 days from the date of acquisition.

**“Treasury Management Agreement”** means any agreement governing the provision of treasury or cash management services, including deposit accounts, funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services provided by a Lender or an Affiliate of a Lender.

**“Utilization Fees”** has the meaning set forth in Section 3.4(c).

**“Utilized Revolving Loan Commitment”** means, for any period from the Effective Date to the Maturity Date, the amount equal to the daily average sum for such period of the aggregate principal amount of all Revolving Loans plus Swingline Loans plus LOC Obligations.

**“Voting Stock”** means all classes of the Capital Stock (or other voting interests) of such Person then outstanding and normally entitled to vote in the election of directors or other governing body of such Person.

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## **1.2 Computation of Time Periods.**

For purposes of computation of periods of time hereunder, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.” References in this Credit Agreement to “Articles”, “Sections”, “Schedules” or “Exhibits” shall be to Articles, Sections, Schedules or Exhibits of or to this Credit Agreement unless otherwise specifically provided.

## **1.3 Accounting Terms.**

Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Lenders hereunder shall be prepared, in accordance with GAAP applied on a consistent basis.

## **1.4 Time.**

All references to time herein shall be references to Eastern Standard Time or Eastern Daylight time, as the case may be, unless specified otherwise.

# **SECTION 2.**

## **LOANS**

### **2.1 Revolving and Term Loan Commitments.**

(a) Revolving Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make revolving loans to the Borrower in Dollars, at any time and from time to time, during the period from the Effective Date to the Maturity Date (each a “Revolving Loan” and collectively the “Revolving Loans”); provided, however, that (a) the sum of the aggregate amount of Revolving Loans outstanding plus the aggregate amount of Swingline Loans outstanding plus the aggregate amount of LOC Obligations outstanding shall not exceed the Revolving Committed Amount and (b) with respect to each individual Revolving Lender, such Revolving Lender’s pro rata share of outstanding Revolving Loans plus such Revolving Lender’s pro rata share of outstanding LOC Obligations plus its pro rata share of Swingline Loans shall not exceed such Revolving Lender’s Commitment Percentage of the Revolving Committed Amount. Subject to the terms of this Credit Agreement, the Borrower may borrow, repay and reborrow Revolving Loans. Unless earlier terminated pursuant to other provisions of this Credit Agreement, the Commitments hereunder shall terminate on the Maturity Date.

(b) Term Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make term loans to the Borrower in Dollars, at any time and from time to time during the period from the Effective Date to forty (40) days following the Effective Date (each a “Term Loan” and collectively, the “Term Loans”); provided, however, that (a) the Borrower may not request more than two (2) draws with respect to the Term Loans, one of which must be on the Effective Date, (b) the sum of the aggregate amount of Term Loans outstanding shall not exceed the Term Loan Committed Amount and (c) with respect to each individual Term Loan Lender, such Term Loan Lender’s pro rata share of outstanding Term Loans shall not exceed such Term Loan Lender’s Commitment Percentage of the Term Loan Committed Amount. Any amounts remaining under the Term Loan Committed Amount subsequent to the date forty (40) days after the Effective Date shall no longer be available and the Lenders shall have no further obligation to fund any additional Term Loans. Once repaid, Term Loans may not be reborrowed.

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## **2.2 Letters of Credit.**

(a) **Issuance; Terms.** Subject to the terms and conditions hereof and of the LOC Documents, if any, and any other terms and conditions which an Issuing Lender may reasonably require (so long as such terms and conditions do not impose any financial obligation on or require any Lien (not otherwise contemplated by this Credit Agreement) to be given by the Borrower or conflict with any obligation of, or detract from any action which may be taken by the Borrower or its Subsidiaries under this Credit Agreement), the applicable Issuing Lender shall from time to time, upon request, issue in Dollars, and the Revolving Lenders shall participate in, letters of credit (the “Letters of Credit”) for the account of the Borrower (or, subject to Section 2.2(f), the Parent or any of its Subsidiaries) from the Effective Date until the Maturity Date, in a form reasonably acceptable to such Issuing Lender; provided, however, that (i) the sum of the aggregate amount of LOC Obligations outstanding plus Revolving Loans outstanding plus Swingline Loans outstanding shall not exceed the Revolving Committed Amount and (ii) with respect to each individual Lender, such Lender’s pro rata share of outstanding Revolving Loans plus its pro rata share of outstanding LOC Obligations plus its pro rata share of Swingline Loans shall not exceed such Lender’s Commitment Percentage of the Revolving Committed Amount. The issuance and expiry date of each Letter of Credit shall be a Business Day. No Letter of Credit shall have an expiry date extending beyond the date that is five (5) Business Days before the Maturity Date. Each Letter of Credit shall be either (x) a standby letter of credit issued to support the obligations (including pension or insurance obligations), contingent or otherwise, of the Borrower, the Parent or any of its Subsidiaries or (y) a commercial letter of credit in respect of the purchase of goods or services by the Borrower, the Parent or any of its Subsidiaries in the ordinary course of business. Each Letter of Credit shall comply with the related LOC Documents.

(b) **Notice and Reports.** The request for the issuance of a Letter of Credit shall be submitted in writing to the applicable Issuing Lender at least three Business Days prior to the requested date of issuance. Such request shall specify the date such Letter of Credit is to be issued and describe the terms of such Letter of Credit and shall be accompanied by a completed application in form and substance satisfactory to such Issuing Lender. Each Issuing Lender will notify the Agent when a Letter of Credit is issued and the details with respect thereto and shall provide to the Agent and, upon written request, to the Lenders a detailed report specifying the Letters of Credit which are then issued and outstanding and any activity with respect thereto which may have occurred since the date of any prior report, and including therein, among other things, the account party, the beneficiary, the face amount, and the expiry date as well as any payments or expirations which may have occurred. Each Issuing Lender will further provide to the Agent, promptly upon request, copies of the Letters of Credit.

(c) **Participations.** Each Lender, upon issuance of a Letter of Credit, shall be deemed to have purchased without recourse a risk participation from the applicable Issuing Lender in such Letter of Credit and the obligations arising thereunder and any collateral relating thereto, in each case in an amount equal to its Commitment Percentage of the obligations under such Letter of Credit, and shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and be obligated to pay to the applicable Issuing Lender therefor and discharge when due, its Commitment Percentage of the obligations arising under such Letter of Credit. Without limiting the scope and nature of each Lender’s participation in any Letter of Credit, to the extent that the applicable Issuing Lender has not been reimbursed as required hereunder or under any such Letter of Credit, each such Lender shall pay to the applicable Issuing Lender its Commitment Percentage of such unreimbursed drawing in same day funds on the day of notification by the applicable Issuing Lender of an unreimbursed drawing pursuant to the provisions of subsection (d) hereof. The obligation of each Lender to so reimburse the applicable Issuing Lender shall be absolute and

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unconditional and shall not be affected by the occurrence of a Default, an Event of Default, the Maturity Date or any other occurrence or event. Any such reimbursement shall not relieve or otherwise impair the obligation of the Borrower to reimburse the applicable Issuing Lender under any Letter of Credit, together with interest as hereinafter provided.

(d) Reimbursement. In the event of any request for a drawing or any drawing under any Letter of Credit, the applicable Issuing Lender will promptly notify the Borrower as to the amount to be paid as a result of such drawing and the date such payment is to be made by the applicable Issuing Lender (the “Payment Date”). If the Commitments remain in effect on the Payment Date, the Borrower shall, unless the Borrower otherwise instructs the Agent by not less than one Business Day’s prior notice, be deemed to have requested a Revolving Loan at the Base Rate in the amount of the drawing as provided in subsection (e) hereof, the proceeds of which will be used to satisfy the reimbursement obligations. The Borrower shall reimburse the applicable Issuing Lender on the Payment Date either with the proceeds of a Revolving Loan obtained hereunder or otherwise in same day funds as provided herein or in the LOC Documents. If the Borrower shall fail to reimburse the applicable Issuing Lender as provided hereinabove, the unreimbursed amount of such drawing shall bear interest at a per annum rate equal to the Base Rate plus two percent (2%). The Borrower’s reimbursement obligations hereunder shall be absolute and unconditional under all circumstances irrespective of (but without waiver of) any rights of set-off, counterclaim or defense to payment that the applicable account party or the Borrower may claim or have against the Issuing Lenders, the Agent, the Lenders, the beneficiary of the Letter of Credit drawn upon or any other Person, including without limitation, any defense based on any failure of the applicable account party or the Borrower to receive consideration or the legality, validity, regularity or unenforceability of the Letter of Credit. The applicable Issuing Lender will promptly notify the Lenders of the amount of any unreimbursed drawing and each Lender shall promptly pay to the Agent for the account of the applicable Issuing Lender, in Dollars and in immediately available funds, the amount of such Lender’s Commitment Percentage of such unreimbursed drawing. Such payment shall be made on the day such notice is received by such Lender from the applicable Issuing Lender if such notice is received at or before 2:00 p.m., otherwise such payment shall be made at or before 12:00 Noon on the Business Day next succeeding the day such notice is received. If such Lender does not pay such amount to the applicable Issuing Lender in full upon such request, such Lender shall, on demand, pay to the Agent for the account of the applicable Issuing Lender interest on the unpaid amount during the period from the date the Lender received the notice regarding the unreimbursed drawing until such Lender pays such amount to the applicable Issuing Lender in full at a rate per annum equal to, if paid within two Business Days of the date of drawing, the Federal Funds Rate and thereafter at a rate equal to the Base Rate. Each Lender’s obligation to make such payment to the applicable Issuing Lender, and the right of the applicable Issuing Lender to receive the same, shall be absolute and unconditional, shall not be affected by any circumstance whatsoever and without regard to the termination of this Credit Agreement or the Commitments hereunder, the existence of a Default or Event of Default or the acceleration of the obligations hereunder and shall be made without any offset, abatement, withholding or reduction whatsoever. Simultaneously with the making of each such payment by a Lender to the applicable Issuing Lender, such Lender shall, automatically and without any further action on the part of the applicable Issuing Lender or such Lender, acquire a participation in an amount equal to such payment (excluding the portion of such payment constituting interest owing to the applicable Issuing Lender) in the related unreimbursed drawing portion of the LOC Obligation and in the interest thereon and in the related LOC Documents, and shall have a claim against the Borrower with respect thereto.

(e) Repayment with Revolving Loans. On any day on which the Borrower shall have requested, or been deemed to have requested, a Revolving Loan borrowing to reimburse a drawing under a Letter of Credit, the Agent shall give notice to the Lenders that a Revolving Loan has been requested or deemed requested in connection with a drawing under a Letter of Credit, in which case a Revolving Loan borrowing comprised solely of Base Rate Loans (each such borrowing, a “Mandatory Borrowing”) shall be immediately

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made from all Lenders (without giving effect to any termination of the Commitments pursuant to Section 9.2 or otherwise) pro rata based on each Lender's respective Commitment Percentage and the proceeds thereof shall be paid directly to the applicable Issuing Lender for application to the respective LOC Obligations. Each such Lender hereby irrevocably agrees to make such Revolving Loans immediately upon any such request or deemed request on account of each such Mandatory Borrowing in the amount and in the manner specified in the preceding sentence and on the same such date notwithstanding (i) the amount of Mandatory Borrowing may not comply with the minimum amount for borrowings of Revolving Loans otherwise required hereunder, (ii) whether any conditions specified in Section 5.2 are then satisfied, (iii) whether a Default or Event of Default then exists, (iv) failure of any such request or deemed request for Revolving Loans to be made by the time otherwise required hereunder or (v) any reduction in the Revolving Committed Amount. In the event that any Mandatory Borrowing cannot be made on the date otherwise required above, whether because the Commitments have terminated or for any other reason (including, without limitation, as a result of the commencement of a proceeding under the Bankruptcy Code with respect to the Borrower), then each such Lender hereby agrees that it shall forthwith fund (as of the date the Mandatory Borrowing would otherwise have occurred, but adjusted for any payments received from the Borrower on or after such date and prior to such purchase) its Participation Interest in the outstanding LOC Obligations; provided, that in the event any Lender shall fail to fund its Participation Interest on the day it is required to do so, then the amount of such Lender's unfunded Participation Interest therein shall bear interest payable to the applicable Issuing Lender upon demand, at the rate equal to, if paid within two Business Days of such date, the Federal Funds Rate, and thereafter at a rate equal to the Base Rate.

(f) Designation of Subsidiaries as Account Parties. Notwithstanding anything to the contrary set forth in this Credit Agreement, a Letter of Credit issued hereunder may contain a statement to the effect that such Letter of Credit is issued for the account of the Parent or any of its Subsidiaries; provided, that notwithstanding such statement, the Borrower shall be the actual account party for all purposes of this Credit Agreement for such Letter of Credit and such statement shall not affect the Borrower's reimbursement obligations hereunder with respect to such Letter of Credit.

(g) Modification and Extension. Except for non-substantive amendments to any Letter of Credit for the purpose of correcting errors or ambiguities or to allow for administrative convenience (which amendments each Issuing Bank may make in its discretion with the consent of the Borrower), the amendment, modification, supplement, extension or renewal of any Letter of Credit shall be deemed to be an issuance of such Letter of Credit. If any Letter of Credit contains a provision pursuant to which it is deemed to be automatically renewed unless notice of termination is given by the applicable Issuing Lender, such Issuing Lender shall timely give notice of termination if (i) as of close of business on the seventeenth day prior to the last day upon which such Issuing Lender's notice of termination may be given to the beneficiaries of such Letter of Credit, such Issuing Lender has received a notice of termination from the Borrower or a notice from the Agent that the conditions to issuance of such Letter of Credit have not been satisfied or (ii) the renewed Letter of Credit would have a term not permitted by subsection (a) above.

(h) Uniform Customs and Practices. An Issuing Lender may have the Letters of Credit be subject to The Uniform Customs and Practice for Documentary Credits (the "UCP") or the International Standby Practices 1998 (the "ISP98"), in either case as published as of the date of issue by the International Chamber of Commerce, in which case the UCP or ISP98, as applicable, may be incorporated therein and deemed in all respects to be a part thereof.

(i) Responsibility of Issuing Lenders. It is expressly understood and agreed that the obligations of each Issuing Lender hereunder to the Lenders are only those expressly set forth in this Credit Agreement and that each Issuing Lender shall be entitled to assume that the conditions precedent set forth in Section 5.2 have been satisfied unless it shall have acquired actual knowledge that any such condition precedent has not

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been satisfied; provided, however, that nothing set forth in this Section 2.2 shall be deemed to prejudice the right of any Lender to recover from an Issuing Lender any amounts made available by such Lender to such Issuing Lender pursuant to this Section 2.2 in the event that it is determined by a court of competent jurisdiction that the payment with respect to a Letter of Credit constituted gross negligence or willful misconduct on the part of such Issuing Lender.

(j) Conflict with LOC Documents. In the event of any conflict between this Credit Agreement and any LOC Document, this Credit Agreement shall govern.

(k) Indemnification of Issuing Lenders.

(i) In addition to its other obligations under this Credit Agreement, the Borrower hereby agrees to protect, indemnify, pay and save the Issuing Lenders harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) that the Issuing Lenders may incur or be subject to as a consequence, direct or indirect, of (A) the issuance of any Letter of Credit or (B) the failure of an Issuing Lender to honor a drawing under a Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority (all such acts or omissions, herein called "Government Acts").

(ii) As between the Borrower and the Issuing Lenders, the Borrower shall assume all risks of the acts, omissions or misuse of any Letter of Credit by the beneficiary thereof. The Issuing Lenders shall not be responsible for: (A) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (B) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (C) failure of the beneficiary of a Letter of Credit to comply fully with conditions required in order to draw upon a Letter of Credit; (D) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (E) errors in interpretation of technical terms; (F) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under a Letter of Credit or of the proceeds thereof; and (G) any consequences arising from causes beyond the control of an Issuing Lender, including, without limitation, any Government Acts. None of the above shall affect, impair, or prevent the vesting of an Issuing Lender's rights or powers hereunder.

(iii) In furtherance and extension and not in limitation of the specific provisions hereinabove set forth, any action taken or omitted by an Issuing Lender, under or in connection with any Letter of Credit or the related certificates, if taken or omitted in good faith, shall not put such Issuing Lender under any resulting liability to the Borrower. It is the intention of the parties that this Credit Agreement shall be construed and applied to protect and indemnify the Issuing Lenders against any and all risks involved in the issuance of the Letters of Credit, all of which risks are hereby assumed by the Borrower, including, without limitation, any and all risks of the acts or omissions, whether rightful or wrongful, of any present or future Government Acts. An Issuing Lender shall not, in any way, be liable for any failure by such Issuing Lender or anyone else to pay any drawing under any Letter of Credit as a result of any Government Acts or any other cause beyond the control of such Issuing Lender.

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(iv) Nothing in this subsection (k) is intended to limit the reimbursement obligation of the Borrower contained in this Section 2.2. The obligations of the Borrower under this subsection (k) shall survive the termination of this Credit Agreement. No act or omission of any current or prior beneficiary of a Letter of Credit shall in any way affect or impair the rights of an Issuing Lender to enforce any right, power or benefit under this Credit Agreement.

(v) Notwithstanding anything to the contrary contained in this subsection (k) or any of the Credit Documents, the Borrower shall have no obligation to indemnify an Issuing Lender in respect of any liability incurred by such Issuing Lender arising solely out of the gross negligence or willful misconduct of such Issuing Lender, as determined by a court of competent jurisdiction. Nothing in this Credit Agreement shall relieve an Issuing Lender of any liability to the Borrower in respect of any action taken by such Issuing Lender which action constitutes gross negligence or willful misconduct of such Issuing Lender or a violation of the UCP, the ISP98 or Uniform Commercial Code (as applicable), as determined by a court of competent jurisdiction.

### **2.3 Method of Borrowing for Revolving Loans and Term Loans.**

By no later than 11:00 a.m. (a) on the date of the requested borrowing of Loans (other than Swingline Loans) that will be Base Rate Loans or (b) three Business Days prior to the date of the requested borrowing of Loans that will be Eurodollar Loans, the Borrower shall submit a written Notice of Borrowing in the form of Exhibit 2.3 to the Agent setting forth (i) the amount requested, (ii) whether such Loans shall accrue interest at the Adjusted Base Rate or the Adjusted Eurodollar Rate, (iii) with respect to Loans that will be Eurodollar Loans, the Interest Period applicable thereto and (iv) certification that the Borrower has complied in all respects with Section 5.2.

### **2.4 Funding of Revolving Loans and Term Loans.**

Upon receipt of a Notice of Borrowing, the Agent shall promptly inform the Lenders as to the terms thereof. Each such Lender shall make its Commitment Percentage of the requested Revolving Loans or Term Loans, as applicable, available to the Agent by 2:00 p.m. on the date specified in the Notice of Borrowing by deposit, in Dollars, of immediately available funds at the Agency Services Address. The amount of the requested Loans will then be made available to the Borrower by the Agent by crediting the account of the Borrower on the books of such office of the Agent, to the extent the amount of such Loans are made available to the Agent.

No Lender shall be responsible for the failure or delay by any other Lender in its obligation to make Loans under this Section 2.4; provided, however, that the failure of any Lender to fulfill its obligations hereunder shall not relieve any other Lender of its obligations hereunder. Unless the Agent shall have been notified by any Lender prior to the date of any such Loan that such Lender does not intend to make available to the Agent its portion of the Loans to be made on such date, the Agent may assume that such Lender has made such amount available to the Agent on the date of such Loans, and the Agent in reliance upon such assumption, may (in its sole discretion but without any obligation to do so) make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Agent, the Agent shall be able to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Agent's demand therefor, the Agent will promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount within two Business Days to the Agent. The Agent shall also be entitled to recover from the Lender or the Borrower, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Agent to the Borrower to the date such corresponding amount is recovered by the

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Agent at a per annum rate equal to (a) from the Borrower at the applicable rate for such Loan pursuant to the Notice of Borrowing and (b) from a Lender at the Federal Funds Rate.

#### **2.5 Continuations and Conversions.**

The Borrower shall have the option (subject to the limitations set forth below), on any Business Day, to continue existing Eurodollar Loans for a subsequent Interest Period, to convert Base Rate Loans into Eurodollar Loans or to convert Eurodollar Loans into Base Rate Loans; provided, however, that (a) each such continuation or conversion must be requested by the Borrower pursuant to a written Notice of Continuation/Conversion, in the form of Exhibit 2.5, in compliance with the terms set forth below, (b) if a Eurodollar Loan is continued or converted into a Base Rate Loan on any day other than the last day of the Interest Period applicable thereto, then the Borrower shall be subject to the provisions set forth in Section 4.3, (c) Eurodollar Loans may not be continued nor may Base Rate Loans be converted into Eurodollar Loans during the existence and continuation of a Default or Event of Default and (d) any request to extend a Eurodollar Loan that fails to comply with the terms hereof or any failure to request an extension of a Eurodollar Loan at the end of an Interest Period shall constitute a conversion to a Base Rate Loan on the last day of the applicable Interest Period. Each continuation or conversion must be requested by the Borrower no later than 11:00 a.m. (i) on the date for a requested conversion of a Eurodollar Loan to a Base Rate Loan or (ii) three Business Days prior to the date for a requested continuation of a Eurodollar Loan or conversion of a Base Rate Loan to a Eurodollar Loan, in each case pursuant to a written Notice of Continuation/Conversion submitted to the Agent which shall set forth (A) whether the Borrower wishes to continue or convert such Loans and (B) if the request is to continue a Eurodollar Loan or convert a Base Rate Loan to a Eurodollar Loan, the Interest Period applicable thereto.

#### **2.6 Minimum Amounts.**

Each request for a Revolving Loan or a Term Loan or a conversion or continuation hereunder shall be subject to the following requirements: (a) each Eurodollar Loan shall be in a minimum amount of \$10,000,000 (and in integral multiples of \$1,000,000 in excess thereof), (b) each Base Rate Loan shall be in a minimum amount of the lesser of \$10,000,000 (and in integral multiples of \$1,000,000 in excess thereof) or the remaining amount available to be borrowed and (c) no more than ten Eurodollar Loans shall be outstanding hereunder at any one time; provided, that the second draw of the Term Loans may be made in a minimum amount of \$1,000,000 (and in integral multiples of \$1,000,000 in excess thereof). For the purposes of this Section, all Eurodollar Loans with the same Interest Periods that begin and end on the same date shall be considered as one Eurodollar Loan, but Eurodollar Loans with different Interest Periods, even if they begin on the same date, shall be considered separate Eurodollar Loans.

#### **2.7 Reductions of Revolving Committed Amount.**

Upon at least five (5) Business Days' notice, the Borrower shall have the right to permanently terminate or reduce the aggregate unused amount of the Revolving Committed Amount at any time or from time to time; provided, that (a) each partial reduction shall be in an aggregate amount at least equal to \$10,000,000 and in integral multiples of \$1,000,000 above such amount, (b) no reduction shall be made which would reduce the Revolving Committed Amount to an amount less than the aggregate amount of the then outstanding Revolving Loans plus the aggregate amount of the then outstanding LOC Obligations plus the aggregate amount of then outstanding Swingline Loans. Any reduction in (or termination of) the Revolving Committed Amount shall be permanent and may not be reinstated.

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## **2.8 Swingline Loans.**

(a) **Swingline Commitment.** Subject to the terms and conditions herein, the Swingline Lender, in its individual capacity, agrees to make loans to the Borrower in Dollars, at any time and from time to time, during the period from the Effective Date to the Maturity Date (each a “Swingline Loan” and collectively, the “Swingline Loans”); provided, however, that (a) the sum of the aggregate amount of Swingline Loans outstanding plus Revolving Loans outstanding plus LOC Obligations outstanding shall not exceed the Revolving Committed Amount and (b) the aggregate amount of Swingline Loans outstanding at any one time shall not exceed the Swingline Committed Amount. Subject to the terms and conditions of the Credit Agreement, the Borrower may borrow, repay and reborrow Swingline Loans.

(b) **Notice of Borrowing and Funding.** By no later than 1:00 p.m. on the date of the requested borrowing of Swingline Loans, the Borrower shall submit a written Notice of Borrowing in the form of Exhibit 2.3 to the Agent setting forth (i) the amount requested and (ii) certification that the Borrower has complied in all respects with Section 5.2. Swingline Loan borrowings shall be made in minimum amounts of \$500,000 and in integral amounts of \$100,000 in excess thereof. The amount of the requested Swingline Loans will then be made available to the Borrower by the Swingline Lender by crediting the account of the Borrower on the books of such office of the Agent.

(c) **Repayment of Swingline Loans.** The Swingline Lender may, at any time, in its sole discretion, by written notice to the Borrower, demand repayment of its Swingline Loans by way of a Revolving Loan borrowing, in which case the Borrower shall be deemed to have requested a Revolving Loan borrowing comprised entirely of Base Rate Loans in the amount of such Swingline Loans; provided, however, that, in the following circumstances, any such demand shall also be deemed to have been given one (1) Business Day prior to each of (i) the Maturity Date, (ii) the occurrence of any Event of Default described in Section 9.1(e), (iii) upon acceleration of the Obligations hereunder, whether on account of an Event of Default described in Section 9.1(e) or any other Event of Default and (iv) the exercise of remedies in accordance with the provisions of Section 9.2 hereof (each such Revolving Loan borrowing made on account of any such deemed request therefor as provided herein being hereinafter referred to as a “Mandatory Swingline Borrowing”). Each Lender hereby irrevocably agrees to make such Revolving Loans on the day such notice is received by the Lenders from the Agent if such notice is received at or before 2:00 p.m., otherwise such payment shall be made at or before 12:00 noon on the Business Day next succeeding the day such notice is received, in the amount and in the manner specified in the preceding sentence notwithstanding (A) the amount of the Mandatory Swingline Borrowing may not comply with the minimum amount for borrowings of Revolving Loans otherwise required hereunder, (B) whether any conditions specified in Section 5.2 are then satisfied, (C) whether a Default or an Event of Default then exists, (D) failure of any such request or deemed request for Revolving Loans to be made by the time otherwise required in Section 2.3, (E) the date of such Mandatory Swingline Borrowing, or (F) any reduction in the Revolving Committed Amount or termination of the Commitments immediately prior to such Mandatory Swingline Borrowing or contemporaneously therewith. In the event that any Mandatory Swingline Borrowing cannot for any reason be made on the date otherwise required above (including, without limitation, as a result of the commencement of a proceeding under the Bankruptcy Code), then each Lender hereby agrees that it shall forthwith purchase (as of the date the Mandatory Swingline Borrowing would otherwise have occurred, but adjusted for any payments received from the Borrower on or after such date and prior to such purchase) from the Swingline Lender such Participation Interests in the outstanding Swingline Loans as shall be

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necessary to cause each such Lender to share in such Swingline Loans ratably based upon its respective Commitment Percentage (determined before giving effect to any termination of the Commitments pursuant to Section 9.2); provided that (x) all interest payable on the Swingline Loans shall be for the account of the Swingline Lender until the date as of which the respective Participation Interests is purchased, and (y) at the time any purchase of Participation Interests pursuant to this sentence is actually made, the purchasing Revolving Lender shall be required to pay to the Swingline Lender interest on the principal amount of such Participation Interests purchased for each day from and including the day upon which the Mandatory Swingline Borrowing would otherwise have occurred to but excluding the date of payment for such participation, at the rate equal to, if paid within two (2) Business Days of the date of the Mandatory Swingline Borrowing, the Federal Funds Effective Rate, and thereafter at a rate equal to the Base Rate.

## **2.9 Notes.**

- (a) The Revolving Loans made by a Lender, upon request of such Lender, shall be evidenced by a duly executed promissory note of the Borrower payable to such Lender in substantially the form of Exhibit 2.9(a) (the “Revolving Notes”).
- (b) The Term Loans made by a Lender, upon request of such Lender, shall be evidenced by a duly executed promissory note of the Borrower payable to such Lender in substantially the form of Exhibit 2.9(b) (the “Term Loan Notes”).
- (c) The Swingline Loans made by the Swingline Lender, upon request of the Swingline Lender, shall be evidenced by a promissory note of the Borrower payable to the Swingline Lender in substantially the form of Exhibit 2.9(c) (the “Swingline Loan Note”).

## **2.10 Increases in Revolving Committed Amount.**

(a) Requested Increases. The Borrower shall have the right, prior to the Maturity Date and with the consent of the Agent and the Issuing Lenders (such consent not to be unreasonably withheld), from time to time during the term of this Credit Agreement, and subject to the terms and conditions set forth below, to increase the aggregate amount of the Revolving Committed Amount; provided that (i) no Default or Event of Default shall exist at the time of the request or the proposed increase in the Revolving Committed Amount; (ii) such increase must be in a minimum amount of \$10,000,000 and in integral multiples of \$1,000,000 above such amount, (iii) the Revolving Committed Amount shall not be increased to an amount greater than FIVE HUNDRED FIFTY MILLION DOLLARS (\$550,000,000) less any principal amounts outstanding under the Term Loans, (iv) no individual Lender’s Commitment may be increased without such Lender’s written consent, (v) the Borrower shall execute and deliver such Revolving Note(s) as are necessary to reflect the increase in the Revolving Committed Amount, (vi) Schedule 1.1(a) shall be amended to reflect the revised Revolving Committed Amount and revised Commitments and Commitment Percentages of the Lenders and (vii) if any Revolving Loans are outstanding at the time of an increase in the Revolving Committed Amount, the Borrower will prepay (provided that any such prepayment shall be subject to Section 4.3) one or more existing Revolving Loans in an amount necessary such that after giving effect to the increase in the Revolving Committed Amount each Lender will hold its Commitment Percentage (based on its share of the revised Revolving Committed Amount) of outstanding Revolving Loans.

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Any such increase in the Revolving Committed Amount shall apply, at the option of the Borrower, to (x) the Commitment of one or more existing Lenders; provided that any Lender whose Commitment is being increased must consent in writing thereto and/or (y) the creation of a new Commitment to one or more institutions that is not an existing Lender; provided that any such institution (A) must conform to the definition of Eligible Assignee, (B) must have a Commitment of at least \$10,000,000 unless otherwise agreed to by the Agent and the Borrower and (C) must become a Lender under this Credit Agreement by execution and delivery of an appropriate joinder agreement or of counterparts to this Credit Agreement in a manner acceptable to the Borrower and the Agent.

(b) Automatic Increases. The Revolving Committed Amount shall be automatically increased from time to time in accordance with Section 3.2(a)(iii). Upon any such increase, (i) each applicable Lender's Original Revolving Commitment shall be increased automatically in accordance with its Original Revolving Commitment Percentage, (ii) Schedule 1.1(a) shall be amended to reflect the revised Revolving Committed Amount and the revised Commitments and, if applicable, Commitment Percentages of the Lenders and (iii) if the Borrower has previously increased the Revolving Committed Amount pursuant to Section 2.10(a) and any Revolving Loans are outstanding at the time of such increase in the Revolving Committed Amount, the Borrower will prepay (provided that any such prepayment shall be subject to Section 4.3) one or more existing Revolving Loans in an amount necessary such that after giving effect to the increase in the Revolving Committed Amount each Lender will hold its Commitment Percentage (as revised due to the increase in the Revolving Committed Amount) of outstanding Revolving Loans. For the avoidance of doubt, no Commitment or Commitment Percentage obtained by a Lender pursuant to Section 2.10(a) shall be subject to increase pursuant to this Section 2.10(b) or Section 3.2(a)(iii).

