
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended December 31, 2003

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: 33-98490
Commission File Number: 333-103873

**STAR GAS PARTNERS, L.P.
STAR GAS FINANCE COMPANY**

(Exact name of registrants as specified in its charters)

**Delaware
Delaware**
(State or other jurisdiction of
incorporation or organization)

**06-1437793
75-3094991**
(I.R.S. Employer
Identification No.)

2187 Atlantic Street, Stamford, Connecticut 06902
(Address of principal executive office)

(203) 328-7310
(Registrants' telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrants (1) have filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) have been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrants are accelerated filers (as defined in Rule 12b-2 of the Act). Yes No

At January 22, 2004, the registrants had units and shares of each issuer's classes of common stock outstanding as follows:

Star Gas Partners, L.P.	Common Units	30,670,528
Star Gas Partners, L.P.	Senior Subordinated Units	3,245,696
Star Gas Partners, L.P.	Junior Subordinated Units	345,364
Star Gas Partners, L.P.	General Partner Units	325,729
Star Gas Finance Company	Common Shares	100

[Table of Contents](#)

STAR GAS PARTNERS, L.P. AND SUBSIDIARIES
INDEX TO FORM 10-Q

	<u>Page</u>
Part I	
Financial Information	
Item 1—Condensed Consolidated Financial Statements	
Condensed Consolidated Balance Sheets as of September 30, 2003 and December 31, 2003	3
Condensed Consolidated Statements of Operations for the three months ended December 31, 2002 and December 31, 2003	4
Condensed Consolidated Statements of Comprehensive Income for the three months ended December 31, 2002 and December 31, 2003	5
Condensed Consolidated Statement of Partners' Capital for the three months ended December 31, 2003	6
Condensed Consolidated Statements of Cash Flows for the three months ended December 31, 2002 and December 31, 2003	7
Notes to Condensed Consolidated Financial Statements	8-17
Item 2—Management's Discussion and Analysis of Financial Condition and Results of Operations	18-26
Item 3—Quantitative and Qualitative Disclosures About Market Risk	27
Item 4—Controls and Procedures	27
Part II	
Other Information:	
Item 6—Exhibits and Reports on Form 8-K	28
Signatures	29

[Table of Contents](#)

STAR GAS PARTNERS, L.P. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS

	Sept. 30, 2003	Dec. 31, 2003
(in thousands)		(unaudited)
ASSETS		
Current assets		
Cash and cash equivalents	\$ 10,111	\$ 14,241
Receivables, net of allowance of \$9,560 and \$10,043, respectively	105,639	189,430
Inventories	42,391	62,890
Prepaid expenses and other current assets	52,968	44,989
Total current assets	211,109	311,550
Property and equipment, net	262,301	259,207
Long-term portion of accounts receivables	7,145	7,806
Goodwill	278,857	278,857
Intangibles, net	201,784	194,368
Deferred charges and other assets, net	14,414	17,799
Total Assets	\$975,610	\$1,069,587
LIABILITIES AND PARTNERS' CAPITAL		
Current liabilities		
Accounts payable	\$ 31,026	\$ 53,782
Working capital facility borrowings	12,000	78,500
Current maturities of long-term debt	22,847	21,571
Accrued expenses	83,197	88,221
Unearned service contract revenue	32,036	36,941
Customer credit balances	77,558	62,354
Total current liabilities	258,664	341,369
Long-term debt	499,341	501,845
Other long-term liabilities	27,829	27,575
Partners' capital (deficit)		
Common unitholders	210,636	210,071
Subordinated unitholders	(57)	39
General partner	(3,082)	(3,075)
Accumulated other comprehensive loss	(17,721)	(8,237)
Total Partners' capital	189,776	198,798
Total Liabilities and Partners' Capital	\$975,610	\$1,069,587

See accompanying notes to condensed consolidated financial statements.

[Table of Contents](#)

STAR GAS PARTNERS, L.P. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited)

	Three Months Ended December 31,	
	2002	2003
(in thousands, except per unit data)		
Sales:		
Product	\$334,712	\$371,866
Installations, service and appliances	50,268	61,996
Total sales	384,980	433,862
Cost and expenses:		
Cost of product	201,327	233,326
Cost of installations, service and appliances	54,020	60,706
Delivery and branch expenses	74,514	83,993
Depreciation and amortization expenses	12,848	14,545
General and administrative expenses	12,849	9,411
Operating income	29,422	31,881
Interest expense	(9,031)	(11,727)
Interest income	661	833
Amortization of debt issuance costs	(437)	(1,269)
Income before income taxes and cumulative effect of change in accounting principle	20,615	19,718
Income tax expense	675	406
Income before cumulative effect of change in accounting principle	19,940	19,312
Cumulative effect of change in accounting principle for adoption of SFAS No. 142, net of income taxes	(3,901)	—
Net income	\$ 16,039	\$ 19,312
General Partner's interest in net income	\$ 159	\$ 194
Limited Partners' interest in net income	\$ 15,880	\$ 19,118
Basic and diluted net income per Limited Partner unit	\$ 0.49	\$ 0.56
Weighted average number of Limited Partner units outstanding:		
Basic	32,449	34,158
Diluted	32,564	34,158

See accompanying notes to condensed consolidated financial statements.

[Table of Contents](#)

STAR GAS PARTNERS, L.P. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(unaudited)

(in thousands)	Three Months Ended December 31,	
	2002	2003
Net income	\$16,039	\$19,312
Other comprehensive income:		
Unrealized gain on derivative instruments	480	9,484
Comprehensive income	\$16,519	\$28,796

Reconciliation of Accumulated Other Comprehensive Income (Loss)

(in thousands)	Pension Plan Obligations	Derivative Instruments	Total
Balance as of September 30, 2002	\$ (15,745)	\$ 4,918	\$(10,827)
Reclassification to earnings	—	(2,702)	(2,702)
Unrealized gain on derivative instruments	—	3,182	3,182
Other comprehensive income	—	480	480
Balance as of December 31, 2002	\$ (15,745)	\$ 5,398	\$(10,347)
Balance as of September 30, 2003	\$ (17,214)	\$ (507)	\$(17,721)
Reclassification to earnings	—	25	25
Unrealized gain on derivative instruments	—	9,459	9,459
Other comprehensive income	—	9,484	9,484
Balance as of December 31, 2003	\$ (17,214)	\$ 8,977	\$ (8,237)

See accompanying notes to condensed consolidated financial statements.

[Table of Contents](#)

STAR GAS PARTNERS, L.P. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENT OF PARTNERS' CAPITAL
(unaudited)

(in thousands, except per unit amounts)	Common	Sr. Sub.	Jr. Sub	General Partner	Common	Senior Sub.	Junior Sub.	General Partner	Accum. Other Comprehensive Income (Loss)	Partners' Capital
Balance as of September 30, 2003	30,671	3,142	345	326	\$210,636	\$ 1,571	\$(1,628)	\$(3,082)	\$ (17,721)	\$189,776
Net income					17,069	1,846	203	194		19,312
Other comprehensive income, net									9,484	9,484
Unit compensation expense						52				52
Distributions (\$0.575 per unit)					(17,634)	(1,806)	(199)	(187)		(19,826)
Balance as of December 31, 2003	30,671	3,142	345	326	\$210,071	\$ 1,663	\$(1,624)	\$(3,075)	\$ (8,237)	\$198,798

See accompanying notes to condensed consolidated financial statements.

[Table of Contents](#)

STAR GAS PARTNERS, L.P. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited)

	Three Months Ended December 31,	
	2002	2003
(in thousands)		
Cash flows provided by (used in) operating activities:		
Net income	\$ 16,039	\$ 19,312
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization	12,848	14,545
Amortization of debt issuance cost	437	1,269
Unit compensation expense	472	52
Provision for losses on accounts receivable	1,383	1,555
Gain on sales of fixed assets, net	(16)	(84)
Cumulative effect of change in accounting principle for the adoption of SFAS No. 142	3,901	—
Changes in operating assets and liabilities:		
Increase in receivables	(89,325)	(85,360)
Increase in inventories	(15,564)	(20,419)
Decrease in other assets	1,493	16,211
Increase in accounts payable	29,746	22,645
Decrease in other current and long-term liabilities	(8,162)	(5,380)
Net cash provided by (used in) operating activities	(46,748)	(35,654)
Cash flows provided by (used in) investing activities:		
Capital expenditures	(4,522)	(2,578)
Proceeds from sales of fixed assets	192	532
Acquisitions	(512)	(1,785)
Net cash used in investing activities	(4,842)	(3,831)
Cash flows provided by (used in) financing activities:		
Working capital facility borrowings	69,000	66,500
Working capital facility repayments	(3,195)	—
Acquisition facility borrowings	—	1,800
Acquisition facility repayments	(700)	—
Repayment of debt	(46,277)	(67)
Distributions	(17,449)	(19,826)
Increase in deferred charges	(746)	(4,792)
Net cash provided by financing activities	633	43,615
Net increase (decrease) in cash	(50,957)	4,130
Cash at beginning of period	61,481	10,111
Cash at end of period	\$ 10,524	\$ 14,241

See accompanying notes to condensed consolidated financial statements.

STAR GAS PARTNERS, L.P. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

1) Partnership Organization

Star Gas Partners, L.P. (“Star Gas” or the “Partnership”) is a diversified home energy distributor and services provider, specializing in heating oil, propane, natural gas and electricity. Star Gas is a master limited partnership, which at December 31, 2003 had outstanding 30.7 million common units (NYSE: “SGU” representing an 88.9% limited partner interest in Star Gas Partners) and 3.1 million senior subordinated units (NYSE: “SGH” representing a 9.1% limited partner interest in Star Gas Partners) outstanding. Additional Partnership interests include 0.3 million junior subordinated units (representing a 1.0% limited partner interest) and 0.3 million general partner units (representing a 1.0% general partner interest).

The Partnership is organized as follows:

- Star Gas Propane, L.P. (“Star Gas Propane”) is the Partnership’s operating subsidiary and, together with its direct and indirect subsidiaries, accounts for substantially all of the Partnership’s assets, sales and earnings. Both the Partnership and Star Gas Propane are Delaware limited partnerships that were formed in October 1995 in connection with the Partnership’s initial public offering. The Partnership is the sole limited partner of Star Gas Propane with a 99% limited partnership interest.
- The general partner of both the Partnership and Star Gas Propane is Star Gas LLC, a Delaware limited liability company. The Board of Directors of Star Gas LLC is appointed by its members. For information concerning the members of Star Gas LLC and its Board of Directors see “Item 10, Directors and Executive Officers of the Registrant” in the Partnership’s annual report on Form 10-K for fiscal year ended September 30, 2003. Star Gas LLC owns an approximate 1% general partner interest in the Partnership and also owns an approximate 1% general partner interest in Star Gas Propane.
- The Partnership’s propane operations (the “propane segment”) are conducted through Star Gas Propane and its direct and indirect subsidiaries. Star Gas Propane primarily markets and distributes propane gas and related products to over 350,000 customers in the Midwest, Northeast, Florida and Georgia.
- The Partnership’s heating oil operations (the “heating oil segment”) are conducted through Petro Holdings, Inc. (“Petro”) and its direct and indirect subsidiaries. Petro is a Minnesota corporation that is an indirect wholly owned subsidiary of Star Gas Propane. Petro is a retail distributor of home heating oil and serves approximately 539,000 customers in the Northeast and Mid-Atlantic.
- The Partnership’s natural gas and electricity operations (the “natural gas and electric reseller segment”) are conducted through Total Gas & Electric, Inc. (“TG&E”), a Florida corporation, that is an indirect wholly-owned subsidiary of Petro. TG&E is an energy reseller that markets natural gas and electricity to residential households in deregulated energy markets in New York, New Jersey, Florida and Maryland and serves approximately 65,000 residential customers.
- Star Gas Finance Company is a direct wholly-owned subsidiary of the Partnership. Star Gas Finance Company serves as the co-issuer, jointly and severally with the Partnership, of the Partnership’s \$200 million 10¼% Senior Notes issued February 6, 2003, which are due in 2013. The Partnership is dependent on distributions from its subsidiaries to service the Partnership’s debt obligations. The distributions from the Partnership’s subsidiaries are not guaranteed and are subject to certain loan restrictions. Star Gas Finance Company has nominal assets and conducts no business operations.

[Table of Contents](#)

2) Summary of Significant Accounting Policies

Basis of Presentation

The Condensed Consolidated Financial Statements include the accounts of Star Gas Partners, L.P., and its subsidiaries. All material intercompany items and transactions have been eliminated in consolidation.

The financial information included herein is unaudited; however, such information reflects all adjustments (consisting solely of normal recurring adjustments), which are, in the opinion of management, necessary for the fair statement of financial condition and results for the interim periods. The results of operations for the three month periods ended December 31, 2002 and December 31, 2003 are not necessarily indicative of the results to be expected for the full year.

These interim financial statements of the Partnership have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and Rule 10-01 of Regulation S-X of the U.S. Securities and Exchange Commission and should be read in conjunction with the Partnership's Annual Report on Form 10-K for the year ended September 30, 2003.

Inventories

Inventories are stated at the lower of cost or market and are computed on a first-in, first-out basis. At the dates indicated, the components of inventory were as follows (in thousands):

	Sept. 30, 2003	Dec. 31, 2003
Propane gas and other fuels	\$ 9,262	\$11,200
Propane appliances and equipment	5,153	5,039
Heating oil and other fuels	11,294	28,217
Fuel oil parts and equipment	12,852	12,857
Natural gas	3,830	5,577
	<u>\$42,391</u>	<u>\$62,890</u>

Property, plant and equipment, consists of the following (in thousands):

	Sept. 30, 2003	Dec. 31, 2003
Property, plant and equipment	\$375,095	\$378,479
Less: accumulated depreciation	112,794	119,272
Property and equipment, net	<u>\$262,301</u>	<u>\$259,207</u>

Reclassifications

Certain prior year amounts have been reclassified to conform to the current year presentation.

Derivatives and Hedging

The Partnership uses derivative financial instruments to manage its exposure to market risk related to changes in the current and future market price of home heating oil, propane, and natural gas. The Partnership believes it is prudent to minimize the variability and price risk associated with the purchase of home heating oil and propane. Accordingly, it is the Partnership's objective to hedge the cash flow variability associated with forecasted purchases of its inventory held for resale through the use of derivative instruments when appropriate. To a lesser extent, the Partnership also hedges the fair value of inventory on hand or firm commitments to purchase inventory. To meet these objectives, it is the Partnership's policy to enter into various types of derivative instruments to (i) manage the variability of cash flows resulting from the price risk associated with forecasted purchases of home heating oil, propane, and natural gas and (ii) hedge the downside price risk of firm purchase commitments and in some cases physical inventory on hand.

Derivatives that are not designated as hedges must be adjusted to fair value through income. Changes in the fair value of a derivative that is highly effective and that is designated and qualifies as a fair value hedge, along with the loss or gain on the hedged asset or liability or unrecognized firm commitment of the hedged item that is attributable to the hedged risk are recorded in earnings. Changes in the fair value of a derivative that is highly effective and that is designated and qualifies as a cash-flow hedge are recorded in accumulated other comprehensive income, until earnings are affected by the variability in cash flows of the designated hedged item. The ineffective portion of a derivative's change in fair value is immediately recognized in earnings.

2) Summary of Significant Accounting Policies—(continued)

All derivative instruments are recognized on the balance sheet at their fair value. On the date the derivative contract is entered into, the Partnership designates the derivative as either a hedge of the fair value of a recognized asset or liability or of an unrecognized firm commitment (fair value hedge), or a hedge of a forecasted transaction or the variability of cash flows to be received or paid related to a recognized asset or liability (cash flow hedge). The Partnership formally documents all relationships between hedging instruments and hedged items, as well as its risk-management objective and strategy for undertaking various hedge transactions. This process includes linking all derivatives that are designated as fair value or cash flow hedges to specific assets and liabilities on the balance sheet or to specific firm commitments or forecasted transactions. The Partnership also formally assesses, both at the hedge's inception and on an ongoing basis, whether the derivatives that are used in hedging transactions are highly effective in offsetting changes in fair value or cash flows of hedged items. When it is determined that a derivative is not highly effective as a hedge or that it has ceased to be a highly effective hedge, the Partnership discontinues hedge accounting prospectively. When hedge accounting is discontinued because it is determined that the derivative no longer qualifies as an effective hedge, the Partnership continues to carry the derivative on the balance sheet at its fair value, and recognizes changes in the fair value of the derivative through current-period earnings.

For the three months ended December 31, 2003, the change in accumulated other comprehensive income (loss) is principally attributable to the increase in fair value of existing cash flow hedges offset in part by the reclassification of accumulated gains on cash flow hedges that settled during the period.

Goodwill and Other Intangible Assets

SFAS No. 142, "Goodwill and Other Intangible Assets" requires that goodwill and intangible assets with indefinite useful lives no longer be amortized, but instead be tested for impairment at least annually in accordance with the provisions of SFAS No. 142. SFAS No. 142 also requires intangible assets with definite useful lives be amortized over their respective estimated useful lives to their estimated residual values, and reviewed for impairment in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets."

The Partnership adopted the applicable provisions of SFAS No. 142 on October 1, 2002, and recorded a non-cash charge of \$3.9 million to reduce the carrying value of the TG&E segment's goodwill in its first fiscal quarter of 2002. This charge was reflected as a cumulative effect of change in accounting principle in the Partnership's condensed consolidated statement of operations for the three months ended December 31, 2002. The Partnership performs its annual impairment review during its fourth fiscal quarter.

Accounting Policies not yet Adopted

In January 2004, the Financial Accounting Standards Board issued SFAS No. 132 (revised), "Employers' Disclosures about Pensions and Other Postretirement Benefits". This Statement replaces existing SFAS No. 132, of the same title. All disclosure requirements now required in existing SFAS No. 132 have been retained in the revised version. The SFAS No. 132 (revised) requires additional disclosures regarding types of plan assets held, investment strategies, measurement date(s), plan obligations, cash flows, and components of net periodic benefit cost (expense). This statement is effective for the Partnership's September 30, 2004, Form 10-K. It is also, effective for the Partnership's interim reporting period beginning January 1, 2004.

3) Long-term Debt

In December 2003, the heating oil segment entered into a new credit agreement consisting of three facilities totaling \$235.0 million having a maturity date of June 30, 2006. These facilities consist of a \$150.0 million revolving credit facility, which is to be used for working capital purposes, a \$35.0 million revolving credit facility, which is to be used for the issuance of standby letters of credit in connection with surety, worker's compensation and other financial guarantees, and a \$50.0 million revolving credit facility, which is to be used to finance or refinance certain acquisitions and capital expenditures, for the issuance of letters of credit in connection with acquisitions and, to the extent that there is insufficient availability under the working capital facility. These facilities refinanced and replaced the existing credit agreements, which totaled \$193.0 million. The former facilities consisted of a working capital facility and an insurance letter of credit facility that were due to expire on June 30, 2004. These new facilities also replaced the heating oil segments acquisition facility that was due to convert to a term loan on June 30, 2004.

4) Segment Reporting

The Partnership has three reportable operating segments: retail distribution of heating oil, retail distribution of propane and reselling of natural gas and electricity. The administrative expenses for the public master limited partnership, Star Gas Partners, have not been allocated to the segments. Management has chosen to organize the enterprise under these three segments in order to leverage the expertise it has in each industry, allow each segment to continue to strengthen its core competencies and provide a clear means for evaluation of operating results.

The heating oil segment is primarily engaged in the retail distribution of home heating oil, related equipment services and equipment sales to residential and commercial customers. It operates primarily in the Northeast and Mid-Atlantic states. Home heating oil is principally used by the Partnership's residential and commercial customers to heat their homes and buildings, and as a result, weather conditions have a significant impact on the demand for home heating oil.

The propane segment is primarily engaged in the retail distribution of propane and related supplies and equipment to residential, commercial, industrial, agricultural and motor fuel customers, in the Midwest, Northeast, Florida and Georgia. Propane is used primarily for space heating, water heating and cooking by the Partnership's residential and commercial customers and as a result, weather conditions also have a significant impact on the demand for propane.

The natural gas and electric reseller segment is primarily engaged in offering natural gas and electricity to residential consumers in deregulated energy markets. In deregulated energy markets, customers have a choice in selecting energy suppliers to power and / or heat their homes; as a result, a significant portion of this segment's revenue is directly related to weather conditions. TG&E operates in New York, New Jersey, Maryland and Florida, where competitors range from independent resellers, like TG&E, to large public utilities.

The public master limited partnership includes the office of the Chief Executive Officer and has the responsibility for maintaining investor relations and investor reporting for the Partnership.

[Table of Contents](#)

4) Segment Reporting—(continued)

The following are the condensed statements of operations and balance sheets for each segment as of and for the periods indicated. There were no inter-segment sales.