## SECTION 3.

### PAYMENTS

#### **3.1 Interest.**

##### **(a) Interest Rate.**

- (i) All Base Rate Loans and all Swingline Loans shall accrue interest at the Adjusted Base Rate.
- (ii) All Eurodollar Loans shall accrue interest at the Adjusted Eurodollar Rate applicable to such Eurodollar Loan.

(b) Default Rate of Interest. Upon the occurrence, and during the continuation, of an Event of Default, all past due principal of and, to the extent permitted by law, past due interest on, the Loans and any other past due amounts owing hereunder or under the other Credit Documents shall bear interest, payable on demand, at a per annum rate equal to one percent (1%) plus the rate which would otherwise be applicable (or if no rate is applicable, then the rate for Loans that are Base Rate Loans plus one percent (1%) per annum).

(c) Interest Payments. Interest on Loans shall be due and payable in arrears on each Interest Payment Date.

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### **3.2 Prepayments.**

(a) Voluntary Prepayments. The Borrower shall have the right to prepay Loans in whole or in part from time to time without premium or penalty; provided, however, that (i) Eurodollar Loans may only be prepaid on three Business Days' prior written notice to the Agent and any prepayment of Eurodollar Loans will be subject to Section 4.3; (ii) each such partial prepayment of Loans shall be in the minimum principal amount of \$10,000,000; and (iii) any prepayment of the Term Loans in connection with a Permitted Acquisition or capital expenditure shall cause the Revolving Committed Amount to be increased in the same dollar amount of such prepayment and shall be subject to Section 2.10(b). Any prepayments made under this Section 3.2(a) shall be applied first to Base Rate Loans and then to Eurodollar Loans in direct order of Interest Period maturities and shall be subject to Section 4.3. The increase in the Revolving Committed Amount pursuant to this clause (a) may, upon request of the Borrower, occur concurrently with the prepayment of the Term Loans.

(b) Mandatory Prepayments. If at any time the amount of Revolving Loans outstanding plus Swingline Loans outstanding plus the aggregate amount of LOC Obligations outstanding exceeds the Revolving Committed Amount, the Borrower shall immediately make a principal payment to the Agent in a manner and in an amount necessary to be in compliance with Sections 2.1(a), 2.2 and 2.8 and as directed by the Agent. All amounts required to be paid pursuant to this Section 3.2(b)(i) shall be (A) applied first to Swingline Loans, then to Revolving Loans (first to Base Rate Loans and then to Eurodollar Loans in the direct order of Interest Period maturities) and then to a cash collateral account in respect of LOC Obligations and (B) subject to Section 4.3.

### **3.3 Payment of Loans in full at Maturity.**

On the Maturity Date, the entire outstanding principal balance of all Loans, together with accrued but unpaid interest and all other sums owing under this Credit Agreement, shall be due and payable in full, unless accelerated sooner pursuant to Section 9.2.

### **3.4 Fees.**

(a) Facility Fees. The Borrower shall pay to the Agent, for the pro rata benefit of the Lenders, a facility fee (the "Facility Fee") equal to the Applicable Margin for Facility Fees times the actual daily amount of Revolving Committed Amount (or, if the Commitments have terminated, on the outstanding amount of all Revolving Loans, Swingline Loans and LOC Obligations), regardless of usage. The Facility Fee shall accrue at all times during the period beginning on the Effective Date and ending on the Maturity Date (and thereafter so long as any Revolving Loans, Swingline Loans or LOC Obligations remain outstanding), including at any time during which one or more of the conditions in Section 5.2 is not met, and shall be due and payable quarterly in arrears on the 15<sup>th</sup> day following the last day of each calendar quarter for the prior calendar quarter, commencing with the first such date to occur after the Closing Date, and on the Maturity Date (and, if applicable, thereafter on demand). The Facility Fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Margin for Facility Fees during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Margin for Facility Fees separately for each period during such quarter that such Applicable Margin for Facility Fees was in effect.

(b) Letter of Credit Fees.

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(i) Letter of Credit Fees. In consideration of the issuance of Letters of Credit hereunder, the Borrower agrees to pay to the Agent, for the pro rata benefit of each Lender, a per annum fee equal to the Applicable Margin for Eurodollar Loans in effect from time to time on the aggregate stated amount for each Letter of Credit from the date of issuance to the date of expiration (the “Letter of Credit Fees”). The accrued Letter of Credit Fees shall be due and payable in arrears on the 15<sup>th</sup> day after the end of each calendar quarter of the Borrower (as well as on the Maturity Date) for the immediately preceding calendar quarter (or portion thereof), beginning with the first of such dates to occur after the Closing Date.

(ii) Issuing Lender Fees. In addition to the Letter of Credit Fees payable pursuant to subsection (i) above, the Borrower shall pay to the applicable Issuing Lender for its own account, without sharing by the other Lenders, (A) if the applicable Issuing Lender is Wachovia Bank, National Association, a fee equal to one-eighth of one percent (.125%) per annum or (B) if the applicable Issuing Lender is any other Lender, such other rate as agreed to between such Issuing Lender and the Borrower, in each case on the total sum of all Letters of Credit issued by the applicable Issuing Lender and outstanding during the applicable period and (C) the customary charges from time to time to the applicable Issuing Lender for its services in connection with the issuance, amendment, payment, transfer, administration, cancellation and conversion of, and drawings under, such Letters of Credit (collectively, the “Issuing Lender Fees”). The accrued Issuing Lender Fees shall be due and payable in arrears on the 15<sup>th</sup> day following the last day of each calendar quarter of the Borrower (as well as on the Maturity Date) for the immediately preceding calendar quarter (or portion thereof), beginning with the first of such dates to occur after the Closing Date.

(c) Utilization Fees.

(i) If on any day the aggregate outstanding principal amount of all Revolving Loans, Swingline Loans and LOC Obligations exceeds the product of (A) fifty percent (50%) times (B) the Revolving Committed Amount, the Borrower agrees to pay to the Agent, for the pro rata benefit of each Lender, a per annum fee equal to .10% multiplied by the Utilized Revolving Loan Commitment (the “Utilization Fees”).

(ii) The accrued Utilization Fees shall be due and payable in arrears on the 15<sup>th</sup> day following the last day of each calendar quarter of the Borrower for the immediately preceding calendar quarter (or portion thereof), beginning with the first of such dates to occur after the Closing Date.

(d) Administrative Fee. The Borrower agrees to pay to the Administrative Agent the annual administrative fee as described in the Fee Letter.

**3.5 Place and Manner of Payments.**

All payments of principal, interest, fees, expenses and other amounts to be made by the Borrower under this Credit Agreement shall be made without setoff, deduction or counterclaim and received not later than 2:00 p.m. on the date when due in Dollars and in immediately available funds by the Agent at the Agency Services Address. The Borrower shall, at the time it makes any payment under this Credit Agreement, specify to the Agent the Loans, Letters of Credit, fees or other amounts payable by the Borrower

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hereunder to which such payment is to be applied (and in the event that it fails to specify, or if such application would be inconsistent with the terms hereof, the Agent shall distribute such payment to the Lenders in such manner as it reasonably determines in its sole discretion). The Agent will distribute such payments to the applicable Lenders on the same Business Day if any such payment is received prior to 2:00 p.m.; otherwise the Agent will distribute each payment to the applicable Lenders prior to 12:00 noon on the next succeeding Business Day. Whenever any payment hereunder shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day (subject to accrual of interest and fees for the period of such extension), except that in the case of Eurodollar Loans, if the extension would cause the payment to be made in the next following calendar month, then such payment shall be made on the next preceding Business Day.

### **3.6 Pro Rata Treatment.**

(a) Loans/Fees. Except to the extent otherwise provided herein, all borrowing of Revolving Loans (including each Mandatory Borrowing) and Term Loans, each payment or prepayment of principal of any Revolving Loan or Term Loan, each payment of interest on the Revolving Loans or Term Loans, each payment of Facility Fees and Utilization Fees, each payment of Letter of Credit Fees, each reduction of the Revolving Committed Amount and each conversion or continuation of any Revolving Loan or Term Loan, shall be allocated pro rata among the Lenders in accordance with their respective Commitment Percentages; provided, that, if any Lender shall have failed to pay its applicable pro rata share of any Loan, then any amount to which such Lender would otherwise be entitled pursuant to this Section 3.6 shall instead be payable to the Agent until the share of such Loan not funded by such Lender has been repaid and any interest owed by such Lender as result of such failure to fund has been paid; and provided, further, that in the event any amount paid to any Lender pursuant to this Section 3.6 is rescinded or must otherwise be returned by the Agent, each Lender shall, upon the written request of the Agent, repay to the Agent the amount so paid to such Lender, with interest for the period commencing on the date such payment is returned by the Agent until the date the Agent receives such repayment at a rate per annum equal to, during the period to but excluding the date two Business Days after such request, the Federal Funds Rate, and thereafter, the Base Rate plus one percent (1%) per annum.

(b) Letters of Credit. Each payment of unreimbursed drawings in respect of LOC Obligations shall be allocated to each Lender pro rata in accordance with its Commitment Percentage; provided, that, if any Lender shall have failed to pay its applicable pro rata share of any drawing under any Letter of Credit, then any amount to which such Lender would otherwise be entitled pursuant to this subsection (b) shall instead be payable to the applicable Issuing Lender; provided, further, that in the event any amount paid to any Lender pursuant to this subsection (b) is rescinded or must otherwise be returned by the applicable Issuing Lender, each Lender shall, upon the written request of the applicable Issuing Lender, repay to the Agent for the account of the applicable Issuing Lender the amount so paid to such Lender, with interest for the period commencing on the date such payment is returned by the applicable Issuing Lender until the date the applicable Issuing Lender receives such repayment at a rate per annum equal to, during the period to but excluding the date two Business Days after such request, the Federal Funds Rate, and thereafter, the Base Rate plus one percent (1%) per annum.

### **3.7 Computations of Interest and Fees.**

(a) Except for Base Rate Loans that are based upon the Prime Rate, on which interest shall be computed on the basis of a 365 or 366 day year as the case may be, all computations of

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interest and fees hereunder shall be made on the basis of the actual number of days elapsed over a year of 360 days.

(b) It is the intent of the Lenders and the Credit Parties to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between the Lenders and the Credit Parties are hereby limited by the provisions of this paragraph which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including but not limited to prepayment or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, or received under this Credit Agreement, under the Notes or otherwise, exceed the maximum nonusurious amount permissible under applicable law. If, from any possible construction of any of the Credit Documents or any other document, interest would otherwise be payable in excess of the maximum nonusurious amount, any such construction shall be subject to the provisions of this paragraph and interest owing pursuant to such documents shall be automatically reduced to the maximum nonusurious amount permitted under applicable law, without the necessity of execution of any amendment or new document. If any Lender shall ever receive anything of value which is characterized as interest on the Loans under applicable law and which would, apart from this provision, be in excess of the maximum lawful amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Loans and not to the payment of interest, or refunded to a Credit Party or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal amount of the Loans. The right to demand payment of the Loans or any other indebtedness evidenced by any of the Credit Documents does not include the right to receive any interest which has not otherwise accrued on the date of such demand, and the Lenders do not intend to charge or receive any unearned interest in the event of such demand. All interest paid or agreed to be paid to the Lenders with respect to the Loans shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term (including any renewal or extension) of the Loans so that the amount of interest on account of such indebtedness does not exceed the maximum nonusurious amount permitted by applicable law.

### **3.8 Sharing of Payments.**

Each Lender agrees that, in the event that any Lender shall obtain payment in respect of any Loan, any unreimbursed drawing with respect to any LOC Obligations or any other obligation owing to such Lender under this Credit Agreement through the exercise of a right of set-off, banker's lien, counterclaim or otherwise (including, but not limited to, pursuant to the Bankruptcy Code) in excess of its pro rata share as provided for in this Credit Agreement, such Lender shall promptly purchase from the other Lenders a participation in such Loans, LOC Obligations and other obligations, in such amounts and with such other adjustments from time to time, as shall be equitable in order that all Lenders share such payment in accordance with their respective ratable shares as provided for in this Credit Agreement. Each Lender further agrees that if a payment to a Lender (which is obtained by such Lender through the exercise of a right of set-off, banker's lien, counterclaim or otherwise) shall be rescinded or must otherwise be restored, each Lender which shall have shared the benefit of such payment shall, by repurchase of a participation theretofore sold, return its share of that benefit to each Lender whose payment shall have been rescinded or otherwise restored. The Borrower agrees that any Lender so purchasing such a participation may, to the fullest extent permitted by law, exercise all rights of payment, including set-off, banker's lien or counterclaim, with respect to such participation as fully as if such Lender were a holder of such Loan or other obligation in the amount of such participation. Except as otherwise expressly provided in this Credit Agreement, if any Lender shall fail to remit to the Agent or any other Lender an amount payable by such Lender to the Agent or such other Lender pursuant to this Credit Agreement on the date when such amount is due, such payments shall accrue

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interest thereon, for each day from the date such amount is due until the day such amount is paid to the Agent or such other Lender, at a rate per annum equal to the Federal Funds Rate. If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section 3.8 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders under this Section 3.8 to share in the benefits of any recovery on such secured claim.

### **3.9 Evidence of Debt.**

(a) Each Lender shall maintain an account or accounts evidencing each Loan made by such Lender to the Borrower from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Credit Agreement. Each Lender will make reasonable efforts to maintain the accuracy of its account or accounts and to promptly update its account or accounts from time to time, as necessary.

(b) The Agent shall maintain the Register pursuant to Section 11.3(c), and a subaccount for each Lender, in which Register and subaccounts (taken together) shall be recorded (i) the amount, type and Interest Period of each such Loan hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable to each Lender hereunder and (iii) the amount of any sum received by the Agent hereunder from or for the account of the Borrower and each Lender's share thereof. The Agent will make reasonable efforts to maintain the accuracy of the subaccounts referred to in the preceding sentence and to promptly update such subaccounts from time to time, as necessary.

(c) The entries made in the Register and subaccounts maintained pursuant to subsection (b) of this Section 3.9, and the entries made in the accounts maintained pursuant to subsection (a) of this Section 3.9, if consistent with the entries of the Agent, shall be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that the failure of any Lender or the Agent to maintain any such account, such Register or such subaccount, as applicable, or any error therein, shall not in any manner affect the obligation of the Borrower to repay the Loans made by such Lender in accordance with the terms hereof.

## **SECTION 4.**

### **ADDITIONAL PROVISIONS**

#### **4.1 Eurodollar Loan Provisions.**

(a) Unavailability. If, on or prior to the first day of any Interest Period, (i) the Agent shall have determined in good faith (which determination shall be conclusive and binding upon the Borrower) that (A) Dollar deposits are not generally available in the London interbank Eurodollar market in the applicable principal amounts and Interest Period of a requested Eurodollar Loan or (B) by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or (ii) the Agent shall have received notice from the Required Lenders that the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to the Lenders of making or maintaining Eurodollar Loans for such Interest Period (as conclusively certified by such Lenders), the Agent shall give notice thereof to the Borrower and the Lenders as soon as practicable thereafter. Upon delivery of such notice, (A) any Eurodollar Loans requested to be made on the first day of such Interest Period shall be made as Base Rate Loans, (B) any Loans that were to have been converted to

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or continued as Eurodollar Loans shall be prepaid by the Borrower or converted to or continued as Base Rate Loans and (C) any outstanding Eurodollar Loans shall be converted, on the first day of such Interest Period, to Base Rate Loans. Until the Agent has withdrawn such notice, no further Eurodollar Loans shall be made or continued as such, nor shall the Borrower have the right to convert Base Rate Loans to Eurodollar Loans.

(b) Change in Legality. Notwithstanding any other provision herein, if any change, after the date hereof, in any law, governmental rule, regulation, guideline or order (including the introduction of any new law or governmental rule, regulation, guideline or order) or in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof shall make it unlawful for any Lender to make or maintain any Eurodollar Loan then, by written notice to the Borrower and to the Agent, such Lender may:

(i) declare that Eurodollar Loans and conversions to or continuations of Eurodollar Loans, will not thereafter be made by such Lender hereunder, whereupon any request by the Borrower for, or for conversion into or continuation of, Eurodollar Loans shall, as to such Lender only, be deemed a request for, or for conversion into or continuation of, Base Rate Loans, unless such declaration shall be subsequently withdrawn; and

(ii) require that all outstanding Eurodollar Loans made by it be converted to Base Rate Loans in which event all such Eurodollar Loans shall be converted to Base Rate Loans either (A) on the last day of the then current Interest Period applicable to such Eurodollar Loan if such Lender can lawfully continue to maintain and fund such Eurodollar Loan or (B) immediately if such Lender shall determine that it may not lawfully continue to maintain and fund such Eurodollar Loan to such day.

(c) Requirements of Law. If at any time a Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to the making, the commitment to make or the maintaining of any Eurodollar Loan or of agreeing to issue or participate in any Letters of Credit because of (i) any change after the date hereof in any law, governmental rule, regulation, guideline or order (including the introduction of any new law or governmental rule, regulation, guideline or order) or in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, including, without limitation, the imposition, modification or deemed applicability of any reserves, deposits or similar requirements (such as, for example, but not limited to, a change in official reserve requirements) or (ii) other circumstances affecting the London interbank Eurodollar market; then the Borrower shall pay to such Lender promptly upon written demand therefor, such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender may determine in its sole discretion) as may be required to compensate such Lender for such increased costs or reductions in amounts receivable hereunder. If any Lender becomes entitled to claim any additional amounts pursuant to this Section 4.1(c), it shall provide prompt notice thereof to the Borrower, through the Agent, certifying (A) that one of the events described in this Section 4.1(c) has occurred and describing in reasonable detail the nature of such event, (B) as to the increased cost or reduced amount resulting from such event and (C) as to the additional amount demanded by such Lender and a reasonably detailed explanation of the calculation thereof; provided, that no such amount shall be payable with respect to any period commencing more than 90 days prior to the date such Lender first notifies the Borrower of its intention to demand compensation therefor under this Section.

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(d) **Regulation D Compensation.** In the event that a Lender is required to maintain reserves of the type contemplated by the definition of “Eurodollar Reserve Percentage”, such Lender may require the Borrower to pay, contemporaneously with each payment of interest on the Eurodollar Loans, additional interest on the related Eurodollar Loan of such Lender at a rate per annum determined by such Lender up to but not exceeding the excess of (i)(A) the applicable London Interbank Offered Rate divided by (B) one minus the Eurodollar Reserve Percentage over (ii) the applicable London Interbank Offered Rate. Any Lender wishing to require payment of such additional interest (x) shall so notify the Borrower and the Agent, in which case such additional interest on the Eurodollar Loans of such Lender shall be payable to such Lender at the place indicated in such notice with respect to each Interest Period commencing at least three Business Days after the giving of such notice and (y) shall notify the Borrower at least three Business Days prior to each date on which interest is payable on the Eurodollar Loans of the amount then due it under this Section. Each such notification shall be accompanied by such information as the Borrower may reasonably request.

Each determination and calculation made by a Lender under this Section 4.1 shall, absent manifest error, be binding and conclusive on the parties hereto. Any conversions of Eurodollar Loans made pursuant to this Section 4.1 shall subject the Borrower to the payments required by Section 4.3 to the extent applicable. This Section shall survive termination of this Credit Agreement and the other Credit Documents and payment of the Loans and all other amounts payable hereunder.

#### **4.2 Capital Adequacy.**

If any Lender has determined that the adoption or becoming effective, after the date hereof, of any applicable law, rule or regulation regarding capital adequacy, or any change therein (after the date hereof), or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by such Lender (or its parent corporation) with any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Lender’s (or parent corporation’s) capital or assets as a consequence of its commitments or obligations hereunder to a level below that which such Lender (or its parent corporation) could have achieved but for such adoption, effectiveness, change or compliance (taking into consideration such Lender’s (or parent corporation’s) policies with respect to capital adequacy), then, upon notice from such Lender (which shall include the basis and calculations in reasonable detail supporting the compensation requested in such notice), and receipt by the Borrower of such written notice from such Lender (with a copy to the Agent) the Borrower shall be obligated to pay to such Lender such additional amount or amounts as will compensate such Lender on an after tax basis (after taking into account applicable deductions and credits in respect of the amount so indemnified) for such reduction; provided, that no such amount shall be payable with respect to any period commencing more than 90 days prior to the date such Lender first notifies the Borrower of its intention to demand compensation therefor under this Section. Each determination by any Lender of amounts owing under this Section 4.2 shall, absent manifest error, be conclusive and binding on the parties hereto. The covenants of this Section 4.2 shall survive termination of this Credit Agreement and the other Credit Documents and the payment of the Loans and all other amounts payable hereunder.

#### **4.3 Compensation.**

The Borrower promises to indemnify each Lender and to hold each Lender harmless from any loss or expense which such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice

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requesting the same in accordance with the provisions of this Credit Agreement, (b) default by the Borrower in making any prepayment of a Eurodollar Loan after the Borrower has given a notice thereof in accordance with the provisions of this Credit Agreement, (c) the making of a prepayment of Eurodollar Loans on a day which is not the last day of an Interest Period with respect thereto and (d) the payment, continuation or conversion of a Eurodollar Loan on a day which is not the last day of the Interest Period applicable thereto or the failure to repay a Eurodollar Loan when required by the terms of this Credit Agreement. Such indemnification may include an amount equal to (i) an amount of interest calculated at the Eurodollar Rate which would have accrued on the amount in question, for the period from the date of such prepayment or of such failure to borrow, convert, continue or repay to the last day of the applicable Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Eurodollar Loans provided for herein minus (ii) the amount of interest (as reasonably determined by such Lender) which would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Eurocurrency market. If any Lender becomes entitled to claim any additional amounts pursuant to this Section 4.3, it shall provide prompt notice thereof to the Borrower, through the Agent, as to the additional amount demanded by such Lender and a reasonably detailed explanation of the calculation thereof. The covenants in this Section 4.3 shall survive the termination of this Credit Agreement and the payment of the Loans and all other amounts payable hereunder.

#### **4.4 Taxes.**

(a) Except as provided below in this Section 4.4, all payments made by the Borrower under this Credit Agreement and any Notes shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any court, or governmental body, agency or other official, excluding taxes measured by or imposed upon the net income of any Lender or its applicable lending office, or any branch or affiliate thereof, and all franchise taxes, branch taxes, taxes on doing business or taxes on the capital or net worth of any Lender or its applicable lending office, or any branch or affiliate thereof, in each case imposed in lieu of net income taxes: (i) by the jurisdiction under the laws of which such Lender, applicable lending office, branch or affiliate is organized or is located, or in which its principal executive office is located, or any nation within which such jurisdiction is located or any political subdivision thereof; or (ii) by reason of any connection between the jurisdiction imposing such tax and such Lender, applicable lending office, branch or affiliate other than a connection arising solely from such Lender having executed, delivered or performed its obligations, or received payment under or enforced, this Credit Agreement or any Notes. If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings (“Non-Excluded Taxes”) are required to be withheld from any amounts payable to an Agent or any Lender hereunder or under any Notes, (A) the amounts so payable to the Agent or such Lender shall be increased to the extent necessary to yield to the Agent or such Lender (after payment of all Non-Excluded Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Credit Agreement and any Notes; provided, however, that the Borrower shall be entitled to deduct and withhold any Non- Excluded Taxes and shall not be required to increase any such amounts payable to any Lender that is not organized under the laws of the United States of America or a state thereof if such Lender fails to comply with the requirements of paragraph (b) of this Section 4.4 whenever any Non-Excluded Taxes are payable by the Borrower, and (B) as promptly as possible after requested, the Borrower shall send to the Agent for its own account or for the account of such Lender, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof. If the Borrower fails to pay any Non-Excluded Taxes when due to the appropriate taxing authority or fails to remit to the Agent the

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required receipts or other required documentary evidence, the Borrower shall indemnify the Agent and any Lender for any incremental Non-Excluded Taxes, interest or penalties that may become payable by the Agent or any Lender as a result of any such failure. The agreements in this Section 4.4 shall survive the termination of this Credit Agreement and the payment of the Loans and all other amounts payable hereunder.

(b) Each Lender that is not incorporated under the laws of the United States of America or a state thereof shall:

- (i) (A) on or before the date of any payment by the Borrower under this Credit Agreement or the Notes to such Lender, deliver to the Borrower and the Agent (x) two duly completed copies of United States Internal Revenue Service Form W-8BEN or W-8ECI, or any successor applicable form, as the case may be, certifying that it is entitled to receive payments under this Credit Agreement and any Notes without deduction or withholding of any United States federal income taxes and (y) an Internal Revenue Service Form W-8 or W-9, or successor applicable form, as the case may be, certifying that it is entitled to an exemption from United States backup withholding tax;
  - (B) deliver to the Borrower and the Agent two further copies of any such form or certification on or before the date that any such form or certification expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower; and
  - (C) obtain such extensions of time for filing and complete such forms or certifications as may reasonably be requested by the Borrower or the Agent; or
- (ii) in the case of any such Lender that is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, (A) represent to the Borrower (for the benefit of the Borrower and the Agent) that it is not a bank within the meaning of Section 881 (c)(3)(A) of the Internal Revenue Code, (B) agree to furnish to the Borrower, on or before the date of any payment by the Borrower, with a copy to the Agent, two accurate and complete original signed copies of Internal Revenue Service Form W-8, or successor applicable form, certifying to such Lender’s legal entitlement at the date of such certificate to an exemption from U.S. withholding tax under the provisions of Section 881(c) of the Internal Revenue Code with respect to payments to be made under this Credit Agreement and any Notes (and to deliver to the Borrower and the Agent two further copies of such form on or before the date it expires or becomes obsolete and after the occurrence of any event requiring a change in the most recently provided form and, if necessary, obtain any extensions of time reasonably requested by the Borrower or the Agent for filing and completing such forms), and (C) agree, to the extent legally entitled to do so, upon reasonable request by the Borrower, to provide to the Borrower (for the benefit of the Borrower and the Agent) such other forms as may be reasonably required in order to establish the legal entitlement of such Lender to an exemption from withholding with respect to payments under this Credit Agreement and any Notes.

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Notwithstanding the above, if any change in treaty, law or regulation has occurred after the date such Person becomes a Lender hereunder which renders all such forms inapplicable or which would prevent such Lender from duly completing and delivering any such form with respect to it and such Lender so advises the Borrower and the Agent, then such Lender shall be exempt from such requirements. Each Person that shall become a Lender or a participant of a Lender pursuant to Section 11.3 shall, upon the effectiveness of the related transfer, be required to provide all of the forms, certifications and statements required pursuant to this subsection (b); provided, that in the case of a participant of a Lender, the obligations of such participant of a Lender pursuant to this subsection (b) shall be determined as if the participant of a Lender were a Lender except that such participant of a Lender shall furnish all such required forms, certifications and statements to the Lender from which the related participation shall have been purchased.

#### **4.5 Replacement of Lenders.**

The Agent and each Lender shall use reasonable efforts to avoid or mitigate any increased cost or suspension of the availability of an interest rate under Sections 4.1 through 4.4 above to the greatest extent practicable (including transferring the Loans to another lending office or Affiliate of a Lender) unless, in the opinion of the Agent or such Lender, such efforts would be likely to have an adverse effect upon it. In the event a Lender makes a request to the Borrower for additional payments in accordance with Section 4.1, 4.2 or 4.4, or suspends Eurodollar Loans under Section 4.1, then, provided that no Default or Event of Default has occurred and is continuing at such time, the Borrower may, at its own expense (such expense to include any transfer fee payable to the Agent under Section 11.3(b) and any expense pursuant to Section 4) and in its sole discretion, require such Lender to transfer and assign in whole (but not in part), without recourse (in accordance with and subject to the terms and conditions of Section 11.3(b)), all of its interests, rights and obligations under this Credit Agreement to an Eligible Assignee which shall assume such assigned obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided, that (a) such assignment shall not conflict with any law, rule or regulation or order of any court or other Governmental Authority and (b) the Borrower or such assignee shall have paid to the assigning Lender in immediately available funds the principal of and interest accrued to the date of such payment on the portion of the Loans hereunder held by such assigning Lender and all other amounts owed to such assigning Lender hereunder, including amounts owed pursuant to Sections 4.1 through 4.4.

### **SECTION 5.**

#### **CONDITIONS PRECEDENT**

##### **5.1 Closing Conditions.**

The obligation of the Lenders to enter into this Credit Agreement is subject to satisfaction (or waiver) of the following conditions:

(a) Executed Credit Documents. Receipt by the Agent of duly executed copies of (i) this Credit Agreement, (ii) the Notes, (iii) the Collateral Documents and (iv) all other Credit Documents, each in form and substance acceptable to the Lenders.

(b) Organizational Documents. Receipt by the Agent of the following:

(i) Partnership Documents. With respect to each Credit Party that is a partnership, a copy of the partnership agreement of such Credit Party, together with all amendments thereto certified to be true and complete by the appropriate Governmental

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Authority of the State of organization of such Credit Party and certified by an Authorized Officer of such Credit Party to be true and correct as of the Effective Date.

(ii) Limited Liability Company Documents. With respect to each Credit Party that is a limited liability company, the following:

(A) Certificate of Formation. A copy of the certificate of formation of such Credit Party certified to be true and complete by the appropriate Governmental Authorities of the State of organization of such Credit Party and certified by an Authorized Officer of such Credit Party to be true and correct as of the Effective Date.

(B) LLC Agreement. A copy of the LLC Agreement of such Credit Party certified by an Authorized Officer of such Credit Party to be true and correct as of the Effective Date.

(iii) Corporate Documents. With respect to each Credit Party that is a corporation, the following:

(A) Charter Documents. Copies of the articles or certificates of incorporation or other charter documents of such Credit Party certified to be true and complete as of a recent date by the appropriate Governmental Authorities of the state of its incorporation and certified by an Authorized Officer of such Credit Party to be true and correct as of the Effective Date.

(B) Bylaws. A copy of the bylaws of such Credit Party certified an Authorized Officer of such Credit Party to be true and correct as of the Effective Date.

(iv) Resolutions. Copies of resolutions, as appropriate, approving and adopting the Credit Documents to which each Credit Party is a party, the transactions contemplated therein and authorizing execution and delivery thereof and certified by an Authorized Officer of the Borrower to be in full force and effect as of the Effective Date.

(v) Good Standing. Copies of certificates of good standing, existence or their equivalent with respect to each Credit Party certified as of a recent date by the appropriate Governmental Authorities of the State of organization of such Credit Party.

(vi) Incumbency. An incumbency certificate certified by an Authorized Officer of the applicable Credit Parties to be true and correct as of the Effective Date.

(c) Opinion of Counsel. Receipt by the Agent of an opinion from legal counsel to the Credit Parties, addressed to the Agent on behalf of the Lenders and dated as of the Effective Date, in form and substance satisfactory to the Agent.

(d) Asset Transfer. Receipt by the Lenders of such information as reasonably requested regarding the transfer of assets from Duke Energy Field Services, LLC and its Subsidiaries and Affiliates to the Parent as of the Closing Date, including copies of all documentation evidencing such transfer (the “Initial Asset Acquisition”).

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(e) IPO. Receipt by the Agent of confirmation that an initial public offering has been consummated by the Parent (or is simultaneously being consummated by the Parent), on terms acceptable to the Lenders, that results in net cash proceeds to the Parent of not less than \$100,000,000.

(f) Financial Statements/Ownership Structure. Receipt by the Lenders of such financial information or other information regarding the Credit Parties and their assets, and the ownership of same, as the Lenders may reasonably request, including without limitation, information regarding the Initial Asset Acquisition.

(g) Collateral. Receipt of the Agent of (i) Permitted Cash Collateral with a value of not less than the Required Collateral Amount, calculated after giving effect to the making of the Term Loan on the Closing Date and (ii) such other documentation and information as required herein or by the Collateral Documents.

(h) Fees and Expenses. Payment by the Borrower of all fees and expenses owed by it to the Lenders, the Agent and the Co-Lead Arrangers, including, without limitation, payment to the Agent of the fees set forth in the Fee Letter.

(i) Litigation. As of the Closing Date, there shall be no material actions, suits, investigations or legal, equitable, arbitration or administrative proceedings pending or threatened against a Credit Party which are likely to be decided adversely to such Credit Party and if so decided would have a Material Adverse Effect.

(j) Material Adverse Effect. As of the Closing Date, no event or condition shall have occurred since December 31, 2004 that would have or would be reasonably expected to have a Material Adverse Effect.

(k) Certificate. The Agent shall have received a certificate or certificates executed by an Approved Officer of the Parent, on behalf of the Credit Parties, as of the Closing Date stating that (i) each Credit Party is in compliance with all existing financial obligations, unless such non-compliance would not have a Material Adverse Effect, (ii) no action, suit, investigation or proceeding is pending or, to such officer's knowledge, threatened in any court or before any arbitrator or governmental instrumentality that purports to affect a Credit Party or any transaction contemplated by the Credit Documents, if such action, suit, investigation or proceeding is likely to be adversely determined and if adversely determined would have a Material Adverse Effect, (iii) the financial statements and information delivered to the Agent on or before the Closing Date were prepared in good faith and in accordance with GAAP, (iv) all consents and approvals of board of directors, equity holders, general partners, Governmental Authorities and third parties necessary in connection with the Initial Asset Acquisition, the IPO and the Credit Documents have been obtained, and (v) immediately after giving effect to this Credit Agreement, the other Credit Documents and all the transactions contemplated herein and therein to occur on such date, (A) no Default or Event of Default exists and (B) all representations and warranties contained herein and in the other Credit Documents are true and correct in all material respects on and as of the date made.

(l) Patriot Act. Receipt by the Agent on behalf of each Lender at least five (5) Business Days prior to the Closing Date of all documentation and other information requested by any Lender in order to comply with the requirements of regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations.

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- (m) Account Designation Letter. Receipt by the Agent of an executed counterpart of the Account Designation Letter.
- (n) Other. Receipt by the Lenders of such other documents, instruments, agreements or information as reasonably requested by any Lender.
- (l) Minimum Commitments. The aggregate amount of Commitments of all Lenders on the Closing Date shall be not less than \$400,000,000.

## **5.2 Conditions to Loans and Issuances of Letters of Credit.**

In addition to the conditions precedent stated elsewhere herein, the Lenders shall not be obligated to make new Loans nor shall an Issuing Lender be required to issue, renew or extend a Letter of Credit (and the Lenders shall not be obligated to participate in any Letter of Credit) unless:

(a) Request. The Borrower shall have timely delivered (i) in the case of any new Revolving Loan or Term Loan, to the Agent, an appropriate Notice of Borrowing, duly executed and completed, by the time specified in Section 2.1, (ii) in the case of any Letter of Credit, to the applicable Issuing Lender, an appropriate request for issuance of a Letter of Credit in accordance with the provisions of Section 2.2 and (iii) in the case of any Swingline Loan, to the Swingline Lender, an appropriate Notice of Borrowing, duly executed and completed, by the time specified in Section 2.8.

(b) Representations and Warranties. The representations and warranties made by the Credit Parties in this Credit Agreement are true and correct in all material respects at and as if made as of the date of the funding of the Loans or the issuance, renewal or extension of the Letters of Credit, as applicable (except to the extent such representations and warranties expressly and exclusively relate to an earlier date).

(c) No Default. No Default or Event of Default shall exist or be continuing either prior to or after giving effect thereto.

(d) Availability. Immediately after giving effect to the making of a Loan (and the application of the proceeds thereof) or to the issuance of a Letter of Credit, as the case may be, the amount of Loans and LOC Obligations outstanding shall not exceed the maximum permitted by Sections 2.1, 2.2 and 2.8.

(e) Cash Collateral. In the case of any new Term Loan, the Borrower shall have deposited into the Cash Collateral Account sufficient Permitted Cash Collateral so that, after giving effect to the making of such Term Loan, the value of all Permitted Cash Collateral maintained in the Cash Collateral Account is not less than the Required Collateral Amount.

The delivery of each Notice of Borrowing and each request for a Letter of Credit shall constitute a representation and warranty by the Borrower of the correctness of the matters specified in subsections (b), (c) and (d) above.

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## SECTION 6.

### REPRESENTATIONS AND WARRANTIES

Each Credit Party hereby represents and warrants to each Lender that:

#### **6.1 Organization and Good Standing.**

Each Credit Party (a) is a limited partnership, limited liability company or a corporation duly formed, validly existing and in good standing under the laws of the state of its formation, (b) is duly qualified and in good standing and authorized to do business in every jurisdiction where the failure to so qualify would have a Material Adverse Effect and (c) has the requisite power and authority to own its properties and to carry on its business as now conducted and as proposed to be conducted.

#### **6.2 Due Authorization.**

Each Credit Party (a) has the requisite power and authority to execute, deliver and perform this Credit Agreement and the other Credit Documents and to incur the obligations herein and therein provided for and (b) has been authorized by all necessary corporate, partnership or limited liability company action to execute, deliver and perform this Credit Agreement and the other Credit Documents.

#### **6.3 No Conflicts.**

Neither the execution and delivery of the Credit Documents, nor the consummation of the transactions contemplated herein and therein, nor performance of and compliance with the terms and provisions hereof and thereof by any Credit Party will (a) violate or conflict with any provision of its organizational documents or bylaws, (b) materially violate, contravene or conflict with any law (including without limitation, the Public Utility Holding Company Act of 1935, as amended), regulation (including without limitation, Regulation U or Regulation X), order, writ, judgment, injunction, decree or permit applicable to it, (c) materially violate, contravene or conflict with contractual provisions of, or cause an event of default under, any indenture, loan agreement, mortgage, deed of trust, contract or other agreement or instrument to which it is a party or by which it may be bound or (d) result in or require the creation of any Lien upon or with respect to its properties other than the Liens hereunder and under the Collateral Documents.

#### **6.4 Consents.**

No consent, approval, authorization or order of, or filing, registration or qualification with, any court or Governmental Authority or third party is required in connection with the execution, delivery or performance of this Credit Agreement or any of the other Credit Documents that has not been obtained.

#### **6.5 Enforceable Obligations.**

This Credit Agreement and the other Credit Documents have been duly executed and delivered and constitute legal, valid and binding obligations of each Credit Party which is a party thereto enforceable against such Credit Party in accordance with their respective terms, except as may be limited by bankruptcy or insolvency laws or similar laws affecting creditors' rights generally or by general equitable principles.

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## **6.6 Financial Condition/Material Adverse Effect.**

The financial statements delivered to the Lenders pursuant to Section 7.1(a) and (b): (i) have been prepared in accordance with GAAP (subject to the provisions of Section 1.3) and (ii) present fairly the financial condition, results of operations and cash flows of the Parent and its Subsidiaries as of such date and for such periods (subject, in the case of interim statements, to normal year-end adjustments and the absence of footnotes). Since the Effective Date, there has been no event or circumstance that, either individually or collectively, has had or would reasonably be expected to have a Material Adverse Effect.

## **6.7 Taxes.**

Each Credit Party and each of its Subsidiaries has filed, or caused to be filed, all material tax returns (federal, state, local and foreign) required to be filed and paid all amounts of taxes shown thereon to be due (including interest and penalties) and has paid all other taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing by it, except (a) for such taxes which are not yet delinquent or that are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained in accordance with GAAP or (b) where such nonfiling or nonpayment would not have a Material Adverse Effect.

## **6.8 Compliance with Law.**

Each Credit Party and each of its Subsidiaries is in compliance with all laws, rules, regulations, orders, decrees and requirements of Governmental Authorities applicable to it or to its properties (including, without limitation, ERISA, the Code and Environmental Laws), except where the necessity of compliance therewith is being contested in good faith by appropriate proceedings or such failure to comply would not have or would not be reasonably expected to have a Material Adverse Effect.

## **6.9 Use of Proceeds; Margin Stock.**

The proceeds of the Loans hereunder will be used solely for the purposes specified in Section 7.7. None of such proceeds will be used for the purpose of (a) purchasing or carrying any “margin stock” as defined in Regulation U or Regulation X, (b) for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry “margin stock”, (c) for any other purpose which might constitute this transaction a “purpose credit” within the meaning of Regulation U or Regulation X or (d) for the acquisition of another Person unless the board of directors (or other comparable governing body) or stockholders, as appropriate, of such Person has approved such acquisition.

## **6.10 Government Regulation.**

Each Credit Party and each of its Subsidiaries is exempt from the registration provisions of the Public Utility Holding Company Act of 1935, as amended. No Credit Party is an “investment company” registered or required to be registered under the Investment Company Act of 1940, as amended, or controlled by such a company.

## **6.11 Solvency.**

Each Credit Party is and, after the consummation of the transactions contemplated by this Credit Agreement, will be Solvent.

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## **6.12 Environmental Matters.**

Except as would not result or be reasonably expected to result in a Material Adverse Effect: (a) each of the properties of the Credit Parties (the “Properties”) and all operations at the Properties are in compliance with all applicable Environmental Laws, (b) there is no violation of any Environmental Law with respect to the Properties or the businesses operated by the Credit Parties (the “Businesses”), and (c) there are no conditions relating to the Businesses or Properties that would reasonably be expected to give rise to a liability under any applicable Environmental Laws.

## **6.13 Subsidiaries.**

Set forth on Schedule 6.13 is a complete and accurate list of all Credit Parties and their Subsidiaries, and the ownership of same, as such Schedule 6.13 may be updated from time to time.

## **6.14 Litigation.**

There are no actions, suits or legal, equitable, arbitration or administrative proceedings, pending or, to the knowledge of a Credit Party, threatened against such Credit Party which (a) are likely to be decided adversely against such Credit Party and (b) if so decided would have or would reasonably be expected to have a Material Adverse Effect.

## **6.15 Collateral.**

This Credit Agreement and the Collateral Documents create valid security interests in, and Liens on, the Cash Collateral, which security interests and Liens are perfected first priority Liens prior to all other Liens. The value of the Permitted Cash Collateral is greater than or equal to the Required Collateral Amount.

## **6.16 Material Contracts.**

Each Credit Party and each of its Subsidiaries is in compliance with all contracts necessary for the ongoing operation and business of such Credit Party or Subsidiary in the ordinary course except where the failure to comply would not have or would not reasonably be expected to have a Material Adverse Effect.

## **6.17 Anti-Terrorism Laws.**

Neither any Credit Party nor any of its Subsidiaries is an “enemy” or an “ally of the enemy” within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 et seq.), as amended. Neither any Credit Party nor any or its Subsidiaries is in violation of (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the Patriot Act (as defined in Section 11.17(b)). None of the Credit Parties (i) is a blocked person described in section 1 of the Anti-Terrorism Order or (ii) to the best of its knowledge, engages in any dealings or transactions, or is otherwise associated, with any such blocked person.

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#### **6.18 Compliance with OFAC Rules and Regulations.**

None of the Credit Parties or their Subsidiaries or their respective Affiliates (a) is a Sanctioned Person, (b) has more than 15% of its assets in Sanctioned Countries, or (c) derives more than 15% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries. No part of the proceeds of any Extension of Credit hereunder will be used directly or indirectly to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country.

#### **6.19 Compliance with FCPA.**

Each of the Credit Parties and their Subsidiaries is in compliance with the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et seq.*, and any foreign counterpart thereto. None of the Credit Parties and their Subsidiaries has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (a) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (b) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (c) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to such Credit Party or its Subsidiary or to any other Person, in violation of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et seq.*

### **SECTION 7.**

#### **AFFIRMATIVE COVENANTS**

Each Credit Party hereby covenants and agrees that so long as this Credit Agreement is in effect and until the Loans and LOC Obligations, together with interest, fees and other obligations hereunder, have been paid in full and the Commitments and Letters of Credit shall have terminated:

##### **7.1 Information Covenants.**

The Borrower will furnish, or cause to be furnished, to the Agent for further distribution to each Lender:

(a) Annual Financial Statements. As soon as available, and in any event within 95 days after the close of each fiscal year of the Parent, a consolidated balance sheet of the Parent as of the end of such fiscal year, together with a related consolidated income statement and related statements of cash flows, capitalization and retained earnings for such fiscal year, setting forth in comparative form figures for the preceding fiscal year, all such financial information described above to be audited by independent certified public accountants of recognized national standing and whose opinion, which shall be furnished to the Agent, shall be to the effect that such financial statements have been prepared in accordance with GAAP (except for changes with which such accountants concur); provided, that the Parent's Form 10-K Annual Report as filed with the Securities and Exchange Commission, without exhibits, will satisfy the requirements of this Section 7.1(a).

(b) Quarterly Financial Statements. As soon as available, and in any event within 50 days after the close of each fiscal quarter of the Parent (other than the fourth fiscal quarter) a consolidated balance sheet of the Parent as of the end of such fiscal quarter, together with a related

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consolidated income statement and related statement of cash flows for such fiscal quarter in each case setting forth in comparative form figures for the corresponding period of the preceding fiscal year, and accompanied by a certificate of an Approved Officer of the Parent to the effect that such quarterly financial statements fairly present in all material respects the financial condition of the Parent and its Subsidiaries and have been prepared in accordance with GAAP, subject to changes resulting from audit and normal year-end audit adjustments to same; provided, that the Parent's Form 10-Q Quarterly Report as filed with the Securities and Exchange Commission, without exhibits, will satisfy the requirements of this Section 7.1(b).

(c) Operating Budget and Cash Flow Projections. As soon as available, and in any event no later than the last day of February of each fiscal year of the Parent, operating budget and cash flow projections of the Parent and its Subsidiaries prepared on a monthly or quarterly basis and otherwise in such form as the Agent may reasonably request; provided, however, that such operating budget and cash flow projections shall not be required if as of the last day of December of the previous fiscal year the Parent has an Investment Grade Rating.

(d) Officer's Certificate. At the time of delivery of the financial statements provided for in Sections 7.1(a) and 7.1(b) above, a certificate of an Approved Officer of the Parent, substantially in the Form of Exhibit 7.1(d), (i) demonstrating compliance with the financial covenants contained in Section 7.10 by calculation thereof as of the end of each such fiscal period, beginning with the fiscal quarter ending March 31, 2006, (ii) stating that no Default or Event of Default exists, or if any Default or Event of Default does exist, specifying the nature and extent thereof and what action the Parent or the Borrower proposes to take with respect thereto, (iii) setting forth the amount of Off Balance Sheet Indebtedness of the Parent and its Subsidiaries as of the end of each such fiscal period, (iv) updating Schedule 6.13 with respect to Subsidiaries, if appropriate, (v) providing information to evidence compliance with Sections 7.12, 8.2(m), 8.4(i), 8.6(g) and 8.7(g) and (vi) providing such other information to evidence compliance with this Credit Agreement as reasonably requested by the Agent.

(e) Reports. Promptly upon transmission or receipt thereof, copies of any material filings and registrations with, and reports to or from, the Securities and Exchange Commission, or any successor agency.

(f) Notices. Within five Business Days after any officer of a Credit Party with responsibility relating thereto obtaining knowledge thereof, such Credit Party will give written notice to the Agent immediately of (i) the occurrence of a Default or Event of Default, specifying the nature and existence thereof and what action such Credit Party proposes to take with respect thereto, and (ii) the occurrence of any of the following with respect to a Credit Party: (A) the pendency or commencement of any litigation, arbitral or governmental proceeding against such Credit Party the claim of which is likely to be decided adversely to such Credit Party and, if adversely determined, would have or would be reasonably expected to have a Material Adverse Effect or (B) the institution of any proceedings against such Credit Party with respect to, or the receipt of notice by such Person of potential liability or responsibility for violation or alleged violation of, any federal, state or local law, rule or regulation (including, without limitation, any Environmental Law) that is likely to be decided adversely to such Credit Party and, if adversely decided, would have a Material Adverse Effect.

(g) ERISA. Upon a Credit Party or any ERISA Affiliate obtaining knowledge thereof, such Credit Party will give written notice to the Agent promptly (and in any event within five Business Days) of: (i) any event or condition, including, but not limited to, any Reportable Event,

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that constitutes, or would be reasonably expected to lead to, a Termination Event if such Termination Event would have a Material Adverse Effect; (ii) with respect to any Multiemployer Plan, the receipt of notice as prescribed in ERISA or otherwise of any withdrawal liability assessed against a Credit Party or any ERISA Affiliate, or of a determination that any Multiemployer Plan is in reorganization or insolvent (both within the meaning of Title IV of ERISA); (iii) the failure to make full payment on or before the due date (including extensions) thereof of all amounts which a Credit Party or any of its Subsidiaries or ERISA Affiliates is required to contribute to each Plan pursuant to its terms and as required to meet the minimum funding standard set forth in ERISA and the Code with respect thereto; or (iv) any change in the funding status of any Plan that would have or would be reasonably expected to have a Material Adverse Effect; together, with a description of any such event or condition or a copy of any such notice and a statement by an officer of a Credit Party briefly setting forth the details regarding such event, condition, or notice, and the action, if any, which has been or is being taken or is proposed to be taken with respect thereto. Promptly upon request, a Credit Party shall furnish the Agent and each of the Lenders with such additional information concerning any Plan as may be reasonably requested, including, but not limited to, copies of each annual report/return (Form 5500 series), as well as all schedules and attachments thereto required to be filed with the Department of Labor and/or the Internal Revenue Service pursuant to ERISA and the Code, respectively, for each "plan year" (within the meaning of Section 3(39) of ERISA).

(h) **Debt Rating Changes.** Upon any change in its Debt Rating, the Parent shall promptly deliver such information to the Agent.

(i) **Other Information.** With reasonable promptness upon any such request, such other information regarding the business, properties or financial condition of the Credit Parties and their Subsidiaries as the Agent or any Lender may reasonably request.

Information required to be delivered pursuant to Sections 7.1(a), 7.1(b) and 7.1(e) shall be deemed to have been delivered on the earlier of (A) the date on which such information is posted by the Agent on behalf of the Credit Parties on IntraLinks, Syndtrak or other electronic medium chosen by the Administrative Agent or (B) the date on which a Credit Party provides notice to the Agent for further delivery to each Lender by the Borrower that such information has been posted on the Securities and Exchange Commission website on the Internet at [www.sec.gov/edgar/searchedgar/webusers.htm](http://www.sec.gov/edgar/searchedgar/webusers.htm) or at another website identified in such notice and accessible by the Lenders without charge; provided, that (i) any such notice may be included in a certificate delivered pursuant to Section 7.1(d) and (ii) the Credit Parties shall deliver paper copies of the information referred to in Sections 7.1(a), 7.1(b) and 7.1(e), to any Lender that requests such delivery.

## **7.2 Preservation of Existence and Franchises.**

Each Credit Party will, and will cause each Subsidiary to, do all things necessary to preserve and keep in full force and effect its existence and rights, franchises and authority; provided, however, that, subject to Section 8.3, a Credit Party shall not be required to preserve any such existence, right or franchise if it in good faith determines that preservation thereof is no longer necessary or desirable in the conduct of its business and that the loss thereof is not disadvantageous in any material respect to the Lenders.

## **7.3 Books and Records.**

Each Credit Party will keep, and will cause each of its Subsidiaries to keep, complete and accurate books and records of its transactions in accordance with good accounting practices on the basis of GAAP (including the establishment and maintenance of appropriate reserves).

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#### **7.4 Compliance with Law.**

Each Credit Party will comply, and will cause each of its Subsidiaries to comply, with all laws (including, without limitation, all Environmental Laws and ERISA laws), rules, regulations and orders, and all applicable restrictions imposed by all Governmental Authorities, applicable to it and its property, unless (a) the failure to comply would not have or would not reasonably be expected to have a Material Adverse Effect or (b) the necessity of compliance therewith is being contested in good faith by appropriate proceedings.

#### **7.5 Payment of Taxes and Other Indebtedness.**

Each Credit Party will, and will cause each of its Subsidiaries to, pay, settle or discharge (a) all taxes, assessments and governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties, before they shall become delinquent, (b) all lawful claims (including claims for labor, materials and supplies) which, if unpaid, might give rise to a Lien upon any of its properties, and (c) all of its other Indebtedness as it shall become due; provided, however, that a Credit Party shall not be required to pay any such tax, assessment, charge, levy, claim or Indebtedness which (i) is being contested in good faith by appropriate proceedings and as to which adequate reserves therefor have been established in accordance with GAAP or (ii) the nonpayment of which would not have a Material Adverse Effect.

#### **7.6 Maintenance of Property; Insurance.**

(a) Each Credit Party will keep, and will cause each of its Subsidiaries to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.

(b) Each Credit Party will, and will cause each of its Subsidiaries to, maintain (either in the name of such Credit Party or in such Subsidiary's own name) with financially sound and responsible insurance companies, insurance on all their respective properties in at least such amounts and against at least such risks (and with such risk retention) as are usually insured against by companies of established repute engaged in the same or a similar business; provided, that self-insurance by a Credit Party or any such Subsidiary shall not be deemed a violation of this covenant to the extent that companies engaged in similar businesses and owning similar properties in the same general areas in which such Credit Party or such Subsidiary operates self-insure.

#### **7.7 Use of Proceeds.**

The proceeds of the Revolving Loans may be used solely (a) to help fund the purchase of the Initial Asset Acquisition, (b) to make cash distributions to the general partner of the Parent on the Effective Date in connection with the Initial Asset Acquisition and (b) for working capital and other general corporate purposes of the Credit Parties. The proceeds of the Term Loans shall be used (a) to make cash distributions to the general partner of the Parent and (b) to make cash distributions to the Parent who will then make cash distributions to or repurchase limited partnership interests from an affiliate of the general partner of the Parent that is also a partner of the Parent. The proceeds of the Swingline Loans may be used solely for working capital and other general corporate purposes of the Credit Parties. The Borrower will use the Letters of Credit solely for the purposes set forth in Section 2.2(a).

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## **7.8 Audits/Inspections.**

Upon reasonable notice and during normal business hours, each Credit Party will, and will cause its Subsidiaries to, permit representatives appointed by the Agent (or upon the occurrence and during the continuance of an Event of Default, any Lender), including, without limitation, independent accountants, agents, attorneys, and appraisers to visit and inspect the Credit Parties' and their Subsidiaries' property, including their books and records, their accounts receivable and inventory, the Credit Parties' and their Subsidiaries' facilities and their other business assets, and to make photocopies or photographs thereof and to write down and record any information such representatives obtain and shall permit the Agent (or upon the occurrence and during the continuance of an Event of Default, any Lender) or its representatives to investigate and verify the accuracy of information provided to the Lenders and to discuss all such matters with the officers, employees and representatives of each Credit Party and its Subsidiaries.

## **7.9 Maintenance of Ownership.**

Each Credit Party will maintain ownership of all Capital Stock of each Subsidiary that is a Credit Party, directly or indirectly, free and clear of all Liens except as permitted by Section 8.3 and Section 8.4.

## **7.10 Financial Covenants.**

(a) **Consolidated Leverage Ratio.** The Consolidated Leverage Ratio, as at the end of each fiscal quarter of the Parent (beginning with the fiscal quarter ending March 31, 2006), shall be less than or equal to 4.75 to 1.0; provided that subsequent to the consummation of a Qualified Acquisition, the Consolidated Leverage Ratio, as at the end of the three consecutive fiscal quarters following such Qualified Acquisition, shall be less than or equal to 5.25 to 1.0.

(b) **Consolidated Interest Coverage Ratio.** The Consolidated Interest Coverage Ratio, as at the end of each fiscal quarter of the Parent (beginning with the fiscal quarter ending March 31, 2006), shall (i) prior to the Investment Grade Rating Date, be greater than or equal to 3.0 to 1.0 and (ii) subsequent to the Investment Grade Rating Date, be greater than or equal to 2.5 to 1.0.

For purposes of calculating compliance with the financial covenants set forth in this Section 7.10:

(i) with respect to the Initial Asset Acquisition, Consolidated EBITDA and Consolidated Interest Expense shall, for the first twelve months subsequent to the Effective Date, be calculated on an annualized 365 day basis for the number of days actually elapsed since the Effective Date until the date of determination; and

(ii) with respect to all Permitted Acquisitions subsequent to the Effective Date, Consolidated EBITDA and Consolidated Interest Expense with respect to such newly acquired assets shall be calculated on a proforma basis as if such acquisition had occurred at the beginning of the applicable twelve month period of determination.

## **7.11 Material Contracts.**

Each Credit Party will comply, and will cause its Subsidiaries to comply, with all contracts necessary for the ongoing operation and business of such Credit Party or Subsidiary in the ordinary course, except where the failure to comply would not have or would not reasonably be expected

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to have a Material Adverse Effect.

#### **7.12 Additional Guarantors.**

If (a) as of the end of any fiscal quarter of the Parent or (b) at the time any Qualified Acquisition is consummated, the Subsidiaries of the Parent that are not Credit Parties hereunder (the “Non-Guarantor Subsidiaries”) constitute more than either (collectively, the “Threshold Requirements”):

- (i) twenty percent (20%), in the aggregate, of Consolidated Net Tangible Assets, or
- (ii) twenty percent (20%), in the aggregate, of Consolidated Net Income,

the Borrower shall promptly notify the Agent and shall, within ten Business Days thereof (A) cause one or more of such Subsidiaries to become a “Guarantor” pursuant to a Joinder Agreement in the form of Exhibit 7.12 and to execute and deliver such other documents as requested by the Agent and (B) deliver to the Agent documents of the types referred to Section 5.1(b) as well as opinions of counsel to such Subsidiary (which shall cover, among other things, legality, validity, binding effect and enforceability), all in form, content and scope satisfactory to the Agent, such that immediately after the joinder of such Subsidiary or Subsidiaries as Guarantors hereunder, the remaining Non-Guarantor Subsidiaries shall not exceed, in the aggregate, either of the Threshold Requirements.

#### **7.13 Cash Collateral.**

(a) The Borrower shall maintain the Cash Collateral Account at all times that any portion of the Term Loans shall remain outstanding.

(b) The Borrower shall, at all times, maintain Permitted Cash Collateral in the Cash Collateral Account with a value greater than or equal to the following (the “Required Collateral Amount”): (i) if all Permitted Cash Collateral is comprised entirely of Tier 1 Permitted Cash Collateral, 100% of the principal amount of all outstanding Term Loans, (ii) if Permitted Cash Collateral is not comprised entirely of Tier 1 Permitted Cash Collateral but is not composed of any Tier 3 Permitted Cash Collateral, 100.5% of the principal amount of all outstanding Term Loans or (iii) if any Permitted Cash Collateral is comprised of any Tier 3 Permitted Cash Collateral, 101% of the principal amount of all outstanding Term Loans. If, at any time, the Required Collateral Amount exceeds the value of the Permitted Cash Collateral, the Borrower shall immediately deposit additional Permitted Cash Collateral into the Cash Collateral Account to eliminate such excess. In accordance with the terms of the Account Control Agreement, the Borrower shall direct the investment of items deposited into the Cash Collateral Account; provided, that (1) all Cash Collateral shall consist of Permitted Cash Collateral at all times and (2) the Borrower shall not be permitted to sell any Permitted Cash Collateral prior to its stated maturity (if any) during the first two months following the Closing Date except pursuant to Section 7.13(c). The Borrower shall treat all income, gains or losses from the investment of items in the Cash Collateral Account as its own income or loss, and the Agent and the Lenders shall have no liability for any such gain or loss.

(c) Upon any prepayment of the Term Loans, the Borrower shall be permitted to liquidate and/or withdraw Cash Collateral from the Cash Collateral Account in an amount up to such prepayment; provided, that after such withdrawal, the value of the Permitted Cash Collateral shall be greater than or equal to the Required Collateral Amount, as calculated after giving effect

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of such prepayment of the Term Loans. In the event that the Borrower shall elect to make such a withdrawal, the Agent shall direct the Intermediary to liquidate the applicable Cash Collateral and remit the proceeds to the Borrower.

(d) If, at the end of any fiscal quarter of the Parent, the value of the Permitted Cash Collateral exceeds 102% of the principal amount of the Term Loans outstanding at such time, then, upon the request of the Borrower, provided no Default or Event of Default has occurred and is continuing, the Agent shall direct the Intermediary to pay and transfer to the Borrower cash, to the extent available, in the Cash Collateral Account in an amount equal to such excess.

(e) To secure the prompt payment in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Term Loans, the Borrower hereby grants to the Agent, for the ratable benefit of the Lenders, a continuing security interest in, and a right to set off against, any and all right, title and interest of the Borrower in and to the Cash Collateral Account and the Cash Collateral and all other amounts maintained in the Cash Collateral Account.

## SECTION 8.

### NEGATIVE COVENANTS

Each Credit Party hereby covenants and agrees that so long as this Credit Agreement is in effect and until the Loans and LOC Obligations, together with interest, fees and other obligations hereunder, have been paid in full and the Commitments and Letters of Credit shall have terminated:

#### **8.1 Nature of Business.**

No Credit Party will, nor will it permit any of its Subsidiaries to (whether now owned or acquired or formed subsequent to the Closing Date), materially alter the character of their business on a consolidated basis from the midstream energy business.

#### **8.2. Liens.**

No Credit Party will create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it or any of its Subsidiaries, except for the following:

(a) Liens in favor of the Lenders securing Indebtedness under this Credit Agreement.

(b) any Lien arising out of the refinancing, extension, renewal or refunding of any Indebtedness secured by any Lien permitted by any of the foregoing clauses of this Section 8.2; provided, that such Indebtedness is not increased and is not secured by any additional assets.

(c) Liens for taxes, assessments or other governmental charges or levies not yet due or which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained in accordance with GAAP.

(d) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and interest owners of oil and gas production and other Liens imposed by law, created in the ordinary course of business and for amounts not past due for more than 60 days or which are being contested in good faith by appropriate proceedings which are sufficient to prevent imminent

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foreclosure of such Liens, are promptly instituted and diligently conducted and with respect to which adequate reserves or other appropriate provisions are being maintained in accordance with GAAP.

(e) Liens incurred or deposits made in the ordinary course of business (including, without limitation, surety bonds and appeal bonds) in connection with workers' compensation, unemployment insurance and other types of social security benefits or to secure the performance of tenders, bids, leases, contracts (other than for the repayment of Indebtedness), statutory obligations and other similar obligations or arising as a result of progress payments under government contracts.

(f) easements (including, without limitation, reciprocal easement agreements and utility agreements), rights-of-way, covenants, consents, reservations, encroachments, variations and other restrictions, charges or encumbrances (whether or not recorded) affecting the use of real property.

(g) Liens with respect to judgments and attachments which do not result in an Event of Default.

(h) Liens, deposits or pledges to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), leases (permitted under the terms of this Agreement), public or statutory obligations, surety, stay, appeal, indemnity, performance or other obligations arising in the ordinary course of business.