(in thousands) Statements of Operations	Three Months Ended December 31,									
	2002					2003				
	Heating Oil	Propane	TG&E	Partners & Others	Consol.	Heating Oil	Propane	TG&E	Partners & Others	Consol.
Sales	\$294,986	\$76,345	\$13,649	\$ —	\$384,980	\$316,070	\$101,947	\$15,845	\$ —	\$433,862
Cost of sales	206,918	36,568	11,861	—	255,347	225,893	54,384	13,755	—	294,032
Delivery and branch	55,574	18,940	—	—	74,514	60,678	23,315	—	—	83,993
Depreciation & amortization	8,567	4,157	124	—	12,848	9,517	4,908	120	—	14,545
G & A expense	4,381	2,220	2,692	3,556	12,849	3,573	2,402	1,308	2,128	9,411
Operating income (loss)	19,546	14,460	(1,028)	(3,556)	29,422	16,409	16,938	662	(2,128)	31,881
Net interest expense (income)	4,994	3,299	81	(4)	8,370	6,176	2,424	75	2,219	10,894
Amortization of debt issuance costs	385	52	—	—	437	1,062	41	—	166	1,269
Income (loss) before income taxes	14,167	11,109	(1,109)	(3,552)	20,615	9,171	14,473	587	(4,513)	19,718
Income tax expense	600	75	—	—	675	331	75	—	—	406
Income (loss) before cumulative effect of change in accounting principle	13,567	11,034	(1,109)	(3,552)	19,940	8,840	14,398	587	(4,513)	19,312
Cumulative effect of change in accounting principle	—	—	(3,901)	—	(3,901)	—	—	—	—	—
Net income (loss)	\$ 13,567	\$ 11,034	\$ (5,010)	\$ (3,552)	\$ 16,039	\$ 8,840	\$ 14,398	\$ 587	\$ (4,513)	\$ 19,312
Capital expenditures	\$ 2,657	\$ 1,840	\$ 25	\$ —	\$ 4,522	\$ 853	\$ 1,725	\$ —	\$ —	\$ 2,578

[Table of Contents](#)

4) Segment Reporting—(continued)

(in thousands) Balance Sheets	September 30, 2003					December 31, 2003				
	Heating Oil	Propane	TG&E	Partners & Others ⁽¹⁾	Consol.	Heating Oil	Propane	TG&E	Partners & Others ⁽¹⁾	Consol.
ASSETS										
Current assets:										
Cash and cash equivalents	\$ 4,244	\$ 5,788	\$ 67	\$ 12	\$ 10,111	\$ 4,613	\$ 9,533	\$ 90	\$ 5	\$ 14,241
Receivables, net	84,814	15,697	5,128	—	105,639	148,374	32,480	8,576	—	189,430
Inventories	24,146	14,415	3,830	—	42,391	41,074	16,239	5,577	—	62,890
Prepaid expenses and other current assets	48,168	3,736	1,498	(434)	52,968	39,008	5,161	1,410	(590)	44,989
Total current assets	161,372	39,636	10,523	(422)	211,109	233,069	63,413	15,653	(585)	311,550
Property and equipment, net	75,715	186,152	434	—	262,301	72,283	186,558	366	—	259,207
Long-term portion of accts. rec.	6,108	1,037	—	—	7,145	6,770	1,036	—	—	7,806
Investment in subsidiaries	3,894	104,024	—	(107,918)	—	4,279	107,588	—	(111,867)	—
Goodwill	232,602	40,138	6,117	—	278,857	232,602	40,138	6,117	—	278,857
Intangibles, net	123,415	78,053	316	—	201,784	118,022	76,081	265	—	194,368
Deferred charges & other assets, net	5,403	2,738	—	6,273	14,414	8,795	2,897	—	6,107	17,799
Total Assets	\$ 608,509	\$ 451,778	\$ 17,390	\$ (102,067)	\$ 975,610	\$ 675,820	\$ 477,711	\$ 22,401	\$ (106,345)	\$ 1,069,587
LIABILITIES AND PARTNERS' CAPITAL										
Current Liabilities:										
Accounts payable	\$ 19,428	\$ 7,712	\$ 3,886	\$ —	\$ 31,026	\$ 29,179	\$ 17,127	\$ 7,476	\$ —	\$ 53,782
Working capital facility borrowings	6,000	6,000	—	—	12,000	65,000	13,500	—	—	78,500
Current maturities of long-term debt	12,597	10,250	—	—	22,847	11,321	10,250	—	—	21,571
Accrued expenses and other current liabilities	60,582	9,222	841	12,552	83,197	57,491	12,479	1,201	17,050	88,221
Due to affiliates	(8,732)	(7,600)	6,348	9,984	—	(4,582)	(8,418)	6,506	6,494	—
Unearned service contract revenue	31,023	1,013	—	—	32,036	35,941	1,000	—	—	36,941
Customer credit balances	49,258	25,458	2,842	—	77,558	39,146	20,269	2,939	—	62,354
Total current liabilities	170,156	52,055	13,917	22,536	258,664	233,496	66,207	18,122	23,544	341,369
Long-term debt	191,380	110,850	—	197,111	499,341	192,007	112,650	—	197,188	501,845
Due to affiliate	116,417	—	—	(116,417)	—	116,417	—	—	(116,417)	—
Other long-term liabilities	26,532	1,297	—	—	27,829	26,312	1,263	—	—	27,575
Partners' Capital:										
Equity Capital	104,024	287,576	3,473	(205,297)	189,776	107,588	297,591	4,279	(210,660)	198,798
Total Liabilities and Partners' Capital	\$ 608,509	\$ 451,778	\$ 17,390	\$ (102,067)	\$ 975,610	\$ 675,820	\$ 477,711	\$ 22,401	\$ (106,345)	\$ 1,069,587

(1) The Partner and Other amounts include the balance sheet of the Public Master Limited Partnership, Star Gas Finance Company, as well as the necessary consolidation entries to eliminate the investment in Petro Holdings, Star Gas Propane and TG&E.

[Table of Contents](#)

5) **Goodwill and Other Intangible Assets**

On October 1, 2002, Star Gas adopted SFAS No. 142, which required the Partnership to discontinue amortizing goodwill. SFAS No. 142 also requires that goodwill be reviewed for impairment upon adoption of SFAS No. 142 and annually thereafter. The Partnership will perform its annual impairment review during the fourth fiscal quarter of each year, which commenced in the fiscal fourth quarter of 2003.

Under SFAS No. 142, goodwill impairment is deemed to exist if the net book value of a reporting unit exceeds its estimated fair value. If goodwill of a reporting unit is determined to be impaired, the amount of impairment is measured based on the excess of the net book value of the goodwill over the implied fair value of the goodwill. The Partnership's reporting units are consistent with the operating segments identified in Note 4 – Segment Reporting.

Upon adoption of SFAS No. 142 in the first fiscal quarter of 2003, the Partnership recorded a non-cash charge of approximately \$3.9 million to reduce the carrying value of its goodwill for its TG&E segment. This charge is reflected as a cumulative effect of change in accounting principle in the Partnership's condensed consolidated statement of operations for the three month period ended December 31, 2002. In calculating the impairment charge, the fair value of the reporting units was estimated using a discounted cash flow methodology.

A summary of the Partnership's goodwill at September 30, 2003 and December 31, 2003, by business segment is as follows (in thousands):

Heating Oil Segment	\$232,602
Propane Segment	40,138
TG&E Segment	6,117
	<u>\$278,857</u>

Intangible assets subject to amortization consist of the following (in thousands):

	September 30, 2003			December 31, 2003		
	Gross Carrying Amount	Accum. Amortization	Net	Gross Carrying Amount	Accum. Amortization	Net
Customer lists	\$292,213	\$ 95,451	\$196,762	\$292,213	\$ 102,358	\$189,855
Covenants not to compete	12,959	7,937	5,022	12,966	8,453	4,513
	<u>\$305,172</u>	<u>\$ 103,388</u>	<u>\$201,784</u>	<u>\$305,179</u>	<u>\$ 110,811</u>	<u>\$194,368</u>

Amortization expense for intangible assets was \$6.6 million for the three months ended December 31, 2002 compared to \$7.4 million for the three months ended December 31, 2003. Total estimated annual amortization expense related to intangible assets subject to amortization, for the year ended September 30, 2004 and the four succeeding fiscal years ended September 30, is as follows (in thousands):

	Estimated Annual Amortization Expense
2004	\$ 29,734
2005	\$ 29,299
2006	\$ 28,106
2007	\$ 27,454
2008	\$ 25,515

[Table of Contents](#)

6) Acquisitions

During the three month period ended December 31, 2002, the Partnership acquired two retail propane dealers. The aggregate consideration for these acquisitions accounted for by the purchase method of accounting was approximately \$0.5 million. For the remainder of fiscal 2003, the Partnership acquired an additional three retail heating oil dealers and five propane dealers.

During the three month period ended December 31, 2003, the Partnership acquired two retail propane dealers. The aggregate consideration for the acquisitions accounted for by the purchase method of accounting was approximately \$1.8 million.

The following table indicates the allocation of the aggregate purchase price paid for these acquisitions and the respective periods of amortization assigned for the fiscal first quarter 2002 and fiscal first quarter 2003 acquisitions:

(in thousands)	2002	2003	Useful Lives
Land	\$ —	\$ 180	—
Buildings	—	120	30 years
Furniture and equipment	—	20	10 years
Fleet	—	100	3 - 30 years
Tanks and equipment	425	1,288	5 - 30 years
Restrictive covenants	107	7	5 years
Working capital	(20)	70	—
Total	\$512	\$1,785	

The acquisitions were accounted for under the purchase method of accounting. Purchase prices have been allocated to the acquired assets and liabilities based on their respective fair market values on the dates of acquisition. The purchase prices in excess of the fair values of net assets acquired are classified as goodwill in the Condensed Consolidated Balance Sheets.

Sales and net income have been included in the Condensed Consolidated Statements of Operations from the respective dates of acquisition. The following unaudited pro forma information presents the results of operations of the Partnership, including the twelve acquisitions completed since October 1, 2002, as if the acquisitions had taken place on October 1, 2002. This pro forma information is presented for informational purposes; it is not indicative of future operating performance (in thousands, except per unit data).

	Three Months Ended December 31,	
	2002	2003
Sales	\$424,774	\$434,120
Net income	\$ 21,123	\$ 19,391
General Partner's interest in net income	212	195
Limited Partners' interest in net income	\$ 20,911	\$ 19,196
Basic net income per limited partner unit	\$ 0.61	\$ 0.56
Diluted net income per limited partner unit	\$ 0.61	\$ 0.56

7) Supplemental Disclosure of Cash Flow Information

(in thousands)	Three Months Ended December 31,	
	2002	2003
Cash paid during the period for:		
Income taxes	\$ 329	\$ 605
Interest	\$ 9,530	\$10,249
Non-cash financing activities:		
Decrease in long-term debt for interest rate swaps	\$(6,068)	\$ (582)
Increase in long-term debt for amortization of debt discount	\$ —	\$ 77
Decrease in other assets	\$ 6,068	\$ 505

[Table of Contents](#)

8) Earnings Per Limited Partner Unit

	Three Months Ended December 31,	
	2002	2003
<i>(in thousands, except per unit data)</i>		
Income before cumulative effect of change in accounting principle per Limited Partner unit:		
Basic	\$ 0.61	\$ 0.56
Diluted	\$ 0.61	\$ 0.56
Cumulative effect of change in accounting principle per Limited Partner unit:		
Basic	\$ (0.12)	\$ —
Diluted	\$ (0.12)	\$ —
Net income per Limited Partner unit:		
Basic	\$ 0.49	\$ 0.56
Diluted	\$ 0.49	\$ 0.56
<u>Basic Earnings Per Unit:</u>		
Net income	\$16,039	\$19,312
Less: General Partner's interest in net income	159	194
Limited Partners' interest in net income	<u>\$15,880</u>	<u>\$19,118</u>
Common Units	28,970	30,671
Senior Subordinated Units	3,134	3,142
Junior Subordinated Units	345	345
Weighted average number of Limited Partner units outstanding	<u>32,449</u>	<u>34,158</u>
Basic earnings per unit	<u>\$ 0.49</u>	<u>\$ 0.56</u>
<u>Diluted Earnings Per Unit:</u>		
Effect of diluted securities	\$ —	\$ —
Limited Partners' interest in net income	<u>\$15,880</u>	<u>\$19,118</u>
Weighted average number of Limited Partner units outstanding	32,449	34,158
Senior subordinated units anticipated to be issued under employee incentive plan	115	—
Diluted weighted average number of Limited Partner units	<u>32,564</u>	<u>34,158</u>
Diluted earnings per unit	<u>\$ 0.49</u>	<u>\$ 0.56</u>

9) Expiration of Senior Subordinated Incentive

In connection with the acquisition of Petro by Star Gas Partners in March of 1999, the Senior Subordinated Units, Junior Subordinated Units and General Partners Units could have earned, pro rata, an aggregate of up to 303,000 additional Senior Subordinated Units over a five year period for each year that Petro met certain financial goals. No units were earned under this incentive for the quarter ended December 31, 2003. No additional units will be issued under this incentive in the future as the calculation period for this incentive expired on December 31, 2003.

[Table of Contents](#)

10) Subsequent Events

Cash Distributions—On January 29, 2004, the Partnership announced that it would pay a cash distribution of \$0.575 per Common Unit and \$0.575 per Senior Subordinated Unit, Junior Subordinated Unit and General Partner Interest for the quarter ended December 31, 2003. The distribution will be paid on February 13, 2004, to unitholders of record on February 9, 2004.

Sale of 10 ¼% Senior Notes—On January 22, 2004, the Partnership and its wholly owned subsidiary, Star Gas Finance Company, jointly issued \$35.0 million of 10 ¼% Senior Notes, due 2013 in a private placement. These notes were issued at a premium to par for total gross proceeds of \$38.7 million. The net proceeds from the offering will be used to repay indebtedness as it becomes due.

Issuance of Senior Subordinated Units—On January 20, 2004, the Partnership issued 104,000 Senior Subordinated Units that were fully vested in fiscal 2003, under the Partnership's Director and Employee Unit Incentive Plan.

Item 2.

**STAR GAS PARTNERS, L.P. AND SUBSIDIARIES
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION
AND RESULTS OF OPERATIONS**

Statement Regarding Forward-Looking Disclosure

This Report includes “forward-looking statements” which represent the Partnership’s expectations or beliefs concerning future events that involve risks and uncertainties, including those associated with the effect of weather conditions on the Partnership’s financial performance, the price and supply of home heating oil, propane, electricity and natural gas and the ability of the Partnership to obtain new accounts and retain existing accounts and the realization of savings from the business process redesign project. All statements other than statements of historical facts included in this Report including, without limitation, the statements under “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere herein, are forward-looking statements. Although the Partnership believes that the expectations reflected in such forward-looking statements are reasonable, it can give no assurance that such expectations will prove to have been correct. Important factors that could cause actual results to differ materially from the Partnership’s expectations (“Cautionary Statements”) are disclosed in this Report, including without limitation and in conjunction with the forward-looking statements included in this Report. All subsequent written and oral forward-looking statements attributable to the Partnership or persons acting on its behalf are expressly qualified in their entirety by the Cautionary Statements.

Overview

In analyzing the financial results of the Partnership, the following matters should be considered.

The primary use for heating oil, propane and natural gas is for space heating in residential and commercial applications. As a result, weather conditions have a significant impact on financial performance and should be considered when analyzing changes in financial performance. The Partnership has purchased weather insurance to partially mitigate the risk of weather conditions. In addition, gross margins can vary according to customer mix. For example, sales to residential customers generate higher profit margins than sales to other customer groups, such as agricultural customers. Accordingly, a change in customer mix can affect gross margins without necessarily impacting total sales. The customer mix was not a significant factor in the current quarter to quarter comparison.

The heating oil, propane and natural gas industries are seasonal in nature with peak activity occurring during the winter months. Accordingly, results of operations for the periods presented are not indicative of the results to be expected for a full year.

The following is a discussion of the historical condition and results of operations of Star Gas Partners, L.P. and its subsidiaries, and should be read in conjunction with the historical Financial and Operating Data and Notes thereto included elsewhere in this quarterly report on Form 10-Q.

[Table of Contents](#)**THREE MONTHS ENDED DECEMBER 31, 2003
COMPARED TO THREE MONTHS ENDED DECEMBER 31, 2002****Volume**

For the three months ended December 31, 2003, retail volume of home heating oil and propane increased 8.5 million gallons, or 3.8%, to 230.1 million gallons, as compared to 221.6 million gallons for the three months ended December 31, 2002. This increase was due to a 8.7 million gallon increase in the propane segment and a 0.2 million gallon decrease in the heating oil segment. The increase in volume reflects the impact of an additional 26.5 million gallons provided by acquisitions partially offset by the impact of warmer temperatures. The Partnership also believes that a planned shift in the delivery pattern at the heating oil segment, designed to increase efficiency, reduced volume for the quarter ended December 31, 2002 by an estimated 10.1 million gallons. Typical delivery patterns would have resulted in these gallons being delivered in the three months ended December 31, 2002 but were actually delivered in the three months ended September 30, 2002. Temperatures in the Partnership's areas of operations for the three months ended December 31, 2003 were an average of 9.6% warmer than in the prior year's comparable quarter and approximately 4.0% warmer than normal as reported by the National Oceanic Atmosphere Administration ("NOAA").

The above activity is summarized as follows:

	<u>(in millions)</u>
Volume—Three months ended December 31, 2002	221.6
Impact of warmer temperatures	(22.1)
Impact of acquisitions	26.5
Impact of 2002 delivery pattern shift	10.1
Impact of scheduling/attrition/other	(6.0)
	<hr/>
Volume—Three months ended December 31, 2003	230.1
	<hr/>

Sales

For the three months ended December 31, 2003, sales increased \$48.9 million, or 12.7%, to \$433.9 million, as compared to \$385.0 million for the three months ended December 31, 2002. This increase was due to \$21.1 million higher home heating oil sales, \$25.6 million higher propane segment sales and a \$2.2 million increase in TG&E sales. Sales increased largely as a result of higher selling prices and by a much lesser extent from the additional volume sold. Selling prices increased versus the prior year's comparable period in response to higher supply costs. Sales of rationally related products, including heating and air conditioning equipment installation and service and water softeners increased \$7.7 million in the heating oil segment and by \$4.0 million in the propane segment from the prior year's comparable period due to acquisitions, increased installation activity and from increases in rates charged to customers for service contracts and increases in billable service. TG&E's sales also largely increased as a result of higher selling prices in response to higher supply cost for natural gas.

Cost of Product

For the three months ended December 31, 2003, cost of product increased \$32.0 million, or 15.9%, to \$233.3 million, as compared to \$201.3 million for the three months ended December 31, 2002. This increase was due to \$14.2 million of higher cost of product at the home heating oil segment, \$15.9 million higher cost of product at the propane segment and a \$1.9 million increase in TG&E cost of product. Cost of product increased largely due to higher supply cost and to a much lesser extent from the cost of product related to the increasing volume. While selling prices and supply cost both increased on a per gallon basis, the increase in selling prices was greater than the increase in supply cost, which results in higher per gallon margins of approximately 1.5 cents.

Cost of Installations, Service and Appliances

For the three months ended December 31, 2003, cost of installations, service and appliances increased \$6.7 million, or 12.4%, to \$60.7 million, as compared to \$54.0 million for the three months ended December 31, 2002. This increase was due to an additional \$4.8 million in the heating oil segment and by \$1.9 million in the propane segment from the prior year's comparable period largely due to the increase in sales of these products.

[Table of Contents](#)

Delivery and Branch Expenses

For the three months ended December 31, 2003, delivery and branch expenses increased \$9.5 million, or 12.7%, to \$84.0 million, as compared to \$74.5 million for the three months ended December 31, 2002. This increase was due to an additional \$5.1 million of delivery and branch expenses at the heating oil segment and a \$4.4 million increase in delivery and branch expenses for the propane segment. The increase in delivery and branch expenses was largely due to additional operating cost associated with acquisitions, increased customer service expense of \$1.5 million at the heating oil segment resulting largely from the start-up of the new outsourced call center and for the impact of operating expense and wage increases. The Partnership estimates that delivery and branch expenses increased approximately \$2.0 million from the comparable prior year quarter due to the impact of operating expense and wage increases. The Partnership also estimated that delivery and branch expenses increased by \$7.7 million for acquisitions. The volume provided by these acquisitions largely offset the impact of the warmer weather experienced during the quarter. This \$7.7 million is largely for the establishment of base operations in new markets as well as for the variable cost of delivering the additional gallons provided by acquisitions.

The heating oil segment's business process redesign project was substantially completed during fiscal 2003. As part of this redesign, a transition to outsourcing in the area of customer relationship management has been undertaken as both a customer satisfaction and a cost reduction strategy. The Partnership believes outsourcing customer inquiries will improve customer responsiveness and eliminate redundancy by leveraging the technology and expertise available from third party service organizations. In addition, an outsourcing partner has greater flexibility to manage extreme seasonal volume. However, significant challenges remain with this transition. While the physical transition is largely complete, the Partnership anticipates that supplementary training and support will be required through the 2003-2004 heating season, which will reduce the savings otherwise anticipated to be realized from the business process redesign project in fiscal 2004, but should not impact subsequent period savings.

Depreciation and Amortization Expenses

For the three months ended December 31, 2003, depreciation and amortization expenses increased \$1.7 million, or 13.2%, to \$14.5 million, as compared to \$12.8 million for the three months ended December 31, 2002. This increase was primarily due to a larger depreciable base of assets as a result of the impact of acquisitions and for increased depreciation resulting from the technology investment made by the heating oil segment as part of its business process redesign project.

General and Administrative Expenses

For the three months ended December 31, 2003, general and administrative expenses decreased \$3.4 million, or 26.8%, to \$9.4 million, as compared to \$12.8 million for the three months ended December 31, 2002. The heating oil segment's business process redesign project was substantially completed during fiscal 2003 and the Partnership did not incur any expense for this project for the quarter ended December 31, 2003. General and administrative expenses for the three months ended December 31, 2002 included \$1.1 million of expense for this project. General and administrative expenses also decreased due to a \$1.3 million decrease in the accrual for compensation earned for unit appreciation rights and restricted stock awards previously granted. The decrease in the accrual was due to a more stable unit price for the senior subordinated units for the current fiscal quarter versus the comparable prior year quarter which had a significant increase in the market value for these units. In addition, the accrual was lower as the Partnership recorded a lower accrual for units to be issued under the Director and Employee Unit Incentive Plan as the Partnership doesn't currently expect to achieve the specified objectives for this plan in fiscal 2004. TG&E's general and administrative expense were also lower by \$1.4 million largely due to lower bad debt and collection expenses of \$1.1 million and for lower third party direct marketing expense of \$0.4 million.

Interest Expense

For the three months ended December 31, 2003, interest expense increased \$2.7 million, or 29.9%, to \$11.7 million, as compared to \$9.0 million for the three months ended December 31, 2002. This increase was largely due to a higher weighted average balance of long-term debt outstanding during the three months ended December 31, 2003 compared to the three month period ended December 31, 2002 and for additional interest related to the higher interest rate on the Partnership's \$200.0 million debt offering completed in fiscal 2003 versus the debt repaid with the proceeds from this offering. This increase in long-term debt outstanding was largely for the funding of acquisitions.

Amortization of Debt Issuance Costs

For the three months ended December 31, 2003, amortization of debt issuance costs increased \$0.8 million, or 190.4%, to \$1.3 million, as compared to \$0.4 million for the three months ended December 31, 2002. This increase was largely due to the amortization of debt issuance costs for the Partnership's \$200.0 million debt offering and for the amortization of bank fees incurred in connection with the heating oil segment's bank credit facility.

[Table of Contents](#)

Cumulative Effect of Change in Accounting Principle

For the three months ended December 31, 2002, the Partnership recorded a \$3.9 million decrease in net income arising from the adoption of Statement No. 142 to reflect the impairment of its goodwill for its TG&E segment.

Net Income

For the three months ended December 31, 2003, net income increased \$3.3 million, or 20.4%, to \$19.3 million, as compared to \$16.0 million for the three months ended December 31, 2002. The increase was due to a \$5.6 million increase in net income at TG&E, a \$3.4 million increase in net income at the propane segment partially offset by a \$4.7 million decrease in the net income at the heating oil segment and a \$1.0 million increase in the net loss at the Partnership level. The increase in net income was primarily due to the results of acquisitions, increased revenues from installations, service and appliance sales, increased per gallon margins and from the impact in fiscal 2003 of the \$3.9 million decrease in net income at the TG&E segment for the adoption of SFAS No. 142 partially offset by the impact of warmer weather and for increased interest expense.

Liquidity and Capital Resources

The ability of Star Gas to satisfy its obligations will depend on its future performance, which will be subject to prevailing economic, financial, business, and weather conditions, and other factors, most of which are beyond its control. Future capital requirements of Star Gas are expected to be provided by cash flows from operating activities and cash on hand at December 31, 2003. To the extent future capital requirements exceed cash flows from operating activities:

- a) working capital will be financed by the Partnership's working capital lines of credit and repaid from subsequent seasonal reductions in inventory and accounts receivable;
- b) growth capital expenditures, mainly for customer tanks will be financed in fiscal 2004 by the use of the Partnership's credit facilities; and
- c) acquisition capital expenditures will be financed by the revolving acquisition lines of credit, long-term debt, the issuance of additional Common Units or a combination thereof.

Cash Flows

Operating Activities. The net cash used in operations of \$35.7 million for the first quarter of fiscal 2004 consisted of net income of \$19.3 million, noncash charges of \$17.3 million, primarily made up of depreciation and amortization of \$15.8 million, which were offset by an increase in operating assets and liabilities of \$72.3 million. The increase in operating assets and liabilities of \$72.3 million was less than the \$81.8 million for the three months ended December 31, 2002 largely due to a reduction of prepaids and other receivables. Despite sales increasing from \$385.0 million in the first quarter of fiscal 2003 to \$433.9 million for the first quarter of fiscal 2004, the increase in accounts receivable was \$4.0 million less than the increase in the first quarter in fiscal 2003 as collections increased from \$295.7 million in the first quarter of fiscal 2003 to \$348.5 million for the first quarter of fiscal 2004. This increase in collections was largely offset by cash payments for cost of product and cost of installations, service and appliances which increased from \$241.2 million in the first quarter of fiscal 2003 to \$292.9 million in the first quarter of fiscal 2004.

Investing Activities. Star Gas completed one acquisition during the fiscal quarter ended December 31, 2003, investing \$1.8 million. This expenditure for acquisitions is reflected in the cash used in investing activities of \$3.8 million along with \$2.6 million invested for capital expenditures. The \$2.6 million for capital expenditures is comprised of \$1.5 million of capital additions needed to sustain operations at current levels and \$1.1 million for capital expenditures incurred in connection with the heating oil segment's business process redesign program and for customer tanks and other capital expenditures to support growth of operations. The capital expenditures made for the business process redesign program were largely for the purchase of technology to increase the efficiency and quality of services provided to its customers. Investing activities also includes proceeds from the sale of fixed assets of \$0.5 million.

Financing Activities. During the quarter ended December 31, 2003, increased bank working capital borrowings of \$66.5 million and acquisition facility borrowings of \$1.8 million provided funds of \$68.3 million. Cash distributions paid to Unitholders of \$19.8 million, debt repayments of \$0.1 million and other financing activities, which were largely for fees incurred in connection with the renewal of the home heating oil segment's bank credit facilities of \$4.8 million reduced the net cash provided by financing activities to \$43.6 million.

As a result of the above activity, cash increased by \$4.1 million to \$14.2 million as of December 31, 2003.

[Table of Contents](#)**Earnings before interest, taxes, depreciation and amortization (EBITDA)**

For the three months ended December 31, 2003, EBITDA increased \$8.1 million, or 21.0% to \$46.4 million as compared to \$38.4 million for the three months ended December 31, 2002. This increase was due to \$5.6 million of more EBITDA generated by TG&E, a \$3.2 million increase in the propane segment EBITDA and a \$1.4 million increase in the EBITDA at the Partnership level partially offset by a \$2.2 million reduction in EBITDA at the heating oil segment primarily due to the warmer weather. The increase in EBITDA was largely due to the results of acquisitions, increased revenues from installations, service and appliance sales and from increased per gallon margins and from the impact in fiscal 2003 of the \$3.9 million decrease in EBITDA at the TG&E segment for the adoption of SFAS No. 142 partially offset by the impact of warmer weather.

The Partnership uses EBITDA as a measure of liquidity and it is being included because the Partnership believes that it provides investors and industry analysts with additional information to evaluate the Partnership's ability to pay quarterly distributions. EBITDA is not a recognized term under generally accepted accounting principles ("GAAP") and should not be considered as an alternative to net income/(loss) or net cash provided by operating activities determined in accordance with GAAP. Because EBITDA as determined by the Partnership excludes some, but not all of the items that affect net income/(loss), it may not be comparable to EBITDA or similarly titled measures used by other companies. The following table sets forth (i) the calculation of EBITDA and (ii) a reconciliation of EBITDA, as so calculated, to cash provided by operating activities (amounts in thousands):

	Three Months Ended December 31,	
	2002	2003
(in thousands)		
Net income	\$ 16,039	\$ 19,312
Plus:		
Income tax expense	675	406
Amortization of debt issuance costs	437	1,269
Interest expense, net	8,370	10,894
Depreciation and amortization	12,848	14,545
EBITDA	38,369	46,426
Add/(subtract)		
Income tax expense	(675)	(406)
Interest expense, net	(8,370)	(10,894)
Unit compensation expense	472	52
Provision for losses on accounts receivable	1,383	1,555
Gain on sale of fixed assets	(16)	(84)
Cumulative effect of change in accounting principle for the adoption of SFAS No. 142	3,901	—
Change in operating assets and liabilities	(81,812)	(72,303)
Net cash used in operating activities	\$(46,748)	\$(35,654)

[Table of Contents](#)

Financing and Sources of Liquidity

The Partnership's heating oil segment has a bank credit facility, which includes a working capital facility, providing for up to \$150.0 million of borrowings to be used for working capital purposes, an acquisition facility, providing for up to \$50.0 million of borrowings to be used for acquisitions and for certain improvements and a \$35.0 million letter of credit facility primarily for insurance purposes. The working capital facility and letter of credit facility will expire on June 30, 2006. The acquisition facility will convert to a term loan for any outstanding borrowings on June 30, 2006, which balance will be payable in eight equal quarterly principal payments. At December 31, 2003, \$65.0 million of working capital borrowings and \$33.0 million of acquisition facility borrowings were outstanding.

The Partnership's propane segment has a bank credit facility, which consists of a \$25.0 million acquisition facility, a \$25.0 million parity debt facility that can be used to fund maintenance and growth capital expenditures and an \$24.0 million working capital facility. The working capital facility expires on September 30, 2006. Borrowings under the acquisition and parity debt facilities will revolve until September 30, 2006, after which time any outstanding loans thereunder, will amortize in quarterly principal payments with a final payment due on September 30, 2008. At December 31, 2003, \$14.4 million of acquisition facility borrowings, \$2.0 million of Parity Debt Facility borrowings and \$13.5 million of working capital borrowings were outstanding.

The Partnership's bank credit facilities and debt agreements contain several financial tests and covenants restricting the various segments and Partnership's ability to pay distributions, incur debt and engage in certain other business transactions. In general these tests are based upon achieving certain debt to cash flow ratios and cash flow to interest expense ratios. In addition, amounts borrowed under the working capital facility are subject to a requirement to maintain a zero balance for at least forty-five consecutive days. Failure to comply with the various restrictive and affirmative covenants of the Partnership's various bank and note facility agreements could negatively impact the Partnership's ability to incur additional debt and/or pay distributions and could cause certain debt to become currently payable.

As of December 31, 2003, the Partnership was in compliance with all debt covenants.

On January 22, 2004, the Partnership and its wholly owned subsidiary, Star Gas Finance Company, jointly issued \$35.0 million face value senior notes due on February 15, 2013. These notes accrue interest at an annual rate of 10.25% and require semi-annual interest payments on February 15 and August 15 of each year commencing on February 15, 2003. These notes are redeemable at the option of the Partnership, in whole or in part, from time to time by payment of a premium as defined. These notes were priced at 110.5% for total gross proceeds of \$38.7 million. The Partnership also incurred \$0.7 million of fees and expenses in connection with the issuance of these notes resulting in net proceeds of \$38.0 million. The net proceeds from the offering will be used to repay indebtedness as it becomes due.

The Partnership had \$523.4 million of debt outstanding as of December 31, 2003 (amount does not include working capital borrowings of \$78.5 million), with significant maturities occurring over the next five years. The following summarizes the Partnership's long-term debt maturities during the twelve months ended December 31, 2003:

2004	\$ 21.6 million
2005	\$ 34.4 million
2006	\$ 75.2 million
2007	\$ 63.4 million
2008	\$ 36.2 million
Thereafter	\$292.6 million

The Partnership's heating oil segment's bank credit facilities allow for the use of the credit facilities to repay up to \$22.5 million of existing senior debt and the Partnership's propane segment's bank credit facilities allow for the refinancing of up to \$25.0 million of existing senior debt. The refinancing capabilities are subject to capacity and other restrictions. Funding for debt maturities other than for what could be refinanced with bank facilities or the application of the proceeds from the \$35.0 million senior note offering will otherwise largely be dependent upon new debt or equity issuances.

The Partnership continues to evaluate strategic alternatives for its TG&E business segment, including evaluating the possible sale of the business. An investment advisor, Cenatar Advisory Group, has been hired to assist the Partnership in this endeavor. The Partnership has not made a decision to sell the TG&E business but is currently evaluating preliminary interest expressed by potential buyers as well as evaluating other alternatives for the business. A major consideration in the Partnership's evaluation process is the significant improvement that TG&E demonstrated in fiscal 2003 and for the first fiscal quarter of fiscal 2004 in becoming a profitable operation. The Partnership would not expect any potential sale to result in a significant gain or loss. In addition, the Partnership would also not expect that any potential sale would have a significant impact on liquidity on a going forward basis.

[Table of Contents](#)

Financing and Sources of Liquidity — (continued)

In general, the Partnership distributes to its partners on a quarterly basis, all of its Available Cash in the manner described below. Available Cash is defined for any of the Partnership's fiscal quarters, as all cash on hand at the end of that quarter, less the amount of cash reserves that are necessary or appropriate in the reasonable discretion of the general partner to (i) provide for the proper conduct of the business; (ii) comply with applicable law, any of its debt instruments or other agreements; or (iii) provide funds for distributions to the common unitholders and the senior subordinated unitholders during the next four quarters, in some circumstances.

The Partnership believes that the purchase of weather insurance could be an important element in the Partnership's ability to maintain the stability of its cash flows. The Partnership purchased a base of \$12.5 million of weather insurance coverage for each year from 2004—2007 and purchased an additional \$7.5 million of weather insurance coverage for fiscal 2004. The amount of insurance proceeds that could be realized under these policies is calculated by multiplying the degree day deviation from an agreed upon cumulative degree day strike price by \$35,000. The calculation period for the weather insurance coverage is from November first to the end of February and is measured based upon a weighting of certain New England and Mid-Atlantic weather stations. Due to the close to normal weather conditions experienced for the policy period during the quarter ended December 31, 2003, the Partnership did not receive any benefit from the weather insurance for this period.

For the remainder of fiscal 2004, the Partnership anticipates paying interest of approximately \$32.3 million and anticipates growth and maintenance capital additions of approximately \$6.0 million. In addition, the Partnership plans to pay distributions on its units to the extent there is sufficient available cash in accordance with the partnership agreement. The Partnership plans to fund acquisitions made through a combination of debt and equity. Based on its current cash position, proceeds from its \$35.0 million senior note offering completed in January 2004, bank credit availability and anticipated net cash to be generated from operating activities, the Partnership expects to be able to meet all of its obligations for fiscal 2004.

Accounting Policies not yet Adopted

In January 2004, the Financial Accounting Standards Board issued SFAS No. 132 (revised), "Employers' Disclosures about Pensions and Other Postretirement Benefits". This Statement replaces existing SFAS No. 132, of the same title. All disclosure requirements now required in existing SFAS No. 132 have been retained in the revised version. SFAS No. 132 (revised) requires additional disclosures regarding types of plan assets held, investment strategies, measurement date(s), plan obligations, cash flows, and components of net periodic benefit cost (expense). This statement is effective for the Partnership's September 30, 2004, Form 10-K. It is also, effective for the Partnership's interim reporting period beginning January 1, 2004.

[Table of Contents](#)

Critical Accounting Policies and Estimates

The preparation of financial statements in conformity with Generally Accepted Accounting Principles requires management to establish accounting policies and make estimates and assumptions that affect reported amounts of assets and liabilities at the date of the Consolidated Financial Statements. Star Gas evaluates its policies and estimates on an on-going basis. The Partnership's Consolidated Financial Statements may differ based upon different estimates and assumptions. Star Gas believes the following are its critical accounting policies:

Goodwill and Other Intangible Assets

The FASB issued SFAS No. 142, "Goodwill and Other Intangible Assets" in June 2001. SFAS No. 142 requires that goodwill no longer be amortized, but instead be tested for impairment at least annually in accordance with the provisions of SFAS No. 142. SFAS No. 142 also requires that intangible assets with definite useful lives, such as customer lists, continue to be amortized over their respective estimated useful lives.

SFAS No. 142 was adopted on October 1, 2002, with the Partnership now calculating amortization using the straight-line method over periods ranging from 5 to 15 years for intangible assets with definite useful lives. Star Gas uses amortization methods and determines asset values based on its best estimates using reasonable and supportable assumptions and projections. Star Gas assesses the useful lives of intangible assets based on the estimated period over which Star Gas will receive benefit from such intangible assets such as historical evidence regarding customer churn rate. In some cases, the estimated useful lives are based on contractual terms. At December 31, 2003, the Partnership had \$194.4 million of net intangible assets subject to amortization. If circumstances required a change in estimated useful lives of the assets, it could have a material effect on results of operations. For example, if lives were shortened by one year, the Partnership estimates that amortization for these assets for the three month period ended December 31, 2003 would have increased by approximately \$0.7 million.

SFAS No. 142 also requires the Partnership's goodwill to be assessed annually for impairment. These assessments involve management's estimates of future cash flows, market trends and other factors. If goodwill is determined to be impaired, a loss is recorded in accordance with SFAS No. 142. At December 31, 2003, the Partnership had \$278.9 million of goodwill. Intangible assets with finite lives must be assessed for impairment whenever changes in circumstances indicate that the assets may be impaired. Similar to goodwill, the assessment for impairment requires estimates of future cash flows related to the intangible asset. To the extent the carrying value of the assets exceeds its future cash flows, an impairment loss is recorded based on the fair value of the asset.

Depreciation of Property, Plant and Equipment

Depreciation is calculated using the straight-line method based on the estimated useful lives of the assets ranging from 3 to 30 years. Net property, plant and equipment was \$259.2 million for the Partnership at December 31, 2003. If circumstances required a change in estimated useful lives of the assets, it could have a material effect on results of operations. For example, if lives were shortened by one year, the Partnership estimates that depreciation for the three month period ended December 31, 2003 would have increased by approximately \$0.7 million.

[Table of Contents](#)

Critical Accounting Policies and Estimates—(continued)

Assumptions Used in the Measurement of the Partnership's Defined Benefit Obligations

SFAS No. 87, "Employers' Accounting for Pensions" requires the Partnership to make assumptions as to the expected long-term rate of return that could be achieved on defined benefit plan assets and discount rates to determine the present value of the plans' pension obligations. The Partnership evaluates these critical assumptions at least annually.

The discount rate enables the Partnership to state expected future cash flows at a present value on the measurement date. The rate is required to represent the market rate for high-quality fixed income investments. A lower discount rate increases the present value of benefit obligations and increases pension expense. A 25 basis point decrease in the discount rate used for fiscal 2003 would have increased pension expense by approximately \$0.1 million and would have increased the minimum pension liability by another \$1.8 million. The Partnership assumed a discount rate of 6.00% as of September 30, 2003.

The Partnership considers the current and expected asset allocations, as well as historical and expected returns on various categories of plan assets to determine its expected long-term rate of return on pension plan assets. The expected long-term rate of return on assets is developed with input from the Partnership's actuarial firm. The long-term rate of return assumption used for determining net periodic pension expense for fiscals 2002 and 2003 was 8.50 percent. As of September 30, 2003, this assumption was reduced to 8.25 percent for determining fiscal 2004 net periodic pension expense. A further 25 basis point decrease in the expected return on assets would have increased pension expense in fiscal 2003 by approximately \$0.1 million.

Over the life of the plans, both gains and losses have been recognized by the plans in the calculation of annual pension expense. As of September 30, 2003, \$17.2 million of unrecognized losses remain to be recognized by the plans. These losses may result in increases in future pension expense as they are recognized.

Insurance Reserves

The Partnership's heating oil segment has in the past and is currently self-insuring a portion of workers' compensation, auto and general liability claims. In February 2003, the propane segment also began self-insuring a portion of its workers' compensation claims. The Partnership establishes reserves based upon expectations as to what its ultimate liability will be for these claims using developmental factors based upon historical claim experience. The Partnership continually evaluates the potential for changes in loss estimates with the support of qualified actuaries. As of September 30, 2003, the heating oil segment had approximately \$29.4 million of insurance reserves and the propane segment had \$1.1 million of insurance reserves. The ultimate settlement of these claims could differ materially from the assumptions used to calculate the reserves which could have a material effect on results of operations.

Item 3.

Quantitative and Qualitative Disclosures About Market Risk

The Partnership is exposed to interest rate risk primarily through its Bank Credit Facilities due to the fact that they are subject to variable interest rates. The Partnership utilizes these borrowings to meet its working capital needs and also to fund the short-term needs of its acquisition program.

At December 31, 2003, the Partnership had outstanding borrowings totaling \$601.9 million, of which approximately \$127.9 million is subject to variable interest rates under its Bank Credit Facilities. The Partnership also has interest rate swaps with a notional value of \$55.0 million which swap fixed rate borrowings of 8.05% to variable rate borrowings based on the six month LIBOR interest rate plus 5.52%. In the event that interest rates associated with these facilities were to increase 100 basis points, the impact on future cash flows would be a decrease of approximately \$1.8 million annually.

The Partnership also selectively uses derivative financial instruments to manage its exposure to market risk related to changes in the current and future market price of home heating oil, propane and natural gas. The Partnership does not hold derivatives for trading purposes. The value of market sensitive derivative instruments is subject to change as a result of movements in market prices. Consistent with the nature of hedging activity, associated unrealized gains and losses would be offset by corresponding decreases or increases in the purchase price the Partnership would pay for the product being hedged. Sensitivity analysis is a technique used to evaluate the impact of hypothetical market value changes. Based on a hypothetical ten percent increase in the cost of product at December 31, 2003, the potential gain on the Partnership's hedging activity would be to increase the fair value of these outstanding derivatives by \$7.3 million to a fair value of \$21.6 million; and conversely a hypothetical ten percent decrease in the cost of product would decrease the fair value of these outstanding derivatives by \$6.0 million to a fair value of \$8.2 million.

Item 4.

Controls and Procedures

(a) Evaluation of disclosure controls and procedures.

The General Partner's principal executive officer and its principal financial officer, evaluated the effectiveness of the Partnership's disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, such principal executive officer and principal financial officer concluded that, the Partnership's disclosure controls and procedures as of the end of the period covered by this report have been designed and are functioning effectively to provide reasonable assurance that the information required to be disclosed by the Partnership in reports filed under the Securities Exchange Act of 1934 is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms. The General Partner and the Partnership believe that a controls system, no matter how well designed and operated, can not provide absolute assurance that the objectives of the controls system are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected.

(b) Change in Internal Control over Financial Reporting.

No change in the Partnership's internal control over financial reporting occurred during the Partnership's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect the Partnership's internal control over financial reporting.

PART II OTHER INFORMATION

Item 6.

Exhibits and Reports on Form 8-K

(a) Exhibits Included Within:

- 10.35 Credit agreement dated December 22, 2003, between Petroleum Heat and Power Co., Inc. and the agents, Fleet National Bank, JPMorgan Chase Bank and LaSalle Bank National Association.
- 10.36 First supplemental indenture dated January 22, 2004 to the indenture dated February 6, 2003 for the Partnership's 10 ¼% Senior Notes due 2013.
- 31.1 Rule 13a-14(a) Certification.
- 31.2 Rule 13a-14(a) Certification.
- 32.1 Section 906 Certification.
- 32.2 Section 906 Certification.

(b) Reports on Form 8-K:

12/4/03—On December 4, 2003, Star Gas Partners, L.P., a Delaware partnership (the "Partnership"), issued a press release describing its financial results for its fourth quarter and year ended September 30, 2003.