(i) rights of first refusal entered into in the ordinary course of business.

(j) Liens consisting of any (i) rights reserved to or vested in any municipality or governmental, statutory or public authority to control or regulate any property of a Credit Party or any Subsidiary or to use such property in any manner which does not materially impair the use of such property for the purpose for which it is held by a Credit Party or any such Subsidiary, (ii) obligations or duties to any municipality or public authority with respect to any franchise, grant, license, lease or permit and the rights reserved or vested in any Governmental Authority or public utility to terminate any such franchise, grant, license, lease or permit or to condemn or expropriate any property, or (iii) zoning laws, ordinances or municipal regulations.

(k) Liens on deposits required by any Person with whom a Credit Party or any Subsidiary enters into forward contracts, futures contracts, swap agreements or other commodities contracts in the ordinary course of business.

(l) other Liens, including Liens imposed by Environmental Laws, arising in the ordinary course of its business which (i) do not secure Indebtedness (other than Liens on cash and cash equivalents that secure letters of credit), (ii) do not secure any obligation in an amount exceeding \$10,000,000 at any time and (iii) do not in the aggregate materially detract from the value of its assets or materially impair the use thereof in the operation of its business.

(m) (i) prior to the Investment Grade Rating Date only, Liens securing, or in respect of, purchase money obligations for fixed or capital assets and obligations under Capital Leases; provided, that (A) any such Lien attaches to such property concurrently with such acquisition; (B) such Lien attaches solely to the property so acquired in such transaction; (C) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of such acquisition and (D) the aggregate Indebtedness being secured by such Liens does not exceed at any one time 3% of Consolidated Tangible Net Assets or (ii) subsequent to the Investment Grade Debt Rating only, other Liens securing Indebtedness or

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obligations in an amount not to exceed, in the aggregate, at any one time 10% of Consolidated Tangible Net Assets.

(n) after the Investment Grade Rating Date, any Lien on any asset of any Person existing at the time such Person is merged or consolidated with or into the Borrower, the Parent or any Subsidiary and not created in contemplation of such event.

(o) after the Investment Grade Rating Date, any Lien existing on any asset prior to the acquisition thereof by the Borrower, the Parent or any Subsidiary and not created in contemplation of such acquisition.

### **8.3 Consolidation and Merger.**

A Credit Party will not, and will not permit any of its Subsidiaries to, (a) enter into any transaction of merger or (b) consolidate, liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution); provided, that: (i) a Person (including a Subsidiary of the Borrower) may be merged or consolidated with or into the Borrower or the Parent so long as (A) the Borrower or the Parent, as the case may be, shall be the continuing or surviving entity, (B) no Default or Event of Default shall exist or be caused thereby, (C) if the Parent has a Debt Rating at the time of such merger or consolidation, the Parent is not downgraded by a Designated Rating Agency as a result of such transaction to a rating below an Investment Grade Rating (or equivalent rating if the Parent has selected a Designated Rating Agency other than S&P or Moody's), as applicable and (D) the Borrower remains liable for its obligations under this Credit Agreement and all the rights and remedies hereunder remain in full force and effect, and (ii) a Subsidiary of the Parent may merge with or into another Subsidiary of the Parent; provided that if one of such Subsidiaries is a Guarantor, the surviving entity must be a Guarantor.

### **8.4 Dispositions.**

A Credit Party will not make, nor permit its Subsidiaries to make any Disposition except:

- (a) Dispositions of inventory in the ordinary course of business;
- (b) Dispositions of machinery and equipment no longer used or useful in the conduct of business of a Credit Party and its Subsidiaries that are Disposed of in the ordinary course of business;
- (c) Dispositions of assets to a Credit Party;
- (d) Dispositions of Investments permitted under Section 8.7;
- (e) Dispositions of accounts receivable in connection with the collection or compromise thereof;
- (f) Dispositions of licenses, sublicenses, leases or subleases granted to others not interfering in any material respect with the business of a Credit Party and its Subsidiaries;
- (g) Dispositions of Cash Equivalents for fair market value;
- (h) Dispositions in which: (i) the assets being disposed are used simultaneously in exchange for replacement assets or (ii) the net proceeds thereof are either (A)

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reinvested within 180 days from such Disposition in assets to be used in the ordinary course of the business of the Parent and its Subsidiaries and/or (B) used to permanently reduce the Revolving Committed Amount on a dollar for dollar basis.

(i) other Dispositions not exceeding in the aggregate for all Credit Parties and their Subsidiaries (i) 10% of Consolidated Net Tangible Assets in any fiscal year and (ii) 25% of Consolidated Net Tangible Assets during the term of this Credit Agreement.

#### **8.5 Transactions with Affiliates.**

A Credit Party will not, and will not permit any Subsidiary to, directly or indirectly, pay any funds to or for the account of, make any investment in, lease, sell, transfer or otherwise dispose of any assets, tangible or intangible, to, or participate in, or effect, any transaction with, any officer, director, employee or Affiliate (other than another Credit Party) unless any and all such transactions between a Credit Party and its Subsidiaries on the one hand and any officer, director, employee or Affiliate (other than another Credit Party) on the other hand, shall be on an arms-length basis and on terms no less favorable to such Credit Party or such Subsidiary than could have been obtained from a third party who was not an officer, director, employee or Affiliate (other than another Credit Party); provided, that the foregoing provisions of this Section shall not (a) prohibit a Credit Party and each Subsidiary from declaring or paying any lawful dividend or distribution otherwise permitted hereunder, (b) prohibit a Credit Party or a Subsidiary from providing credit support for its Subsidiaries as it deems appropriate in the ordinary course of business, (c) prohibit a Credit Party or a Subsidiary from engaging in a transaction or transactions that are not on an arms-length basis or are not on terms as favorable as could have been obtained from a third party, provided that such transaction or transactions occurs within a related series of transactions, which, in the aggregate, are on an arms-length basis and are on terms as favorable as could have been obtained from a third party, (d) prohibit a Credit Party or a Subsidiary from engaging in non-material transactions with any Credit Party that are not on an arms-length basis or are not on terms as favorable as could have been obtained from a third party but are in the ordinary course of such Credit Party's or such Subsidiary's business, so long as, in each case, after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, (e) prohibit a Credit Party from entering into any of the agreements to be entered into by various Credit Parties in connection with the Initial Asset Acquisition and the transactions related thereto, (f) prohibit a Credit Party from engaging in a transaction with an Affiliate if such transaction has been approved by the Conflicts Committee, or (g) prohibit a Credit Party from entering into any of the agreements listed on Schedule 8.5.

#### **8.6 Indebtedness.**

No Credit Party will, nor will it permit its Subsidiaries to, create, incur, assume or suffer to exist any Indebtedness, except:

- (a) Indebtedness under the Credit Documents;
- (b) Investments permitted under Section 8.7 that would constitute Indebtedness;
- (c) obligations (contingent or otherwise) of a Credit Party or any Subsidiary existing or arising under (i) any Credit Facility Swap Contract or (ii) any other Swap Contract; provided that with respect to clauses (i) and (ii) above (A) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view" and (B) such Credit Facility Swap Contract

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or Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(d) current liabilities of the Credit Parties or their respective Subsidiaries incurred in the ordinary course of business but not incurred through (i) the borrowing of money or (ii) the obtaining of credit except for credit on an open account basis customarily extended and in fact extended in connection with normal purchases of goods and services;

(e) Indebtedness in respect of taxes, assessments, governmental charges or levies and claims for labor, materials and supplies to the extent that payment therefor shall not at the time be required to be made in accordance with the provisions of this Credit Agreement;

(f) Indebtedness in respect of judgments or awards only to the extent, for the period and for an amount not resulting in a Default or Event of Default;

(g) other unsecured Indebtedness in an aggregate amount not to exceed, at any one time outstanding, the greater of (i) \$50,000,000 and (ii) 10% of Consolidate Net Tangible Assets; and

(h) secured Indebtedness to the extent permitted by Section 8.2(m).

### **8.7 Investments.**

No Credit Party will, nor will it permit its Subsidiaries to, make any Investments, except:

(a) Investments held by a Credit Party or a Subsidiary in the form of cash or Cash Equivalents;

(b) Investments in any Subsidiary;

(c) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(d) Investments in Permitted Acquisitions and capital expenditures in the ordinary course;

(e) Investments in Credit Facility Swap Contracts and other Swap Contracts permitted by Section 8.6;

(f) Loans and advances to the general partner of the Borrower or the Parent to enable such general partner of the to pay general and administrative costs and expenses pursuant to the partnership agreement of the Borrower or Parent, as applicable; and

(g) other Investments in an aggregate amount not to exceed, at any one time outstanding, \$25,000,000.

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## **8.8 Restricted Payments.**

No Credit Party will, nor will it permit its Subsidiaries to, declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

- (a) a Credit Party or Subsidiary may make Restricted Payments to a Credit Party;
- (b) a Credit Party or Subsidiary may declare and make dividend payments or other distributions payable solely in the Capital Stock of such Person;
- (c) cash distributions may be made and redemption of limited partnership units may occur with the proceeds of the Term Loan, the initial draw of Revolving Loans on the Closing Date and the proceeds of the IPO, in each case in connection with the Initial Asset Acquisition;
- (d) as long as no Default or Event of Default exists and is continuing, the Credit Parties may make quarterly cash distributions in an amount not to exceed Available Cash for such period; and
- (e) the Parent or Borrower may repurchase their respective limited partnership units in an aggregate amount not exceeding \$5,000,000 in any fiscal year.

## **SECTION 9.**

### **EVENTS OF DEFAULT**

#### **9.1 Events of Default.**

An Event of Default shall exist upon the occurrence of any of the following specified events (each an "Event of Default"):

- (a) Payment. A Credit Party shall: (i) default in the payment when due of any principal amount of any of the Loans or of any reimbursement obligation arising from drawings under any Letters of Credit; or (ii) default, and such default shall continue for five or more Business Days, in the payment when due of any interest on the Loans or of any fees or other amounts owing hereunder, under any of the other Credit Documents or in connection herewith.
- (b) Representations. Any representation, warranty or statement made or deemed to be made by a Credit Party herein, in any of the other Credit Documents, or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto shall prove to have been untrue in any material respect on the date as of which it was deemed to have been made.
- (c) Covenants. A Credit Party shall:
  - (i) default in the due performance or observance of any term, covenant or agreement contained in Section 7.1(f), 7.8, 7.10, 7.11, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7 or 8.8;
  - (ii) default in the due performance or observance by it of any term, covenant or agreement contained in Section 7.13 of this Credit Agreement and such default shall

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continue unremedied for a period of at least 5 Business Days after notice of such default is given by the Agent or a Lender to the Borrower; or

(iii) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in subsections (a), (b), (c)(i) or (c)(ii) of this Section 9.1) contained in this Credit Agreement or any other Credit Document and such default shall continue unremedied for a period of at least 30 days after the earlier of (A) a Responsible Officer of a Credit Party becoming aware of such default or (B) notice of such default is given by the Agent or a Lender to the Borrower.

(d) Credit Documents.

(i) Any Credit Document shall fail to be in full force and effect or a Credit Party shall so assert or any Credit Document shall fail to give the Agent and/or the Lenders the rights, powers and privileges purported to be created thereby; or

(ii) The Agent shall cease to have a valid, perfected, first priority Lien on the Cash Collateral in the Cash Collateral Account for any reason.

(e) Bankruptcy, etc. The occurrence of any of the following with respect to a Credit Party or a Subsidiary (i) a court or governmental agency having jurisdiction in the premises shall enter a decree or order for relief in respect of such Credit Party or Subsidiary in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appoint a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of such Credit Party or Subsidiary or for any substantial part of its property or ordering the winding up or liquidation of its affairs; or (ii) an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect is commenced against such Credit Party or Subsidiary and such petition remains unstayed and in effect for a period of 90 consecutive days; or (iii) such Credit Party or Subsidiary shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of such Person or any substantial part of its property or make any general assignment for the benefit of creditors; or (iv) such Credit Party or Subsidiary shall admit in writing its inability to pay its debts generally as they become due or any action shall be taken by such Person in furtherance of any of the aforesaid purposes.

(f) Defaults under Other Agreements. With respect to any Indebtedness, including any Off Balance Sheet Indebtedness, in excess of the greater of (i) \$10,000,000 or (ii) the lesser of (x) three percent (3%) of Consolidated Net Tangible Assets and (y) \$100,000,000 (other than Indebtedness outstanding under this Credit Agreement) of a Credit Party or any Subsidiary such Credit Party or such Subsidiary shall (A) default in any payment (beyond the applicable grace period with respect thereto, if any) with respect to any such Indebtedness or fail to timely pay such Indebtedness when due, or (B) default (after giving effect to any applicable grace period) in the observance or performance of any covenant or agreement relating to such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event or condition shall occur or condition exist, the effect of which default or other event or condition in this clause (B) is to cause any such Indebtedness to become due prior to its stated maturity.

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(g) Judgments. One or more judgments, orders, or decrees shall be entered against a Credit Party or a Subsidiary involving a liability, in the aggregate, in excess of the greater of (i) \$10,000,000 or (ii) the lesser of (x) three percent (3%) of Consolidated Net Tangible Assets and (y) \$50,000,000 (to the extent not paid or covered by insurance provided by a carrier who has acknowledged coverage) and such judgments, orders or decrees shall continue unsatisfied, undischarged and unstayed for a period ending on the first to occur of (i) the last day on which such judgment, order or decree becomes final and unappealable and, where applicable, with the status of a judicial lien or (ii) 45 days.

(h) ERISA. The occurrence of:

(i) any of the following events or conditions which could result in a liability of a Credit Party or an ERISA Affiliate, in the aggregate, in excess of the greater of (i) \$10,000,000 or (ii) the lesser of (x) three percent (3%) of Consolidated Net Tangible Assets and (y) \$25,000,000: (A) any “accumulated funding deficiency,” as such term is defined in Section 302 of ERISA and Section 412 of the Code, whether or not waived, shall exist with respect to any Plan, or any lien shall arise on the assets of the Borrower or any ERISA Affiliate in favor of the PBGC or a Plan; or (B) any prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) or breach of fiduciary responsibility shall occur which would be reasonably expected to subject the Borrower or any ERISA Affiliate to any liability under Sections 406, 409, 502(i), or 502(l) of ERISA or Section 4975 of the Code, or under any agreement or other instrument pursuant to which the Borrower or any ERISA Affiliate has agreed or is required to indemnify any person against any such liability; or

(ii) any of the following events or conditions which could result in a liability of a Credit Party or an ERISA Affiliate, in the aggregate, in excess of the greater of (i) \$10,000,000 or (ii) the lesser of (x) three percent (3%) of Consolidated Net Tangible Assets and (y) \$50,000,000: (A) a Termination Event shall occur with respect to a Single Employer Plan which is, in the reasonable opinion of the Agent, likely to result in the termination of such Plan for purposes of Title IV of ERISA; or (B) a Termination Event shall occur with respect to a Multiemployer Plan or Multiple Employer Plan which is, in the reasonable opinion of the Agent, likely to result in (x) the termination of such Plan for purposes of Title IV of ERISA, or (y) the Borrower or any ERISA Affiliate incurring any liability in connection with a withdrawal from, reorganization of (within the meaning of Section 4241 of ERISA), or insolvency (within the meaning of Section 4245 of ERISA) of such Plan.

(i) Change of Control. The occurrence of any Change of Control.

## **9.2 Acceleration; Remedies.**

Upon the occurrence of an Event of Default, and at any time thereafter unless and until such Event of Default has been waived by the Required Lenders (or the Lenders as may be required hereunder), the Agent may, with the consent of the Required Lenders, and shall, upon the request and direction of the Required Lenders, by written notice to the Borrower take any of the following actions without prejudice to the rights of the Agent or any Lender to enforce its claims against the Borrower, except as otherwise specifically provided for herein:

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(i) Termination of Commitments. Declare the Commitments and the obligation of the Issuing Bank to issue any Letter of Credit to be terminated whereupon the Commitments and such obligation of the Issuing Bank to issue any Letter of Credit shall be immediately terminated.

(ii) Acceleration of Loans and Letters of Credit. Declare the unpaid principal of and any accrued interest in respect of all Loans, any reimbursement obligations arising from drawings under Letters of Credit and any and all other indebtedness or obligations of any and every kind owing by the Credit Parties to any of the Lenders hereunder to be due whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

(iii) Cash Collateralize Letters of Credit. Direct the Borrower to pay (and the Borrower agrees that upon receipt of such notice, or upon the occurrence of an Event of Default under Section 9.1(e), it will immediately pay) to the Issuing Lender additional cash, to be held by the Issuing Lender, for the benefit of the Lenders, in a cash collateral account as security for the LOC Obligations in respect of subsequent drawings under all then outstanding Letters of Credit in an amount equal to the maximum aggregate amount which may be drawn under all Letters of Credits then outstanding.

(iv) Enforcement of Rights. Enforce any and all rights and interests created and existing under the Credit Documents, including, without limitation, all rights of set-off.

(v) Cash Collateral. Liquidate the Cash Collateral and apply the proceeds thereof to repay the Term Loans then outstanding.

Notwithstanding the foregoing, if an Event of Default specified in Section 9.1(e) shall occur, then the Commitments and the obligation of the Issuing Bank to issue any Letter of Credit shall automatically terminate and all Loans, all reimbursement obligations under Letters of Credit, all accrued interest in respect thereof, all accrued and unpaid fees and other indebtedness or obligations owing to the Lenders and the Agent hereunder shall immediately become due and payable without the giving of any notice or other action by the Agent or the Lenders.

Notwithstanding the fact that enforcement powers reside primarily with the Agent, each Lender has, to the extent permitted by law, a separate right of payment and shall be considered a separate "creditor" holding a separate "claim" within the meaning of Section 101(5) of the Bankruptcy Code or any other insolvency statute.

### **9.3 Allocation of Payments After Event of Default.**

Notwithstanding any other provision of this Credit Agreement, after the occurrence of an Event of Default, all amounts collected or received by the Agent or any Lender on account of amounts outstanding under any of the Credit Documents shall be paid over or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including without limitation reasonable attorneys' fees) of the Agent and the Lenders in connection with enforcing the rights of the Lenders under the Credit Documents, pro rata as set forth below;

SECOND, to payment of any fees owed to the Agent, or any Lender, pro rata as set forth below;

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THIRD, to the payment of all accrued interest payable to the Lenders hereunder, pro rata as set forth below;

FOURTH, to the payment of the outstanding principal amount of the Loans and to the payment or cash collateralization of the outstanding LOC Obligations, pro rata, as set forth below;

FIFTH, to all other obligations which shall have become due and payable under the Credit Documents and not repaid pursuant to clauses "FIRST" through "FOURTH" above; and

SIXTH, to the payment of the surplus, if any, to whomever may be lawfully entitled to receive such surplus;  
provided, that all amounts collected from the proceeds of Cash Collateral shall be used to repay the Term Loans.

In carrying out the foregoing, (a) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; (b) each of the Lenders shall receive an amount equal to its pro rata share (based on the proportion that the then outstanding Loans and LOC Obligations held by such Lender bears to the aggregate then outstanding Loans and LOC Obligations), of amounts available to be applied; and (c) to the extent that any amounts available for distribution pursuant to clause "FOURTH" above are attributable to the issued but undrawn amount of outstanding Letters of Credit, such amounts shall be held by the Agent in a cash collateral account and applied (i) first, to reimburse the Issuing Lender from time to time for any drawings under such Letters of Credit and (ii) then, following the expiration of all Letters of Credit, to all other obligations of the types described in clauses "FOURTH", "FIFTH" and "SIXTH" above in the manner provided in this Section 9.3.

## SECTION 10.

### AGENCY PROVISIONS

#### **10.1 Appointment.**

Each Lender hereby designates and appoints Wachovia Bank, National Association, as agent of such Lender to act as specified herein and the other Credit Documents, and each such Lender hereby authorizes the Agent, as the agent for such Lender, to take such action on its behalf under the provisions of this Credit Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated by the terms hereof and of the other Credit Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere herein and in the other Credit Documents, the Agent shall not have any duties or responsibilities, except those expressly set forth herein and therein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Credit Agreement or any of the other Credit Documents, or shall otherwise exist against the Agent. The provisions of this Section are solely for the benefit of the Agent and the Lenders and no Credit Party shall have any rights as a third party beneficiary of the provisions hereof. In performing its functions and duties under this Credit Agreement and the other Credit Documents, the Agent shall act solely as agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation or relationship of agency or trust with or for any Credit Party. All institutions acting as a Co-Syndication Agent or Co-Documentation Agent hereunder shall have no obligations in such capacity under the Credit Documents.

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## **10.2 Delegation of Duties.**

The Agent may execute any of its duties hereunder or under the other Credit Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Agent shall not be responsible to the Lenders for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

## **10.3 Exculpatory Provisions.**

Neither the Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection herewith or in connection with any of the other Credit Documents (except for its or such Person's own gross negligence or willful misconduct), or responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Credit Party contained herein or in any of the other Credit Documents or in any certificate, report, statement or other document referred to or provided for in, or received by the Agent under or in connection herewith or in connection with the other Credit Documents, or enforceability or sufficiency therefor of any of the other Credit Documents, or for any failure of any Credit Party to perform its obligations hereunder or thereunder. The Agent shall not be responsible to any Lender for the effectiveness, genuineness, validity, enforceability, collectibility or sufficiency of this Credit Agreement, or any of the other Credit Documents or for any representations, warranties, recitals or statements made herein or therein or made by any Credit Party in any written or oral statement or in any financial or other statements, instruments, reports, certificates or any other documents in connection herewith or therewith furnished or made by the Agent to the Lenders or by or on behalf of any Credit Party to the Agent or any Lender or be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or therein or as to the use of the proceeds of the Loans or of the existence or possible existence of any Default or Event of Default or to inspect the properties, books or records of any Credit Party. The Agent is not a trustee for the Lenders and owes no fiduciary duty to the Lenders.

## **10.4 Reliance on Communications.**

The Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Credit Parties, independent accountants and other experts selected by the Agent with reasonable care). The Agent may deem and treat the Lenders as the owner of its interests hereunder for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Agent in accordance with Section 11.3(b). The Agent shall be fully justified in failing or refusing to take any action under this Credit Agreement or under any of the other Credit Documents unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or under any of the other Credit Documents in accordance with a request of the Required Lenders (or to the extent specifically provided in Section 11.6, all the Lenders) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders (including their successors and assigns).

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## **10.5 Notice of Default.**

The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder (other than an Event of Default specified in Section 9.1(a)) unless the Agent has received notice from a Lender or the Borrower referring to the Credit Document, describing such Default or Event of Default and stating that such notice is a “notice of default.” In the event that the Agent receives such a notice, the Agent shall give prompt notice thereof to the Lenders. The Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders.

## **10.6 Non-Reliance on Agent and Other Lenders.**

Each Lender expressly acknowledges that neither the Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Agent or any Affiliate thereof hereinafter taken, including any review of the affairs of the Credit Parties, shall be deemed to constitute any representation or warranty by the Agent to any Lender. Each Lender represents to the Agent that it has, independently and without reliance upon the Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Credit Parties and made its own decision to make its Extensions of Credit hereunder and enter into this Credit Agreement. Each Lender also represents that it will, independently and without reliance upon the Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Credit Agreement, and to make such investigation as it deems necessary to inform itself as to the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Credit Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Agent hereunder, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, assets, property, financial or other conditions, prospects or creditworthiness of the Credit Parties which may come into the possession of the Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

## **10.7 Indemnification.**

Each Lender agrees to indemnify the Agent (including for purposes of this Section 10.7 the Agent in its capacity as Issuing Lender) in its capacity as such (to the extent not reimbursed by the Credit Parties and without limiting the obligation of the Credit Parties to do so), ratably according to its Commitment Percentage, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time (including without limitation at any time following the payment in full of the Credit Parties Obligations) be imposed on, incurred by or asserted against the Agent in its capacity as such in any way relating to or arising out of this Credit Agreement or the other Credit Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Agent under or in connection with any of the foregoing; provided, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the gross negligence or willful misconduct of the Agent. If any indemnity furnished to the Agent for any purpose shall, in the opinion of the Agent, be insufficient or become impaired, the Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished. The agreements in this Section 10.7 shall survive the payment of the Obligations and all other amounts payable hereunder and under the other Credit Documents and the termination of the Commitments.

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#### **10.8 Agent in Its Individual Capacity.**

The Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with a Credit Party as though the Agent were not Agent hereunder. With respect to the Loans made, Letters of Credit issued and all Obligations owing to it, the Agent shall have the same rights and powers under this Credit Agreement as any Lender and may exercise the same as though it were not the Agent, and the terms "Lender" and "Lenders" shall include the Agent in its individual capacity.

#### **10.9 Successor Agent.**

The Agent may, at any time, resign upon 30 days written notice to the Lenders and the Borrower. Upon any such resignation, the Borrower with the consent of the Required Lenders (such consent of the Required Lenders not to be unreasonably withheld or delayed) shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed and shall have accepted such appointment within 30 days after the notice of resignation, then the retiring Agent shall select a successor Agent provided such successor is a Lender hereunder or qualifies as an Eligible Assignee (or if no Eligible Assignee shall have been so appointed by the retiring Agent and shall have accepted such appointment, then the Lenders shall perform all obligations of the retiring Agent hereunder until such time, if any, as a successor Agent shall have been appointed and shall have accepted such appointment as provided for above). Upon the acceptance of any appointment as Agent hereunder by a successor, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations as Agent, as appropriate, under this Credit Agreement and the other Credit Documents and the provisions of this Section 10.9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Credit Agreement.

### **SECTION 11.**

#### **MISCELLANEOUS**

##### **11.1 Notices.**

(a) Except as otherwise expressly provided herein, all notices and other communications shall have been duly given and shall be effective (i) when delivered, (ii) when transmitted via telecopy (or other facsimile device), (iii) the Business Day following the day on which the same has been delivered prepaid (or pursuant to an invoice arrangement) to a reputable national overnight air courier service, or (iv) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case to the respective parties at the address or telecopy numbers set forth on Schedule 11.1, or at such other address as such party may specify by written notice to the other parties hereto.

(b) Notwithstanding anything herein to the contrary, notices and other communications to the Agent, the Lenders and the Credit Parties, may be delivered or furnished by electronic communication (including email, Internet or intranet website) pursuant to procedures approved by the Agent; provided that the certificate required to be delivered by Section 7.1(d) must be delivered in original form.

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## **11.2 Right of Set-Off.**

In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence of an Event of Default and the commencement of remedies described in Section 9.2, each Lender is authorized at any time and from time to time, without presentment, demand, protest or other notice of any kind (all of which rights being hereby expressly waived), to set-off and to appropriate and apply any and all deposits (general or special) and any other indebtedness at any time held or owing by such Lender (including, without limitation branches, agencies or Affiliates of such Lender wherever located) to or for the credit or the account of the Borrower against obligations and liabilities of the Borrower to the Lenders hereunder, under the Notes, the other Credit Documents or otherwise, irrespective of whether the Agent or the Lenders shall have made any demand hereunder and although such obligations, liabilities or claims, or any of them, may be contingent or unmatured, and any such set-off shall be deemed to have been made immediately upon the occurrence of an Event of Default even though such charge is made or entered on the books of such Lender subsequent thereto.

## **11.3 Benefit of Agreement.**

(a) **Generally.** This Credit Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; provided, that the Borrower may not assign and transfer any of its interests without the prior written consent of the Lenders; and provided, further, that the rights of each Lender to transfer, assign or grant participations in its rights and/or obligations hereunder shall be limited as set forth below in this Section 11.3.

(b) **Assignments.** Each Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Credit Agreement (including, without limitation, all or a portion of its Loans, its Notes, its LOC Obligations and its Commitment); provided, however, that:

(i) each such assignment shall be to an Eligible Assignee;

(ii) all assignments of the Term Loans or the Original Revolving Committed Amount must be pro rata among such Lender's Commitment with respect to the Term Loans and Original Revolving Committed Amount.

(iii) except in the case of an assignment to another Lender or an assignment of all of a Lender's rights and obligations under this Credit Agreement, any such partial assignment shall be in an amount at least equal to \$10,000,000 (or, if less, the remaining amount of the Commitment (which for this purpose includes Loans and LOC Obligations) being assigned by such Lender) and an integral multiple of \$1,000,000 in excess thereof; and

(iv) the parties to such assignment shall execute and deliver to the Agent for its acceptance an Assignment Agreement in substantially the form of Exhibit 11.3(b), together with a processing fee from the assignor of \$3,500.

Upon execution, delivery, and acceptance of such Assignment Agreement, the assignee thereunder shall be a party hereto and, to the extent of such assignment, have the obligations, rights, and benefits of a Lender hereunder and the assigning Lender shall, to the extent of such assignment, relinquish its rights (except those rights hereunder which by their terms expressly survive) and be released from its obligations under this Credit Agreement. Upon the consummation of any assignment pursuant to this Section 11.3(b),

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the assignor, the Agent and the Borrower shall make appropriate arrangements so that, if required, new Notes are issued to the assignor and the assignee. If the assignee is not incorporated under the laws of the United States of America or a state thereof, it shall deliver to the Borrower and the Agent certification as to exemption from deduction or withholding of taxes in accordance with Section 4.4.

By executing and delivering an assignment agreement in accordance with this Section 11.3(b), the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (A) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim created by such assigning Lender and the assignee warrants that it is an Eligible Assignee; (B) except as set forth in clause (A) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Credit Agreement, any of the other Credit Documents or any other instrument or document furnished pursuant hereto or thereto, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Credit Agreement, any of the other Credit Documents or any other instrument or document furnished pursuant hereto or thereto or the financial condition of the Borrower or the performance or observance by the Borrower of any of its obligations under this Credit Agreement, any of the other Credit Documents or any other instrument or document furnished pursuant hereto or thereto; (C) such assigning Lender and such assignee represents and warrants that it is legally authorized to enter into such assignment agreement; (D) such assignee confirms that it has received a copy of this Credit Agreement, the other Credit Documents and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such assignment agreement; (E) such assignee will independently and without reliance upon the Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Credit Agreement and the other Credit Documents; (F) such assignee appoints and authorizes the Agent to take such action on its behalf and to exercise such powers under this Credit Agreement or any other Credit Document as are delegated to the Agent by the terms hereof or thereof, together with such powers as are reasonably incidental thereto; and (G) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Credit Agreement and the other Credit Documents are required to be performed by it as a Lender.

(c) Register. The Agent shall maintain a copy of each Assignment Agreement delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Loans owing to, each Lender from time to time (the “Register”). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Credit Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Acceptance. Upon its receipt of an Assignment Agreement executed by the parties thereto, together with any Note subject to such assignment and payment of the processing fee, the Agent shall, if such Assignment Agreement has been completed and is in substantially the form of Exhibit 11.3(b) hereto, (i) accept such Assignment Agreement, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the parties thereto.

(e) Participations. Each Lender may sell participations to one or more Persons in all or a portion of its rights, obligations or rights and obligations under this Credit Agreement (including all or a portion of its Commitment, its Notes, its LOC Obligations and its Loans); provided, however, that (i) such Lender’s obligations under this Credit Agreement shall remain unchanged, (ii) such

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Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participant shall be entitled to the benefit of the yield protection provisions contained in Sections 4.1 through 4.4, inclusive, but shall not be entitled to receive any amount greater than such Lender would have been able to receive, and (iv) the Borrower shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Credit Agreement, and such Lender shall retain the sole right to enforce the obligations of the Borrower relating to its Loans, its Notes and its LOC Obligations and to approve any amendment, modification, or waiver of any provision of this Credit Agreement (other than amendments, modifications, or waivers decreasing the amount of principal of or the rate at which interest is payable on such Loans or Notes, extending any scheduled principal payment date or date fixed for the payment of interest on such Loans or Notes, or extending its Commitment).

(f) Nonrestricted Assignments. Notwithstanding any other provision set forth in this Credit Agreement, any Lender may at any time assign and pledge all or any portion of its Loans and its Notes to any Federal Reserve Bank as collateral security pursuant to Regulation A and any Operating Circular issued by such Federal Reserve Bank. No such assignment shall release the assigning Lender from its obligations hereunder.

(g) Information. Subject to Section 11.17, any Lender may furnish any information concerning the Borrower in the possession of such Lender from time to time to assignees and participants (including prospective assignees and participants).

#### **11.4 No Waiver; Remedies Cumulative.**

No failure or delay on the part of the Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Borrower and the Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies which the Agent or any Lender would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Agent or the Lenders to any other or further action in any circumstances without notice or demand.

#### **11.5 Payment of Expenses, etc.**

The Borrower agrees to: (i) pay all reasonable out-of-pocket costs and expenses of the Agent in connection with (A) the negotiation, preparation, execution and delivery, syndication and administration of this Credit Agreement and the other Credit Documents and the documents and instruments referred to therein (including, without limitation, the reasonable fees and expenses of counsel to the Agent) and (B) any amendment, waiver or consent relating hereto and thereto including, but not limited to, any such amendments, waivers or consents resulting from or related to any work-out, renegotiation or restructure relating to the performance by the Borrower under this Credit Agreement, (ii) pay all reasonable out-of-pocket costs and expenses of the Agent and each Lender in connection with (A) enforcement of the Credit Documents and the documents and instruments referred to therein (including, without limitation, in connection with any such enforcement, the reasonable fees and disbursements of counsel for the Agent and each of the Lenders (including the allocated cost of internal counsel)) and (B) any bankruptcy or insolvency proceeding of the Borrower and (iii) indemnify the Agent and each Lender, their respective Affiliates and the respective officers, directors, employees, representatives and agents of the foregoing from and hold each of them harmless against any and all losses, liabilities, claims, damages or expenses incurred by any of them as

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a result of, or arising out of, or in any way related to, or by reason of, any investigation, litigation or other proceeding (whether or not the Agent or any Lender is a party thereto) related to the entering into and/or performance of any Credit Document or the use of proceeds of any Loans (including other extensions of credit) hereunder or the consummation of any other transactions contemplated in any Credit Document, including, without limitation, the reasonable fees and disbursements of counsel and settlement costs incurred in connection with any such investigation, litigation or other proceeding (but excluding any such losses, liabilities, claims, damages or expenses to the extent incurred by reason of gross negligence or willful misconduct on the part of the Person to be indemnified).

#### **11.6 Amendments, Waivers and Consents.**

Neither this Credit Agreement, nor any other Credit Document nor any of the terms hereof or thereof may be amended, changed, waived, discharged or terminated unless such amendment, change, waiver, discharge or termination is in writing and signed by the Required Lenders and the Borrower (and if the rights or duties of the Issuing Bank are affected thereby, by it); provided, that no such amendment, change, waiver, discharge or termination shall without the consent of each Lender affected thereby:

- (a) extend the Maturity Date, or postpone or extend the time for any payment or prepayment of principal (except pursuant to Section 3.3(b)) or the time of payment of any reimbursement obligation, or any portion thereof, arising from drawings under Letters of Credit;
- (b) reduce the rate or extend the time of payment of interest thereon or fees or other amounts payable hereunder;
- (c) reduce or waive the principal amount of any Loan or of any reimbursement obligation, or any portion thereof, arising from drawings under Letters of Credit;
- (d) increase or extend the Commitment of a Lender (it being understood and agreed that a waiver of any Default or Event of Default or a waiver of any mandatory reduction in the Commitments shall not constitute a change in the terms of any Commitment of any Lender);
- (e) consent to the assignment or transfer by the Borrower of any of its rights and obligations under (or in respect of) the Credit Documents or release the Borrower from its obligations under the Credit Documents;
- (f) amend, modify or waive any provision of this Section 11.6 or Section 2.10, 3.6, 3.8, 5.2, 9.1(a), 11.2, 11.3 or 11.5;
- (g) reduce any percentage specified in, or otherwise modify, the definition of Required Lenders;
- (h) release the Cash Collateral except as specifically permitted hereunder and by the Collateral Documents; or
- (i) release the Parent from its obligations under the Credit Documents or release all or substantially all of the other Guarantors from their obligations.

No provision of Section 10 may be amended or modified without the consent of the Agent.

No provision of Section 2.2 may be amended or modified without the consent of each Issuing Lender

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affected thereby.

No provision of Section 2.8 may be amended or modified without the consent of the Swingline Lender.

Notwithstanding the fact that the consent of all the Lenders is required in certain circumstances as set forth above, (x) each Lender is entitled to vote as such Lender sees fit on any reorganization plan that affects the Loans or the Letters of Credit, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersede the unanimous consent provisions set forth herein and (y) the Required Lenders may consent to allow the Borrower to use cash collateral in the context of a bankruptcy or insolvency proceeding.

**11.7 Counterparts/Telecopy.**

This Credit Agreement may be executed in any number of counterparts, each of which where so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Delivery of executed counterparts by telecopy shall be as effective as an original and shall constitute a representation that an original will be delivered.

**11.8 Headings.**

The headings of the sections and subsections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Credit Agreement.

**11.9 Defaulting Lender.**

Each Lender understands and agrees that if such Lender is a Defaulting Lender then it shall not be entitled to vote on any matter requiring the consent of the Required Lenders or to object to any matter requiring the consent of all the Lenders; provided, however, that (a) a Lender's Commitment may not be increased without its consent whether or not it is a Defaulting Lender and (b) all other benefits and obligations under the Credit Documents shall apply to such Defaulting Lender.

**11.10 Survival of Indemnification and Representations and Warranties.**

All indemnities set forth herein and all representations and warranties made herein shall survive the execution and delivery of this Credit Agreement, the making of the Loans, the issuance of the Letters of Credit and the repayment of the Loans, LOC Obligations and other obligations and the termination of the Commitments hereunder.

**11.11 Governing Law; Venue.**

(a) THIS CREDIT AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREBY AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. Any legal action or proceeding with respect to this Credit Agreement or any other Credit Document may be brought in the courts of the State of New York, or of the United States for the Southern District of New York, and, by execution and delivery of this Credit Agreement, the Borrower hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of such courts. The Borrower further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid,

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to it at the address for notices pursuant to Section 11.1, such service to become effective 30 days after such mailing. Nothing herein shall affect the right of a Lender to serve process in any other manner permitted by law or to commence legal proceedings or to otherwise proceed against the Borrower in any other jurisdiction.

(b) The Borrower hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Credit Agreement or any other Credit Document brought in the courts referred to in subsection (a) hereof and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

#### **11.12 Waiver of Jury Trial; Waiver of Consequential Damages.**

EACH OF THE PARTIES TO THIS CREDIT AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS CREDIT AGREEMENT, ANY OF THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY. The Borrower agrees not to assert any claim against the Agent, any Lender, any of their Affiliates, or any of their respective directors, officers, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to any of the transactions contemplated hereby or by the other Credit Documents.

#### **11.13 Severability.**

If any provision of any of the Credit Documents is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

#### **11.14 Further Assurances.**

The Borrower agrees, upon the request of the Agent, to promptly take such actions, as reasonably requested, as are necessary to carry out the intent of this Credit Agreement and the other Credit Documents.

#### **11.15 Entirety.**

This Credit Agreement together with the other Credit Documents represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, if any, including any commitment letters or correspondence relating to the Credit Documents or the transactions contemplated herein and therein.

#### **11.16 Binding Effect; Continuing Agreement.**

(a) This Credit Agreement shall become effective at such time when all of the conditions set forth in Section 5.1 have been satisfied or waived by the Lenders and it shall have been executed by the Borrower, the Agent and the Lenders, and thereafter this Credit Agreement shall be binding upon and inure to the benefit of the Borrower, the Agent and each Lender and their respective successors and permitted assigns.

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(b) This Credit Agreement shall be a continuing agreement and shall remain in full force and effect until all Loans, LOC Obligations, interest, fees and other Obligations have been paid in full and all Commitments and Letters of Credit have been terminated. Upon such termination, the Borrower shall have no further obligations (other than those provisions that expressly survive the termination thereof) under the Credit Documents; provided, that should any payment, in whole or in part, of the Obligations be rescinded or otherwise required to be restored or returned by the Agent or any Lender, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, then the Credit Documents shall automatically be reinstated and all amounts required to be restored or returned and all costs and expenses incurred by the Agent or any Lender in connection therewith shall be deemed included as part of the Obligations.

#### **11.17 Confidentiality; USA PATRIOT Act.**

(a) The Agent and each Lender will keep any information delivered or made available by the Borrower pursuant to this Credit Agreement confidential from anyone other than persons employed or retained by the Agent or such Lender and its Affiliates who are engaged in evaluating, approving, structuring or administering this Credit Agreement; provided, that the Agent and the Lenders shall be entitled to disclose such information (a) to any other Lender or to the Agent, (b) upon the order of any court or administrative agency, (c) upon the request or demand of any regulatory agency or authority, (d) which had been publicly disclosed other than as a result of a disclosure by the Agent or any Lender prohibited by this Agreement, (e) in connection with any litigation to which the Agent, any Lender or its subsidiaries or parent may be a party, (f) to the extent necessary in connection with the exercise of any remedy under this Agreement, (g) to such Lender's or Agent's legal counsel and independent auditors and (h) subject to provisions substantially similar to this Section 11.17, to any actual or proposed participant or assignee.

(b) Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act.

## **SECTION 12.**

### **GUARANTY**

#### **12.1 The Guaranty.**

Each of the Guarantors hereby jointly and severally guarantees to each Lender, each Affiliate of a Lender that enters into a Credit Facility Swap Contract or a Treasury Management Agreement with a Credit Party, and the Administrative Agent as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such

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extension or renewal.

Notwithstanding any provision to the contrary contained herein or in any other of the Credit Documents, Credit Facility Swap Contracts or Treasury Management Agreements, the obligations of each Guarantor under this Agreement and the other Credit Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under the Bankruptcy Code or any comparable provisions of any applicable state law.

## **12.2 Obligations Unconditional.**

The obligations of the Guarantors under Section 12.1 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Credit Documents, Credit Facility Swap Contracts or Treasury Management Agreements, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guaranteee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 12.2 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against either the Borrower or any other Guarantor for amounts paid under this Section 12 until such time as the Obligations have been paid in full and the Commitments have expired or terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

- (a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any of the acts mentioned in any of the provisions of any of the Credit Documents, any Credit Facility Swap Contract or Treasury Management Agreement between Credit Party and any Lender, or any Affiliate of a Lender, or any other agreement or instrument referred to in the Credit Documents, such Credit Facility Swap Contracts or such Treasury Management Agreements shall be done or omitted;
- (c) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Credit Documents, any Credit Facility Swap Contract or Treasury Management Agreement between any Credit Party and any Lender, or any Affiliate of a Lender, or any other agreement or instrument referred to in the Credit Documents, such Credit Facility Swap Contracts or such Treasury Management Agreements shall be waived or any other guaranteee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;
- (d) any Lien granted to, or in favor of, the Administrative Agent or any Lender or Lenders as security for any of the Obligations shall fail to attach or be perfected; or
- (e) any of the Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

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With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Administrative Agent or any Lender exhaust any right, power or remedy or proceed against any Person under any of the Credit Documents, any Credit Facility Swap Contract or any Treasury Management Agreement between any Credit Party and any Lender, or any Affiliate of a Lender, or any other agreement or instrument referred to in the Credit Documents, such Credit Facility Swap Contracts or such Treasury Management Agreements, or against any other Person under any other guarantee of, or security for, any of the Obligations.

#### **12.3 Reinstatement.**

The obligations of the Guarantors under this Section 12 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify the Administrative Agent and each Lender on demand for all reasonable costs and expenses (including, without limitation, the reasonable fees, charges and disbursements of counsel) incurred by the Administrative Agent or such Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

#### **12.4 Certain Additional Waivers.**

Each Guarantor further agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to Section 12.2 and through the exercise of rights of contribution pursuant to Section 12.6.

#### **12.5 Remedies.**

The Guarantors agree that, to the fullest extent permitted by law, as between the Guarantors, on the one hand, and the Administrative Agent and the Lenders, on the other hand, the Obligations may be declared to be forthwith due and payable as provided in Section 9.2 (and shall be deemed to have become automatically due and payable in the circumstances provided in said Section 9.2) for purposes of Section 12.1 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 12.1. The Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms hereof and of the Collateral Documents and that the Lenders may exercise their remedies thereunder in accordance with the terms thereof.

#### **12.6 Rights of Contribution.**

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable law. Such contribution rights shall be subordinate and subject in right of payment to the obligations of such Guarantors under the Credit Documents and no Guarantor shall exercise such rights of contribution until all Obligations have been paid in full and the Commitments have terminated.

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**12.7 Guarantee of Payment; Continuing Guarantee.**

The guarantee in this Section 12 is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Obligations whenever arising.

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Each of the parties hereto has caused a counterpart of this Credit Agreement to be duly executed and delivered as of the date first above written.

**BORROWER:**

**DCP MIDSTREAM OPERATING, LP**

By: /s/ Michael J. Bradley  
Michael J. Bradley  
President and Chief Executive Officer

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**GUARANTORS:**

**DCP MIDSTREAM PARTNERS, LP**

By: DCP Midstream GP, LP *its General Partner*

By: DCP Midstream GP, LLC *its General Partner*

By: /s/ Michael J. Bradley  
Michael J. Bradley  
President and Chief Executive Officer

**DCP MIDSTREAM OPERATING, LLC**

By: /s/ Michael J. Bradley  
Michael J. Bradley  
President and Chief Executive Officer

**DCP ASSETS HOLDINGS GP, LLC**

By: /s/ Michael J. Bradley  
Michael J. Bradley  
President and Chief Executive Officer

**DCP ASSETS HOLDING, LP**

By: DCP Assets Holdings GP, LLC *its General Partner*

By: /s/ Michael J. Bradley  
Michael J. Bradley  
President and Chief Executive Officer

**DCP BLACK LAKE HOLDING, LP**

By: DCP Assets Holdings GP, LLC *its General Partner*

By: /s/ Michael J. Bradley  
Michael J. Bradley  
President and Chief Executive Officer

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**ASSOCIATED LOUISIANA INTRASTATE PIPE LINE,  
LLC**

By: /s/ Michael J. Bradley  
Michael J. Bradley  
President and Chief Executive Officer

**DUKE ENERGY INTRASTATE PIPELINE, LLC**

By: /s/ Michael J. Bradley  
Michael J. Bradley  
President and Chief Executive Officer

**PANENERGY LOUISIANA INTRASTATE, LLC**

By: /s/ Michael J. Bradley  
Michael J. Bradley  
President and Chief Executive Officer

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LENDERS:

**WACHOVIA BANK, NATIONAL ASSOCIATION**, as Agent  
and as a Lender

By: /s/ Lawrence P. Sullivan  
Name: Lawrence P. Sullivan  
Title: Director

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**SUNTRUST BANK**, as a Lender

By: /s/ Kelley B. Brandenburg  
Name: Kelley B. Brandenburg  
Title: Vice President

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**CITICORP USA, INC., as a Lender**

By: /s/ Todd Mogil

Name: Todd Mogil

Title: Attorney-in-Fact

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**UBS LOAN FINANCE LLC, as a Lender**

By: /s/ Barbara Ezell-McMichael  
Name: Barbara Ezell-McMichael  
Title: Associate Director

By: /s/ Marle A. Haddad  
Name: Marle A. Haddad  
Title: Associate Director

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**KEY BANK, NATIONAL  
ASSOCIATION, as a Lender**

By: /s/ Kevin D. Smith  
Name: Kevin D. Smith  
Title: Vice President

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**LEHMAN BROTHERS BANK, FSB**, as a  
Lender

By: /s/ Maria M. Lund  
Name: Maria M. Lund  
Title: Vice President

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**THE ROYAL BANK OF SCOTLAND  
PLC, as a Lender**

By: /s/ Patricia Dundee  
Name: Patricia Dundee  
Title: Managing Director

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**JPMORGAN CHASE BANK, N.A.**, as a  
Lender

By: /s/ Jeanie Gonzales

Name: Jeanie Gonzales

Title: Sr. Vice President

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**BANK OF TOKYO-MITSUBISHI TRUST  
COMPANY, as a Lender**

By: /s/ Linda Tam

Name: Linda Tam

Title: Authorized Signatory

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**WELLS** FARGO BANK, N.A., as a Lender

By:

/s/ Guy C. Evangelista

Name: Guy C. Evangelista

Title: Vice President

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**DCP MIDSTREAM PARTNERS, LP  
LONG-TERM INCENTIVE PLAN**

**SECTION 1. Purpose of the Plan.**

The DCP Midstream Partners, LP Long-Term Incentive Plan (the “Plan”) has been adopted by DCP Midstream GP, LLC, a Delaware limited liability company (the “Company”), the general partner of DCP Midstream GP, LP, a Delaware limited partnership (the “General Partner”) which is the general partner of DCP Midstream Partners, LP, a Delaware limited partnership (the “Partnership”), and is intended to promote the interests of the Partnership and the Company by providing to Employees, Consultants and Directors incentive compensation awards for superior performance that are based on Units. The Plan is also contemplated to enhance the ability of the Company, the Partnership and their Affiliates to attract and retain the services of individuals who are essential for the growth and profitability of the Partnership and to encourage them to devote their best efforts to advancing the business of the Partnership.

**SECTION 2. Definitions.**

As used in the Plan, the following terms shall have the meanings set forth below:

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the Person in question. As used herein, the term “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Award” means an Option, Restricted Unit, Phantom Unit, Substitute Award or DERs granted under the Plan.

“Award Agreement” means the written or electronic agreement by which an Award shall be evidenced.

“Board” means the Board of Directors of the Company.

“Committee” means the Board, the Compensation Committee of the Board or such other committee as may be appointed by the Board to administer the Plan.

“Consultant” means an individual, other than an Employee or a Director, who provides services to the Company, the Partnership or an Affiliate.

“DER” means a contingent right to receive an amount in cash equal to the cash distributions made by the Partnership with respect to a Unit during the period such Award is outstanding.

“Director” means a member of the Board who is not an Employee or a Consultant.

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“Employee” means an employee of the Company or an Affiliate.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Fair Market Value” means the closing sales price of a Unit on the applicable date (or if there is no trading in the Units on such date, on the next preceding date on which there was trading) as reported in *The Wall Street Journal* (or other reporting service approved by the Committee). In the event Units are not traded on a national securities market at the time a determination of fair market value is required to be made hereunder, the determination of fair market value shall be made in good faith by the Committee.

“Option” means an option to purchase Units granted under the Plan.

“Participant” means an Employee, Consultant or Director granted an Award under the Plan.

“Partnership Agreement” means the Amended and Restated Agreement of Limited Partnership of DCP Midstream Partners, LP, as it may be amended or amended and restated from time to time.

“Person” means an individual or a corporation, limited liability company, partnership, joint venture, trust, unincorporated organization, association, government agency or political subdivision thereof or other entity.

“Phantom Unit” means a phantom (notional) Unit granted under the Plan which upon vesting entitles the Participant to receive a Unit or an amount of cash equal to the Fair Market Value of a Unit, as determined by the Committee in its discretion.

“Restricted Period” means the period established by the Committee with respect to an Award during which the Award remains subject to forfeiture and is either not exercisable by or payable to the Participant, as the case may be.

“Restricted Unit” means a Unit granted under the Plan that is subject to a Restricted Period.

“Rule 16b-3” means Rule 16b-3 promulgated by the SEC under the Exchange Act, or any successor rule or regulation thereto as in effect from time to time.

“SEC” means the Securities and Exchange Commission, or any successor thereto.

“Substitute Award” means an award granted pursuant to Section 6(d)(viii) of the Plan.

“UDR” means a distribution made by the Partnership with respect to a Restricted Unit.

“Unit” means a Common Unit of the Partnership.

### SECTION 3. Administration.

The Plan shall be administered by the Committee. A majority of the Committee shall constitute a quorum, and the acts of the members of the Committee who are present at any meeting thereof at which a quorum is present, or acts unanimously approved by the members of the Committee in writing, shall be the acts of the Committee. Subject to the following and applicable law, the Committee, in its sole discretion, may delegate any or all of its powers and duties under the Plan, including the power to grant Awards under the Plan, to the Chief Executive Officer of the Company, subject to such limitations on such delegated powers and duties as the Committee may impose, if any. Upon any such delegation all references in the Plan to the "Committee", other than in Section 7, shall be deemed to include the Chief Executive Officer; provided, however, that such delegation shall not limit the Chief Executive Officer's right to receive Awards under the Plan. Notwithstanding the foregoing, the Chief Executive Officer may not grant Awards to, or take any action with respect to any Award previously granted to, a person who is an officer subject to Rule 16b-3 or a member of the Board. Subject to the terms of the Plan and applicable law, and in addition to other express powers and authorizations conferred on the Committee by the Plan, the Committee shall have full power and authority to: (i) designate Participants; (ii) determine the type or types of Awards to be granted to a Participant; (iii) determine the number of Units to be covered by Awards; (iv) determine the terms and conditions of any Award; (v) determine whether, to what extent, and under what circumstances Awards may be settled, exercised, canceled, or forfeited; (vi) interpret and administer the Plan and any instrument or agreement relating to an Award made under the Plan; (vii) establish, amend, suspend, or waive such rules and regulations and appoint such agents as it shall deem appropriate for the proper administration of the Plan; and (viii) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan. The Committee may correct any defect or supply any omission or reconcile any inconsistency in the Plan or an Award Agreement in such manner and extent the Committee deems necessary or appropriate. Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations, and other decisions under or with respect to the Plan or any Award shall be within the sole discretion of the Committee, may be made at any time and shall be final, conclusive, and binding upon all Persons, including the Company, the Partnership, any Affiliate, any Participant, and any beneficiary of any Award.

### SECTION 4. Units.

(a) Limits on Units Deliverable. Subject to adjustment as provided in Section 4(c), the number of Units that may be delivered with respect to Awards under the Plan is 850,000. Units withheld from an Award to satisfy the Company's minimum tax withholding obligations with respect to the Award shall not be considered to be Units delivered under the Plan for this purpose. If any Award is forfeited, cancelled, exercised or otherwise terminates or expires without the actual delivery of Units pursuant or with respect to such Award, the Units subject to such Award shall again be available for Awards under the Plan. There shall not be any limitation on the number of Awards that may be granted and paid in cash.

(b) Sources of Units Deliverable Under Awards. Any Units delivered pursuant to an Award shall consist, in whole or in part, of Units acquired in the open market, from any Affiliate,

the Partnership or any other Person, or any combination of the foregoing, as determined by the Committee in its discretion.

(c) Adjustments. In the event of any distribution (whether in the form of cash, Units, other securities, or other property), recapitalization, split, reverse split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Units or other securities of the Partnership, issuance of warrants or other rights to purchase Units or other securities of the Partnership, or other similar transaction or event, the Committee shall, in such manner as it may deem equitable, adjust the number and type of Units (or other securities or property) with respect to which Awards may be granted.

#### SECTION 5. Eligibility.

Any Employee, Consultant or Director shall be eligible to be designated a Participant and receive an Award under the Plan.

#### SECTION 6. Awards.

(a) Options. The Committee shall have the authority to determine the Employees, Consultants and Directors to whom Options shall be granted, the number of Units to be covered by each Option, the purchase price therefor and the Restricted Period and other conditions and limitations applicable to the exercise of the Option, including the following terms and conditions and such additional terms and conditions, as the Committee shall determine, that are not inconsistent with the provisions of the Plan.

(i) Exercise Price. The exercise price per Unit purchasable under an Option shall be determined by the Committee at the time the Option is granted but, except with respect to a Substitute Award, may not be less than its Fair Market Value as of the date of grant.

(ii) Time and Method of Exercise. The Committee shall determine the Restricted Period with respect to an Option grant, which may include, without limitation, the provision for accelerated vesting upon the achievement of specified performance goals or other events, and the method or methods by which payment of the exercise price with respect thereto may be made or deemed to have been made, which may include, without limitation, cash, check acceptable to the Company, a "cashless-broker" exercise through procedures, including limitations, approved by the Company, withholding Units from the Award upon exercise, or any combination of methods, having a Fair Market Value on the exercise date equal to the relevant exercise price.

(iii) Forfeitures. Except as otherwise provided in the terms of the Option grant, upon termination of a Participant's employment with or consulting services to the Company and its Affiliates or membership on the Board, whichever is applicable, for any reason during the applicable Restricted Period, all Options shall be forfeited by the Participant. The Committee may, in its discretion, waive in whole or in part such forfeiture with respect to a Participant's Options.

(b) **Restricted Units and Phantom Units.** The Committee shall have the authority to determine the Employees, Consultants and Directors to whom Restricted Units or Phantom Units shall be granted, the number of Restricted Units or Phantom Units to be granted to each such Participant, the Restricted Period, the conditions under which the Restricted Units or Phantom Units may become vested or forfeited and such other terms and conditions as the Committee may establish with respect to such Awards.

(i) **UDRs.** To the extent provided by the Committee, in its discretion, a grant of Restricted Units may provide that distributions made by the Partnership with respect to the Restricted Units shall be subject to the same forfeiture and other restrictions as the Restricted Unit and, if restricted, such distributions shall be held, without interest, until the Restricted Unit vests or is forfeited with the UDR being paid or forfeited at the same time, as the case may be. Absent such a restriction on the UDRs in the grant agreement, UDRs shall be paid to the holder of the Restricted Unit without restriction.

(ii) **Forfeitures.** Except as otherwise provided in the terms of the Restricted Units or Phantom Units grant, upon termination of a Participant's employment with or consulting services to the Company and its Affiliates or membership on the Board, whichever is applicable, for any reason during the applicable Restricted Period, all outstanding Restricted Units and Phantom Units awarded the Participant shall be automatically forfeited on such termination. The Committee may, in its discretion, waive in whole or in part such forfeiture with respect to a Participant's Restricted Units and/or Phantom Units.

(iii) **Lapse of Restrictions.**

(A) **Phantom Units.** Upon or as soon as reasonably practical following the vesting of each Phantom Unit, subject to the provisions of Section 8(b), the Participant shall be entitled to receive from the Company one Unit or cash equal to the Fair Market Value of a Unit, as determined by the Committee in its discretion.

(B) **Restricted Units.** Upon or as soon as reasonably practical following the vesting of each Restricted Unit, subject to satisfying the tax withholding obligations of Section 8(b), the Participant shall be entitled to have the restrictions removed from his or her Unit certificate so that the Participant then holds an unrestricted Unit.

(c) **DERs.** The Committee shall have the authority to determine the Employees, Consultants and Directors to whom DERs are granted, whether such DERs are tandem or separate Awards, whether the DERs shall be paid directly to the Participant, be credited to a bookkeeping account (with or without interest in the discretion of the Committee) the vesting restrictions applicable to the Award, and such other provisions or restrictions as determined by the Committee in its discretion.

(d) General.

(i) Awards May Be Granted Separately or Together. Awards may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, or in substitution for any other Award granted under the Plan or any award granted under any other plan of the Company or any Affiliate. Awards granted in addition to or in tandem with other Awards or awards granted under any other plan of the Company or any Affiliate may be granted either at the same time as or at a different time from the grant of such other Awards or awards.

(ii) Limits on Transfer of Awards.

(A) Except as provided in Paragraph (C) below, each Option shall be exercisable only by the Participant during the Participant's lifetime, or by the person to whom the Participant's rights shall pass by will or the laws of descent and distribution.

(B) Except as provided in Paragraph (C) below, no Award and no right under any such Award may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Participant and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company, the Partnership or any Affiliate.

(C) To the extent specifically provided by the Committee with respect to an Option, an Option may be transferred by a Participant without consideration to immediate family members or related family trusts, limited partnerships or similar entities or on such terms and conditions as the Committee may from time to time establish.

(iii) Term of Awards. The term of each Award shall be for such period as may be determined by the Committee.

(iv) Unit Certificates. All certificates for Units or other securities of the Partnership delivered under the Plan pursuant to any Award or the exercise thereof shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the Plan or the rules, regulations, and other requirements of the SEC, any stock exchange upon which such Units or other securities are then listed, and any applicable federal or state laws, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

(v) Consideration for Grants. Awards may be granted for such consideration, including services, as the Committee determines.

(vi) Delivery of Units or other Securities and Payment by Participant of Consideration. Notwithstanding anything in the Plan or any grant agreement to the contrary, delivery of Units pursuant to the exercise or vesting of an Award may be deferred for any period during which, in the good faith determination of the Committee, the Company is not reasonably able to obtain Units to deliver pursuant to such Award.

without violating the rules or regulations of any applicable law or securities exchange. No Units or other securities shall be delivered pursuant to any Award until payment in full of any amount required to be paid pursuant to the Plan or the applicable Award grant agreement (including, without limitation, any exercise price or tax withholding) is received by the Company.

(vii) **Substitute Awards.** Awards may be granted under the Plan in substitution of similar awards held by individuals who become Employees, Consultants or Directors as a result of a merger, consolidation or acquisition by the Company or an Affiliate of another entity or the assets of another entity. Such Substitute Awards that are Options may have exercise prices less than the Fair Market Value of a Unit on the date of such substitution.

## **SECTION 7. Amendment and Termination.**

Except to the extent prohibited by applicable law:

(a) **Amendments to the Plan.** Except as required by the rules of the principal securities exchange on which the Units are traded and subject to Section 7(b) below, the Board may amend, alter, suspend, discontinue, or terminate the Plan in any manner, including increasing the number of Units available for Awards under the Plan, without the consent of any partner, Participant, other holder or beneficiary of an Award, or any other Person.

(b) **Amendments to Awards.** Subject to Section 7(a), the Committee may waive any conditions or rights under, amend any terms of, or alter any Award theretofore granted, provided no change, other than pursuant to Section 7(c), in any Award shall materially reduce the benefit to Participant without the consent of such Participant.

(c) **Actions Upon the Occurrence of Certain Events.** In connection with any event described in Section 4(c) of the Plan, or a Change of Control, any changes in applicable laws, regulations, or accounting principles affecting the financial statements of the Partnership, the Committee, in its sole discretion and on such terms and conditions as it deems appropriate, may take any one or more of the following actions in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or an outstanding Award:

(A) provide for either (i) the termination of any Award in exchange for an amount of cash, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Participant's rights (and, for the avoidance of doubt, if as of the date of the occurrence of such transaction or event the Committee determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Participant's rights, then such Award may be terminated by the Company without payment) or (ii) the replacement of such Award with other rights or property selected by the Committee in its sole discretion;

(B) provide that such Award be assumed by the successor or survivor entity, or a parent or subsidiary thereof, or be substituted for by similar options, rights or awards covering the equity of the successor or survivor, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of equity interests and prices;

(C) make adjustments in the number and type of Units (or other securities or property) subject to outstanding Awards, and in the number and kind of outstanding Awards and/or in the terms and conditions of (including the exercise price), and the vesting/performance criteria included in, outstanding Awards;

(D) provide that such Award shall be exercisable or payable, notwithstanding anything to the contrary in the Plan or the applicable Award Agreement; and

(E) provide that the Award cannot be exercised or become payable after such event, i.e., shall terminate upon such event.