[Table of Contents](#)

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrants have duly caused this report to be signed on its behalf of the undersigned thereunto duly authorized:

Star Gas Partners, L.P.
(Registrant)
By: Star Gas LLC as General Partner

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Ami Trauber</u> Ami Trauber	Chief Financial Officer Star Gas LLC (Principal Financial Officer)	January 29, 2004
<u>/s/ James J. Bottiglieri</u> James J. Bottiglieri	Vice President Star Gas LLC	January 29, 2004

Star Gas Finance Company
(Registrant)

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Ami Trauber</u> Ami Trauber	Chief Financial Officer (Principal Financial Officer)	January 29, 2004
<u>/s/ James J. Bottiglieri</u> James J. Bottiglieri	Vice President	January 29, 2004

CREDIT AGREEMENT

among

PETROLEUM HEAT AND POWER CO., INC.

and

**VARIOUS FINANCIAL INSTITUTIONS,
as the Lenders**

and

**WACHOVIA BANK, NATIONAL ASSOCIATION,
as Administrative Agent for the Lenders and as an Issuer
of certain Letters of Credit**

**LASALLE BANK NATIONAL ASSOCIATION,
as an Issuer of certain Letters of Credit**

and

**FLEET NATIONAL BANK,
as Syndication Agent**

and

**JPMORGAN CHASE BANK
and
LASALLE BANK NATIONAL ASSOCIATION,
as Co-Documentation Agents**

as of
December 22, 2003

Arranged by

**WACHOVIA CAPITAL MARKETS, LLC,
as Co-Lead Arranger and Sole Book Manager**

and

**FLEET NATIONAL BANK,
as Co-Lead Arranger**

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND ACCOUNTING TERMS	1
SECTION 1.1 Defined Terms	1
SECTION 1.2 Use of Defined Terms	37
SECTION 1.3 Other Interpretive Provisions	37
SECTION 1.4 Accounting and Financial Determinations	38
ARTICLE II COMMITMENTS, BORROWING PROCEDURES AND NOTES	39
SECTION 2.1 Commitments	39
SECTION 2.1.1 Facility A Commitment	39
SECTION 2.1.2 Facility B Commitment	39
SECTION 2.1.3 Facility C Commitment	39
SECTION 2.1.4 Restrictions on Loans	40
SECTION 2.2 Reduction and Termination of Commitments	40
SECTION 2.2.1 Optional	40
SECTION 2.2.2 Mandatory	41
SECTION 2.2.3 Termination	41
SECTION 2.3 Borrowing Procedure	41
SECTION 2.4 Continuation and Conversion Elections	41
SECTION 2.5 Funding	42
SECTION 2.6 Loan Accounts/Notes	42
SECTION 2.7 Swing Line	43
SECTION 2.8 Facility Extension Options	46
ARTICLE III REPAYMENTS, PREPAYMENTS, INTEREST AND FEES	47
SECTION 3.1 Repayments and Prepayments	47
SECTION 3.1.1 Repayment	47
SECTION 3.1.2 Voluntary Prepayments	48
SECTION 3.1.3 Mandatory Prepayments	48
SECTION 3.2 Interest Provisions	50
SECTION 3.2.1 Rates	50
SECTION 3.2.2 Post-Default Rate	51
SECTION 3.2.3 Payment Dates	51
SECTION 3.3 Fees	52

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
SECTION 3.3.1 Facility Fee	52
SECTION 3.3.2 Letter of Credit Fee	52
SECTION 3.3.3 Letter of Credit Issuing Fee	52
SECTION 3.3.4 Other Fees	52
ARTICLE IV LETTERS OF CREDIT	53
SECTION 4.1 The Letter of Credit Facility and Subfacilities	53
SECTION 4.2 Issuance, Amendment and Renewal of Letters of Credit	55
SECTION 4.3 Expenses	56
SECTION 4.4 Other Lenders' Participation	57
SECTION 4.5 Disbursements	58
SECTION 4.6 Reimbursement	58
SECTION 4.7 Cash Collateral Pledge	58
SECTION 4.8 Nature of Reimbursement Obligations	59
SECTION 4.9 Increased Costs; Indemnity	59
SECTION 4.10 Uniform Customs and Practice	60
ARTICLE V CERTAIN LIBOR AND OTHER PROVISIONS	61
SECTION 5.1 LIBOR Lending Unlawful	61
SECTION 5.2 Deposits Unavailable	61
SECTION 5.3 Increased LIBOR Loan Costs, etc.	61
SECTION 5.4 Funding Losses	62
SECTION 5.5 Increased Capital Costs	62
SECTION 5.6 Taxes	63
SECTION 5.7 Payments, Computations, etc.	64
SECTION 5.8 Sharing of Payments	65
SECTION 5.9 Setoff	65
SECTION 5.10 Recourse	65
SECTION 5.11 Replacement of Lenders	66
ARTICLE VI CONDITIONS TO BORROWING	66
SECTION 6.1 Conditions to Effectiveness	66
SECTION 6.1.1 Credit Agreement and Notes	66
SECTION 6.1.2 Closing Certificate	66

TABLE OF CONTENTS
(Continued)

	Page
SECTION 6.1.3 Organizational Documents	67
SECTION 6.1.4 Permits	68
SECTION 6.1.5 Post-Closing Agreement	68
SECTION 6.1.6 Opinion of Counsel	68
SECTION 6.1.7 Closing Fees, Expenses, etc.	68
SECTION 6.1.8 Insurance	68
SECTION 6.1.9 Facility A Notes	68
SECTION 6.1.10 Facility C Notes	68
SECTION 6.1.11 Borrowing Base Certificate	68
SECTION 6.1.12 Collateral Related Documents	68
SECTION 6.1.13 Flood Hazard Certificates	70
SECTION 6.1.14 Solvency Certificate	70
SECTION 6.1.15 Information	70
SECTION 6.1.16 Financial Projections	70
SECTION 6.1.17 Financial Statements	70
SECTION 6.1.18 Certified Documents	70
SECTION 6.1.19 Existing Credit Agreement	70
SECTION 6.1.20 Consent of Holders of Other Indebtedness	71
SECTION 6.1.21 Other Documents	71
SECTION 6.2 All Borrowings and Issuances of Letters of Credit	71
SECTION 6.2.1 Compliance with Warranties, No Default, etc.	71
SECTION 6.2.2 Borrowing Request	72
SECTION 6.2.3 Borrowing Base Certificate	72
SECTION 6.2.4 Satisfactory Legal Form	72
SECTION 6.2.5 Compliance Certificate	72
ARTICLE VII REPRESENTATIONS AND WARRANTIES	72
SECTION 7.1 Organization etc.	73
SECTION 7.2 Subsidiaries	73
SECTION 7.3 Qualification	73
SECTION 7.4 Enforceability	74
SECTION 7.5 Due Authorization; Non-contravention; etc.	74

TABLE OF CONTENTS
(Continued)

	Page
SECTION 7.6 Government Approvals; Regulations, etc.	74
SECTION 7.7 Business; Financial Statements	75
SECTION 7.8 No Material Adverse Change	76
SECTION 7.9 Litigation; Labor Controversies, etc.	76
SECTION 7.10 Ownership of Properties; Liens	76
SECTION 7.11 Taxes	76
SECTION 7.12 ERISA Compliance	77
SECTION 7.13 Environmental Warranties	78
SECTION 7.14 Regulations U and X and Use of Proceeds	79
SECTION 7.15 Accuracy of Information	80
SECTION 7.16 Solvency	80
SECTION 7.17 Compliance with Laws	80
SECTION 7.18 Investment Company Act; Other Regulations	80
SECTION 7.19 Restrictive Agreements	81
SECTION 7.20 Tax Disclosure	81
ARTICLE VIII COVENANTS	81
SECTION 8.1 Affirmative Covenants	81
SECTION 8.1.1 Financial Information, Reports, Notices, etc.	81
SECTION 8.1.2 Maintenance of Properties	85
SECTION 8.1.3 Insurance	85
SECTION 8.1.4 Payment of Obligations	85
SECTION 8.1.5 Compliance with Laws	86
SECTION 8.1.6 Books and Records	86
SECTION 8.1.7 Inspection	86
SECTION 8.1.8 Environmental Covenant	86
SECTION 8.1.9 Compliance with ERISA	87
SECTION 8.1.10 Ranking/Security	87
SECTION 8.1.11 Clean Down Period	87
SECTION 8.1.12 Preservation of Corporate Existence	88
SECTION 8.1.13 Use of Proceeds	88
SECTION 8.1.14 Update of Customer Lists	88

TABLE OF CONTENTS
(Continued)

	Page
SECTION 8.1.15 Further Assurances	89
SECTION 8.1.16 Tax Disclosure	89
SECTION 8.1.17 Risk Management	89
SECTION 8.1.18 Certain Vehicles	90
SECTION 8.1.19 Certain Real Property	90
SECTION 8.1.20 Mortgage Taxes	92
SECTION 8.2 Negative Covenants	92
SECTION 8.2.1 Business Activities	92
SECTION 8.2.2 Indebtedness	93
SECTION 8.2.3 Liens	95
SECTION 8.2.4 Financial Covenants	96
SECTION 8.2.5 Investments	97
SECTION 8.2.6 Restricted Payments, etc.	98
SECTION 8.2.7 Consolidation, Merger, etc.	99
SECTION 8.2.8 Asset Dispositions, etc.	100
SECTION 8.2.9 Modification of Certain Agreements	100
SECTION 8.2.10 Transactions with Affiliates	101
SECTION 8.2.11 Negative Pledges, Restrictive Agreements, etc.	101
SECTION 8.2.12 Limitation on Issuance of Stock	101
SECTION 8.2.13 Operating Leases	101
SECTION 8.2.14 Prepayments	101
SECTION 8.2.15 Organic Documents	102
SECTION 8.2.16 Capital Expenditures	102
SECTION 8.2.17 Contingent Liabilities	102
SECTION 8.2.18 ERISA	102
SECTION 8.2.19 Accounting Changes	102
SECTION 8.2.20 Bank Accounts	103
ARTICLE IX EVENTS OF DEFAULT	103
SECTION 9.1 Listing of Events of Default	103
SECTION 9.1.1 Non-Payment of Obligations	103
SECTION 9.1.2 Breach of Warranty	103

TABLE OF CONTENTS
(Continued)

	Page
SECTION 9.1.3 Non-Performance of Other Covenants and Obligations	103
SECTION 9.1.4 Default on Other Indebtedness	103
SECTION 9.1.5 Judgments	104
SECTION 9.1.6 ERISA	104
SECTION 9.1.7 Change in Control	104
SECTION 9.1.8 Bankruptcy, Insolvency, etc.	104
SECTION 9.1.9 Impairment of Security, etc.	105
SECTION 9.1.10 Split-Up	105
SECTION 9.1.11 Guarantor Defaults	105
SECTION 9.2 Action if Bankruptcy	106
SECTION 9.3 Action if Other Event of Default	106
ARTICLE X THE AGENT	107
SECTION 10.1 Appointment and Authorization of Agent	107
SECTION 10.2 Delegation of Duties	107
SECTION 10.3 Liability of Agent	107
SECTION 10.4 Reliance by Agent	108
SECTION 10.5 Notice of Default	108
SECTION 10.6 Credit Decision; Disclosure of Information by Agent	109
SECTION 10.7 Indemnification of Agent	109
SECTION 10.8 Agent in its Individual Capacity	110
SECTION 10.9 Successor Agent	110
SECTION 10.10 Other Agents; Lead Managers	110
SECTION 10.11 Foreign Lenders	111
SECTION 10.12 Collateral Matters	111
ARTICLE XI MISCELLANEOUS PROVISIONS	112
SECTION 11.1 Waivers, Amendments, etc.	112
SECTION 11.2 Notices	113
SECTION 11.3 Payment of Costs and Expenses	114
SECTION 11.4 Indemnification	114
SECTION 11.5 Survival	115

TABLE OF CONTENTS
(Continued)

	Page
SECTION 11.6 Severability	115
SECTION 11.7 Headings	115
SECTION 11.8 Execution in Counterparts, Effectiveness, etc.	115
SECTION 11.9 Governing Law; Entire Agreement	116
SECTION 11.10 Successors and Assigns	116
SECTION 11.11 Sale and Transfer of Loans and Notes; Participations in its Loans and Notes	116
SECTION 11.11.1 Assignments	116
SECTION 11.11.2 Participations	117
SECTION 11.12 Other Transactions	118
SECTION 11.13 Forum Selection and Consent to Jurisdiction	118
SECTION 11.14 Waiver of Jury Trial	119

Exhibits

Exhibit A-1	Form of Facility A Note
Exhibit A-2	Form of Facility C Note
Exhibit A-3	Form of Swing Line Note
Exhibit B	Form of Borrowing Base Certificate
Exhibit C	Form of Borrowing Request
Exhibit D	Form of Continuation/Conversion Notice
Exhibit E	Form of Assignment and Acceptance Agreement
Exhibit F	Form of Compliance Certificate
Exhibit G	Form of Subordination Agreement (Affiliate)
Exhibit H	Form of Opinion of Phillips Nizer LLP
Exhibit I	Form of Swing Line Loan Request
Exhibit J-1	Form of Guarantee Agreement of Star Gas Partners and Holdings
Exhibit J-2	Form of Guarantee Agreement of the Material Subsidiaries
Exhibit K	Form of Solvency Certificate
Exhibit L	Form of Mortgage
Exhibit M	Form of Post-Closing Agreement
Exhibit N	Form of Perfection Certificate
Exhibit O-1	Form of Pledge and Security Agreement of the Borrower and the Material Subsidiaries
Exhibit O-2	Form of Pledge and Security Agreement of Holdings
Exhibit O-3	Form of Vehicle Security Agreement

Schedules

Schedule I	Commitments and Facility Percentages
Schedule II	Disclosure Schedule
	Item 7.1 (Organization)
	Item 7.2 (Subsidiaries)
	Item 7.3 (Qualification)
	Item 7.13(b) (Environmental)
	Item 8.2.2(a)(i) (Private Placement Debt)
	Item 8.2.2(a)(iii) (Existing Subordinated Debt and Affiliate Subordinated Debt)
	Item 8.2.2(b) (Star Gas Partners Indebtedness)
	Item 8.2.14 (Acquisition Debt)
	Item 8.2.17 (Contingent Obligations)
Schedule III	List of Existing Facility B Letters of Credit
Schedule IV	Mortgaged Properties
Schedule V	Lien Search Locations
Schedule VI	Mortgaged Properties with Title Insurance
Schedule VII	Bank Accounts

CREDIT AGREEMENT

This CREDIT AGREEMENT (as the same may be amended, supplemented or otherwise modified from time to time, this "*Agreement*"), dated as of December 22, 2003, among PETROLEUM HEAT AND POWER CO., INC., a Minnesota corporation (the "*Borrower*"), the various financial institutions as are or may become parties hereto (collectively, the "*Lenders*"), WACHOVIA BANK, NATIONAL ASSOCIATION ("*Wachovia*"), as administrative agent (the "*Agent*") for the Lenders and as issuer of certain letters of credit, LASALLE BANK NATIONAL ASSOCIATION, as an issuer of certain letters of credit, FLEET NATIONAL BANK, as Syndication Agent, and JPMORGAN CHASE BANK and LASALLE BANK NATIONAL ASSOCIATION, as Co-Documentation Agents.

WITNESSETH:

WHEREAS, the Borrower is in the business of the wholesale and retail sale and distribution of home heating oil, diesel fuel, propane, natural gas and related petroleum derivative products, the provision of maintenance services to customers, and the related retail sale of supplies and HVAC equipment (the "*Fuel Oil Distribution Business*");

WHEREAS, the Borrower has requested, and the Lenders have agreed to provide (subject to the terms set forth herein) (i) a \$150,000,000 revolving credit facility which will include a \$20,000,000 sublimit for the issuance of standby letters of credit and a \$10,000,000 sublimit for swing line loans, the proceeds of which are to be used for working capital purposes as specified in Section 2.1.1 ("*Facility A*"); (ii) a \$35,000,000 revolving credit facility, the proceeds of which are to be used for the issuance of standby letters of credit issued by the Issuer (as hereinafter defined) in connection with surety, worker's compensation and other financial guarantees as specified in Section 2.1.2 ("*Facility B*"); (iii) a \$50,000,000 revolving credit facility, the proceeds of which are to be used to finance or refinance certain acquisitions and capital expenditures, to refinance certain maturing senior secured debt, for the issuance of letters of credit in connection with acquisitions and, to the extent that there is insufficient availability under the revolving credit facility described in clause (i) above, from time to time, for working capital purposes as specified in Section 2.1.3 ("*Facility C*" and together with Facility A and Facility B, the "*Facilities*");

WHEREAS, the Facilities will refinance and replace the Existing Credit Agreement (as hereinafter defined) and the Existing Credit Agreement will be paid in full and terminated;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Defined Terms. The following terms when used in this Agreement, including its preamble and recitals, shall, except where the context otherwise requires, have the following meanings:

"*Acquisition Debt*" means unsecured Indebtedness for which Holdings, the Borrower or any Material Subsidiary becomes liable in connection with acquisitions of businesses permitted by Section 8.2.1 in favor of the sellers of such businesses (provided that such Indebtedness may be secured to the extent permitted by Section 8.2.3(g)) and, subject to the other terms and conditions of this Agreement, by Facility C Letters of Credit).

“**Affiliate**” of any Person means as applied to any Person, any other Person directly or indirectly controlling or controlled by or under common control with such Person, provided, that for purposes of this definition, “control” as used with respect to any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether as a general partner or through the ownership of voting securities or by contract or otherwise.

“**Affiliate Subordinated Debt**” means Indebtedness that is provided by Star Gas Partners to the Borrower and is subordinated to the Obligations on and subject to the following terms and conditions:

(a) such Indebtedness (i) shall bear interest at market rates, (ii) shall not provide for any principal repayments (whether at maturity, upon prepayment, upon scheduled installment or otherwise, provided that such Indebtedness may provide for acceleration to the extent permitted by the Affiliate Subordination Agreement relating to such Indebtedness) prior to the date that is at least one year following the date on which all Commitments shall have terminated and all Obligations shall have been paid in full, and (iii) shall be subject to the Affiliate Subordination Agreement;

(b) such Indebtedness shall not be secured by any property or other assets of any Obligor; and

(c) prior to the issuance of such Indebtedness, the Agent shall have received a legal opinion satisfactory to it from counsel to Star Gas Partners with respect to the Affiliate Subordination Agreement and any related matters requested by the Agent.

All such Affiliate Subordinated Debt outstanding as of the Effective Date is set forth on Item 8.2.2(a)(iii) of the Disclosure Schedule.

“**Affiliate Subordination Agreement**” means (i) any agreement containing the subordination provisions as are set forth in Exhibit F-3 to the Intercreditor Agreement (or such other provisions to preserve or maintain the rights of the holders of the Senior Debt as are set forth in Exhibit F-3 to the Intercreditor Agreement) or (ii) any other agreement containing or subject to subordination and other provisions that are otherwise reasonably satisfactory to the Agent.

“**After Acquired Property**” is defined in Section 8.1.19(b).

“**Agent**” is defined in the preamble and includes each other Person as shall have subsequently been appointed as the successor Agent pursuant to Section 10.9.

“Agent-Related Person” means Wachovia in its capacity as agent and any successor agent arising under Section 10.9 and in its capacity as an issuer of a letter of credit, together with Wachovia Capital Markets, LLC and their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

“Aggregate Cost of Unmortgaged Property” is defined in Section 8.1.19(c).

“Agreement” is defined in the preamble.

“Alternate Base Rate” means, on any date and with respect to all Base Rate Loans, a fluctuating rate of interest per annum equal to the higher of:

- (a) the rate of interest most recently announced by the Agent at its principal office as its prime rate for Dollar loans; and
- (b) the most recently determined Federal Funds Rate plus 1/2 of 1%.

The Alternate Base Rate is not necessarily intended to be the lowest rate of interest determined by the Agent in connection with extensions of credit. Any change in the Alternate 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, as applicable. The Agent will give notice promptly to the Borrower and the Lenders of changes in the Alternate Base Rate.

“Applicable Base Rate Margin” means, with respect to any Base Rate Loan, the then applicable per annum rate (based on the then applicable Level) set forth in the Pricing Grid.

“Applicable Lending Office” means, with respect to each Lender and with respect to each Type of Loan, the lending office designated for such Type of Loan on Schedule I or such other office of such Lender or of an affiliate of such Lender as such Lender may from time to time specify to the Agent and the Borrower as the office at which its Loans of such Type are to be made and maintained.

“Applicable LIBOR Margin” means, with respect any LIBOR Loan, the then applicable per annum rate (based on the then applicable Level) set forth in the Pricing Grid.

“Asset Dispositions” is defined in Section 8.2.8.

“Assignee Lender” is defined in Section 11.11.1.

“Assignment and Acceptance Agreement” means an Assignment and Acceptance Agreement substantially in the form of Exhibit E hereto.

“Available Cash” means, as of any date, (a) the sum of (i) all cash of Holdings, the Borrower and the Material Subsidiaries on hand at the end of the most recently ended Fiscal Quarter and (ii) all additional cash of Holdings, the Borrower and the Material Subsidiaries on hand on such date resulting from borrowings or capital contributions subsequent to the end of such Fiscal Quarter, less (b) the amount of cash reserves that is necessary or appropriate in the

reasonable discretion of the board of directors of Holdings to (i) provide for the proper conduct of the business of Holdings, the Borrower and the Material Subsidiaries (including reserves for future Capital Expenditures) subsequent to such Fiscal Quarter and (ii) comply with applicable law or any debt instrument or other agreement or obligation to which Holdings, the Borrower or any Material Subsidiary is a party or its assets are subject; provided, however, that Available Cash attributable to the Borrower or any Material Subsidiary shall be excluded to the extent dividends or distributions of such Available Cash by the Borrower or such Material Subsidiary are not at such date permitted by the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or other regulation.

In addition, without limiting the foregoing, Available Cash shall, without duplication, reflect a reserve equal to 50% of the interest to be paid on Indebtedness in the next Fiscal Quarter and, beginning with a date three Fiscal Quarters before a scheduled principal payment date on any Indebtedness, 25% of the aggregate principal amount of such Indebtedness due on any such payment date in the third succeeding Fiscal Quarter, 50% of the aggregate principal amount of such Indebtedness due on any such quarterly payment date in the second succeeding Fiscal Quarter and 75% of the aggregate principal amount of such Indebtedness due on any quarterly payment date in the next succeeding Fiscal Quarter on such Indebtedness. The foregoing reserves for principal amounts to be paid shall be reduced by the aggregate amount of advances available to the Borrower from responsible financial institutions under binding, irrevocable credit facility commitments (and which are subject to no conditions which the Borrower is unable to meet) and letters of credit to be used to refinance such principal (so long as no repayment obligations under such credit facilities and no reimbursement obligation with respect to any such letter of credit would come due within three Fiscal Quarters). For purposes of this paragraph only, reserves shall not be required for (i) scheduled principal payments of the Private Placement Debt consisting of the senior secured notes due August 1, 2006 and (ii) the Affiliate Subordinated Debt.