#### **SECTION 8. General Provisions.**

(a) **No Rights to Award.** No Person shall have any claim to be granted any Award under the Plan, and there is no obligation for uniformity of treatment of Participants. The terms and conditions of Awards need not be the same with respect to each recipient.

(b) **Tax Withholding.** Unless other arrangements have been made that are acceptable to the Company, the Company or any Affiliate is authorized to withhold from any Award, from any payment due or transfer made under any Award or from any compensation or other amount owing to a Participant the amount (in cash, Units, Units that would otherwise be issued pursuant to such Award or other property) of any applicable taxes payable in respect of the grant of an Award, its exercise, the lapse of restrictions thereon, or any payment or transfer under an Award or under the Plan and to take such other action as may be necessary in the opinion of the Company to satisfy its withholding obligations for the payment of such taxes.

(c) **No Right to Employment or Services.** The grant of an Award shall not be construed as giving a Participant the right to be retained in the employ of the Company or any Affiliate, continue consulting services or to remain on the Board, as applicable. Further, the Company or an Affiliate may at any time dismiss a Participant from employment or consulting free from any liability or any claim under the Plan, unless otherwise expressly provided in the Plan, any Award agreement or other agreement.

(d) **Governing Law.** The validity, construction, and effect of the Plan and any rules and regulations relating to the Plan shall be determined in accordance with the laws of the State of Delaware without regard to its conflict of laws principles.

(e) **Severability.** If any provision of the Plan or any Award is or becomes or is deemed to be invalid, illegal, or unenforceable in any jurisdiction or as to any Person or Award, or would disqualify the Plan or any Award under any law deemed applicable by the

Compensation Committee, such provision shall be construed or deemed amended to conform to the applicable laws, or if it cannot be construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan or the Award, such provision shall be stricken as to such jurisdiction, person or award and the remainder of the Plan and any such Award shall remain in full force and effect.

(f) Other Laws. The Committee may refuse to issue or transfer any Units or other consideration under an Award if, in its sole discretion, it determines that the issuance or transfer of such Units or such other consideration might violate any applicable law or regulation, the rules of the principal securities exchange on which the Units are then traded, or entitle the Partnership or an Affiliate to recover the same under Section 16(b) of the Exchange Act, and any payment tendered to the Company by a Participant, other holder or beneficiary in connection with the exercise of such Award shall be promptly refunded to the relevant Participant, holder or beneficiary.

(g) No Trust or Fund Created. Neither the Plan nor any Award shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company or any participating Affiliate and a Participant or any other Person. To the extent that any Person acquires a right to receive payments from the Company or any participating Affiliate pursuant to an Award, such right shall be no greater than the right of any general unsecured creditor of the Company or any participating Affiliate.

(h) No Fractional Units. No fractional Units shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash, other securities, or other property shall be paid or transferred in lieu of any fractional Units or whether such fractional Units or any rights thereto shall be canceled, terminated, or otherwise eliminated.

(i) Headings. Headings are given to the Sections and subsections of the Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Plan or any provision thereof.

(j) Facility Payment. Any amounts payable hereunder to any person under legal disability or who, in the judgment of the Committee, is unable to properly manage his financial affairs, may be paid to the legal representative of such person, or may be applied for the benefit of such person in any manner which the Committee may select, and the Company shall be relieved of any further liability for payment of such amounts.

(k) Participation by Affiliates. In making Awards to Employees employed by an entity other than by the Company, the Committee shall be acting on behalf of the Affiliate, and to the extent the Partnership has an obligation to reimburse the Company for compensation paid for services rendered for the benefit of the Partnership, such payments or reimbursement payments may be made by the Partnership directly to the Affiliate, and, if made to the Company, shall be received by the Company as agent for the Affiliate.

(l) Gender and Number. Words in the masculine gender shall include the feminine gender, the plural shall include the singular and the singular shall include the plural.

(m) Compliance with Section 409A. Nothing in the Plan or any Award Agreement shall operate or be construed to cause the Plan or an Award to fail to comply with the requirements of Section 409A of the Internal Revenue Code. The applicable provisions of Section 409A and the regulations thereunder are hereby incorporated by reference and shall control over any Plan or Award Agreement provision in conflict therewith.

**SECTION 9. Term of the Plan.**

The Plan shall be effective on the date of its approval by the Board and shall continue until the earliest of (i) the date terminated by the Board, (ii) all Units available under the Plan have been paid to Participants, or (iii) the 10th anniversary of the date the Plan is approved by the unitholders of the Company. However, unless otherwise expressly provided in the Plan or in an applicable Award Agreement, any Award granted prior to such termination, and the authority of the Committee to amend, alter, adjust, suspend, discontinue, or terminate any such Award or to waive any conditions or rights under such Award, shall extend beyond such termination date.

**CONTRIBUTION, CONVEYANCE  
AND ASSUMPTION AGREEMENT**

**THIS CONTRIBUTION, CONVEYANCE AND ASSUMPTION AGREEMENT**, dated as of December 7, 2005, is entered into by and among **DCP MIDSTREAM PARTNERS, LP**, a Delaware limited partnership (“**MLP**”), **DCP MIDSTREAM OPERATING, LP**, a Delaware limited partnership (“**OLP**”), **DCP MIDSTREAM GP, LLC**, a Delaware limited liability company (“**DCP GP LLC**”), **DCP MIDSTREAM GP, LP**, a Delaware limited partnership (“**DCP GP LP**”), **DUKE ENERGY FIELD SERVICES, LLC**, a Delaware limited liability company (“**DEFS**”), **DEFS HOLDING 1 LLC**, a Delaware limited liability company (“**DEFS Holding 1**”), **DEFS HOLDING, LLC**, a Delaware limited liability company (“**DEFS Holding**”), **DCP ASSETS HOLDINGS, LP** (formerly named DEFS Assets Holding, LP), a Delaware limited partnership (“**DCP Assets Holdings**”), **DCP ASSETS HOLDINGS GP, LLC**, a Delaware limited liability company (“**DCP Assets Holdings GP**”), **DUKE ENERGY NGL SERVICES, LP**, a Delaware limited partnership (“**DENGL**”), **DCP BLACK LAKE HOLDINGS, LLC**, a Delaware limited liability company (“**Black Lake Holdings**”), **DCP LP HOLDINGS, LP**, a Delaware limited partnership (“**DCP LP Holdings**”), and **DUKE ENERGY GUADALUPE PIPELINE HOLDINGS, INC.**, a Delaware corporation (“**Guadalupe Holdings**”). The parties to this agreement are collectively referred to herein as the “**Parties**.” Capitalized terms used herein shall have the meanings assigned to such terms in Section 1.1.

**RECITALS**

WHEREAS, DEFS and DCP GP LP have formed MLP, pursuant to the Delaware Revised Uniform Limited Partnership Act (the “**Delaware LP Act**”), for the purpose of engaging in any business activity that is approved by DCP GP LP and that lawfully may be conducted by a limited partnership organized pursuant to the Delaware Act.

WHEREAS, in order to accomplish the objectives and purposes in the preceding recital, the following actions have been taken prior to the date hereof:

1. DEFS formed DCP GP LLC, under the terms of the Delaware Limited Liability Company Act (the “**Delaware LLC Act**”), and contributed \$1,000 in exchange for all of the member interests in DCP GP LLC.
  2. DCP GP LLC and DEFS formed DCP GP LP, under the terms of the Delaware LP Act, to which DCP GP LLC contributed \$0.01 and DEFS contributed \$999.99 in exchange for a 0.001% general partner interest and 99.999% limited partner interest, respectively.
  3. DCP GP LP and DEFS formed MLP, under the terms of the Delaware LP Act, to which DCP GP LP contributed \$40 and DEFS contributed \$1,960 in exchange for a 2% general partner interest and 98% limited partner interest, respectively.
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4. MLP formed DCP Midstream Operating, LLC, a Delaware limited liability company (“**OLP GP**”), under the terms of the Delaware LLC Act, and contributed \$1,000 in exchange for all of the member interests in OLP GP.

5. OLP GP and MLP formed OLP, under the terms of the Delaware Act, to which OLP GP contributed \$0.01 and MLP contributed \$999.99 in exchange for a 0.001% general partner interest and 99.999% limited partner interest, respectively.

6. DEFS Holding formed DCP Assets Holdings GP under the terms of the Delaware LLC Act, and contributed \$1,000 in exchange for all of the member interests in DCP Assets Holdings GP.

7. DEFS formed Guadalupe Holdings, under the terms of the Delaware General Corporation Law (the “**Delaware Law**”), and contributed \$1,000 in exchange for all of the stock in Guadalupe Holdings.

8. DEFS and Guadalupe Holdings formed DCP LP Holdings, under the terms of the Delaware LP Act, to which DEFS contributed \$500 and Guadalupe Holdings contributed \$500 in exchange for a 50% general partner interest and 50% limited partner interest, respectively.

9. DENGL formed Black Lake Holdings, under the terms of the Delaware LLC Act, and contributed \$1,000 in exchange for all of the member interests in Black Lake Holding.

WHEREAS, concurrently with the consummation of the transactions contemplated hereby, each of the following matters shall occur:

1. DCP Assets Holdings will distribute all of its stock in Duke Energy Guadalupe Pipeline, Inc., a Delaware corporation (“**DEGP**”), and its member interests in (a) Discovery Producer Services, LLC, a Delaware limited liability company (“**Discovery**”), (b) PanEnergy Dauphin Island LLC, a Delaware limited liability company (“**PanEnergy**”), (c) Gulf Coast NGL Pipeline, LLC, a Delaware limited liability company (“**Gulf Coast**”), (d) Centana Gathering LLC, a Delaware limited liability company (“**Centana**”), (e) DEFS Industrial Gas Co. LLC, a Delaware limited liability company (“**DIGC**”), and (f) Centana Intrastate Pipeline LLC, a Delaware limited liability company (“**CIP**”), to DEFS (of which 0.5% of each of these distributions will be made to DEFS on behalf of DEFS Holding).

2. DEFS will convey all of its stock in DEGP to Guadalupe Holdings as a capital contribution.

3. DEGP will file a certificate of conversion under Delaware Law to convert into a Delaware limited liability company named Duke Energy Guadalupe Pipeline, LLC (“**DEGP LLC**”).

4. Gas Supply Resources Inc., a Texas corporation (“**Resources**”), and GSRI Transportation Inc., a Texas corporation (“**Transportation**”), each will file articles of conversion under the Texas Business Corporation Act (“**TBCA**”) to convert into Texas limited

liability companies, named Gas Supply Resources LLC (“Resources LLC”), and GSRI Transportation LLC (“Transportation LLC”), respectively.

5. DCP Assets Holdings and all of its subsidiaries will distribute approximately all of their accounts receivable as of the closing of the Offering (“Closing Time”) to their respective equity owners, and each such equity owner will in turn distribute these accounts receivable to their equity owners, and this process of distributions will continue until such accounts receivable are distributed to DEFS.

6. DEFS Holding will convey its 0.5% general partner interest in DCP Assets Holdings to DCP Assets Holdings GP as a capital contribution.

7. DENGL will contribute a 45% partnership interest in Black Lake Pipe Line Company, a Texas general partnership (“Black Lake”), to Black Lake Holdings as a capital contribution.

8. DENGL will distribute its member interest in Black Lake Holdings to DEFS Holding 1 and DEFS Holding, on a pro rata basis based on their respective ownership interests in DENGL (99.5% and 0.5% for DEFS Holding 1 and DEFS Holding, respectively), and DEFS Holding 1 will distribute its member interest in Black Lake Holdings to DEFS; in turn, DEFS and DEFS Holding will convey their member interests in Black Lake Holdings to DCP Assets Holdings as a capital contribution.

9. DEFS will convey a limited partner interest in DCP Assets Holdings with a value equal to 2% of the equity of MLP plus the amount of any cash distributed to DCP GP LP by MLP (the “Interest”) to DCP GP LP as a capital contribution (of which 0.001% of such conveyance will be made to DEFS on behalf of DCP GP LLC).

10. DEFS will convey its remaining limited partner interest in DCP Assets Holdings to DCP LP Holdings as a capital contribution.

11. DEFS Holding will convey its member interests in DCP Assets Holdings GP to DCP LP Holdings in exchange for a limited partner interest in DCP LP Holdings.

12. Guadalupe Holdings will convey its member interest in DEGP LLC to DCP LP Holdings as a capital contribution.

13. DCP GP LP will contribute the Interest to MLP in exchange for (a) a continuation of its 2% general partner interest in MLP, (b) the issuance of the IDRs of the MLP, (c) the right to receive approximately \$3.447 million to reimburse DCP GP LP for certain capital expenditures and (d) the right to receive \$183.0 million sourced to new indebtedness recourse to DCP GP LP (the “Initial Recourse Debt”).

14. DCP LP Holdings will contribute its partner interests in DCP Assets Holdings and its member interest in DCP Assets Holdings GP to MLP in exchange for (a) 1,357,143 Common Units in MLP (representing a 7.6% interest), (b) 7,142,857 Sub Units in MLP (representing a 40% interest) and (c) the right to receive approximately \$5.153 million to reimburse DCP LP Holdings of certain capital expenditures.

15. The public, through the Underwriters, will contribute \$193.5 million in cash, less the net amount of \$12,571,875 payable to the Underwriters after taking into account the Underwriters' discount, the structuring fees payable to the Underwriters and the Underwriters' reimbursement of certain expenses incurred by the MLP in connection with the Offering, in exchange for 9,000,000 Common Units in MLP (representing a 50.4% interest).

16. MLP will (a) pay transaction expenses associated with the transactions contemplated by this Agreement in the amount of approximately \$4.7 million (exclusive of the Underwriter's spread but including debt placement costs), (b) distribute approximately \$3.447 million to DCP GP LP to reimburse DCP GP LP for certain capital expenditures, (c) distribute approximately \$5.153 million to DCP LP Holdings to reimburse DCP LP Holdings for certain capital expenditures, (d) contribute \$53.9 million in the aggregate to DCP LP Holdings to replenish working capital (of which 0.001% of such contribution will be made to DCP LP Holdings on behalf of DCP Assets Holdings GP); and (f) contribute \$113.7 million in cash, its member interest in DCP Assets Holdings GP and its limited partner interest in DCP Assets Holdings to OLP as a capital contribution (of which 0.001% of such contribution will be made to OLP on behalf of OLP GP).

17. OLP will buy U.S. Treasury securities or other qualifying securities permitted to be pledged as collateral pursuant to the terms of the Term Loan Facility (the "**Securities**") for \$73.0 million in cash and will incur the Initial Recourse Debt by borrowing \$183.0 million from lenders, of which \$73.0 million will be borrowed pursuant to the Term Loan Facility and the remainder will be borrowed pursuant to the Revolving Credit Facility, using the Securities as collateral security for \$73.0 million of borrowings under the Term Loan Facility with MLP guaranteeing the Initial Recourse Debt.

18. OLP will distribute the borrowed funds of \$183.0 million to MLP (of which 0.001% of such distribution will be made to MLP on behalf of OLP GP) and MLP, in turn, will distribute the funds to DCP GP LP.

19. DCP GP LP will loan the funds distributed to it pursuant to the preceding paragraph 18 and will distribute other cash received to DEFS (of which 0.001% of such distribution will be made to DEFS on behalf of DCP GP LLC), and DEFS will use the proceeds to retire its indebtedness.

20. If the Underwriters exercise their option to purchase up to an additional 1,350,000 Common Units (the "**Option**"), the proceeds of that exercise, net of the applicable Underwriter's spread, shall be contributed by MLP to OLP and then the OLP will buy additional Securities, which will be used as collateral for borrowings by OLP of up to \$27.1 million pursuant to the Term Loan Facility guaranteed by MLP (the "**Subsequent Recourse Debt**"); the funds borrowed by OLP will then be distributed to MLP which will use them to redeem from DCP LP Holdings a number of Common Units sold by MLP pursuant to the exercise of the Shoe.

21. DCP LP Holdings will loan the funds received from the sale of the Common Units pursuant to the preceding paragraph 20 to DEFS.

22. DCP Assets Holdings will distribute a 0.001% member interest in Black Lake Holdings to OLP and DCP Assets Holdings GP on a pro rata basis in accordance with their percentage ownership interests in DCP Assets Holdings.

23. OLP will convey its interest in Black Lake Holdings to DCP Assets Holdings GP.

24. Black Lake Holdings will file a certificate of conversion under Delaware Law to convert into a Delaware limited partnership named DCP Black Lake Holdings, LP and to designate DCP Assets Holdings GP as the general partner thereof and DCP Assets Holdings as the sole limited partner thereto.

25. The agreements of limited partnership and the limited liability company agreements of the aforementioned entities will be amended and restated to the extent necessary to reflect the applicable matters set forth above and as contained in this Agreement.

NOW, THEREFORE, in consideration of their mutual undertakings and agreements hereunder, the Parties undertake and agree as follows:

## **ARTICLE 1** **DEFINITIONS**

Section 1.1 The following capitalized terms shall have the meanings given below.

- (a) "**Acquisition**" means consummation of the transactions contemplated by the terms of this Agreement.
- (b) "**Agreement**" means this Contribution, Conveyance and Assumption Agreement.
- (c) "**Common Unit**" has the meaning assigned to such term in the Partnership Agreement.
- (d) "**Credit Agreement**" means the Credit Agreement, dated as of December 7, 2005, among the OLP, the MLP, the subsidiaries of the MLP, Wachovia Bank, National Association, as administrative agent for the lenders named therein.
- (e) "**Effective Time**" shall mean 8:00 a.m. New York, New York time on December 7, 2005.
- (f) "**IDRs**" means "Incentive Distribution Rights" as such term is defined in the Partnership Agreement.
- (g) "**MLP**" has the meaning assigned to such term in the opening paragraph of this Agreement.
- (h) "**Offering**" means the initial public offering by MLP of Common Units.
- (i) "**Omnibus Agreement**" means that certain Omnibus Agreement of even date herewith, among DEFS, DCP GP LLC, DCP GP LP, MLP and OLP.
- (j) "**Partnership Agreement**" means the First Amended and Restated Agreement of Limited Partnership of DCP Midstream Partners, LP dated as of December 7, 2005.
- (k) "**Partnership Group**" has the meaning assigned to such term in the Omnibus Agreement.
- (l) "**Registration Statement**" means the registration statement on Form S-1 (Registration No. 333-128378) filed by MLP relating to the Offering.
- (m) "**Revolving Credit Facility**" means the revolving credit facility of up to \$250.0 million under the Credit Agreement.

- (n) "**Sub Unit**" means "Subordinated Unit" as such term is defined in the Partnership Agreement.
- (o) "**Term Loan Facility**" means the term loan facility of up to \$175.0 million under the Credit Agreement.
- (p) "**Underwriters**" means Lehman Brothers Inc., Citigroup Global Markets Inc., UBS Securities LLC, Wachovia Capital Markets, LLC, A.G. Edwards & Sons, Inc. and KeyBanc Capital Markets, a division of McDonald Investments, Inc.

## ARTICLE 2 CONTRIBUTIONS, ACKNOWLEDGMENTS AND DISTRIBUTIONS

Section 2.1 **Distribution of DEGP by DCP Assets Holdings**. DCP Assets Holdings hereby distributes, grants, bargains, conveys, assigns, transfers, sets over and delivers to DEFS, its successors and assigns, for its use forever, all right, title and interest in and to all of its shares of DEGP common stock (of which 0.5% of such distribution is being made on behalf of DEFS Holding). DEFS hereby accepts such shares of common stock in DEGP as a distribution.

Section 2.2 **Distribution of Discovery by DCP Assets Holdings**. DCP Assets Holdings hereby distributes, grants, bargains, conveys, assigns, transfers, sets over and delivers to DEFS, its successors and assigns, for its use forever, all right, title and interest in and to all of its member interests in Discovery (of which 0.5% of such distribution is being made on behalf of DEFS Holding). DEFS hereby accepts such member interests in Discovery as a distribution.

Section 2.3 **Distribution of PanEnergy by DCP Assets Holdings**. DCP Assets Holdings hereby distributes, grants, bargains, conveys, assigns, transfers, sets over and delivers to DEFS, its successors and assigns, for its use forever, all right, title and interest in and to all of its member interests in PanEnergy (of which 0.5% of such distribution is being made on behalf of DEFS Holding). DEFS hereby accepts such member interests in PanEnergy as a distribution.

Section 2.4 **Distribution of Gulf Coast by DCP Assets Holdings**. DCP Assets Holdings hereby distributes, grants, bargains, conveys, assigns, transfers, sets over and delivers to DEFS, its successors and assigns, for its use forever, all right, title and interest in and to all of its member interests in Gulf Coast (of which 0.5% of such distribution is being made on behalf of DEFS Holding). DEFS hereby accepts such member interests in Gulf Coast as a distribution.

Section 2.5 **Distribution of Centana by DCP Assets Holdings**. DCP Assets Holdings hereby distributes, grants, bargains, conveys, assigns, transfers, sets over and delivers to DEFS, its successors and assigns, for its use forever, all right, title and interest in and to all of its member interests in Centana (of which 0.5% of such distribution is being made on behalf of DEFS Holding). DEFS hereby accepts such member interests in Centana as a distribution.

Section 2.6 **Distribution of DIGC by DCP Assets Holdings**. DCP Assets Holdings hereby distributes, grants, bargains, conveys, assigns, transfers, sets over and delivers

to DEFS, its successors and assigns, for its use forever, all right, title and interest in and to all of its member interests in DIGC (of which 0.5% of such distribution is being made on behalf of DEFS Holding). DEFS hereby accepts such member interests in DIGC as a distribution.

Section 2.7 **Distribution of CIP by DCP Assets Holdings**. DCP Assets Holdings hereby distributes, grants, bargains, conveys, assigns, transfers, sets over and delivers to DEFS, its successors and assigns, for its use forever, all right, title and interest in and to all of its member interests in CIP (of which 0.5% of such distribution is being made on behalf of DEFS Holding). DEFS hereby accepts such member interests in CIP as a distribution.

Section 2.8 **Contribution of DEGP Common Stock to Guadalupe Holdings**. DEFS hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to Guadalupe Holdings, its successors and assigns, for its and their own use forever, all right, title and interest in and to all of its shares of DEGP common stock, as a capital contribution, and Guadalupe Holdings hereby accepts such DEGP shares as a contribution to the capital of Guadalupe Holdings.

Section 2.9 **Conversion of DEGP to DEGP LLC**. The Parties acknowledge that DEGP has adopted a certificate of conversion in the form attached hereto as Exhibit A and pursuant thereto has converted to DEGP LLC, a Delaware limited liability company, having Guadalupe Holdings as a sole member.

Section 2.10 **Conversion of Resources to Resources LLC**. The Parties acknowledge that Resources has adopted articles of conversion in the form attached hereto as Exhibit B and pursuant thereto has converted to Resources LLC, a Texas limited liability company, having DEGP LLC as a sole member.

Section 2.11 **Conversion of Transportation to Transportation LLC**. The Parties acknowledge that Transportation has adopted articles of conversion in the form attached hereto as Exhibit C and pursuant thereto has converted to Transportation LLC, a Texas limited liability company, having Resources LLC as a sole member.

Section 2.12 **Distribution of Working Capital Assets by DCP Assets Holdings and its Subsidiaries**. DCP Assets Holdings and its subsidiaries hereby distribute, grant, bargain, convey, assign, transfer, set over and deliver to their respective equity owners, and each such equity owner will in turn distribute these accounts receivable to their equity owners, and this process of distributions will continue until such accounts receivable are distributed to DEFS, its successors and assigns, for its use forever, all of their accounts receivable as of the Closing Time. DEFS hereby accepts such accounts receivable as a distribution.

Section 2.13 **Contribution of General Partner Interest in DCP Assets Holdings to DCP Assets Holdings GP**. DEFS Holding hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to DCP Assets Holdings GP, its successors and assigns, for its and their own use forever, all right, title and interest in and to its 0.5% general partner interest in DCP Assets Holdings, as a capital contribution, and DCP Assets Holdings GP

hereby accepts such general partner interest as a contribution to the capital of DCP Assets Holdings GP.

Section 2.14 **Contribution of Black Lake Interest to Black Lake Holdings**. DENGL hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to Black Lake Holdings, its successors and assigns, for its and their own use forever, all right, title and interest in and to a 45% partner interest in Black Lake (the “**Black Lake Interest**”), as a capital contribution, and Black Lake Holdings hereby accepts the Black Lake Interest as a contribution to the capital of Black Lake Holdings. The transfer of the Black Lake Interest from DENGL to Black Lake Holdings shall be further evidenced by the execution and delivery by DENGL and Black Lake Holdings of an Assignment and Assumption Agreement in the form attached hereto as Exhibit D.

Section 2.15 **Conveyance of Member Interest in Black Lake Holdings to DEFS Holding 1 and DEFS Holding**. DENGL hereby distributes, grants, bargains, conveys, assigns, transfers, sets over and delivers to DEFS Holding 1 and DEFS Holding, their successors and assigns, for their own use forever, all right, title and interest in and to Black Lake Holdings, on a pro rata basis based on their respective 99.5% and 0.5% ownership interests in DENGL, and DEFS Holding 1 and DEFS Holding hereby accept such member interests in Black Lake Holdings.

Section 2.16 **Distribution of Member Interests in Black Lake Holdings by DEFS Holding 1**. DEFS Holding 1 hereby distributes, grants, bargains, conveys, assigns, transfers, sets over and delivers to DEFS, its successors and assigns, for its and their own use forever, all right, title and interest in and to all of its 99.5% member interest in Black Lake Holdings, and DEFS hereby accepts such interest in Black Lake as a distribution.

Section 2.17 **Contribution of Black Lake Holdings to DCP Assets Holdings**. DEFS Holding 2 hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to DCP Assets Holdings, its successors and assigns, for its and their own use forever, all right, title and interest in and to its 0.5% interest in Black Lake Holdings, as a capital contribution, and DCP Assets Holdings hereby accepts such interest as a contribution to the capital of DCP Assets Holdings.

Section 2.18 **Contribution of Black Lake Holdings to DCP Assets Holdings**. DEFS hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to DCP Assets Holdings, its successors and assigns, for its and their own use forever, all right, title and interest in and to its 99.5% interest in Black Lake Holdings, as a capital contribution, and DCP Assets Holdings hereby accepts such interest as a contribution to the capital of DCP Assets Holdings.

Section 2.19 **Contribution of the Interest to DCP GP LP**. DEFS hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to DCP GP LP, its successors and assigns, for its and their own use forever, all right, title and interest in and to the Interest (of which 0.001% of such contribution is being made on behalf of DCP GP LLC), as a capital contribution, and DCP GP LP hereby accepts the Interest as a contribution to the capital of DCP GP LP.

Section 2.20 **Contribution of Remaining Interest in DCP Assets Holdings to DCP LP Holdings.** DEFS hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to DCP LP Holdings, its successors and assigns, for its and their own use forever, all right, title and interest in and to its remaining interest in DCP Assets Holdings after the contribution of the Interest to DCP GP LP, as a capital contribution, and DCP LP Holdings hereby accepts such member interest as a contribution to the capital of DCP LP Holdings.

Section 2.21 **Contribution of Member Interest in DCP Assets Holdings to DCP LP Holdings.** DEFS Holding hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to DCP LP Holdings, its successors and assigns, for its and their own use forever, all right, title and interest in and to its membership interest in DCP Assets Holdings GP in exchange for a 0.5% limited partner interest in DCP LP Holdings, and DCP LP Holdings hereby accepts such member interest as a contribution to the capital of DCP LP Holdings.

Section 2.22 **Contribution of DEGP LLC Member Interest to DCP LP Holdings.** Guadalupe Holdings hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to DCP LP Holdings, its successors and assigns, for its and their own use forever, all right, title and interest in and to its member interest in DEGP LLC, as a capital contribution, and DCP LP Holdings hereby accepts such member interest as a contribution to the capital of DCP LP Holdings.

Section 2.23 **Contribution of the Interest by DCP GP LP to MLP.** DCP GP LP hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to MLP, its successors and assigns, for its and their own use forever, all right, title and interest in and to the Interest, as a capital contribution, in exchange for (a) a continuation of its 2% general partner interest in MLP, (b) the issuance of the IDRs, (c) the right to receive approximately \$3.447 million to reimburse DCP GP LP for certain capital expenditures, (d) the right to receive the Initial Recourse Debt and (e) other good and valuable consideration, the sufficiency of which is hereby acknowledged, and MLP hereby accepts the Interest as a contribution to the capital of MLP.

Section 2.24 **Contribution of Interests in DCP Assets Holdings and DEGP LLC to MLP.** DCP LP Holdings hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to MLP, its successors and assigns, for its and their own use forever, all right, title and interest in and to its partner interests in DCP Assets Holdings, and its member interests in DCP Assets Holdings GP in exchange for (a) 1,357,143 Common Units, representing a 7.6% interest in MLP, (b) 7,142,857 Sub Units, representing a 40% interest in MLP, (c) the right to receive approximately \$5.153 million to reimburse DCP LP Holdings for certain capital expenditures and (d) other good and valuable consideration, the sufficiency of which is hereby acknowledged, and MLP hereby accepts such partner interests in DCP Assets Holdings and its member interests in DCP Assets Holdings GP as a contribution to the capital of MLP.

Section 2.25 **Public Cash Contribution.** The Parties acknowledge a capital contribution by the public through the Underwriters to MLP of \$193.5 million in cash (\$180,928,125 net to MLP after taking into account the Underwriters' discount, the structuring

fees payable to the Underwriters and the Underwriters' reimbursement of certain expenses incurred by the MLP in connection with the Offering) in exchange for 9,000,000 Common Units, representing a 50.4% interest in MLP.

Section 2.26 **Payment of Transaction Costs**. The Parties acknowledge (a) the payment by MLP, in connection with the Acquisition, of transaction expenses in the amount of approximately \$4.7 million (exclusive of the Underwriter's spread but including debt placement costs), (b) the distribution by MLP of approximately \$3.447 million to DCP GP LP to reimburse it for certain capital expenditures, (c) the distribution by MLP of approximately \$5.153 million to DCP LP Holdings to reimburse it for certain capital expenditures and (d) the contribution by MLP of approximately \$53.9 million to DCP Assets Holdings (of which 0.001% is being contributed on behalf of DCP Assets Holdings GP) to replenish working capital.

Section 2.27 **Contribution of Member Interest in DCP Assets Holdings, Limited Partner Interest in DCP Assets Holdings and Cash to OLP**. MLP hereby grants, contributes, bargains, conveys, assigns, transfers, sets over and delivers to OLP, its successors and assigns, for its and their own use forever, all right, title and interest in and to its member interest in DCP Assets Holdings GP, its limited partner interest in DCP Assets Holdings and \$113.7 million in cash (of which 0.001% is being contributed on behalf of OLP GP), as a capital contribution, and DCP LP Holdings hereby accepts such membership interest, limited partner interest and cash as a contribution to the capital of DCP LP Holdings.