“**Bankruptcy Code**” means Title 11 of the United States Code or any successor statute.

“**Bankruptcy Law**” is defined in Section 9.1.8.

“**Base Rate Loan**” means a Loan bearing interest at a fluctuating rate determined by reference to the Alternate Base Rate.

“**Borrower**” is defined in the preamble.

“**Borrower’s Account**” means account no. 022098571 of the Borrower maintained at JPMorgan Chase Bank or such other account in the United States designated by Borrower in writing to the Agent.

“**Borrowing**” means the Loans of the same Type and, in the case of LIBOR Loans, having the same Interest Period made by all Lenders on the same Business Day and pursuant to the same Borrowing Request in accordance with Section 2.3.

“**Borrowing Base**” means, on any date of determination thereof, the amount equal to the sum of (a) 85% of the aggregate amount of Eligible Accounts of Holdings, the Borrower and the Material Subsidiaries, plus (b) 60% of the aggregate book value of all Eligible Inventory,

determined following the first-in, first-out method at the lower of cost or market in accordance with GAAP; provided, however Eligible Inventory shall not, at any time, constitute more than 30% of the Borrowing Base. The Borrowing Base (including without limitation, the amount of Eligible Accounts and Eligible Inventory) on any date shall be determined by the Agent in accordance with the provisions of Section 2.1.1(c).

“**Borrowing Base Certificate**” means a certificate executed by a Responsible Officer of the Borrower and a Responsible Officer of Holdings substantially in the form of Exhibit B hereto.

“**Borrowing Request**” means a Loan request and certificate duly executed by a Responsible Officer of the Borrower, substantially in the form of Exhibit C hereto.

“**Business Day**” means:

(a) any day which is neither a Saturday or Sunday nor a legal holiday on which banks are authorized or required to be closed in Charlotte, North Carolina or New York, New York; and

(b) relative to the making, continuing, prepaying or repaying of any LIBOR Loans, any day on which dealings in Dollars are carried on in the London interbank market.

“**Capital Expenditures**” means, for any period, the aggregate amount of all payments made during such period by any Person directly or indirectly for the purpose of acquiring, constructing or maintaining fixed assets, intangible assets, including, without limitation, customer lists and goodwill, real property or equipment that, in accordance with GAAP, would be added as a debit to the fixed asset account of such Person, including, without limitation, all amounts paid or payable during such period with respect to Capitalized Lease Liabilities and interest that are required to be capitalized in accordance with GAAP, including assets acquired through acquisitions.

“**Capital Stock**” means, with respect to any Person, any capital stock (including preferred stock), shares, units, interests, participations or other ownership interests (however designated, including without limitation such analogous items as they may apply to a partnership, limited liability company or similar Person) of such Person and any rights, warrants or options to purchase any thereof.

“**Capitalized Lease Liabilities**” means all monetary obligations of Holdings, the Borrower or any Material Subsidiary under any leasing or similar arrangement which, in accordance with GAAP, would be classified as capitalized leases, and, for purposes of this Agreement and each other Loan Document, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty.

“**Cash Collateralize**” means to pledge and deposit with or deliver to the Trustee, for the benefit of the Senior Debt pursuant to the Intercreditor Agreement, as additional collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Agent and the Issuer and subject to the terms of the Intercreditor Agreement. Derivatives of such term shall have corresponding meanings.

“**Casualty Event**” means, with respect to any Property of Holdings, the Borrower or any of the Material Subsidiaries, any loss of or damage to, or any condemnation or other taking of, such Property for which such Person receives insurance proceeds, or proceeds of a condemnation award or other compensation.

“**Casualty Proceeds**” is defined in [Section 3.1.3\(i\)](#).

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended.

“**CERCLIS**” means the Comprehensive Environmental Response Compensation Liability Information System List.

“**Change in Control**” means:

(a) the Sevin Group shall fail to own directly at least a 51% ownership interest in the Managing General Partner with voting power to elect the board of directors or other governing body; or

(b) the Managing General Partner shall fail to own directly 100% of the general partnership interests in Star Propane, or if Star Propane shall have been converted to corporate form, at least 51% of the voting shares of Star Propane; or

(c) the Managing General Partner shall fail to own directly 100% of the general partnership interests in Star Gas Partners, or if Star Gas Partners shall have been converted to corporate form, at least 51% of the voting shares of Star Gas Partners; or

(d) (i) Star Gas Partners shall fail to own directly or indirectly at least 51% of the voting shares of Holdings and the Borrower, or (ii) Star Gas Partners shall fail to own directly or indirectly at least a 51% ownership interest in Holdings and the Borrower; or

(e) Star Gas Partners shall fail to own directly at least 99% in Star Propane; or

(f) (i) Holdings shall fail to own directly at least 99% of the voting shares of the Borrower, or (ii) Holdings shall fail to own directly at least a 99% ownership interest in the Borrower; or

(g) (i) the Borrower or Holdings shall fail to own directly or indirectly at least 99% of the voting shares of each Material Subsidiary, or (ii) the Borrower or Holdings shall fail to own directly or indirectly at least a 99% ownership interest in each Material Subsidiary.

“**Co-Lead Arrangers**” means Wachovia Capital Markets, LLC and Fleet National Bank, each in their capacity as co-lead arrangers.

“**Code**” means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time.

“**Collateral**” is defined in the respective Security Documents.

“**Commitment**” means, as the context may require, a Lender’s Facility A Commitment, Facility B Commitment or Facility C Commitment, or all thereof.

“**Commitment Termination Date**” means, as the context may require, the Facility A Commitment Termination Date, the Facility B Commitment Termination Date or the Facility C Loan Conversion Date.

“**Commitment Termination Event**” means:

(a) the occurrence of any Default described in Section 9.1.8; or

(b) the occurrence and continuance of any other Event of Default and either:

(i) the declaration of the Loans to be due and payable pursuant to Section 9.3; or

(ii) in the absence of such declaration in clause (i) above, the giving of notice by the Agent, acting at the direction of the Required Lenders, to the Borrower that the Commitments have been terminated.

“**Compliance Certificate**” means a certificate signed by a Responsible Officer of the Borrower and a Responsible Officer of Holdings substantially in the form of Exhibit F, demonstrating compliance with the covenants contained in Sections 8.1.11, 8.2.2, 8.2.4, 8.2.5, 8.2.6, 8.2.8, 8.2.13, 8.2.16 and 8.2.18 and certifying that no Default or Event of Default exists, or, if any Default or Event of Default exists, stating the nature and status thereof.

“**Consolidated**” or “**consolidated**” means, when used with reference to any accounting term, the amount described by such accounting term, determined on a consolidated basis in accordance with GAAP, after elimination of intercompany items.

“**Consolidated Cash Flow**” means, for any period, with respect to Holdings, the Borrower and the Material Subsidiaries, Consolidated Net Income for such period, plus (a) an amount equal to any extraordinary loss plus any net loss realized in connection with asset sales during such period, to the extent such losses were deducted in computing Consolidated Net Income, minus (b) an amount equal to any extraordinary gain during such period plus any net gain realized in connection with asset sales during such period, to the extent such gains were added in computing Consolidated Net Income, plus (c) provisions for taxes based on income or profits of Holdings, the Borrower and the Material Subsidiaries for such period, to the extent such provision for taxes was deducted in computing Consolidated Net Income, plus (d) Consolidated Interest Expense for such period, whether paid or accrued (including

amortization of original issue discount, non-cash interest payments and the interest component of any payments associated with Capitalized Lease Liabilities and Synthetic Lease Obligations and net payments (if any) pursuant to interest rate hedging obligations), to the extent such expense was deducted in computing Consolidated Net Income, plus (e) depreciation and amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period), to the extent such depreciation and amortization were deducted in computing Consolidated Net Income for such period, plus (f) all other non-cash expenses to the extent deducted in computing Consolidated Net Income (less any payments with respect to such non-cash expenses subsequently made in cash) as indicated on the income statements of Holdings, the Borrower and the Material Subsidiaries, in each case on a consolidated basis, without duplication and determined in accordance with GAAP, plus (g) Petro Reorganization Expenses incurred during such period in an amount not to exceed \$12,000,000; provided the aggregate amount of Petro Reorganization Expenses included for all periods shall not exceed \$12,000,000; and provided further, that solely for purposes of calculating Available Cash, the Consolidated Cash Flow to Consolidated Interest Expense Ratio and the Leverage Ratio (but not for purposes of calculating the Pricing Ratio), Consolidated Cash Flow shall be determined without giving effect to any non-cash gains or losses incurred as a result of Financial Accounting Standards Board Statement 133 and the implementation of Financial Accounting Standards Board Statements 141 and 142.

Consolidated Cash Flow shall be calculated after giving effect, on a pro forma basis for the four (4) consecutive Fiscal Quarters most recently completed, to, without duplication, any asset sales, dispositions or asset acquisitions (including, without limitation, any asset acquisition giving rise to the need to make such calculation as a result of Holdings, the Borrower or one of the Material Subsidiaries (including any Person who becomes a Material Subsidiary as a result of the asset acquisition) incurring, assuming or otherwise being liable for acquired Indebtedness) occurring during the period commencing on the first day of such period to and including the date of determination (the "*Reference Period*"), as if such asset sale or asset acquisition occurred on the first day of the Reference Period. Whenever pro forma effect is to be given to an acquisition of assets, the amount of income or earnings relating thereto and the amount of Consolidated Interest Expense associated with any Indebtedness incurred in connection therewith, such pro forma calculations will be determined in good faith by the senior financial officer of such Person; provided, however, that such officer shall assume (i) the historical sales and gross profit margins associated with such assets for the most recent consecutive twelve (12) month period ended prior to the date of purchase for which financial statements are available (provided that the first month of such period will be no more than eighteen (18) full calendar months prior to such date of purchase), less estimated post-acquisition loss of customers (not to be less than 5%) and (ii) other expenses as if such assets had been owned by such Person since the first day of such period. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness will be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period. For purposes of the foregoing, asset sales and asset acquisitions shall include all manners of accomplishing the same by way of direct sale or acquisition, by sale or acquisition of stock or otherwise.

"Consolidated Cash Flow to Consolidated Interest Expense Ratio" means, as of the date of determination, the Consolidated Cash Flow for the four (4) full Fiscal Quarters immediately

preceding the date of determination divided by the Consolidated Interest Expense for such Fiscal Quarters.

“**Consolidated Interest Expense**” means, for any period, the aggregate consolidated interest expense of Holdings, the Borrower and the Material Subsidiaries determined in accordance with GAAP net of up to \$5,000,000 of interest income received during such period but including, without duplication, (a) all commissions, discounts and other fees and charges owed with respect to letters of credit and banker’s acceptances for such period, (b) net costs under interest rate protection agreements for such period, (c) the Synthetic Lease Interest Components of Holdings, the Borrower and the Material Subsidiaries for such period, (d) the portion of any Capitalized Lease Liabilities allocable to consolidated interest expense for such period and (e) the product of (1) the amount of all dividends (whether in cash or otherwise (except dividends payable solely in shares of Qualified Capital Stock)) on all Disqualified Stock of such Person and its Subsidiaries, times (2) a fraction, the numerator of which is one and the denominator of which is one minus the then current effective consolidated federal, state and local income tax rate of such Person, expressed as a decimal; provided, however, (i) that “Consolidated Interest Expense” shall, in the event Holdings, the Borrower or any of the Material Subsidiaries has incurred, assumed, guaranteed, redeemed or repaid any Indebtedness subsequent to commencement of the period for which the Consolidated Cash Flow to Consolidated Interest Expense Ratio is being calculated but prior to the last day included in such period, be calculated giving pro forma effect to such incurrence, assumption, guarantee, redemption or repayment of Indebtedness, as if the same had occurred at the beginning of such period and (ii) interest on Affiliate Subordinated Debt shall be included only to the extent such interest is paid in cash. The foregoing calculation shall give pro forma effect to acquisitions (including all mergers and consolidations), asset sales and other dispositions and discontinuations of businesses or assets during the referenced period or subsequent to the referenced period and on or prior to the calculation of the Consolidated Cash Flow to Consolidated Interest Expense Ratio assuming that all acquisitions, asset sales and other dispositions and discontinuations of business or assets has occurred on the first day of the referenced period.

“**Consolidated Net Income**” means, for any period, the net income (or deficit) of Holdings, the Borrower and the Material Subsidiaries for such period (taken as a cumulative whole) after deducting all operating expenses, provisions for all taxes and reserves (including reserves for deferred income taxes) and all other proper deductions, all determined in accordance with GAAP on a consolidated basis, after eliminating all intercompany transactions, provided that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Material Subsidiary or is merged into or consolidated with Holdings, the Borrower or a Material Subsidiary, (b) the income (or deficit) of any Person (other than a Material Subsidiary) in which Holdings, the Borrower or any Material Subsidiary has an ownership interest, except to the extent that any such income has been actually received by the Borrower or such Material Subsidiary in the form of dividends, or similar distributions, (c) the undistributed earnings of the Borrower and any Material Subsidiary to the extent that the declaration or payment of dividends or similar distributions by the Borrower and such Material Subsidiary is not at the time permitted by the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to the Borrower and such Material Subsidiary, (d) any restoration to income of any contingency reserve, except to the

extent that provision for such reserve was made out of income accrued during such period, (e) any aggregate net after tax gain or net after tax loss during such period arising from the sale, exchange or other disposition of capital assets (such term to include all fixed assets, whether tangible or intangible, all Inventory sold in conjunction with the disposition of such fixed assets, and all securities), (f) any write-up of any asset, (g) any net gain from the collection of the proceeds of life insurance policies, (h) any gain arising from the acquisition of any securities, or the extinguishment, under GAAP, of any Indebtedness, of Holdings, the Borrower or any Material Subsidiary, (i) any after tax gain or loss during such period from any change in accounting, from any discontinued operations or the disposition thereof, from any extraordinary events or from any prior period adjustments, (j) any deferred credit representing the excess of equity in any Material Subsidiary at the date of acquisition over the cost of the investment in such Material Subsidiary, and (k) in the case of a successor to the Borrower by consolidation or merger or as a transferee of its assets, any earnings of the successor corporation prior to such consolidation, merger or transfer of assets.

“Consolidated Total Assets” means, as of any date of determination, the total assets of Holdings, the Borrower and the Material Subsidiaries on a consolidated basis, as determined in accordance with GAAP.

“Contingent Liability” means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the indebtedness, obligation or any other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person’s obligation under any Contingent Liability shall (subject to any limitation set forth therein) be deemed to be the outstanding principal amount of the debt, obligation or other liability guaranteed thereby or, if there is no principal amount outstanding to make such determination, the amount of any liability of such Person shall be deemed to be the maximum probable liability in the respect thereof (assuming such Person is required to perform thereunder) as determined in good faith by such Person in accordance with GAAP.

“Continuation/Conversion Notice” means a notice of continuation or conversion of LIBOR Loans or Base Rate Loans, as applicable, and a certificate duly executed by a Responsible Officer of the Borrower, substantially in the form of Exhibit D hereto.

“Current Assets” means, at any date, the amount at which the current assets of Holdings, the Borrower and the Material Subsidiaries (on a consolidated basis), would be shown on the consolidated balance sheet of Holdings, the Borrower and the Material Subsidiaries prepared in accordance with GAAP.

“Current Liabilities” means, at any date, the amount at which the current liabilities of Holdings, the Borrower and the Material Subsidiaries (on a consolidated basis), would be shown on a balance sheet of Holdings, the Borrower and the Material Subsidiaries prepared in accordance with GAAP excluding the current portion of long term indebtedness (as such terms

are defined in GAAP), all outstanding Facility A Loans and all outstanding Facility C Working Capital Loans.

“**Current Value**” is defined in Section 8.1.19(b)(i).

“**Customer List**” means, at any time, the names and addresses of all customers of Holdings, the Borrower and the Material Subsidiaries at such time, together with all trade names and trademarks and all supporting documents, including but not limited to computer discs, programs, tapes, trial balances and carrying media.

“**Default**” means any event or occurrence which, after notice or lapse of time or both, would constitute an Event of Default.

“**Disbursement Date**” is defined in Section 4.5.

“**Disclosure Schedule**” means the Disclosure Schedule attached hereto as Schedule II, as it may be amended, supplemented or otherwise modified from time to time by the Borrower with the written consent of the Agent and the Required Lenders.

“**Disqualified Stock**” means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), upon the happening of any event or otherwise (i) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, (ii) is convertible into or exchangeable or exercisable for Indebtedness or Disqualified Stock, or (iii) is redeemable at the option of the holder thereof, in whole or in part, in each case on or prior to the first anniversary of the stated maturity of such Capital Stock.

“**Dollar**” and the sign “\$” mean lawful money of the United States.

“**Effective Amount**” means (i) with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and prepayments or repayments of Loans occurring on such date, and (ii) with respect to any outstanding L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any issuances of Letters of Credit occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date. For purposes of Section 3.1, the Effective Amount shall be determined without giving effect to any mandatory prepayments to be made under such Section 3.1.

“**Effective Date**” means the date on which all conditions precedent set forth in Section 6.1, Section 6.2 and Section 11.8 are satisfied or waived by the Agent and all Lenders.

“**Eligible Accounts**” means, as to any Person at a particular date, the total outstanding balance of Accounts (as defined in the Uniform Commercial Code in effect in the State of New York) of such Person recorded on the books of such Person in accordance with GAAP after giving effect to all normal reserves (including, without limitation, bad debt reserves) in connection therewith (a) which are bona fide, valid and legally enforceable obligations of (i) the

account debtor in respect thereof and arise from the actual sale and delivery of goods or rendition and acceptance of services in the ordinary course of business to such account debtor or (ii) an obligor who has purchased an Account from such Person and has agreed to pay such Person for such Account, (b) which are not owed by an obligor which is an Affiliate or Subsidiary of such Person, (c) which are not owed by an obligor which has taken any of the actions or suffered any of the events of the kind described in Section 9.1.8, (d) which are owed solely by such Person free and clear of all liens or other rights or claims of any other Person (except in favor of the Trustee for the ratable benefit of the Secured Parties and other Liens permitted under Section 8.2.3), (e) with respect to which no more than sixty (60) days have elapsed since the date payment is due, (f) in which the Trustee has a perfected, first priority security interest, and (g) which are not determined by the Agent, on behalf of the Lenders, to be ineligible for any other reason, based upon credit, collateral or other considerations customarily taken into account by the Agent in making such determinations.

“Eligible Assignee” means (i) any other Lender or any Affiliate of a Lender meeting the criteria set forth in clause (ii) hereof and (ii) (A) any other commercial bank organized under the laws of the United States, or any State thereof, and having a combined capital and surplus of at least \$250,000,000, (B) a savings and loan association or savings bank organized under the laws of the United States, or any State thereof, and having a combined capital and surplus of at least \$250,000,000, (C) a commercial bank organized under the laws of any other country which is a member of the OECD, and having a combined capital and surplus of at least an amount equal to \$250,000,000; provided that such bank is acting through a branch or agency located in the United States or in the country in which it is organized or another country which is described in this clause (C), (D) the central bank of any country which is a member of the OECD, and (E) a finance company, insurance company or other financial institution or fund (whether a corporation, partnership or other entity) which is engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of its business, is consented to in writing by the Borrower (unless an Event of Default shall have occurred and be continuing) and the Agent.

“Eligible Inventory” shall mean Inventory of Holdings, the Borrower and the Material Subsidiaries as to which all of the following requirements have been fulfilled to the satisfaction of the Agent:

(a) such Inventory is owned by Holdings, the Borrower or such Material Subsidiary, is subject to a perfected, first priority security interest of the Trustee in favor of the Secured Parties pursuant to the Security Agreements, which security interest is perfected as to such Inventory, and is subject to no other Lien whatsoever other than a Lien permitted under Section 8.2.3(d);

(b) such Inventory is not held on consignment;

(c) such Inventory is of customary quality and meets all standards applicable to such Inventory, its use or sale imposed by any Governmental Authority having regulatory authority over such matters;

(d) such Inventory is of a type sold in the ordinary course of the business of Holdings, the Borrower or such Material Subsidiary;

(e) such Inventory is located within the United States, (i) in commercial storage facilities or (ii) at one of the locations listed in Schedule 3 to the Security Agreements;

(f) such Inventory has not been delivered to a customer of Holdings, the Borrower or such Material Subsidiary (regardless of whether such delivery is on a consignment basis) and has not been returned by any customer; and

(g) such Inventory is not determined by the Agent, on behalf of the Lenders, to be ineligible for any other reason, based upon credit, collateral or other considerations customarily taken into account by the Agent in making such determinations.

“Environmental Claim” means any written or oral notice, claim, demand or other communication (collectively, a “claim”) for investigatory costs, cleanup, costs, Government Authority response costs, damages to natural resources or other property, personal injuries, fines or penalties arising out of, based on or resulting from (a) the presence, release or threatened release into the environment, of any Hazardous Material at or from any location or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law. The term “Environmental Claim” shall include, without limitation, any claim by any Government Authority for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and any claim by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the presence of Hazardous Materials or arising from alleged injury or threat of injury to health, public safety or the environment.

“Environmental Law” means any law, regulation, statute, ordinance, principle of common law, code, rule, regulation, order or guideline (including consent decrees or administrative orders) relating to human health, public safety or the environment or to emissions, discharges, releases or threatened releases of Hazardous Materials into the environment (including, without limitation, ambient air, soil, surface water, ground water, wetlands, land or subsurface strata), or otherwise relating to the presence, existence, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

“ERISA” means the Employee Retirement Income Security Act of 1974, and the regulations and rules promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations which is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in

reorganization (within the meaning of Section 4241 of ERISA), is insolvent (within the meaning of Section 4245 of ERISA), or has been terminated (within the meaning of Title IV of ERISA); (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which could constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of any liability under Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; (g) the failure by Holdings, the Borrower or any ERISA Affiliate to make a payment to a Plan required under Section 302 of ERISA that results in a lien pursuant to Section 302(f) of ERISA; or (h) the adoption of an amendment to a Plan requiring the provision of security to such Plan, pursuant to Section 307 of ERISA.

“*Event of Default*” is defined in [Section 9.1](#).

“*Excess Sale Proceeds*” is defined in [Section 8.2.8\(b\)](#).