Section 2.28 **Purchase of Securities by OLP and Incurrence of Initial Recourse Debt by OLP**. The Parties acknowledge (i) the purchase by OLP of \$73.0 million in principal amount of Securities, (ii) the incurrence of the Initial Recourse Debt by OLP, (iii) the pledge of the Securities referred to in clause (i) of this Section 2.28 as collateral for the borrowings under the Term Loan Facility and (iv) the guarantee of the Initial Recourse Debt by MLP.

Section 2.29 **Distribution of Proceeds from Initial Recourse Debt by OLP to MLP**. OLP hereby distributes, grants, bargains, conveys, assigns, transfers, sets over and delivers to MLP, its successors and assigns, for its use forever, all right, title and interest in and to cash in an amount equal to the principal amount of the Initial Recourse Debt (of which 0.001% of such distribution is being made on behalf of OLP GP).

Section 2.30 **Distribution of Cash by MLP to DCP GP LP**. MLP hereby distributes, grants, bargains, conveys, assigns, transfers, sets over and delivers to DCP GP LP, its successors and assigns, for its and their own use forever, all right, title and interest in and to cash in an amount equal to amount received by MLP pursuant to Section 2.29.

Section 2.31 **Loan of Cash by DCP GP LP to DEFS**. DCP GP LP hereby loans to DEFS cash in an amount equal to amount received by DCP GP LP pursuant to Section 2.30 and, in connection therewith, DEFS agrees to execute a promissory note in the form attached hereto as Exhibit E as completed to reflect the principal amount of the loan from DCP GP LP to DEFS.

Section 2.32 **Distribution of Member Interest in Black Holdings by DCP Assets Holdings to OLP and DCP Assets Holdings GP.** DCP Assets Holdings hereby distributes, grants, bargains, conveys, assigns, transfers, sets over and delivers to OLP and DCP Assets Holdings GP, their successors and assigns, for its and their own use forever, all right, title and interest in and to a 0.001% member interest in Black Lake Holdings, on a pro rata basis in accordance with their respective ownership interests in DCP Assets Holdings, and each of OLP and DCP Assets Holdings GP hereby accept such distribution.

Section 2.33 **Conveyance of Member Interest in Black Lake Holdings by OLP to DCP Assets Holdings GP.** OLP hereby grants, bargains, conveys, assigns, transfers, sets over and delivers to DCP Assets Holdings GP, its successors and assigns, for its and their own use forever, all right, title and interest in and to its member interest in Black Lake Holdings, as a capital contribution, and DCP Assets Holdings GP hereby accepts such member interest as a contribution to the capital of DCP Assets Holdings GP.

Section 2.34 **Conversion of Black Lake Holdings to a Limited Partnership.** The Parties acknowledge that Black Lake Holdings has adopted articles of conversion in the form attached hereto as Exhibit F and pursuant thereto (i) has converted to Black Lake Holdings, LP, a Delaware limited partnership, and (ii) has designated DCP Assets Holdings GP as the general partner thereof and DCP Assets Holdings as the sole limited partner thereof.

### **ARTICLE 3** **ADDITIONAL TRANSACTIONS**

Section 3.1 **Purchase of Additional Common Units.** If the Option is exercised in whole or in part, the public, through the Underwriters, will contribute additional cash to MLP in exchange for up to an additional 1,350,000 Common Units.

Section 3.2 **Purchase of Securities by OLP and Incurrence of Recourse Debt by OLP.** The Parties acknowledge, in the event that the Option is exercised in whole or in part, (i) the contribution by MLP to OLP an amount of cash equal to the net proceeds received by MLP pursuant to Section 3.1, (ii) the purchase of OLP of up to \$27.1 million in principal amount of Securities utilizing the cash received by OLP from MLP pursuant to clause (i) of this Section 3.2, (iii) the incurrence of the Subsequent Recourse Debt by OLP, (iv) the pledge of the Securities referred to in clause (ii) of this Section 3.2 as collateral for the borrowings under the Term Loan Facility and (v) the guarantee of the Subsequent Recourse Debt, if any, by MLP.

Section 3.3 **Distribution of Proceeds from Additional Borrowings by OLP to MLP.** In the event the Option is exercised in whole or in part, OLP hereby agrees to distribute, grant, bargain, convey, assign, transfer, set over and deliver to MLP, its successors and assigns, for its and their own use forever, all right, title and interest in and to cash in an amount equal to the principal amount of the Subsequent Recourse Debt (of which 0.001% of such distribution is being made on behalf of OLP GP).

Section 3.4 **Redemption of Common Units.** MLP hereby agrees to redeem a number of Common Units held by DCP LP Holdings equal to the number of Common Units issued to the public, through the underwriters, upon exercise of the Option, if any, at a

redemption price per Common Unit equal to the initial public offering price per Common Unit, net of underwriting discounts.

Section 3.5 **Loan of Cash by DCP GP LP to DEFS**. DCP LP Holdings hereby agrees to loan to DEFS cash in an amount equal to amount received by DCP LP Holdings pursuant to Section 3.4, if any, and, in connection therewith, DEFS agrees to execute a promissory note in the form attached hereto as Exhibit E as completed to reflect the principal amount of the loan from DCP LP Holdings to DEFS.

## **ARTICLE 4 TITLE MATTERS**

### **Section 4.1 Encumbrances.**

(a) Except to the extent provided in any other document executed in connection with this Agreement or the Offering, the contribution and conveyance (by operation of law or otherwise) of the various physical assets owned as reflected in this Agreement (collectively, the "Assets") are made expressly subject to all recorded and unrecorded liens (other than consensual liens), encumbrances, agreements, defects, restrictions, adverse claims and all laws, rules, regulations, ordinances, judgments and orders of governmental authorities or tribunals having or asserting jurisdictions over the Assets and operations conducted thereon or in connection therewith, in each case to the extent the same are valid and enforceable and affect the Assets, including all matters that a current survey or visual inspection of the Assets would reflect.

(b) To the extent that certain jurisdictions in which the Assets are located may require that documents be recorded in order to evidence the transfers of title reflected in this Agreement, then the provisions set forth in Section 4.1(a) immediately above shall also be applicable to the conveyances under such documents.

### **Section 4.2 Disclaimer of Warranties; Subrogation; Waiver of Bulk Sales Laws.**

(a) EXCEPT TO THE EXTENT PROVIDED IN ANY OTHER DOCUMENT EXECUTED OR DELIVERED IN CONNECTION WITH THIS AGREEMENT OR THE OFFERING INCLUDING, WITHOUT LIMITATION THE OMNIBUS AGREEMENT, THE PARTIES ACKNOWLEDGE AND AGREE THAT NONE OF THE PARTIES HAS MADE, DOES NOT MAKE, AND EACH SUCH PARTY SPECIFICALLY NEGATES AND DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, ORAL OR WRITTEN, PAST OR PRESENT, REGARDING (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE ASSETS INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, GEOLOGY OR ENVIRONMENTAL CONDITION OF THE ASSETS GENERALLY, INCLUDING THE PRESENCE OR LACK OF HAZARDOUS SUBSTANCES OR OTHER MATTERS ON THE ASSETS, (B) THE INCOME TO BE DERIVED FROM THE ASSETS, (C) THE SUITABILITY OF THE ASSETS FOR ANY AND ALL ACTIVITIES AND USES

THAT MAY BE CONDUCTED THEREON, (D) THE COMPLIANCE OF OR BY THE ASSETS OR THEIR OPERATION WITH ANY LAWS (INCLUDING WITHOUT LIMITATION ANY ZONING, ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS), OR (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE ASSETS. EXCEPT TO THE EXTENT PROVIDED IN ANY OTHER DOCUMENT EXECUTED OR DELIVERED IN CONNECTION WITH THIS AGREEMENT OR THE OFFERING INCLUDING, WITHOUT LIMITATION, THE OMNIBUS AGREEMENT, THE PARTIES ACKNOWLEDGE AND AGREE THAT EACH HAS HAD THE OPPORTUNITY TO INSPECT THE RESPECTIVE ASSETS, AND EACH IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE RESPECTIVE ASSETS AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY ANY OF THE PARTIES. EXCEPT TO THE EXTENT PROVIDED IN ANY OTHER DOCUMENT EXECUTED OR DELIVERED IN CONNECTION WITH THIS AGREEMENT OR THE OFFERING INCLUDING, WITHOUT LIMITATION, THE OMNIBUS AGREEMENT, NONE OF THE PARTIES IS LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE ASSETS FURNISHED BY ANY AGENT, EMPLOYEE, SERVANT OR THIRD PARTY. EXCEPT TO THE EXTENT PROVIDED IN ANY OTHER DOCUMENT EXECUTED OR DELIVERED IN CONNECTION WITH THIS AGREEMENT OR THE OFFERING INCLUDING, WITHOUT LIMITATION, THE OMNIBUS AGREEMENT, EACH OF THE PARTIES ACKNOWLEDGES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CONTRIBUTION OF THE ASSETS AS PROVIDED FOR HEREIN IS MADE IN AN "AS IS", "WHERE IS" CONDITION WITH ALL FAULTS, AND THE ASSETS ARE CONTRIBUTED AND CONVEYED SUBJECT TO ALL OF THE MATTERS CONTAINED IN THIS SECTION. THIS SECTION SHALL SURVIVE SUCH CONTRIBUTION AND CONVEYANCE OR THE TERMINATION OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED BY THE PARTIES AFTER DUE CONSIDERATION AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE ASSETS THAT MAY ARISE PURSUANT TO ANY LAW NOW OR HEREAFTER IN EFFECT, OR OTHERWISE, EXCEPT AS SET FORTH IN THIS AGREEMENT OR ANY OTHER DOCUMENT EXECUTED OR DELIVERED IN CONNECTION WITH THIS AGREEMENT OR THE OFFERING, INCLUDING, WITHOUT LIMITATION, THE OMNIBUS AGREEMENT.

(b) The contributions of the Assets made under this Agreement are made with full rights of substitution and subrogation of the respective parties receiving such contributions, and all persons claiming by, through and under such parties, to the extent assignable, in and to all covenants and warranties by the predecessors-in-title of the parties contributing the Assets, and with full subrogation of all rights accruing under applicable statutes of limitation and all rights of action of warranty against all former owners of the Assets.

(c) Each of the Parties agrees that the disclaimers contained in this Section 4.2 are "conspicuous" disclaimers. Any covenants implied by statute or law by the use of the words "grant," "convey," "bargain," "sell," "assign," "transfer," "deliver," or "set over" or any of them

or any other words used in this Agreement or any exhibits hereto are hereby expressly disclaimed, waived or negated.

(d) Each of the Parties hereby waives compliance with any applicable bulk sales law or any similar law in any applicable jurisdiction in respect of the transactions contemplated by this Agreement.

## **ARTICLE 5** **FURTHER ASSURANCES**

Section 5.1 **Further Assurances**. From time to time after the Effective Time, and without any further consideration, the Parties agree to execute, acknowledge and deliver all such additional deeds, assignments, bills of sale, conveyances, instruments, notices, releases, acquittances and other documents, and will do all such other acts and things, all in accordance with applicable law, as may be necessary or appropriate (a) more fully to assure that the applicable Parties own all of the properties, rights, titles, interests, estates, remedies, powers and privileges granted by this Agreement, or which are intended to be so granted, or (b) more fully and effectively to vest in the applicable Parties and their respective successors and assigns beneficial and record title to the interests contributed and assigned by this Agreement or intended so to be and to more fully and effectively carry out the purposes and intent of this Agreement.

Section 5.2 **Other Assurances**. From time to time after the Effective Time, and without any further consideration, each of the Parties shall execute, acknowledge and deliver all such additional instruments, notices and other documents, and will do all such other acts and things, all in accordance with applicable law, as may be necessary or appropriate to more fully and effectively carry out the purposes and intent of this Agreement. Without limiting the generality of the foregoing, the Parties acknowledge that the parties have used their good faith efforts to attempt to identify all of the assets being contributed to the MLP or its subsidiaries as required in connection with the Offering. However, due to the age of some of those assets and the difficulties in locating appropriate data with respect to some of the assets it is possible that assets intended to be contributed to the MLP or its subsidiaries were not identified and therefore are not included in the assets contributed to the MLP or its subsidiaries. It is the express intent of the Parties that the MLP or its subsidiaries own all assets necessary to operate the assets that are identified in this Agreement and in the Registration Statement. To the extent any assets were not identified but are necessary to the operation of assets that were identified, then the intent of the Parties is that all such unidentified assets are intended to be conveyed to the appropriate members of the Partnership Group. To the extent such assets are identified at a later date, the Parties shall take the appropriate actions required in order to convey all such assets to the appropriate members of the Partnership Group. Likewise, to the extent that assets are identified at a later date that were not intended by the parties to be conveyed as reflected in the Registration Statement, the Parties shall take the appropriate actions required in order to convey all such assets to the appropriate party.

## **ARTICLE 6** **EFFECTIVE TIME**

Notwithstanding anything contained in this Agreement to the contrary, none of the provisions of Article 2 or Article 3 of this Agreement shall be operative or have any effect until the Effective Time, at which time all the provisions of Article 2 and Article 3 of this Agreement shall be effective and operative in accordance with Article 7, without further action by any party hereto.

## **ARTICLE 7** **MISCELLANEOUS**

**Section 7.1 Order of Completion of Transactions.** The transactions provided for in Article 2 and Article 3 of this Agreement shall be completed immediately following the Effective Time in the following order: first, the transactions provided for in Article 2 shall be completed in the order set forth therein; and second, following the completion of the transactions as provided in Article 2, the transactions, if they occur, provided for in Article 3 shall be completed.

**Section 7.2 Costs.** Except for the transaction costs set forth in Section 2.26, the OLP shall pay all expenses, fees and costs, including but not limited to, all sales, use and similar taxes arising out of the contributions, conveyances and deliveries to be made hereunder and shall pay all documentary, filing, recording, transfer, deed, and conveyance taxes and fees required in connection therewith. In addition, the OLP shall be responsible for all costs, liabilities and expenses (including court costs and reasonable attorneys' fees) incurred in connection with the implementation of any conveyance or delivery pursuant to Section 5.1 or Section 5.2.

**Section 7.3 Headings; References; Interpretation.** All Article and Section headings in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any of the provisions hereof. The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole, including, without limitation, all Schedules and Exhibits attached hereto, and not to any particular provision of this Agreement. All references herein to Articles, Sections, Schedules and Exhibits shall, unless the context requires a different construction, be deemed to be references to the Articles and Sections of this Agreement and the Schedules and Exhibits attached hereto, and all such Schedules and Exhibits attached hereto are hereby incorporated herein and made a part hereof for all purposes. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural and vice versa. The use herein of the word "including" following any general statement, term or matter shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation", "but not limited to", or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

Section 7.4 **Successors and Assigns.** The Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

Section 7.5 **No Third Party Rights.** The provisions of this Agreement are intended to bind the Parties as to each other and are not intended to and do not create rights in any other person or confer upon any other person any benefits, rights or remedies and no person is or is intended to be a third party beneficiary of any of the provisions of this Agreement.

Section 7.6 **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together shall constitute one agreement binding on the parties hereto.

Section 7.7 **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado applicable to contracts made and to be performed wholly within such state without giving effect to conflict of law principles thereof.

Section 7.8 **Severability.** If any of the provisions of this Agreement are held by any court of competent jurisdiction to contravene, or to be invalid under, the laws of any political body having jurisdiction over the subject matter hereof, such contravention or invalidity shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be invalid and an equitable adjustment shall be made and necessary provision added so as to give effect to the intention of the Parties as expressed in this Agreement at the time of execution of this Agreement.

Section 7.9 **Amendment or Modification.** This Agreement may be amended or modified from time to time only by the written agreement of all the Parties. Each such instrument shall be reduced to writing and shall be designated on its face as an Amendment to this Agreement.

Section 7.10 **Integration.** This Agreement and the instruments referenced herein supersede all previous understandings or agreements among the Parties, whether oral or written, with respect to their subject matter. This document and such instruments contain the entire understanding of the Parties with respect to the subject matter hereof and thereof. No understanding, representation, promise or agreement, whether oral or written, is intended to be or shall be included in or form part of this Agreement unless it is contained in a written amendment hereto executed by the parties hereto after the date of this Agreement.

Section 7.11 **Deed; Bill of Sale; Assignment.** To the extent required and permitted by applicable law, this Agreement shall also constitute a “deed,” “bill of sale” or “assignment” of the assets and interests referenced herein.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first above written.

DCP MIDSTREAM PARTNERS, LP

By: DCP Midstream GP, LP, its general partner

By: DCP Midstream GP, LLC, its  
general partner

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

DCP MIDSTREAM OPERATING, LP

By: DCP Midstream Operating, LLC, its general partner

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

DCP MIDSTREAM GP, LLC

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

DCP MIDSTREAM GP, LP

By: DCP Midstream GP, LLC, its general partner

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

*[Signature Page to the Contribution Agreement]*

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DUKE ENERGY FIELD SERVICES, LLC

By: /s/ Brent L. Backes

Name: Brent L. Backes

Title: Vice President, General Counsel and Secretary

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DEFS HOLDING 1, LLC

By: /s/ Brent L. Backes

Name: Brent L. Backes

Title: Vice President, General Counsel and Secretary

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DEFS HOLDING, LLC

By: /s/ Brent L. Backes

Name: Brent L. Backes

Title: Vice President, General Counsel and Secretary

---

DCP ASSETS HOLDINGS, LP

By: DCP Assets Holdings GP, LLC, its general partner

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

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DCP ASSETS HOLDINGS GP, LLC

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

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*[Signature Page to the Contribution Agreement]*

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DUKE ENERGY GUADALUPE PIPELINE HOLDINGS, INC.

By: /s/ Brent L. Backes

Name: Brent L. Backes

Title: Vice President, General Counsel and Secretary

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DUKE ENERGY NGL SERVICES, LP

By: DEFS Holding, LLC, its general partner

By: /s/ Brent L. Backes

Name: Brent L. Backes

Title: Vice President, General Counsel and Secretary

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DCP LP HOLDINGS, LP

By: Duke Energy Field Services, LLC, its general partner

By: /s/ Brent L. Backes

Name: Brent L. Backes

Title: Vice President, General Counsel and Secretary

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DCP BLACK LAKE HOLDINGS, LP

By: DCP Assets Holdings GP, LLC, its general partner

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

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*[Signature Page to the Contribution Agreement]*

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**CERTIFICATE OF CONVERSION  
TO  
LIMITED LIABILITY COMPANY  
OF  
DUKE ENERGY GUADALUPE PIPELINE, INC.**

Pursuant to the provisions of Section 266 of the Delaware General Corporation Law (the "DGCL") and Section 18-214 of the Delaware Limited Liability Company Act (the "LLC Act"), Duke Energy Guadalupe Pipeline, Inc., a Delaware corporation (the "Corporation"), hereby executes this Certificate of Conversion to Limited Liability Company ("Certificate") for the purpose of converting (the "Conversion") the Corporation to a limited liability company (the "Limited Liability Company") and, in connection therewith, certifies as follows:

1. The Corporation's name immediately prior to the filing of this Certificate is Duke Energy Guadalupe Pipeline, Inc. and its current state of incorporation is Delaware.
2. The Corporation was formed on August 24, 1989 in the State of Delaware under the DGCL.
3. The name of the Limited Liability Company into which the Corporation shall be converted is Duke Energy Guadalupe Pipeline, LLC and the Limited Liability Company shall be formed under the LLC Act.
4. The Conversion of the Corporation to the Limited Liability Company has been duly approved and authorized in accordance with the provisions of Section 266 of the DGCL and Section 18-214 of the LLC Act.
5. At the Effective Time (as defined below), by virtue of the Conversion and without any other action on the part of the Corporation, the issued and outstanding common stock of the Corporation shall be converted into membership interests of the Limited Liability Company on the basis of one membership interest for each one thousand (1,000) shares of common stock of the Corporation.
6. This Certificate shall become effective as of 12:01 p.m. eastern time on December 7, 2005. ("Effective Time").

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of December 7, 2005.

DUKE ENERGY GUADALUPE PIPELINE, INC.

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

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**ARTICLES OF CONVERSION  
OF  
GAS SUPPLY RESOURCES INC.  
TO  
GAS SUPPLY RESOURCES LLC**

Pursuant to the provisions of Article 5.18 of the Texas Business Corporation Act (the "TBCA") and Article 10.09 of the Texas Limited Liability Company Act (the "TLLCA"), Gas Supply Resources Inc., a Texas corporation, hereby adopts and authorizes for filing with the Texas Secretary of State the following Articles of Conversion for the purpose of effecting the conversion described below (the "Conversion"):

1. A plan of conversion (the "Plan of Conversion") has been adopted and approved by the Converting Entity in accordance with the provisions of Article 5.17 of the TBCA and Article 10.08 of the TLLCA providing for the Conversion of Gas Supply Resources Inc., a corporation incorporated under the laws of the State of Texas (the "Converting Entity") into Gas Supply Resources LLC, a limited liability company to be formed under the laws of the State of Texas (the "Converted Entity").
  2. The executed Plan of Conversion is on file at the principal place of business of the Converting Entity at 370 17th Street, Suite 2500, Denver, Colorado 80202. The executed Plan of Conversion will be on file, from and after the Conversion, at the principal place of business of the Converted Entity at 370 17th Street, Suite 2500, Denver, Colorado 80202.
  3. A copy of the Plan of Conversion will be furnished by the Converting Entity (prior to the Conversion) or the Converted Entity (after the Conversion), on written request and without cost, to any shareholder of the Converting Entity or member of the Converted Entity.
  4. The Converting Entity has outstanding 400 shares of common stock, par value \$0.01 per share (being the Converting Entity's only outstanding class of capital stock), all of which were voted in favor of the Conversion.
  5. The Converted Entity will be liable for the payment of all filing fees and franchise taxes required by law to be paid by the Converting Entity.
  6. Approval of the Plan of Conversion was duly authorized by all action required by the laws under which the Converting Entity was formed and by its constituent documents.
  7. These Articles of Conversion shall become effective as of 11:02 a.m. CDT on December 7, 2005.
-

**IN WITNESS WHEREOF**, the undersigned has executed these Articles of Conversion as of the 7th day of December, 2005.

**GAS SUPPLY RESOURCES INC.**

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

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**ARTICLES OF CONVERSION  
OF  
GSRI TRANSPORTATION INC.  
TO  
GSRI TRANSPORTATION LLC**

Pursuant to the provisions of Article 5.18 of the Texas Business Corporation Act (the "TBCA") and Article 10.09 of the Texas Limited Liability Company Act (the "TLLCA"), Gas Supply Resources Inc., a Texas corporation, hereby adopts and authorizes for filing with the Texas Secretary of State the following Articles of Conversion for the purpose of effecting the conversion described below (the "Conversion"):

1. A plan of conversion (the "Plan of Conversion") has been adopted and approved by the Converting Entity in accordance with the provisions of Article 5.17 of the TBCA and Article 10.08 of the TLLCA providing for the Conversion of GSRI Transportation Inc., a corporation incorporated under the laws of the State of Texas (the "Converting Entity") into GSRI Transportation LLC, a limited liability company to be formed under the laws of the State of Texas (the "Converted Entity").
  2. The executed Plan of Conversion is on file at the principal place of business of the Converting Entity at 370 17th Street, Suite 2500, Denver, Colorado 80202. The executed Plan of Conversion will be on file, from and after the Conversion, at the principal place of business of the Converted Entity at 370 17th Street, Suite 2500, Denver, Colorado 80202.
  3. A copy of the Plan of Conversion will be furnished by the Converting Entity (prior to the Conversion) or the Converted Entity (after the Conversion), on written request and without cost, to any shareholder of the Converting Entity or member of the Converted Entity.
  4. The Converting Entity has outstanding 500 shares of common stock, par value \$0.01 per share (being the Converting Entity's only outstanding class of capital stock), all of which were voted in favor of the Conversion.
  5. The Converted Entity will be liable for the payment of all filing fees and franchise taxes required by law to be paid by the Converting Entity.
  6. Approval of the Plan of Conversion was duly authorized by all action required by the laws under which the Converting Entity was formed and by its constituent documents.
  7. These Articles of Conversion shall become effective as of 11:03 a.m. CDT on December 7, 2005.
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**IN WITNESS WHEREOF**, the undersigned has executed these Articles of Conversion as of the 7th day of December, 2005.

**GSRI TRANSPORTATION INC.**

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

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**ASSIGNMENT AND ASSUMPTION AGREEMENT  
(Black Lake Pipe Line Company General Partnership)**

This Assignment and Assumption Agreement (this "Assignment") is entered into as of the \_\_\_\_day of \_\_\_\_, 2005 (the "Effective Date"), by and among Duke Energy NGL Services, LP, a Delaware limited partnership ("Assignor") and DCP Black Lake Holdings, LLC ("Assignee").

WHEREAS, Assignor owns a 50% general partnership interest in the Black Lake Pipe Line Company, a Texas general partnership (the "Partnership"); and

WHEREAS, Assignor has determined it to be in its best interest to assign a 45% general partnership interest in the Partnership (herein referred to as the "Transferred Partnership Interest") to Assignee; and

WHEREAS, Assignor shall consummate the assignment of the Transferred Partnership Interest per Section 9.4 of that certain Agreement of General Partnership of Black Lake Pipe Line Company dated August 7, 1996 (the "Partnership Agreement"), between Assignor's predecessor in interest and Black Lake Pipe Line Company, Inc. (the "Non-Transferring Partner"); and

WHEREAS, said Section 9.4 of the Partnership Agreement requires that each of Assignor and Assignee perform and/or assume certain undertakings for the benefit of the Non-Transferring Partner (the "Undertakings"); and

WHEREAS, Assignor and Assignee are executing this Assignment for the purpose of (i) transferring the Transferred Partnership Interest from Assignor to Assignee and (ii) completing and/or documenting the Undertakings for the benefit of the Non-Transferring Partner.

NOW THEREFORE, in consideration of the mutual agreements contained herein, Assignor and Assignee hereby agree as follows:

1. Definitions and Section References. All capitalized terms used in this Assignment and not defined herein shall have the meanings defined in the Partnership Agreement, and all section or article references contained herein shall be to sections or articles of the Partnership Agreement.

2. Assignment of the Transferred Partnership Interest. Assignor does hereby assign, transfer and convey all of its right, title and interest in and to the Transferred Partnership Interest and the rights and benefits represented thereby to Assignee.

3. Certifications and Covenants Under Section 9.4 of the Partnership Agreement. Assignor and Assignee, as applicable, covenant and certify to the following:

(a) Assignee is not in receivership, bankruptcy, insolvency, dissolution or similar proceeding;

(b) Assignee is a Qualified Purchaser;

(c) Assignor hereby agrees to remain liable, as guarantor and otherwise, for compliance by Assignee with all of Assignor's obligations under the Partnership Agreement;

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(c) Assignee does hereby agree to be bound by the terms and conditions of the Partnership Agreement, and Assignee's execution of this Assignment shall be deemed to be an execution of the Partnership Agreement, as amended through the Effective Date, and the Non-Transferring Partner shall have the right to construe Assignee's execution of this Assignment as execution of the Partnership Agreement; and

(d) this Assignment has been conducted in accordance with all applicable securities and other laws and will not result in the Partnership or any Partner becoming subject to the Public Utility Holding Company Act of 1935 or the Investment Company Act of 1940, or comparable state statutes or regulations.

5. No Third Party Beneficiary. With the exception of the Non-Transferring Partner this Assignment is intended solely for the benefit of Assignor and Assignee and shall not impart any rights enforceable by any other person or entity (other than the Non-Transferring Partner and its permitted successors and assigns).

6. Miscellaneous. This Assignment (a) shall be governed and construed in accordance with the laws of the State of Texas and (b) may be signed in one or more counterparts, which together shall constitute one and the same agreement.

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IN WITNESS WHEREOF, the undersigned have executed this Assignment effective as of the first date written above.

**“ASSIGNOR”**

**DUKE ENERGY NGL SERVICES, LP**

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

**“ASSIGNEE”**

**DCP BLACK LAKE HOLDINGS, LLC**

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

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PROMISSORY NOTE

\$\_\_\_\_\_,000,000

December \_\_\_, 2005

FOR VALUE RECEIVED, the undersigned, Duke Energy Field Services, LLC, a Delaware limited liability company (the "Borrower"), promises to pay to the order of DCP Midstream GP, LP, a Delaware limited partnership (the "Lender"), at its office at 370 17th Street, Suite 2775, Denver, Colorado 80202, ON DEMAND, the principal sum of [\_\_\_\_] MILLION DOLLARS AND NO CENTS (\$\_\_\_\_\_,000,000.00)], together with interest on the principal amount from time to time outstanding hereunder payable without necessity for demand therefor, as set forth herein.

The Lender shall record on its books or records the principal amount of this Note and the principal balances from time to time outstanding. The record thereof shall be prima facie evidence as to all such amounts; provided, however, that the failure of the Lender to record any of the foregoing shall not limit or otherwise affect the obligation of the Borrower to repay amounts owing under this Note.

Interest on the principal amount from time to time outstanding hereunder shall accrue at an interest rate equal to the greater of 5.0% per annum or at the applicable short-term federal rate in effect under Section 1274(d) of the Internal Revenue Code of 1986, as amended, for the period in which interest is being accrued; provided, however, that upon the occurrence and during the continuance of any default by the Borrower in the payment of any amount due under this Note, interest shall accrue and be payable by the Borrower on such unpaid amount at a rate per annum equal to two percentage points above the rate otherwise applicable as set forth herein. Interest shall be due and payable on January 1, April 1, July 1 and October 1 of each year commencing on the date of this Note until paid or on the date on which the outstanding principal amount of this Note shall become due and payable upon demand or by acceleration. Interest shall be computed on the basis of a year of 365 (or 366, as the case may be) days and for the actual number of days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

Prepayments may be made on this Note at any time, without any penalty or premium. All payments hereunder shall be in such lawful money of the United States of America as shall be legal tender for public and private debts at the time of payment.

This Note shall be governed by and construed in accordance with the laws of the State of Texas.

Duke Energy Field Services, LLC

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

**CERTIFICATE OF CONVERSION  
FROM A LIMITED LIABILITY COMPANY TO A  
LIMITED PARTNERSHIP PURSUANT TO SECTION 17-217  
OF THE DELAWARE REVISED UNIFORM LIMITED PARTNERSHIP ACT**

1. The jurisdiction where the limited liability company was first formed is Delaware.
2. The date on which the limited liability company was first formed is November 30, 2005.
3. The name of the limited liability company immediately prior to the filing of this certificate is DCP Black Lake Holdings, LLC.
4. The name of the limited partnership as set forth in its Certificate of Limited Partnership filed in accordance with Section 17-217(b) is DCP Black Lake Holdings, LP.
5. This Certificate shall become effective as of 12:04 p.m. eastern time on December 7, 2005.

EXECUTED as of the 7th day of December, 2005.