“*Existing Credit Agreement*” means the Second Amended and Restated Credit Agreement, dated as of June 15, 2001, among the Borrower, the Lenders identified therein, Bank of America, N.A., as administrative agent, Fleet National Bank, as syndication agent, and First Union National Bank (predecessor in interest to Wachovia Bank, National Association), as documentation agent, as amended from time to time.

“*Existing Facility B Letters of Credit*” means those letters of credit issued prior to the Effective Date which are listed on [Schedule III](#) hereto.

“*Existing Subordinated Debt*” means certain unsecured Permitted Subordinated Debt listed on Item 8.2.2(a)(iii) of the Disclosure Schedule.

“*Existing Unmortgaged Property*” is defined in [Section 8.1.19\(a\)](#).

“*Facilities*” is defined in the preamble.

“*Facility A*” is defined in the preamble.

“*Facility A Commitment*” is defined in [Section 2.1.1\(a\)](#).

“*Facility A Commitment Termination Date*” means the earliest of:

- (a) the Stated Maturity Date;
- (b) the date on which the Facility A Commitments are terminated in full or reduced to zero pursuant to [Section 2.2](#); and
- (c) the date on which any Commitment Termination Event occurs.

“**Facility A L/C Amendment Application**” means an application form for the amendment or renewal of outstanding Facility A Letters of Credit as shall at any time be in use by the applicable Issuer, as such Issuer shall request.

“**Facility A L/C Application**” means an application form for the issuance of a Facility A Letter of Credit as shall at any time be in use by the applicable Issuer, as such Issuer shall request.

“**Facility A L/C Issuance Date**” is defined in Section 4.1(a).

“**Facility A L/C Obligations**” means, at any time, the sum of (a) the aggregate undrawn amount of all Facility A Letters of Credit then outstanding, plus (b) the aggregate amount of all unreimbursed drawings under all Facility A Letters of Credit, plus (c) all other Obligations of the Borrower under or in connection with Facility A L/C-Related Documents, to the extent not included within clauses (a) and (b) hereof.

“**Facility A L/C-Related Documents**” means the Facility A Letters of Credit, the Facility A L/C Applications, the Facility A L/C Amendment Applications and any other document relating to any Facility A Letter of Credit including any of the Issuer’s standard form of reimbursement agreements and other documents for letter of credit issuances and amendments.

“**Facility A Letters of Credit**” is defined in Section 4.1(a).

“**Facility A Loan**” is defined in Section 2.1.1(a).

“**Facility A Note**” is defined in Section 2.6(b).

“**Facility A Percentage**” means, relative to any Lender, the Facility A Percentage set forth on Schedule I, as such percentage may be adjusted from time to time pursuant to Assignment and Acceptance Agreement(s) executed by such Lender and its Assignee Lender(s) and delivered pursuant to Section 11.11.1.

“**Facility B**” is defined in the preamble.

“**Facility B Commitment**” means, as to any Lender, its obligation to participate in Facility B Letters of Credit pursuant hereto in an aggregate principal and/or face amount not to exceed at any one time outstanding the amount set forth opposite such Lender’s name on Schedule I under the caption “Facility B Commitment” as such amount must be reduced from time to time as provided herein.

“**Facility B Commitment Termination Date**” means the earliest of:

(a) the Stated Maturity Date;

(b) the date on which the Facility B Commitments are terminated in full or reduced to zero pursuant to Section 2.2; and

(c) the date on which any Commitment Termination Event occurs.

“**Facility B L/C Amendment Application**” means an application form for the amendment or renewal of outstanding Facility B Letters of Credit as shall at any time be in use by the applicable Issuer, as such Issuer shall request.

“**Facility B L/C Application**” means an application form for the issuance of a Facility B Letter of Credit as shall at any time be in use by the applicable Issuer, as such Issuer shall request.

“**Facility B L/C Issuance Date**” is defined in Section 4.1(b).

“**Facility B L/C Obligations**” means, at any time, the sum of (a) the aggregate undrawn amount of all Facility B Letters of Credit then outstanding, plus (b) the aggregate amount of all unreimbursed drawings under all Facility B Letters of Credit, plus (c) all other Obligations of the Borrower, under or in connection with the Facility B L/C-Related Documents, to the extent included within clauses (a) and (b) hereof.

“**Facility B L/C-Related Documents**” means the Facility B Letters of Credit, the Facility B L/C Applications, the Facility B L/C Amendment Applications and any other document relating to any Facility B Letter of Credit, including any of the Issuer’s standard form of reimbursement agreements and other documents for letter of credit issuances and amendments.

“**Facility B Letters of Credit**” is defined in Section 4.1(b).

“**Facility B Percentage**” means, relative to any Lender, the Facility B Percentage set forth on Schedule I, as such percentage may be adjusted from time to time pursuant to Assignment and Acceptance Agreement(s) executed by such Lender and its Assignee Lender(s) and delivered pursuant to Section 11.11.1.

“**Facility C**” is defined in the preamble.

“**Facility C Commitment**” is defined in Section 2.1.3.

“**Facility C L/C Amendment Application**” means an application form for amendment or renewal of outstanding Facility C Letters of Credit as shall at any time be in use by the applicable Issuer, as such Issuer shall request.

“**Facility C L/C Application**” means an application form for the issuance of a Facility C Letter of Credit as shall at any time be in use by the applicable Issuer, as such Issuer shall request.

“**Facility C L/C Issuance Date**” is defined in Section 4.1(c).

“**Facility C L/C Obligations**” means, at any time, (a) the aggregate undrawn amount of all Facility C Letters of Credit, plus (b) the aggregate amount of all unreimbursed drawings under all Facility C Letters of Credit, plus (c) all other Obligations of the Borrower under or in

connection with Facility C L/C-Related Documents, to the extent not included within clauses (a) and (b) hereof.

“**Facility C L/C-Related Documents**” means the Facility C Letter of Credit, the Facility C L/C Applications, the Facility C L/C Amendment Applications and any other document relating to Facility C Letter of Credit, including any of the Issuer’s standard form of reimbursement agreements and other documents for letter of credit issuances and amendments.

“**Facility C Letters of Credit**” is defined in Section 4.1(c).

“**Facility C Loan**” is defined in Section 2.1.3, and shall include, without limitation, Facility C Working Capital Loans.

“**Facility C Loan Conversion Date**” means the earliest of:

- (a) the Stated Maturity Date;
- (b) the date on which the Facility C Commitments are terminated in full or reduced to zero pursuant to Section 2.2; and
- (c) the date on which any Commitment Termination Event occurs.

“**Facility C Note**” is defined in Section 2.6(c).

“**Facility C Percentage**” means, relative to any Lender, the Facility C Percentage set forth on Schedule I, as such percentage may be adjusted from time to time pursuant to Assignment and Acceptance Agreement(s) executed by such Lender and its Assignee Lender(s) and delivered pursuant to Section 11.11.1.

“**Facility C Term-Out Option**” is defined in Section 2.8(b).

“**Facility C Working Capital Loans**” is defined in Section 7.14(b).

“**Federal Funds Rate**” means, for any period, a fluctuating interest rate per annum equal for each day during such period to:

- (a) the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York; or
- (b) if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Agent from three federal funds brokers of recognized standing selected by it.

“**Fiscal Quarter**” means, with respect to any Person, the three (3) month period ending on March 31, June 30, September 30 and December 31.

“**Fiscal Year**” means with respect to Star Gas Partners, Holdings, the Borrower and their respective Subsidiaries, any period of twelve consecutive calendar months ending on September 30; references to a Fiscal Year with a number corresponding to any calendar year (e.g., the “2000 Fiscal Year”) refer to the Fiscal Year ending on the September 30 occurring during such calendar year.

“**F.R.S. Board**” means the Board of Governors of the Federal Reserve System or any successor thereto.

“**Fuel Oil Distribution Business**” is defined in the preamble.

“**Funded Debt**” means, as of any date of determination, without duplication, (i) all interest-bearing Indebtedness of Holdings, the Borrower and the Material Subsidiaries (but excluding Affiliate Subordinated Debt, Facility A Loans, Swing Line Loans, amounts not drawn in respect of the Facility A Letters of Credit and the Facility B Letters of Credit); (ii) Capitalized Lease Liabilities and (iii) Synthetic Lease Obligations; provided, however, that “Funded Debt” shall, in the event that Holdings, the Borrower or any Material Subsidiary has incurred, assumed, guaranteed, redeemed or repaid any Indebtedness subsequent to commencement of the period in which any Leverage Ratio is being calculated but prior to the date on which the calculation of the Leverage Ratio is made, be calculated giving pro forma effect to such incurrence, assumption, guarantee, redemption or repayment of Indebtedness, as if the same had occurred at the beginning of the applicable reference period. The foregoing calculation shall give pro forma effect to acquisitions (including all mergers and consolidations), asset sales and other dispositions and discontinuations of businesses or assets during the reference period or subsequent to the reference period and on or prior to the calculation of Leverage Ratio assuming that all acquisitions, asset sales and other dispositions and discountenances of business or assets had occurred on the first day of the reference period. Funded Debt shall be reduced by amounts attributable to businesses and assets that are so disposed of or discontinued only to the extent that the Indebtedness included within such Funded Debt would no longer be an obligation of Holdings, the Borrower or any of the Material Subsidiaries.

“**GAAP**” is defined in Section 1.4.

“**Government Authority**” means any agency, authority, board, bureau, commission, department, office or instrumentality of any nature whatsoever of any governmental or quasi-governmental unit, whether federal, state, county, district, city or other political subdivision, foreign or otherwise and whether now or hereafter in existence, or any officer or official of any thereof.

“**Guarantee Agreements**” means (i) the Amended and Restated Guarantee Agreement, dated as of December 22, 2003, among Star Gas Partners, Holdings and the Trustee in the form of Exhibit J-1 and (ii) the Amended and Restated Guarantee Agreement, dated as of December 22, 2003, among the Material Subsidiaries and the Trustee in the form of Exhibit J-2.

“**Hazardous Material**” means:

- (a) any “hazardous substance,” as defined by CERCLA;

(b) any “hazardous waste,” as defined by the Resource Conservation and Recovery Act, as amended;

(c) any “pollutant” pursuant to the Clean Water Act, as amended;

(d) any petroleum product or related compound;

(e) any polychlorinated biphenyls or friable asbestos;

(f) any radioactive material or substance; or

(g) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material, substance or waste within the meaning of any other Environmental Law, all as amended or hereafter amended.

“**Holdings**” means Petro Holdings, Inc., a Minnesota corporation.

“**Indebtedness**” of any Person means, without duplication:

(a) any indebtedness for borrowed money which such Person has directly or indirectly created, incurred or assumed;

(b) any indebtedness, whether or not for borrowed money, with respect to which such Person has become directly or indirectly liable and which represents the deferred purchase price (or a portion thereof) or has been incurred to finance the purchase price (or a portion thereof) of any property or service or business acquired by such Person, whether, by purchase, consolidation, merger or otherwise;

(c) all obligations of such Person evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses;

(d) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to property acquired by the Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property);

(e) all Capitalized Lease Liabilities;

(f) any indebtedness, whether or not for borrowed money, secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien in respect of property owned by such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, provided that the amount of such Indebtedness if not so assumed shall in no event be deemed to be greater than the fair market value from time to time (as determined in good faith, by such Person) of the property subject to such Lien;

(g) all liabilities of such Person in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions (whether or not representing obligations for borrowed money);

(h) all payment obligations of such Person existing or arising under Secured Interest Rate Contracts; provided that such obligations shall be treated as (x) Indebtedness solely for purposes of Section 8.2.2(a)(iv) and (y) other than for purposes of Section 8.2.9, Parity Debt as defined and used in this Agreement (including, without limitation, as used in other defined terms in this Agreement);

(i) any indebtedness of the character referred to in clause (a) through (h) of this definition deemed to be extinguished under GAAP but for which such Person remains legally liable but only to the extent of such legal liability; and

(j) any indebtedness of any other Person of the character referred to in clause (a) through (i) of this definition with respect to which the Person whose Indebtedness is being determined has become liable by way of a Contingent Liability.

“Indemnified Liabilities” is defined in Section 11.4.

“Indemnified Parties” is defined in Section 11.4.

“Insolvency Proceeding” means (a) any case, action or proceeding before any court or other Government Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other similar arrangement in respect of a Person’s creditors generally or any substantial portion of a Person’s creditors; undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

“Intercreditor Agreement” means that certain Amended and Restated Intercreditor and Trust Agreement, dated as of the date hereof, among Star Gas Partners, Holdings, the Borrower and the Material Subsidiaries, as Obligors, Wachovia Bank, National Association, as Trustee, the Note Purchasers named therein, as Note Holders, the Lenders named therein, and the Agent, in its capacity as Agent

“Interest Period” means, relative to any LIBOR Loan, the period beginning on (and including) the date on which such LIBOR Loan is made or continued as, or converted into, a LIBOR Loan pursuant to Section 2.3 or 2.4 and ending on (but excluding) the day which numerically corresponds to such date one, two, three or six months thereafter (or, if such month has no numerically corresponding day, on the last Business Day of such month) or any shorter period if acceptable to all the Lenders, in each case as the Borrower may select in its relevant notice pursuant to Section 2.3 or 2.4; provided, however, that:

(a) the Borrower shall not be permitted to select Interest Periods to be in effect at any one time which have expiration dates occurring on more than five (5) different dates;

(b) Interest Periods commencing on the same date for Loans comprising part of the same Borrowing shall be of the same duration;

(c) if such Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next following Business Day (unless, if such Interest Period applied to LIBOR Loans, such next following Business Day is the first Business Day of a calendar month, in which case such Interest Period shall end on the Business Day next preceding such numerically corresponding day); and

(d) no Interest Period may end later than the date set forth in clause (a) of the definition “Facility A Commitment Termination Date,” in the case of Interest Periods for Facility A Loans, or in the case of Interest Periods for Facility C Loans any date on which a principal payment is due if it would be necessary to repay Facility C Loans before the end of the Interest Period applicable thereto.

“**Interest Rate Contracts**” means, all interest rate swap agreements, interest rate cap agreements, interest rate collar agreements, interest rate insurance or other similar agreements or arrangements to which any of Holdings, the Borrower or any Material Subsidiary is a party.

“**Inventory**” shall mean all inventory consisting of home heating oil, diesel fuel, propane, natural gas and other petroleum derivative products of, and held for sale by, Holdings, the Borrower or any Material Subsidiary.

“**Investment**” means, relative to any Person, any direct or indirect purchase or other acquisition by such Person of Capital Stock of any other Person, or any direct or indirect loan, advance or capital contribution by such Person to any other Person, and any other item which would be classified as an “investment” on a balance sheet of such Person prepared in accordance with GAAP, including, without limitation, any direct or indirect contribution by such Person of property or assets to a joint venture, partnership or other business entity in which such Person retains an interest, but excluding any Permitted Hedging Agreement, Permitted Secured Interest Rate Contracts and investments in any company by which such company becomes a Material Subsidiary. For the purposes of Section 8.2.5, the amount involved in Investments made during any period shall be the aggregate cost during such period to Holdings, the Borrower and the Material Subsidiaries of all such Investments, determined in accordance with GAAP, but without regard to unrealized increases or decreases in value, or write-ups, write-downs or write-offs, of such investments and without regard to the existence of any undistributed earnings or accrued interest with respect thereto accrued after the respective dates on which such Investments were made, less any net return of capital realized during such period upon the sale, repayment or other liquidation of such Investment (determined in accordance with GAAP, but without regard to any amounts received as earnings (in the form of dividends not constituting a return of capital, interest or otherwise) on such Investment or as loans from any Person in whom such Investment has been made).

“**Issue**” means, with respect to any Letter of Credit, to issue or extend the expiry of, or to renew or increase the amount of, such Letter of Credit; and the terms **Issued**, **Issuing**, and **Issuance** have corresponding meanings.

“**Issuer**” means (i) Wachovia, solely in its capacity as issuer of the Existing Facility B Letters of Credit, (ii) LaSalle Bank National Association, in its capacity as issuer of one or more Letters of Credit or (iii) any successor issuers thereto as may be reasonably agreed upon by the Agent, the Required Lenders and the Borrower. The term “Issuer” shall refer to Wachovia or LaSalle Bank National Association, in their capacity as issuer of a Letter of Credit as the context may require.

“**L/C Amendment Applications**” means, as relevant, a Facility A L/C Amendment Application, a Facility B L/C Amendment Application or a Facility C L/C Amendment Application or all.

“**L/C Applications**” means, as relevant, a Facility A L/C Application, a Facility B L/C Application or a Facility C L/C Application or all.

“**L/C Obligations**” means the Facility A L/C Obligations, the Facility B L/C Obligations and the Facility C L/C Obligations.

“**L/C-Related Documents**” means, as relevant, the Facility A L/C-Related Documents, the Facility B L/C-Related Documents or the Facility C L/C-Related Documents, or all.

“**Lenders**” is defined in the preamble.

“**Letters of Credit**” means the collective reference to the Facility A Letters of Credit, the Facility B Letters of Credit and the Facility C Letters of Credit, including all Existing Letters of Credit.

“**Level**” means, at any time, Level I, Level II, Level III, Level IV or Level V determined in accordance with the following table on the basis of the Pricing Ratio computed as of the end of the Fiscal Quarter immediately preceding the date of determination:

Level	Pricing Ratio determined as of the end of the immediately preceding Fiscal Quarter
I	< 3.00
II	□ 3.00 < 3.50
III	□ 3.50 < 3.75
IV	□ 3.75 < 4.00
V	□ 4.00

Notwithstanding the foregoing, any change in the Level shall be determined by the Agent based upon the financial information required to be contained in the Compliance Certificate delivered by the Borrower to the Agent with respect to each Fiscal Quarter of the Borrower and shall, subject to the next two succeeding sentences, become effective as of the day following the date of delivery of such Compliance Certificate. If the Borrower shall have failed to deliver a Compliance Certificate for any Fiscal Quarter by the day which is ten (10) days after the date on

which such Compliance Certificate is required by this Agreement to be delivered to the Agent, and without limiting the other rights and remedies of the Agent and the Lenders hereunder, the Level shall, notwithstanding the actual Pricing Ratio at such time, be deemed to be Level V as of the first day of the Fiscal Quarter beginning after the Fiscal Quarter for which such Compliance Certificate was due and shall continue at such Level until such Compliance Certificate shall have been delivered.

During the period from the Effective Date through December 31, 2003, the Level shall, notwithstanding the actual Pricing Ratio at such time, be deemed to be Level I.

“**Leverage Ratio**” means, at any date of determination, the ratio of Funded Debt at such date to Consolidated Cash Flow for the then immediately preceding four (4) Fiscal Quarters.

“**LIBOR**” means, with respect to each day during each Interest Period pertaining to a LIBOR Loan, the rate appearing on Page 3750 of the Dow Jones Markets Service (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service as determined by the Agent from time to time for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market) at approximately 11:00 a.m. (London time), two (2) Business Days prior to the commencement of such Interest Period, as the rate for Dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the rate per annum with respect to such LIBOR Loan for such Interest Period shall be the rate per annum equal to the rate at which the principal London office of the Agent offers to place Dollar deposits at or about 11:00 a.m. (London time), two (2) Business Days prior to the beginning of such Interest Period with first-class banks in the London interbank market for delivery on the first day of such Interest Period for the number of days comprised therein and in an amount comparable to the amount of its LIBOR Loan to be outstanding during such Interest Period.

“**LIBOR Loan**” means any Loan bearing interest, at all times during an Interest Period applicable to such Loan, at a fixed rate of interest determined by reference to the LIBOR (Reserve Adjusted).

“**LIBOR (Reserve Adjusted)**” means, relative to any Loan to be made, continued or maintained as, or converted into, a LIBOR Loan for any Interest Period, a rate per annum (rounded upward, if necessary, to the nearest 1/100 of 1%) determined pursuant to the following formula:

$$\text{LIBOR (Reserve Adjusted)} = \frac{\text{LIBOR}}{1.00 - \text{LIBOR Reserve Percentage}}$$

The LIBOR (Reserve Adjusted) for any Interest Period for LIBOR Loans will be determined by the Agent on the basis of the LIBOR Reserve Percentage in effect on, and the applicable rates furnished to and received by the Agent, two (2) Business Days before the first day of such Interest Period.

“LIBOR Reserve Percentage” means, relative to any Interest Period for LIBOR Loans, the reserve percentage (expressed as a decimal) equal to the maximum aggregate reserve requirements (including all basic, emergency, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements) specified under regulations issued from time to time by the F.R.S. Board and then applicable to assets or liabilities consisting of and including “Eurocurrency Liabilities,” as currently defined in Regulation D of the F.R.S. Board, having a term approximately equal or comparable to such Interest Period.

“Lien” means, as to any Person, any mortgage, lien (statutory or otherwise), pledge, reservation, right of entry, encroachment, easement, right of way, restrictive covenant, license, charge, security interest or other encumbrance in or on, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or capital lease with respect to, any property or asset owned or held by such Person, or the signing or filing of a financing statement with respect to any of the foregoing which names such Person as debtor, the signing of any security agreement with respect to any of the foregoing authorizing any other party as the secured party thereunder to file any financing statement or any other agreement to give or grant any of the foregoing. For the purposes of this Agreement, a Person shall be deemed to be the owner of any asset which it has placed in trust for the benefit of the holders of Indebtedness of such Person and such trust shall be deemed to be a Lien if such Person remains legally liable therefor, notwithstanding that such Indebtedness is or may be deemed to be extinguished under GAAP.

“Loan” means, as the context may require, a Facility A Loan, a Facility C Loan or a Swing Line Loan.

“Loan Documents” means this Agreement, the Notes, the Guarantee Agreements, the Security Documents, the L/C-Related Documents, the Intercreditor Agreement, any Affiliate Subordination Agreement, the letter agreement referred to in [Section 3.3.4](#) and any other fee letter, pledge agreement, security agreement, guaranty, mortgage, subordination agreement or other agreement delivered from time to time to the Agent under or in connection with this Agreement (other than the Permitted Secured Interest Rate Contracts), as the same may be amended, supplemented, restated or otherwise modified from time to time.

“Managing General Partner” means Star Gas LLC, a Delaware limited liability company.

“Material Adverse Effect” means, without limitation, a material adverse effect on (i) the condition (financial or otherwise), business, prospects, operations, assets or properties of Star Gas Partners (individually) and Star Gas Partners and its subsidiaries (taken as a whole), (ii) the condition (financial or otherwise), business, prospects, operations, assets or properties of Holdings, the Borrower and the Material Subsidiaries (taken as a whole), (iii) any Obligor’s ability to perform its obligations under any Loan Document to which it is a party, (iv) the security interests (or the value or priority thereof) granted under the Security Documents, or (v) the validity of the Loan Documents.

“Material Subsidiary” means Petro, Inc., Maxwhale Corp., Ortep of Pennsylvania, Inc., Marex Corporation, A.P. Woodson Company, Inc., Richland Partners, LLC, Columbia Petroleum Transportation, LLC, Total Gas & Electric, Inc., Total Gas & Electricity (PA), Inc., Meenan Oil Co, Inc., Meenan Oil Co., L.P., Meenan Holdings of New York, Inc. and, unless waived by the Agent, all other existing, future, direct and indirect Subsidiaries of the Borrower or Holdings other than the Nonmaterial Subsidiaries.

“Mortgage” means each mortgage, security agreement, financing statement and fixture filing made by an Obligor in favor of the Trustee, each dated as of the Effective Date and covering one or more of the Mortgaged Properties listed on Schedule IV, as well as those executed after the Effective Date by an Obligor as required by Section 8.1.19, in each case substantially in the form of Exhibit L, as each of the same may be amended, supplemented, assigned or otherwise modified from time to time.

“Mortgaged Property” means the real properties identified on Schedule IV and each other real property subject to a Mortgage under Section 8.1.19 or otherwise.

“Multiemployer Plan” means a “multiemployer plan,” within the meaning of Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes, is making, or is obligated to make contributions or, during any of the preceding five (5) calendar years, has made, or been obligated to make, contributions.

“Multiple Employer Plan” means a single employer plan, as defined in Section 3(37) or 4001(a)(15) of ERISA, that is subject to Title IV of ERISA and that (i) is maintained for employees of the Borrower or an ERISA Affiliate and at least one Person other than the Borrower and its ERISA Affiliates or (ii) was so maintained and in respect of which the Borrower or an ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

“Net Capital Contributions” shall mean, as of any date of determination, the excess of (i) the sum of (a) the net cash proceeds received by Holdings from Star Gas Partners or Star/Petro, Inc. from the acquisition by Star Gas Partners or Star/Petro, Inc. of Capital Stock of Holdings or capital contributions by Star Gas Partners or Star/Petro, Inc. after September 30, 2003 minus any cash payment by Holdings on account of the redemption, retirement, purchase or other acquisition of Capital Stock or cash payments constituting a return of capital contributions (other than such cash payments consisting of Restricted Payments permitted under Section 8.2.6) by Star Gas Partners or Star/Petro, Inc. made since September 30, 2003 and (b) the aggregate principal amount of Affiliated Subordinated Debt outstanding as of the date of determination over (ii) \$116,000,000.

“Nonmaterial Subsidiary” means, with respect to Holdings, the Borrower or any Material Subsidiary, a Subsidiary which meets any of the following conditions:

(a) Holdings’, the Borrower’s and the Material Subsidiaries’ aggregate investments in and advances (x) to such Subsidiary do not exceed 2.5% of the Consolidated Total Assets of Holdings or (y) to such Subsidiary and all other Nonmaterial Subsidiaries do not exceed 5% of Consolidated Total Assets of Holdings, in each case, as of the end of the most recently ended Fiscal Quarter;

(b) Holdings', the Borrower's and the Material Subsidiaries' aggregate proportionate share (as determined by ownership interests) of the total assets (after intercompany eliminations) (x) of such Subsidiary do not exceed 2.5% of the Consolidated Total Assets of Holdings or (y) of such Subsidiary and all other Nonmaterial Subsidiaries do not exceed 5% of Consolidated Total Assets of Holdings, in each case, as of the end of the most recently ended Fiscal Quarter; and

(c) Holdings', the Borrower's and the Material Subsidiaries' aggregate proportionate share (as determined by ownership interests) in the income from continuing operations before income taxes, extraordinary items and cumulative effect of changes in accounting principles (x) of such Subsidiary do not exceed 2.5% of the Consolidated Net Income of Holdings or (y) of such Subsidiary and all other Nonmaterial Subsidiaries do not exceed 5% of Consolidated Net Income of Holdings in each case, as of the end of the most recently ended Fiscal Quarter.

"**Note**" means, as the context may require, either a Facility A Note, a Facility C Note or a Swing Line Note, or any or all of them.

"**Note Agreements**" means, collectively, (a) the several substantially identical note purchase agreements dated as of March 25, 1999 pursuant to which \$90,000,000 original principal amount of the Borrower's senior secured notes (which Indebtedness constitutes Private Placement Debt) was issued; (b) the several substantially identical note purchase agreements dated as of October 1, 2000 pursuant to which \$40,000,000 original principal amount of the Borrower's senior secured notes (which Indebtedness constitutes Private Placement Debt) was issued and (c) the several substantially identical note purchase agreements dated as of July 30, 2001 pursuant to which \$103,000,000 original principal amount of the Borrower's senior secured notes (which Indebtedness constitutes Private Placement Debt) was issued.

"**Note Holders**" is defined in the Intercreditor Agreement.

"**Obligations**" means the obligations of the Obligors to the Agent, any Issuer and the Lenders under this Agreement, the Letters of Credit, the Notes, and each other Loan Document.

"**Obligor**" means Star Gas Partners, Holdings, the Borrower, the Material Subsidiaries or any other Person (other than the Agent, the Issuers, the Trustee, the Co-Lead Arrangers, any Lender and the Note Holders) obligated under any Loan Document.

"**Other Facilities**" is defined in Section 11.12.

"**Organic Document**" means, relative to any Obligor, its partnership agreement, certificate of incorporation, certificate of formation, its by-laws or operating agreement and all shareholder agreements, voting trusts and similar arrangements applicable to any of its authorized shares of Capital Stock or other equity interests.

"**Parity Debt**" means the obligations of the Borrower described in subsections (B), (C) and (D) of clause (iv) of Section 8.2.2(a) (other than Permitted Subordinated Debt) which are secured and will rank *pari passu* with the Obligations hereunder.

“**Participant**” is defined in Section 11.11.2.

“**PBGC**” means the Pension Benefit Guaranty Corporation or any Government Authority succeeding to any of its principal functions under ERISA.

“**Pension Plan**” means a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA (other than a Multiemployer Plan) which the Borrower and/or any ERISA Affiliate sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or in the case of a Multiple Employer Plan, has made contributions at any time during the immediately preceding five (5) plan years.

“**Percentage**” means the Facility A Percentage, the Facility B Percentage or the Facility C Percentage, as applicable, or all.

“**Perfection Certificate**” is defined in Section 6.1.12(a)(iii).

“**Permitted Hedging Agreements**” means fuel oil, propane or natural gas hedging agreements for the purpose of hedging (a) price fluctuations of inventory of Holdings, the Borrower and the Material Subsidiaries, and (b) Holdings’, the Borrower’s or any Material Subsidiary’s obligation to deliver fuel oil at capped or fixed prices (and not for investment or speculative purposes).

“**Permitted Secured Interest Rate Contract Obligations**” means all obligations of Holdings, the Borrower and the Material Subsidiaries existing or arising under Permitted Secured Interest Rate Contracts.

“**Permitted Secured Interest Rate Contracts**” means, at any time, Secured Interest Rate Contracts with one or more Lenders hedging interest expense on not more than fifty percent (50%) of the aggregate principal amount of Indebtedness of Holdings, the Borrower and the Material Subsidiaries then outstanding; provided, however, if any such Lender ceases to be a Lender hereunder, any such transaction entered into pursuant to any Permitted Secured Interest Rate Contract prior to such cessation shall be deemed to be a Permitted Secured Interest Rate Contract hereunder.

“**Permitted Subordinated Debt**” means Indebtedness that is subordinated to the Obligations and the Permitted Secured Interest Rate Contract Obligations on and subject to the following terms and conditions (as applicable):

(a) if such Indebtedness is provided by Star Gas Partners, such Indebtedness is Affiliated Subordinated Debt;

(b) if such Indebtedness is provided by an Affiliate of any Obligor, such Indebtedness (i) shall be provided by an Obligor (other than Star Gas Partners), (ii) shall bear interest at or below market rates and (iii) (A) shall be created under an agreement containing subordination provisions as are set forth in Exhibit G or (B) shall otherwise be on terms reasonably satisfactory to the Agent;

(c) if such Indebtedness is provided by a Person that is not an Affiliate of any Obligor, such Indebtedness (i) shall bear interest at market rates, (ii) shall not provide for any principal repayments (whether at maturity, upon prepayment, upon scheduled installment or otherwise) that would exceed \$2,000,000 in the aggregate during any Fiscal Year during the term of this Agreement, (iii) shall be created under an agreement containing subordination and other provisions that are reasonably satisfactory to the Agent, including subordination provisions relating to any Obligor guaranteeing such Indebtedness and (iv) if such Indebtedness shall be secured by any property or other assets of any Obligor, (1) such Indebtedness shall not exceed \$25,000,000 in aggregate principal amount outstanding at any time, (2) such Indebtedness shall not be secured by any property or assets not securing the Senior Debt, (3) the Liens of the holder or holders of such Indebtedness shall be subordinated to the Liens securing the Senior Debt on terms that are reasonably satisfactory to the Agent, and (4) the Intercreditor Agreement and the Security Documents shall be amended in form and substance satisfactory to the Agent to reflect such subordination.

“**Person**” means any natural person, corporation, partnership, firm, association, trust, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

“**Petro Reorganization Expenses**” means expenses relating to the reorganization of the Borrower and its Subsidiaries, including, but not limited to, severance pay, project consultants, project related travel expense, corporate identity expense (e.g. repainting trucks), set-up and implementation fees of outsourcing arrangements and salary of personnel to the extent relating to services dedicated to the project and not related to operations in the ordinary course of business.

“**Plan**” means an employee benefit plan (as defined in Section 3(3) of ERISA), subject to Part 4 of Title I (B) of ERISA which the Borrower or an ERISA Affiliate sponsors or maintains or to which the Borrower or an ERISA Affiliate makes, is making, or is obligated to make contributions and includes any Pension Plan.

“**Post-Closing Agreement**” is defined in [Section 6.1.5](#).

“**Post-Default Rate**” means (a) in respect of any Loans a rate per annum equal to: (i) if such Loans are Base Rate Loans, 2% above the Alternate Base Rate as in effect from time to time plus the Applicable Base Rate Margin (but in no event less than the interest rate in effect on the due date), or (ii) if such Loans are LIBOR Loans, 2% above the rate of interest in effect thereon at the time of the Event of Default that resulted in the Post-Default Rate being instituted until the end of the then current Interest Period therefor and, thereafter, 2% above the Alternate Base Rate as in effect from time to time plus the Applicable Base Rate Margin (but in no event less than the interest rate in effect on the due date); and (b) in respect of other amounts payable (other than interest) not paid when due (whether at stated maturity, by acceleration or otherwise), a rate per annum during the period commencing on the due date until such other amounts are paid in full equal to 2% above the Alternate Base Rate as in effect from time to time plus the Applicable Base Rate Margin (but in no event less than the interest rate in effect on the due date).

“**Pricing Grid**” means the following:

Level	Facility Fee	Applicable LIBOR Margin	Applicable Base Rate Margin
Level I	0.375%	1.125%	0.000%
Level II	0.375%	1.375%	0.125%
Level III	0.500%	1.500%	0.250%
Level IV	0.500%	1.625%	0.500%
Level V	0.500%	1.750%	0.500%

“**Pricing Ratio**” means, as of the last day of each Fiscal Quarter of Holdings, the ratio of (a) the sum of Funded Debt plus the aggregate undrawn or drawn amount of all issued Facility B Letters of Credit on such last day to (b) Consolidated Cash Flow for such Fiscal Quarter of Holdings and the three (3) immediately preceding Fiscal Quarters of Holdings.

“**Private Placement Debt**” means all of the existing secured Indebtedness set forth on Item 8.2.2(a)(i) of the Disclosure Schedule and other Parity Debt now or hereinafter incurred.

“**Pro Forma Basis**” as used only in the definition of SGP Consolidated Pro Forma Operating Cash Flow, means the adjustment of any item of income or expense of Star Gas Partners and its Subsidiaries for any period as follows:

(a) if Star Gas Partners or any of its Subsidiaries has incurred, repaid, discharged or defeased any Indebtedness since the beginning of such period, the SGP Consolidated Operating Cash Flow and the SGP Consolidated Pro Forma Interest Expense for such period will be calculated after giving effect on a pro forma basis to (i) the incurrence of any Indebtedness as if such Indebtedness has been incurred on the first day of such period, (ii) the discharge of any other Indebtedness repaid, repurchased, defeased or otherwise discharged as if such discharge had occurred on the first day of such period, and (iii) the interest income realized by Star Gas Partners and its Subsidiaries on the proceeds of such Indebtedness, to the extent not yet applied at the date of determination, assuming such proceeds earned interest at the rate of 5% per annum from the date such proceeds were received through such date of determination;

(b) if since the beginning of such period Star Gas Partners or any of its Subsidiaries will have made any Asset Disposition, the SGP Consolidated Operating Cash Flow for such period will be reduced by an amount equal to the SGP Consolidated Operating Cash Flow (if positive) directly attributable to the assets which are the subject of such Asset Disposition for such period, or increased by an amount equal to the SGP Consolidated Operating Cash Flow (if negative), directly attributable thereto for such period, and the SGP Consolidated Interest Expense for such period will be reduced by an amount equal to the SGP Consolidated Interest Expense directly attributable to any Indebtedness of Star Gas Partners or any of its Subsidiaries repaid, repurchased, defeased or otherwise discharged with respect to Star Gas Partners and its continuing Subsidiaries

in connection with such Asset Dispositions for such period (or, if the Capital Stock of any of its Subsidiaries is sold, the SGP Consolidated Interest Expense for such period directly attributable to the Indebtedness of such Subsidiary to the extent Star Gas Partners and its continuing Subsidiaries are no longer liable for such Indebtedness after such sale); and

(c) if since the beginning of such period Star Gas Partners or any of its Subsidiaries (by merger or otherwise) will have made an Investment in any Subsidiary (or any Person which becomes a Subsidiary) or an acquisition of assets, including any acquisition of assets occurring in connection with a transaction causing a calculation to be made hereunder, which constitutes all or substantially all of the assets of an operating unit of a business, the SGP Consolidated Operating Cash Flow and the SGP Consolidated Interest Expense for such period will be calculated after giving pro forma effect hereto (including the incurrence of any Indebtedness) as if such Investment or acquisition occurred on the first day of such period.

For purposes of this definition, whenever pro forma effect is to be given to an acquisition of assets, the amount of income or earnings relating thereto and the amount of the SGP Consolidated Interest Expense associated with any Indebtedness incurred in connection therewith, such pro forma calculations will be determined in good faith by the senior financial officer of Star Gas Partners; provided, however, that such officer shall assume (A) the historical sales and gross profit margins associated with such assets for the most recent consecutive twelve (12) month period ended prior to the date of purchase for which financial statements are available (provided that the first month of such period will be no more than eighteen (18) full calendar months prior to such date of purchase), less estimated post-acquisition loss of customers (not to be less than 5%) and (B) other expenses as if such assets had been owned by Star Gas Partners since the first day of such period. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness will be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period.

“Property” means any right or interest in or to property whatsoever, whether real, personal or mixed and whether tangible or intangible.

“Qualified Capital Stock” means Capital Stock not constituting Disqualified Stock.

“Quarterly Payment Date” means the last day of each March, June, September, and December or, if any such day is not a Business Day, the next succeeding Business Day.

“Regulatory Change” means, relative to the Agent or any Lender, any change after the date hereof in any (or the adoption after the date hereof of any new):

(a) United States Federal or state law or foreign law applicable to the Agent or such Lender; or

(b) regulation, interpretation, directive, or request (whether or not having the force of law) applicable to such Agent or such Lender or any court or government authority charged with the interpretation or administration of any law referred to in the immediately preceding clause (a) or of any fiscal, monetary, or other authority having jurisdiction over the Agent or such Lender.

“**Reimbursement Obligation**” is defined in Section 4.6.

“**Release**” means a “release,” as such term is defined in CERCLA.

“**Reportable Event**” means, any of the events set forth in Section 4043(c) of ERISA or the regulations thereunder, other than any such event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the PBGC.

“**Required Lenders**” means, except as otherwise provided in the Intercreditor Agreement with respect to matters covered thereby, Lenders holding 51% or more of the Commitments (or, if the Commitments have been terminated, Lenders holding 51% or more of the aggregate outstanding Obligations).

“**Requirement of Law**” means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or of a Government Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

“**Resource Conservation and Recovery Act**” means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., as amended.

“**Responsible Officer**” means with respect to any Person, the President, any Vice President, the Chief Financial Officer, the Treasurer and the Secretary of such Person and any other officer of such Person who is responsible for compliance with or performance of any obligation under or matter referred to in this Agreement with respect to any Obligor, and, in any case, any employee of such Obligor performing any of the above functions.

“**Restricted Distribution**” is defined in Section 8.2.6(a).

“**Restricted Investment**” means any Investment other than those permitted by Section 8.2.5.

“**Restricted Payment**” of any Person means:

(a) any payment or other distribution in respect of the Capital Stock of such Person or any Subsidiary of such Person (other than on account of Capital Stock or other equity interest of a Subsidiary of such Person owned legally and beneficially by such Person or another Subsidiary of such Person), including, without limitation, any payment or other distribution resulting in the acquisition by such Person of Securities that would constitute treasury stock, and

(b) any payment, repayment, redemption, retirement, repurchase or other acquisition, direct or indirect, by such Person or any Subsidiary of such Person of, on account of, or in respect of, the principal of any Permitted Subordinated Debt (or any installment thereof) prior to the regularly scheduled maturity date thereof (as in effect on the date such Permitted Subordinated Debt was originally occurred).

For purposes of this Agreement, the amount of any Restricted Payment made in property shall be the greater of (x) the fair market value of such property (as determined in good faith by the

Borrower) and (y) the net book value thereof on the books of such Person, in each case determined as of the date on which such Restricted Payment is made.

“**Risk Management Policy**” means that certain written policy of Holdings and its Subsidiaries addressing trading and risk management, adopted by the board of directors of Holdings, as the same may be amended from time to time; provided that a copy of each amendment shall be delivered to the Agent prior to the effective date thereof.

“**SEC**” means the Securities and Exchange Commission, or any governmental authority succeeding to any of its principal functions.

“**Secured Interest Rate Contracts**” means Interest Rate Contracts with respect to which the obligations of Holdings, the Borrower or the Material Subsidiaries thereunder are secured by (or for which the holder of any such obligation has an existing right, contingent or otherwise, to have such obligation secured by) any Lien in respect of property owned by any of Holdings, the Borrower or any Material Subsidiary, whether or not any such Person has assumed or become liable for the payment of such obligations.

“**Secured Parties**” means (a) the Lenders, (b) the Agent, the Issuer, Fleet National Bank, as Syndication Agent and JPMorgan Chase Bank and LaSalle Bank National Association, as Co-Documentation Agents, in their capacities as such under each Loan Document, (c) each Lender with which the Borrower enters into a Permitted Secured Interest Rate Contract, in its capacity as a party to such agreement or if such party ceases to be a Lender, then for any swap transaction entered into under a Permitted Secured Interest Rate Contract with such party prior to the date such party ceases to be a Lender, such party shall continue to be a Secured Party hereunder with respect to the Borrower’s obligations relating to any such swap transaction, (d) the beneficiaries of each indemnification obligation undertaken by the Borrower or any of the Obligors under any Loan Document, (e) the holders of any Private Placement Debt and (f) the successors and assigns of the foregoing.

“**Securities Act**” means the Securities Act of 1933, as amended from time to time.

“**Security**” is defined in Section 2(1) of the Securities Act.

“**Security Agreements**” means (i) the Amended and Restated Pledge and Security Agreement, dated as of the date hereof, among the Borrower, the Material Subsidiaries and the Trustee in the form of Exhibit O-1, (ii) the Amended and Restated Pledge and Security Agreement, dated as of the date hereof, between Holdings and the Trustee in the form of Exhibit O-2, (iii) the Vehicle Security Agreement, dated as of the date hereof, between the Borrower, the Material Subsidiaries, Holdings and the Trustee in the form of Exhibit O-3 and (iv) the Trademark Security Agreements.

“**Security Documents**” means (a) any of the documents securing the Notes, including without limitation, the Security Agreements, (b) each Mortgage and (c) the Guarantee Agreements.

“**Senior Debt**” means the Obligations and the Private Placement Debt.

“**Sevin Group**” means Irik P. Sevin, Audrey L. Sevin and any testamentary trust, all beneficiaries of which are members of the immediate family of Irik P. Sevin or Audrey L. Sevin, and all trustees which are members of the immediate family of Irik P. Sevin or Audrey L. Sevin and, under the terms of the trust, have the power to vote membership interests in the Managing General Partner.

“**SGP Consolidated Funded Debt**” means, for Star Gas Partners and its Subsidiaries at any date of determination, the sum of the aggregate principal amount of all Indebtedness of Star Gas Partners and its Subsidiaries at the time outstanding (other than Indebtedness related to working capital) after eliminating all offsetting debits and credits between Star Gas Partners and its Subsidiaries and all other items required to be eliminated in the course of the preparation of consolidated financial statements of Star Gas Partners and its Subsidiaries in accordance with GAAP.

“**SGP Consolidated Interest Expense**” means, for Star Gas Partners and its Subsidiaries for any period, the sum (without duplication) of (i) all interest deducted (including the interest component of Capitalized Lease Liabilities) together with all interest capitalized or deferred during such period and not deducted in determining the SGP Consolidated Net Income for such period, and (ii) all Indebtedness issuance cost, discount and expense amortized.