**DCP BLACK LAKE HOLDINGS, LP**

By: DCP Assets Holdings GP, LLC  
its General Partner

By: \_\_\_\_\_  
Michael S. Richards  
Vice President, General Counsel and Secretary

**OMNIBUS AGREEMENT  
AMONG  
DUKE ENERGY FIELD SERVICES, LLC  
DCP MIDSTREAM GP, LLC  
DCP MIDSTREAM GP, LP  
DCP MIDSTREAM PARTNERS, LP  
AND  
DCP MIDSTREAM OPERATING, LP**

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## **OMNIBUS AGREEMENT**

THIS OMNIBUS AGREEMENT (“*Agreement*”) is entered into on, and effective as of, the Closing Date (as defined herein), and is by and among Duke Energy Field Services, LLC, a Delaware limited liability company (“*DEFS*”), DCP Midstream GP, LLC, a Delaware limited liability company (“*DCP LLC*”), DCP Midstream GP, LP, a Delaware limited partnership (the “*General Partner*”), DCP Midstream Partners, LP, a Delaware limited partnership (the “*MLP*”) and DCP Midstream Operating, LP (the “*OLP*”). The above-named entities are sometimes referred to in this Agreement each as a “*Party*” and collectively as the “*Parties*.”

### **RECITALS:**

The Parties desire by their execution of this Agreement to evidence their understanding, (i) as more fully set forth in Article II and Article III of this Agreement, with respect to certain indemnification and reimbursement obligations of the Parties, and (ii) as more fully set forth in Article IV of this Agreement, with respect to DEFS’ obligation to maintain certain specified credit support for the Partnership Group (as defined herein).

In consideration of the premises and the covenants, conditions, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### **ARTICLE I** **Definitions**

**1.1 Definitions.** (a) Capitalized terms used herein but not defined shall have the meanings given them in the MLP Agreement.

(b) As used in this Agreement, the following terms shall have the respective meanings set forth below:

“*Agreement*” means this Omnibus Agreement, as it may be amended, modified or supplemented from time to time in accordance with the terms hereof.

“*Black Lake Holdings*” means Black Lake Holdings, LLC, a Delaware limited liability company.

“*Black Lake Pipeline*” means the NGL pipeline located in Louisiana and Texas that is owned by BLPLC.

“*BLPLC*” means Black Lake Pipe Line Company, a Texas general partnership.

“*Cause*” has the meaning ascribed thereto in the Partnership Agreement.

“*Cap*” has the meaning given such term in Section 2.4(a).

DCP MIDSTREAM PARTNERS, LP  
OMNIBUS AGREEMENT

Omnibus Agreement

*“Change of Control”* means, with respect to any Person (the “*Applicable Person*”), any of the following events: (i) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the Applicable Person’s assets to any other Person, unless immediately following such sale, lease, exchange or other transfer such assets are owned, directly or indirectly, by the Applicable Person; (ii) the dissolution or liquidation of the Applicable Person; (iii) the consolidation or merger of the Applicable Person with or into another Person pursuant to a transaction in which the outstanding Voting Securities of the Applicable Person are changed into or exchanged for cash, securities or other property, other than any such transaction where (a) the outstanding Voting Securities of the Applicable Person are changed into or exchanged for Voting Securities of the surviving Person or its parent and (b) the holders of the Voting Securities of the Applicable Person immediately prior to such transaction own, directly or indirectly, not less than a majority of the outstanding Voting Securities of the surviving Person or its parent immediately after such transaction; and (iv) a “person” or “group” (within the meaning of Sections 13(d) or 14(d)(2) of the Exchange Act) being or becoming the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) of more than 50% of all of the then outstanding Voting Securities of the Applicable Person, except in a merger or consolidation which would not constitute a Change of Control under clause (iii) above.

*“Closing Date”* means the date of the closing of the initial public offering of common units representing limited partner interests in the MLP.

*“Common Unit”* has the meaning given such term in the MLP Agreement.

*“Conflicts Committee”* has the meaning given such term in the MLP Agreement.

*“Covered Environmental Losses”* means all environmental losses, damages, liabilities, claims, demands, causes of action, judgments, settlements, fines, penalties, costs and expenses (including, without limitation, costs and expenses of any Environmental Activity, court costs and reasonable attorney’s and experts’ fees) of any and every kind or character, by reason of or arising out of:

- (i) any violation or correction of violation, including without limitation performance of any Environmental Activity, of Environmental Laws; or
- (ii) any event, omission or condition associated with ownership or operation of the MLP Assets or the Black Lake Pipeline (including, without limitation, the exposure to or presence of Hazardous Substances on, under, about or migrating to or from the MLP Assets or the Black Lake Pipeline or the exposure to or Release of Hazardous Substances arising out of operation of the MLP Assets or the Black Lake Pipeline at non-MLP Asset locations) including, without limitation, (A) the cost and expense of any Environmental Activities, (B) the cost or expense of the preparation and implementation of any closure, remedial or corrective action or other plans required or necessary under Environmental Laws and (C) the cost and expense for any environmental or toxic tort pre-trial, trial or appellate legal or litigation support work; *provided*, in the

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case of clauses (A) and (B), such cost and expense shall not include the costs of and associated with project management and soil and ground water monitoring;

but only to the extent that such violation complained of under clause (i), or such events or conditions included in clause (ii), occurred before the Closing Date.

“DCP LLC” has the meaning given such term in the introduction to this Agreement.

“DEFS” has the meaning given such term in the introduction to this Agreement.

“Environmental Activities” shall mean any investigation, study, assessment, evaluation, sampling, testing, monitoring, containment, removal, disposal, closure, corrective action, remediation (regardless of whether active or passive), natural attenuation, restoration, bioremediation, response, repair, corrective measure, cleanup or abatement that is required or necessary under any applicable Environmental Law, including, but not limited to, institutional or engineering controls or participation in a governmental voluntary cleanup program to conduct voluntary investigatory and remedial actions for the clean-up, removal or remediation of Hazardous Substances that exceed actionable levels established pursuant to Environmental Laws, or participation in a supplemental environmental project in partial or whole mitigation of a fine or penalty.

“Environmental Laws” means all federal, state, and local laws, statutes, rules, regulations, orders, judgments, ordinances, codes, injunctions, decrees, Environmental Permits and other legally enforceable requirements and rules of common law relating to (a) pollution or protection of the environment or natural resources including, without limitation, the federal Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendments and Reauthorization Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Oil Pollution Act of 1990, the Hazardous Materials Transportation Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act and other environmental conservation and protection laws, each as amended through the Closing Date, (b) any Release or threatened Release of, or any exposure of any Person or property to, any Hazardous Substances and (c) the generation, manufacture, processing, distribution, use, treatment, storage, transport or handling of any Hazardous Substances.

“Environmental Permit” means any permit, approval, identification number, license, registration, consent, exemption, variance or other authorization required under or issued pursuant to any applicable Environmental Law.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“G&A Expenses Limit” has the meaning given such term in Section 3.3.

“General Partner” has the meaning given such term in the introduction to this Agreement.

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***“Hazardous Substance”*** means (a) any substance that is designated, defined or classified as a hazardous waste, solid waste, hazardous material, pollutant, contaminant or toxic or hazardous substance, or terms of similar meaning, or that is otherwise regulated under any Environmental Law, including, without limitation, any hazardous substance as defined under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, (b) oil as defined in the Oil Pollution Act of 1990, as amended, including oil, gasoline, natural gas, fuel oil, motor oil, waste oil, diesel fuel, jet fuel and other refined petroleum hydrocarbons and petroleum products and (c) radioactive materials, asbestos containing materials or polychlorinated biphenyls.

***“Indemnified Party”*** means either the Partnership Group or DEFS, as the case may be, in their capacity as the parties entitled to indemnification in accordance with Article II.

***“Indemnifying Party”*** means either the Partnership Group or DEFS, as the case may be, in their capacity as the parties from whom indemnification may be required in accordance with Article II.

***“Losses”*** means any losses, damages, liabilities, claims, demands, causes of action, judgments, settlements, fines, penalties, costs and expenses (including, without limitation, court costs and reasonable attorney’s and experts’ fees) of any and every kind or character.

***“MLP”*** has the meaning given such term in the introduction to this Agreement.

***“MLP Agreement”*** means the Amended and Restated Agreement of Limited Partnership of the MLP, dated as of the Closing Date, as such agreement is in effect on the Closing Date, to which reference is hereby made for all purposes of this Agreement. An amendment or modification to the MLP Agreement subsequent to the Closing Date shall be given effect for the purposes of this Agreement only if it has received the approval of the Conflicts Committee that would be required, if any, pursuant to Section 6.6 hereof if such amendment or modification were an amendment or modification of this Agreement.

***“MLP Assets”*** means the pipelines, processing plants or related equipment or assets, or portions thereof, conveyed, contributed or otherwise transferred or intended to be conveyed, contributed or otherwise transferred to any member of the Partnership Group, or owned by or necessary for the operation of the business, properties or assets or any member of the Partnership Group, prior to or as of the Closing Date; *provided*, the MLP Assets do not include the Partnership Group’s direct or indirect ownership interest in Black Lake Holdings, BLPLC or the Black Lake Pipeline.

***“OLP”*** has the meaning given such term in the introduction to this Agreement.

***“Organizational Documents”*** means certificates of incorporation, by-laws, certificates of formation, limited liability company operating agreements, certificates of limited partnership or limited partnership agreements or other formation or governing documents of a particular entity.

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*“Partnership Entities”* means DCP LLC, the General Partner and each member of the Partnership Group.

*“Partnership Group”* means the MLP, the OLP and any Subsidiary of the MLP or the OLP.

*“Partnership Indemnitee”* means any Person who is an Indemnitee (as defined in the Partnership Agreement); provided, that the term “Partnership Indemnitee” shall exclude DEFS and any Affiliate of DEFS (as defined in the Partnership Agreement) which is not a member of the Partnership Group.

*“Party”* or *“Parties”* have the meaning given such terms in the introduction to this Agreement.

*“Person”* means an individual, corporation, partnership, joint venture, trust, limited liability company, unincorporated organization or any other entity.

*“Release”* means any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping or disposing into the environment.

*“Seabreeze Pipeline”* the NGL pipeline located in Texas that is owned, directly or indirectly, by the OLP.

*“Subsidiary”* has the meaning given such term in the MLP Agreement.

*“Voting Securities”* means securities of any class of Person entitling the holders thereof to vote in the election of, or to appoint, members of the board of directors or other similar governing body of the Person.

## **ARTICLE II Indemnification**

### **2.1 Environmental Indemnification.**

(a) Subject to the provisions of Section 2.4 and Section 2.5, DEFS shall indemnify, defend and hold harmless the Partnership Group and the Partnership Indemnitees from and against any Covered Environmental Losses suffered or incurred by the Partnership Group or any Partnership Indemnitee relating to the MLP Assets or the Black Lake Pipeline for a period of three (3) years from the Closing Date; *provided* that, for purposes of determining the amount of any Covered Environmental Loss suffered or incurred by the Partnership Group or any Partnership Indemnitee with respect to the Black Lake Pipeline, the Partnership Group’s indirect ownership of only 45% of the partnership interests in BLPLC shall be taken into account such that any Covered Environmental Loss suffered or incurred by the Partnership Group or any Partnership Indemnitee with respect to the Black Lake Pipeline would be determined in a proportionate manner to the Covered Environmental Loss suffered or incurred by BLPLC with respect to the same matter.

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(b) The Partnership Group shall indemnify, defend and hold harmless DEFS and its Subsidiaries, other than any Subsidiary constituting part of the Partnership Group, from and against any Covered Environmental Losses suffered or incurred by DEFS and its Subsidiaries, other than any Subsidiary constituting part of the Partnership Group, relating to the MLP Assets and the Black Lake Pipeline occurring after the Closing Date, except to the extent that the Partnership Group is indemnified with respect to any of such Covered Environmental Losses under Section 2.1(a), *provided* that in no event shall the Partnership Group indemnify, defend or hold harmless DEFS and its Subsidiaries from and against any Covered Environmental Losses relating to the Black Lake Pipeline arising from or attributable to the 5% interest in BLPLC owned by DEFS and its Subsidiaries from and after the Closing Date.

**2.2 Indemnification for Certain Repair Costs.** Subject to the provisions of Section 2.4 and Section 2.5, DEFS shall also indemnify, defend and hold harmless the Partnership Group and the Partnership Indemnitees from and against:

(a) any capital contributions required to be made by the Partnership Group to fund any repair and/or replacement costs associated with, resulting from or identified during the 2006 pipeline integrity testing of the Black Lake Pipeline that is ongoing as of the Closing Date and expected to be completed in 2006 as required under the Pipeline Safety Improvement Act of 2002; *provided* that the maximum amount that DEFS shall be required to contribute to the Partnership Group and the Partnership Indemnitees pursuant to this Section 2.2(a) shall be \$5.3 million; and

(b) any repair and/or replacement costs suffered or incurred by the Partnership Group or Partnership Indemnitees associated with, resulting from or identified during the 2006 pipeline integrity testing of the Seabreeze Pipeline scheduled for 2006 as required under the Pipeline Safety Improvement Act of 2002; *provided* that, for purposes of this subsection (a), DEFS shall not be obligated to indemnify the Partnership Group or any Partnership Indemnitee for any incremental operating costs suffered or incurred by the Partnership Group associated with or resulting from any of the repair or replacement of all or any portion of the Seabreeze Pipeline, *provided further that*, the maximum amount that DEFS shall be required to contribute to the Partnership Group and the Partnership Indemnitees pursuant to this Section 2.2(b) shall be \$4.0 million.

### **2.3 Additional Indemnification**

(a) Subject to the provisions of Section 2.4 and Section 2.5, DEFS shall indemnify, defend and hold harmless the Partnership Group and the Partnership Indemnitees from and against any Losses suffered or incurred by the Partnership Group or any Partnership Indemnitee by reason of or arising out of:

(i) the failure of the Partnership Group to be the owner of valid and indefeasible easement rights, leasehold and/or fee ownership interests in and to the lands on which are located any MLP Assets or the Black Lake Pipeline, or to have valid and indefeasible ownership of a 45% partnership interest in BLPLC,

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and such failure renders the Partnership Group liable or unable to use or operate the MLP Assets or the Black Lake Pipeline in substantially the same manner that the MLP Assets or the Black Lake Pipeline were used and operated by DEFS and its Subsidiaries (and BLPLC, with respect to the Black Lake Pipeline) immediately prior to the Closing Date as described in the Registration Statement; *provided* that, for purposes of determining the amount of any Loss suffered or incurred by the Partnership Group or any Partnership Indemnitee with respect to the Black Lake Pipeline, the Partnership Group's ownership of only 45% of the partnership interests in BLPLC shall be taken into account such that any Loss suffered or incurred by the Partnership Group or any Partnership Indemnitee with respect to the Black Lake Pipeline would be determined in a proportionate manner to the Loss suffered or incurred by BLPLC with respect to the same matter;

(ii) the failure of the Partnership Group to have on the Closing Date any consent or governmental permit necessary to allow (i) the transfer of any of the MLP Assets or a 45% partnership interest in BLPLC to the Partnership Group on the Closing Date or (ii) any such MLP Assets or the Black Lake Pipeline to cross the roads, waterways, railroads and other areas upon which any such MLP Assets or the Black Lake Pipeline are located as of the Closing Date, and any such failure specified in such clause (ii) renders the Partnership Group unable to use or operate the MLP Assets or the Black Lake Pipeline in substantially the same manner that the MLP Assets or the Black Lake Pipeline were owned and operated by DEFS and its Subsidiaries (and BLPLC, with respect to the Black Lake Pipeline) immediately prior to the Closing Date as described in the Registration Statement; *provided*, that, for purposes of determining the amount of any Loss suffered or incurred by the Partnership Group or any Partnership Indemnitee with respect to the Black Lake Pipeline, the Partnership Group's ownership of only 45% of the partnership interests in BLPLC shall be taken into account such that any Loss suffered or incurred by the Partnership Group or any Partnership Indemnitee with respect to the Black Lake Pipeline would be determined in a proportionate manner to the Loss suffered or incurred by BLPLC with respect to the same matter;

(iii) all federal, state and local income tax liabilities attributable to the ownership or operation of the MLP Assets or the Black Lake Pipeline prior to the Closing Date, including any such income tax liabilities of DEFS and its Subsidiaries that may result from the consummation of the formation transactions for the Partnership Group occurring on or prior to the Closing Date, but excluding any federal, state and local income taxes reserved on the books of the Partnership Group as of the Closing Date;

(iv) the assets, liabilities, business or operations of any of (a) Discovery Producer Services, LLC, a Delaware limited liability company (“Discovery”), (b) PanEnergy Dauphin Island LLC, a Delaware limited liability company (“PanEnergy”), (c) Gulf Coast NGL Pipeline, LLC, a Delaware limited liability company (“Gulf Coast”), (d) Centana Gathering LLC, a Delaware limited liability company (“Centana”), (e) DEFS Industrial Gas Co., LLC, a Delaware limited liability company (“DIGC”), and (f) Centana Intrastate Pipeline LLC, a Delaware limited liability company (“CIP”); and

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(v) all currently pending legal actions against one or more members of the Partnership Group or involving or otherwise relating to the MLP Assets, BLPLC or the Black Lake Pipeline;

*provided, however,* that, in the case of clauses (i) and (ii) above, such indemnification obligations shall survive for three (3) years from the Closing Date; and that in the case of clause (iii) above, such indemnification obligations shall survive until sixty (60) days after the expiration of any applicable statute of limitations.

(b) In addition to and not in limitation of the indemnification provided under this Article II, the Partnership Group shall indemnify, defend, and hold harmless DEFS and its Subsidiaries, other than any Subsidiary constituting part of the Partnership Group, from and against any Losses suffered or incurred by DEFS and its Subsidiaries, other than any Subsidiary constituting part of the Partnership Group, by reason of or arising out of events and conditions associated with the operation of the MLP Assets or Black Lake Pipeline that occurs on or after the Closing Date; *provided* that in no event shall the Partnership Group indemnify, defend or hold harmless DEFS and its Subsidiaries pursuant to this Section 2.3(b) from and against any Losses relating to the Black Lake Pipeline arising from or attributable to the 5% interest in BLPLC owned by DEFS and its Subsidiaries from and after the Closing Date.

#### **2.4 Limitations Regarding Indemnification.**

(a) The aggregate liability of DEFS under Sections 2.1(a) shall not exceed \$15.0 million (the “Cap”).

(b) No claims may be made against DEFS for indemnification pursuant to Sections 2.1(a) unless the aggregate dollar amount of the Losses suffered or incurred by the Partnership Group or Partnership Indemnitees exceed \$250,000, after such time DEFS shall be liable for the full amount of such claims, subject to the limitations of Section 2.4(a).

(c) Notwithstanding anything herein to the contrary, in no event shall DEFS have any indemnification obligations under this Agreement for claims made as a result of additions to or modifications of Environmental Laws promulgated after the Closing Date.

#### **2.5 Indemnification Procedures.**

(a) The Indemnified Party agrees that within a reasonable period of time after it becomes aware of facts giving rise to a claim for indemnification pursuant to this Article II, they will provide notice thereof in writing to the Indemnifying Party specifying the nature of and specific basis for such claim; *provided, however,* that the Indemnified Party shall not submit claims more frequently than once a calendar quarter (or twice in the case of the last calendar quarter prior to the expiration of the applicable indemnity coverage under this Agreement).

(b) The Indemnifying Party shall have the right to control all aspects of the defense of (and any counterclaims with respect to) any claims brought against the Indemnified Party that are covered by the indemnification set forth in this Article II, including, without limitation, the selection of counsel, determination of whether to appeal any decision of any court and the settling of any such matter or any issues relating thereto; *provided, however,* that no such

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settlement shall be entered into without the consent (which consent shall not be unreasonably withheld, conditioned or delayed) of the Indemnified Party unless it includes a full release of the Indemnified Party from such matter or issues, as the case may be.

(c) The Indemnified Party agrees to cooperate fully with the Indemnifying Party with respect to all aspects of the defense of any claims covered by the indemnification set forth in Article II, including, without limitation, the prompt furnishing to the Indemnifying Party of any correspondence or other notice relating thereto that the Indemnified Party may receive, permitting the names of the Indemnified Party to be utilized in connection with such defense, the making available to the Indemnifying Party of any files, records or other information of the Indemnified Party that the Indemnifying Party considers relevant to such defense and the making available to the Indemnifying Party of any employees of the Indemnified Party; *provided, however*, that in connection therewith the Indemnifying Party agrees to use reasonable efforts to minimize the impact thereof on the operations of the Indemnified Party and further agrees to maintain the confidentiality of all files, records and other information furnished by the Indemnified Party pursuant to this Section 2.5. In no event shall the obligation of the Indemnified Party to cooperate with the Indemnifying Party as set forth in the immediately preceding sentence be construed as imposing upon the Indemnified Party an obligation to hire and pay for counsel in connection with the defense of any claims covered by the indemnification set forth in this Article II; *provided, however*, that the Indemnified Party may, at its own option, cost and expense, hire and pay for counsel in connection with any such defense. The Indemnifying Party agrees to keep any such counsel hired by the Indemnified Party reasonably informed as to the status of any such defense, but the Indemnifying Party shall have the right to retain sole control over such defense.

(d) In determining the amount of any loss, cost, damage or expense for which the Indemnified Party is entitled to indemnification under this Agreement, the gross amount of the indemnification will be reduced by (i) any insurance proceeds realized by the Indemnified Party, and such correlative insurance benefit shall be net of any incremental insurance premium that becomes due and payable by the Indemnified Party as a result of such claim, (ii) all amounts recovered by the Indemnified Party under contractual indemnities from third Persons and (iii) any proceeds realized by the Indemnified Party from rate increases associated with the repair costs set forth in Section 2.2. The Partnership hereby agrees to use commercially reasonable efforts to realize any applicable insurance proceeds, amounts recoverable under such contractual indemnities or recover any repair costs incurred to comply with the Pipeline Safety Improvement Act of 2002 through the rates on the Black Lake Pipeline or the SeaBreeze Pipeline.

### **ARTICLE III Reimbursement Obligations**

#### **3.1 Reimbursement for Operating and General and Administrative Expenses.**

(a) DEFS hereby agrees to continue to provide the Partnership Group with certain general and administrative services, such as legal, accounting, treasury, insurance administration and claims processing, risk management, health, safety and environmental, information technology, human resources, credit, payroll, internal audit, taxes and engineering. These general and administrative services shall be substantially identical in nature and quality to

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the services of such type previously provided by DEFS in connection with their management and operation of the MLP Assets during the one-year period prior to the Closing Date.

(b) Subject to the provisions of Section 3.3, the Partnership Group hereby agrees to reimburse DEFS for all expenses and expenditures it incurs or payments it makes on behalf of the Partnership Group for these general and administrative services.

(c) The Partnership Group hereby agrees to reimburse DEFS for all other expenses and expenditures it incurs or payments it makes on behalf of the Partnership Group, including, but not limited to, (i) salaries of operational personnel performing services on the Partnership Group's behalf and the cost of employee benefits for such personnel, (ii) capital expenditures, (iii) maintenance and repair costs and (iv) taxes.

(d) The General Partner shall be entitled to allocate any such expenses and expenditures between the Partnership Group, on the one hand, and DEFS, on the other hand, in accordance with the foregoing provision on any reasonable basis.

**3.2 Reimbursement for Insurance.** The Partnership Group hereby agrees to reimburse DEFS and its Subsidiaries other than any Subsidiary constituting part of the Partnership Group for all expenses it incurs or payments it makes on behalf of the Partnership Group and the Partnership Indemnitees for (i) insurance coverage with respect to the MLP Assets and the Black Lake Pipeline (excluding any insurance coverage relating to the 5% interest in BLPLC owned by DEFS and its Subsidiaries from and after the Closing Date), (ii) insurance coverage with respect to claims related to fiduciary obligations of officers, directors and control persons of the Partnership Group and (iii) insurance coverage with respect to claims under federal and state securities laws.

**3.3 Limitations on Reimbursement.**

(a) The amount for which DEFS shall be entitled to reimbursement from the Partnership Group pursuant to Section 3.1(b) for general and administrative expenses shall not exceed \$4.8 million in the aggregate in the first year following the date of this Agreement (the "G&A Expenses Limit"). Thereafter, the G&A Expenses Limit shall be increased annually over the next two years by the percentage increase in the Consumer Price Index – All Urban Consumers, U.S. City Average, Not Seasonally Adjusted for the applicable year. In the event that the Partnership Group makes any acquisitions of assets or businesses or the business of the Partnership Group otherwise expands during the first three years following the date of this Agreement, then the G&A Expenses Limit shall be appropriately increased in order to account for adjustments in the nature and extent of the general and administrative services by DEFS to the Partnership Group, with any such increase in the G&A Expense Limit subject to the approval of the Conflicts Committee. After the third anniversary of the date of this Agreement, the General Partner will determine the amount of general and administrative expenses that will be properly allocated to the Partnership in accordance with the terms of the Partnership Agreement.

(b) The obligation of the Partnership Group to reimburse DEFS and its Subsidiaries pursuant to Section 3.2 shall not be subject to any monetary limitation.

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## **ARTICLE IV** **Continuance of Credit Support**

**4.1 Credit Support.** DEFS shall maintain in full force and effect any and all credit support arrangements, including without limitation guarantees and letters of credit, in effect as of the Closing Date with respect to (i) any derivative financial instruments, including swap contracts relating to the price of natural gas, crude oil or natural gas liquids and other hedging contracts, related to the business or operations of the Partnership Group until the earlier to occur of (A) the fifth anniversary of the Closing Date or (B) such time as the MLP obtains a credit rating of at least B1 by Moody's Investors Services, Inc. or B+ by Standard & Poor's Ratings Groups, a division of The McGraw Hill Companies, with respect to any of its unsecured indebtedness and (ii) any commercial contract related to the business or operations of the Partnership Group until the expiration of such commercial contract, without giving effect to any renewal thereof beyond the stated termination date of such contract.

## **ARTICLE V** **Voting of DEFS' Interest in BLPLC**

**5.1 Voting of DEFS' Interest in BLPLC.** From and after the Closing Date and so long as DEFS and its Subsidiaries own any interest in BLPLC, DEFS will, and will cause its Subsidiaries to, vote, take action by written consent or take any other action pursuant to the terms of the partnership agreement of BLPLC or otherwise with respect to any such interest in BLPLC as directed in writing by the Partnership Group to DEFS.

## **ARTICLE VI** **Miscellaneous**

**6.1 Choice of Law; Submission to Jurisdiction.** This Agreement shall be subject to and governed by the laws of the State of Colorado, excluding any conflicts-of-law rule or principle that might refer the construction or interpretation of this Agreement to the laws of another state. Each Party hereby submits to the jurisdiction of the state and federal courts in the State of Colorado and to venue in Colorado.

**6.2 Notice.** All notices, requests or consents provided for or permitted to be given pursuant to this Agreement must be in writing and must be given by depositing same in the United States mail, addressed to the Person to be notified, postpaid, and registered or certified with return receipt requested or by delivering such notice in person or by telecopier or telegram to such Party. Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telegram or telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All notices to be sent to a Party pursuant to this Agreement shall be sent to or made at the address set forth below or at such other address as such Party may stipulate to the other Parties in the manner provided in this Section 6.2.

For notices to DEFS:

370 17th Street, Suite 2500

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Denver, Colorado 80202  
Phone: (303) 595-3331  
Fax: (303) 605-2226  
Attention: General Counsel

For notices to DCP LLC, the General Partner, the MLP or the OLP:

370 17th Street, Suite 2775  
Denver, Colorado 80202  
Phone: (303) 633-2900  
Fax: (303) 633-2921  
Attention: General Counsel

**6.3 Entire Agreement.** This Agreement constitutes the entire agreement of the Parties relating to the matters contained herein, superseding all prior contracts or agreements, whether oral or written, relating to the matters contained herein.

**6.4 Termination.** Notwithstanding any other provision of this Agreement, if the General Partner is removed as general partner of the Partnership under circumstances where Cause does not exist and Units held by the General Partner and its Affiliates are not voted in favor of such removal, this Agreement, other than the provisions set forth in Article II hereof, may immediately thereupon be terminated by DEFS. The provisions of Article III of this Agreement shall also terminate upon a Change of Control of DCP LLC, the General Partner or the MLP.

**6.5 Effect of Waiver or Consent.** No waiver or consent, express or implied, by any Party to or of any breach or default by any Person in the performance by such Person of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such Person of the same or any other obligations of such Person hereunder. Failure on the part of a Party to complain of any act of any Person or to declare any Person in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder until the applicable statute of limitations period has run.

**6.6 Amendment or Modification.** This Agreement may be amended or modified from time to time only by the written agreement of all the Parties; *provided, however,* that the MLP and the OLP may not, without the prior approval of the Conflicts Committee, agree to any amendment or modification of this Agreement that, in the reasonable discretion of the General Partner, will adversely affect the holders of Common Units. Each such instrument shall be reduced to writing and shall be designated on its face an "Amendment" or an "Addendum" to this Agreement.

**6.7 Assignment; Third Party Beneficiaries.** No Party shall have the right to assign its rights or obligations under this Agreement without the consent of the other Parties. Each of the Parties hereto specifically intends that DEFS and each entity comprising the Partnership Entities, as applicable, whether or not a Party to this Agreement, shall be entitled to assert rights and

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remedies hereunder as third-party beneficiaries hereto with respect to those provisions of this Agreement affording a right, benefit or privilege to any such entity.

6.8 **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all signatory Parties had signed the same document. All counterparts shall be construed together and shall constitute one and the same instrument.

6.9 **Severability.** If any provision of this Agreement or the application thereof to any Person or circumstance shall be held invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

6.10 **Gender, Parts, Articles and Sections.** Whenever the context requires, the gender of all words used in this Agreement shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural. All references to Article numbers and Section numbers refer to Articles and Sections of this Agreement.

6.11 **Further Assurances.** In connection with this Agreement and all transactions contemplated by this Agreement, each Party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all such transactions.

6.12 **Withholding or Granting of Consent.** Each Party may, with respect to any consent or approval that it is entitled to grant pursuant to this Agreement, grant or withhold such consent or approval in its sole and uncontrolled discretion, with or without cause, and subject to such conditions as it shall deem appropriate.

6.13 **Laws and Regulations.** Notwithstanding any provision of this Agreement to the contrary, no Party shall be required to take any act, or fail to take any act, under this Agreement if the effect thereof would be to cause such Party to be in violation of any applicable law, statute, rule or regulation.

6.14 **Negation of Rights of Limited Partners, Assignees and Third Parties.** The provisions of this Agreement are enforceable solely by the Parties, and no limited partner, member, or assignee of DEFS, the MLP or the OLP or other Person shall have the right, separate and apart from DEFS, the MLP or the OLP, to enforce any provision of this Agreement or to compel any Party to comply with the terms of this Agreement.

6.15 **No Recourse Against Officers or Directors.** For the avoidance of doubt, the provisions of this Agreement shall not give rise to any right of recourse against any officer or director of DEFS or any Partnership Entity.

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IN WITNESS WHEREOF, the Parties have executed this Agreement on, and effective as of, the Closing Date.

**DUKE ENERGY FIELD SERVICES, LLC**

By: /s/ Brent L. Backes

Name: Brent L. Backes

Title: Vice President, General Counsel and Secretary

**DCP MIDSTREAM GP, LLC**

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

**DCP MIDSTREAM GP, LP**

By: DCP MIDSTREAM GP, LLC, its general partner

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

**DCP MIDSTREAM PARTNERS, LP**

By: DCP MIDSTREAM GP, LP, its general partner

By: DCP MIDSTREAM GP, LLC, its general partner

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

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**DCP MIDSTREAM OPERATING, LP**

By: /s/ Michael J. Bradley

Name: Michael J. Bradley

Title: President and Chief Executive Officer

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