“**SGP Consolidated Net Income**” means, for Star Gas Partners and its Subsidiaries for any period, the net income (or loss) of Star Gas Partners and its Subsidiaries for such period (taken as a cumulative whole), as determined in accordance with GAAP, after eliminating all offsetting debits and credits between Star Gas Partners and its Subsidiaries and all other items required to be eliminated in the course of the preparation of consolidated financial statements of Star Gas Partners and its Subsidiaries in accordance with GAAP; provided that the following shall be excluded:

(a) the income (or loss) of any other Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with Star Gas Partners or a Subsidiary of Star Gas Partners, and the income (or loss) of any such Person, substantially all of the assets of which have been acquired in any manner, realized by such other Person prior to the date of acquisition;

(b) the income (or loss) of any other Person (other than a Subsidiary of Star Gas Partners) in which Star Gas Partners or any of its Subsidiaries has an ownership interest, except to the extent that any such income has been actually received by Star Gas Partners or any of its Subsidiaries in the form of cash dividends or similar cash distributions, it being understood that all amounts actually received by Star Gas Partners or any of its Subsidiaries shall be included in the SGP Consolidated Net Income;

(c) the undistributed earnings of any Subsidiary of Star Gas Partners to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary;

(d) any restoration to income of any contingency reserve, except to the extent that provision for such reserve was made out of income accrued during such period;

(e) any aggregate net gain (but not any aggregate net loss) during such period arising from the sale, conversion, exchange or other disposition of capital assets (such term to include, without limitation, (i) all non-current assets and, without duplication, (ii) the following, whether or not current: all fixed assets, whether tangible or intangible, all inventory sold in conjunction with the disposition of fixed assets, and all Securities);

(f) any gains resulting from any write-up of any assets (but not any loss resulting from any write-down of any assets);

(g) any net gain from the collection of the proceeds of life insurance policies;

(h) any gain arising from the acquisition of any Security, or the extinguishment, under GAAP, of any Indebtedness of Star Gas Partners or any of its Subsidiaries;

(i) any net income or gain (but not any net loss) during such period from (i) any change in accounting principles in accordance with GAAP, (ii) any prior period adjustments resulting from any change in accounting principles in accordance with GAAP, (iii) any extraordinary items, or (iv) any discontinued operations or the disposition thereof;

(j) any deferred credit representing the excess of equity in any Subsidiary of such Person at the date of acquisition over the cost of the investment in such Subsidiary;

(k) in the case of a successor to such Person by consolidation or merger or as a transferee of its assets, any earnings of the successor corporation prior to such consolidation, merger or transfer of assets; and

(l) any portion of such net income that cannot be freely converted into Dollars.

“SGP Consolidated Operating Cash Flow” means, of Star Gas Partners and its Subsidiaries for any period, the sum of (a) the SGP Consolidated Net Income for such period plus, to the extent deducted in arriving at such SGP Consolidated Net Income; (b) (i) depreciation, depletion, amortization, and all other non-cash expenses of Star Gas Partners and its Subsidiaries for such period, including, without limitation, (x) non-cash expenses or losses incurred as a result of Statement of Financial Accounting Standard Number 133 and the implementation of Statement of Financial Accounting Standard Numbers 141 and 142 and (y) non-cash expenses related to unit appreciation rights; (ii) income tax expense of Star Gas Partners and its Subsidiaries for such period, (iii) interest expense for such period, all determined for Star Gas Partners and its Subsidiaries in accordance with GAAP and (iv) Petro Reorganization Expenses incurred during such period in an amount not to exceed \$12,000,000; provided the aggregate amount of Petro Reorganization Expenses included for all periods shall not exceed \$12,000,000;

“**SGP Consolidated Pro Forma Interest Expense**” means, Star Gas Partners and its Subsidiaries for any period, the SGP Consolidated Interest Expense for such period determined on a Pro Forma Basis.

“**SGP Consolidated Pro Forma Operating Cash Flow**” means, Star Gas Partners and its Subsidiaries for any period, the SGP Consolidated Operating Cash Flow for such period determined on a Pro Forma Basis.

“**SGP Restricted Payment**” is defined in Section 8.2.6(b).

“**Star Gas Partners**” means Star Gas Partners, L.P., a Delaware limited partnership.

“**Star/Petro**” means Star/Petro, Inc., a Minnesota corporation.

“**Star Propane**” means Star Gas Propane, L.P., a Delaware limited partnership.

“**Star Propane Credit Agreement**” means that certain Amended and Restated Credit Agreement, dated as of September 23, 2003, among Star Propane, the lenders named therein, Wachovia Bank, N.A., as documentation agent, Fleet National Bank, as syndication agent, and JPMorgan Chase Bank, as administrative agent, as amended, supplemented or otherwise modified from time to time in accordance with its terms.

“**Stated Maturity Date**” means, with respect to each Facility, (a) June 30, 2006, if the Borrower does not satisfy the requisite conditions contained in Section 2.8(a) or (b) November 30, 2006, if the Borrower satisfies the requisite conditions contained in Section 2.8(a) subject, with respect to Facility C Loans, to the election of the Facility C Term-Out Option and the satisfaction of the requisite conditions contained in Section 2.8(b).

“**Subsidiary**” means, with respect to any Person, any corporation, limited liability company, business trust, association, partnership, joint venture or other business entity at least a majority (by number of votes) of the stock of any class or classes (or equivalent interest) of which is at the time owned by such Person or by one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person, if the holders of the stock of such class or classes (or equivalent interests) (a) are ordinarily, in the absence of contingencies, entitled to vote for the election of a majority of the directors (or Persons performing similar functions) of such business entity, even though the right so to vote has been suspended by the happening of such a contingency, or (b) are at the time entitled, as such holders, to vote for the election of the majority of the directors (or Persons performing similar functions) of such business entity, whether or not the right so to vote exists by reason of the happening of a contingency. Unless the context otherwise requires, any reference to a Subsidiary shall mean a Subsidiary of the Borrower, Holdings or Star Gas Partners. Star Propane shall be deemed to be a Subsidiary of Star Gas Partners so long as Star Gas Partners owns a majority of the limited partnership interests in Star Propane and the Managing General Partner is the sole general partner of Star Propane.

“**Swing Line**” is defined in Section 2.7(a).

“**Swing Line Lender**” is defined in Section 2.7(a).

“*Swing Line Loan*” is defined in Section 2.7(a).

“*Swing Line Commitment*” is defined in Section 2.7(a).

“*Swing Line Loan Request*” means a loan request and certificate duly executed by a Responsible Officer of the Borrower on behalf of the Borrower and substantially in the form of Exhibit L.

“*Swing Line Note*” is defined in Section 2.7(a).

“*Synthetic Lease*” means each arrangement, however described, under which the obligor: (a) accounts for its interest in the property covered thereby under GAAP as if the obligor were the lessee of a lease which is not a capital lease and (b) accounts for its interest in the property covered thereby for Federal income tax purposes as if the obligor were the owner.

“*Synthetic Lease Interest Component*” means, with respect to any Person for any period, the portion of rent paid or payable (without duplication) for such period under Synthetic Leases of such Person that would be treated as interest in accordance with Financial Accounting Standards Board Statement No. 13 if such Synthetic Leases were treated as capital leases under GAAP.

“*Synthetic Lease Obligation*” means, as to any Person with respect to any Synthetic Lease at any time of determination, the amount of the liability of such Person in respect of such Synthetic Lease that would (if such lease was required to be classified and accounted for as a capital lease on a balance sheet of such Person in accordance with GAAP) be required to be capitalized on the balance sheet of such Person at such time.

“*Taxes*” is defined in Section 5.6.

“*Trademark Security Agreements*” means (i) the Trademark Security Agreement, dated as of the date hereof, between the Borrower and the Trustee; (ii) the Trademark Security Agreement dated as of the date hereof, between Holdings and the Trustee; (iii) the Grant of Security Interests in Trademarks, dated as of June 5, 2003, as executed by certain Material Subsidiaries and assigned to Trustee pursuant to the Assignment of Grant of Security Interest in Trademarks dated as of the date hereof, between HSBC Bank USA and the Trustee, as acknowledged by the Material Subsidiary affected thereby; and (iv) the Grant of Security Interests in Trademarks, dated as of July 30, 2001, as executed by certain Material Subsidiaries and assigned to the Trustee pursuant to the Assignment of Grant of Security Interest in Trademarks, dated as of the date hereof, between HSBC Bank USA and the Trustee, as acknowledged by the Material Subsidiaries affected thereby.

“*Trustee*” means Wachovia Bank, National Association or any permitted successor or replacement trustee under the Intercreditor Agreement.

“*Type*” means, relative to any Loan, the portion thereof, if any, being maintained as a Base Rate Loan or a LIBOR Loan.

“*Unfunded Pension Liability*” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year; provided, that in no event shall the interest rate used in calculating such benefit liabilities be greater than that permitted for purposes of calculating “RPA ’94” current liability under Section 412 of the Code and reporting on the Schedule B to the most recent Form 5500, plus 1.00%.

“*United States*” or “*U.S.*” means the United States of America, its fifty States and the District of Columbia.

“*Wachovia*” is defined in the preamble.

“*Wholly-Owned Subsidiary*” means any corporation in which (other than directors’ qualifying shares required by law) 99% of the Capital Stock of each class having ordinary voting power, and 99% of the Capital Stock of every other class, in each case, at the time as of which any determination is being made, is owned, beneficially and of record, by the Borrower, Holdings, or by one or more of the other Wholly-Owned Subsidiaries of the Borrower or Holdings, or any of them.

Use of Defined Terms. Unless otherwise defined or the context otherwise requires, terms for which meanings are provided in this Agreement shall have such meanings when used in the Disclosure Schedule and in each Note, Borrowing Request, Continuation/Conversion Notice, Loan Document, notice and other communication delivered from time to time in connection with this Agreement or any other Loan Document.

SECTION 1.1 Other Interpretive Provisions.

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and clause, subsection, section, schedule and exhibit references are to this Agreement unless otherwise specified.

(c) (i) The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

(ii) The term “including” is not limiting and means “including without limitation.”

(iii) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(iv) The term “date of determination” shall mean the last day of the preceding Fiscal Quarter.

(v) For purposes of measuring compliance with any financial covenant set forth herein, all such covenants shall be calculated as of the date of determination.

(d) Unless otherwise expressly provided herein, (i) references to agreements (including this Agreement and the other agreements defined herein) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, supplements and other modifications thereto or any replacements thereof, but only to the extent such amendments, restatements, supplements and other modifications or replacements are not prohibited by the terms of any Loan Document, (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation and (iii) references to the Agent, any Issuer, the Syndication Agent, any Co-Documentation Agent, any Lender, any Secured Party and the Trustee shall be a reference to each such party’s successor or assign.

(e) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(f) This Agreement and other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms.

(g) Unless otherwise expressly provided herein, financial calculations applicable to the Borrower shall be made on a consolidated basis among Holdings, the Borrower and the Material Subsidiaries.

Accounting and Financial Determinations. Unless otherwise specified, all accounting terms used herein or in any other Loan Document shall be interpreted, all accounting determinations and computations hereunder or thereunder (including under Section 8.2.4) shall be made, and all financial statements required to be delivered hereunder or thereunder shall be prepared in accordance with, those generally accepted accounting principles in effect in the United States of America from time to time (“*GAAP*”). Notwithstanding the foregoing, if the Borrower, the Required Lenders or the Agent determines that a change in GAAP from that in effect on the date hereof, has altered the treatment of certain financial data to its detriment under this Agreement, such party may seek of the others a renegotiation of any financial covenant affected thereby. If the Borrower, the Required Lenders and Agent cannot agree on renegotiated covenants, then, for the purposes of this Agreement, GAAP will refer to generally accepted accounting principles on the date just prior to the date on which the change that gave rise to the renegotiation occurred.

ARTICLE II

COMMITMENTS, BORROWING PROCEDURES AND NOTES

Commitments. On the terms and subject to the conditions of this Agreement (including Article VI), each Lender severally agrees to make Loans and participate in Letters of Credit pursuant to the Commitments described in this Section 2.1.

SECTION 2.1.1 Facility A Commitment.

(a) On the terms and subject to the conditions of this Agreement (including, without limitation, Section 2.1.4 and Section 8.1.11), from time to time on any Business Day occurring prior to the Facility A Commitment Termination Date, each Lender will make loans (relative to such Lender, its "**Facility A Loans**") to the Borrower in an aggregate principal amount not to exceed at anytime outstanding the lesser of (a) the amount set forth opposite such Lender's name on Schedule I under the caption "Facility A Commitment" (such amount as the same may be reduced hereunder or as reduced or increased as a result of one or more assignments under Section 11.11.1, such Lender's "**Facility A Commitment**"), and (b) such Lender's pro rata portion of an amount equal to (i) the Borrowing Base minus (ii) the Effective Amount of all Facility C Working Capital Loans. On the terms and subject to the conditions hereof, the Borrower may from time to time borrow, prepay and reborrow Facility A Loans.

(b) As a subfacility of the Facility A Commitments, the Borrower may, subject to the terms and conditions of this Agreement, request (i) the Issuer to issue Facility A Letters of Credit pursuant to Article IV and (ii) the Swing Line Lender to make Swing Line Loans pursuant to Section 2.7.

(c) The Borrower shall deliver a Borrowing Base Certificate to the Agent on or prior to the Effective Date to permit the Agent to determine the Borrowing Base to be in effect on the Effective Date and, thereafter, shall deliver Borrowing Base Certificates and such other materials to the Agent in accordance with the provisions of Section 8.1.1(k). Each such Borrowing Base Certificate shall certify the Borrowing Base in effect on the last day of the applicable reporting period. The Borrowing Base shall remain in effect until notice of a redetermined Borrowing Base shall have been given by the Agent in accordance with the provisions of this Section 2.1.1(c); provided, however, if the Borrower fails to deliver a Borrowing Base Certificate, the Borrower will be unable to borrow Facility A Loans and Facility C Working Capital Loans until such time that a Borrowing Base Certificate is delivered.

Facility B Commitment. On the terms and subject to the conditions of this Agreement (including without limitations Section 2.1.4), from time to time on any Business Day occurring prior to the Facility B Commitment Termination Date, the Issuer shall issue and the Lenders shall participate in Facility B Letters of Credit pursuant to Section 4.1.

Facility C Commitment. On the terms and subject to the conditions of this Agreement (including without limitation Sections 2.1.1(c) and 2.1.4 and, with respect to Facility C Working

Capital Loans, Section 8.1.11), from time to time on any Business Day occurring prior to the Facility C Loan Conversion Date, each Lender will make loans (relative to such Lender, its "**Facility C Loans**") to the Borrower and/or issue, or participate in, Facility C Letters of Credit pursuant to Article IV in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Schedule I under the caption "Facility C Commitment" (such amount as the same may be reduced hereunder or as reduced or increased pursuant to Section 11.1(ii) or as a result of one or more assignments under Section 11.1.1.1, such Lender's "**Facility C Commitment**"). On the terms and subject to the conditions hereof, the Borrower may from time to time borrow, prepay and reborrow Facility C Loans prior to the Facility C Loan Conversion Date.

Restrictions on Loans. None of the Lenders shall be permitted or required to:

(d) make any Facility A Loan if, after giving effect thereto, the sum of (i) the Effective Amount of all Facility A Loans, plus (ii) the Effective Amount of all Facility A L/C Obligations, plus (iii) the Effective Amount of all Swing Line Loans plus (iv) the Effective Amount of all Facility C Working Capital Loans would exceed the lesser of (x) the Facility A Commitments and (y) the Borrowing Base minus the Effective Amount of all Facility C Working Capital Loans; or

(e) make any Swing Line Loan, if after giving effect thereto, the Effective Amount of all Swing Line Loans would exceed the Swing Line Commitment; or

(f) make any Facility C Loan if, after giving effect thereto, the Effective Amount of all Facility C Loans together with the Effective Amount of all Facility C L/C Obligations would exceed the Facility C Commitments; or

(g) make any Facility C Working Capital Loans, if the Lenders are permitted to make any Facility A Loan as provided in clause (a) above;

(h) make any Facility C Working Capital Loan if, after giving effect thereto, the sum of (i) the Effective Amount of all Facility A Loans, plus (ii) the Effective Amount of all Facility A L/C Obligations, plus (iii) the Effective Amount of all Swing Line Loans plus (iv) the Effective Amount of all Facility C Working Capital Loans would exceed the Borrowing Base; and

(i) make any Facility C Loan, if after giving effect thereto, Section 8.1.13(b) would be breached.

Reduction and Termination of Commitments. The Commitments are subject to reduction and termination from time to time pursuant to this Section

2.2.

Optional. The Borrower may, from time to time on any Business Day occurring after the Effective Date, voluntarily reduce the unused amount of any Commitment; provided, however, that all such reductions shall require at least three (3) Business Days' prior written notice to the Agent and be permanent, and any partial reduction of any Commitment shall be in an integral multiple of \$1,000,000. All such reductions of the

Commitments for a Facility shall be allocated on a pro rata basis among each Lender's Commitment for such Facility.

Mandatory. The applicable Commitments shall be reduced by an amount equal to any amount required as a mandatory prepayment of the Facility A Loans or Facility C Loans as applicable pursuant to Section 3.1.1, 3.1.3(a), 3.1.3(f) or 3.1.3(i) (whether or not any Loans shall then be outstanding under the applicable Commitments).

Termination.

(j) Upon the occurrence of any event described in the definition of Facility A Commitment Termination Date, the Facility A Commitment shall be reduced to zero and shall terminate automatically and without further action.

(k) Upon the occurrence of any event described in the definition of Facility B Commitment Termination Date, the Facility B Commitment shall be reduced to zero and shall terminate automatically and without further action.

(l) Upon the occurrence of any event described in the definition of Facility C Loan Conversion Date, the Facility C Commitment shall be reduced to zero and shall terminate automatically and without further action.

Borrowing Procedure. By delivering a Borrowing Request to the Agent on or before 9:00 a.m., New York time, on a Business Day, the Borrower may from time to time irrevocably request, on not less than three (3) nor more than five (5) Business Days' notice in the case of LIBOR Loans, and on the same day or no more than five (5) Business Days' notice in the case of Base Rate Loans, that a Borrowing be made in a minimum amount of \$3,000,000 in the case of LIBOR Loans, and in a minimum amount of \$1,000,000 in the case of Base Rate Loans, and in both instances in any integral multiple of \$100,000 in excess thereof, or in the unused amount of the applicable Commitment. On the terms and subject to the conditions of this Agreement, each Borrowing shall be comprised of the same Type of Loans, and shall be made on the Business Day, specified in such Borrowing Request. Each Borrowing Request must be signed by a Responsible Officer of the Borrower. Upon receipt of any Borrowing Request, the Agent shall promptly notify the Lenders of such Borrowing Request. On or before 11:00 a.m., New York time, on such Business Day each Lender shall deposit with the Agent same day funds in an amount equal to such Lender's Percentage of the requested Borrowing. Such deposit will be made to an account which the Agent shall specify from time to time by written notice to the Lenders. To the extent funds are received from the Lenders, the Agent shall make such funds available to the Borrower by wire transfer to the Borrower's Account. No Lender's obligation to make any Loan shall be affected by any other Lender's failure to make any Loan. Swing Line Loans shall not be subject to this Section 2.3.

Continuation and Conversion Elections. By delivering a Continuation/Conversion Notice to the Agent on or before 9:00 a.m., New York time, on a Business Day, the Borrower may from time to time irrevocably elect, on not less than three (3) nor more than five (5) Business Days' notice that all, or any portion in a minimum amount of \$3,000,000, in the case of LIBOR Loans, and in a minimum amount of \$1,000,000 in the case of Base Rate Loans, and in both instances

any integral multiple of \$100,000 in excess thereof, of any Loans be, in the case of Base Rate Loans, converted into LIBOR Loans or, in the case of LIBOR Loans, be converted into a Base Rate Loan or a LIBOR Loan or continued as a LIBOR Loan (in the absence of delivery of a Continuation/Conversion Notice with respect to any LIBOR Loan at least three (3) Business Days before the last day of the then current Interest Period with respect thereto, such LIBOR Loan shall, on such last day, automatically convert to a Base Rate Loan); provided, however, that (i) each such conversion or continuation shall be pro rated among the applicable outstanding Loans of all Lenders, and (ii) no portion of the outstanding principal amount of any Loans may be continued as, or be converted into, LIBOR Loans when any Default or Event of Default has occurred and is continuing.

Funding. Each Lender may, if it so elects, fulfill its obligation to make, continue or convert LIBOR Loans hereunder by causing one of its foreign branches or Affiliates (or an international banking facility created by such Lender) to make or maintain such LIBOR Loan; provided, however, that such LIBOR Loan shall nonetheless be deemed to have been made and to be held by such Lender, and the obligation of the Borrower to repay such LIBOR Loan shall nevertheless be to such Lender for the account of such foreign branch, Affiliate or international banking facility. In addition, the Borrower hereby consents and agrees that, for purposes of any determination to be made for purposes of Section 5.1, 5.2, 5.3 or 5.4, it shall be conclusively assumed that each Lender elected to fund all LIBOR Loans by purchasing, as the case may be, Dollar certificates of deposit in the U.S. or Dollar deposits in its Applicable Lending Office.

SECTION 2.2 Loan Accounts/Notes.

(a) The Loans made by each Lender shall be evidenced by one or more loan accounts or records maintained by such Lender in the ordinary course of business. The loan accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the Letters of Credit Issued for the account of the Borrower and the interest and payments thereon. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Loans. In case of a discrepancy between the entries in the Agent's books and any Lender's books, the Agent's books shall be conclusive absent manifest error.

(b) Upon the written request of any Lender made through the Agent, the Facility A Loans made by such Lender shall be evidenced by a single promissory note of the Borrower in substantially the form of Exhibit A-1 hereto (each, a "**Facility A Note**" and collectively, the "**Facility A Notes**"), instead of loan accounts. Each Facility A Note shall be dated the Effective Date, shall be payable to the order of such Lender in a principal amount equal to such Lender's Facility A Commitment as in effect, and shall otherwise be duly completed. The Notes shall be payable as provided in Article III.

(c) Upon the written request of any Lender made through the Agent, the Facility C Loans made by such Lender shall be evidenced by a single promissory note of the Borrower in substantially the form of Exhibit A-2 hereto (each, a "**Facility C Note**" and collectively, the "**Facility C Notes**"). Each Facility C Note shall be dated the

Effective Date, shall be payable to the order of such Lender in a principal amount equal to such Lender's Facility C Commitment as originally in effect, and shall otherwise be duly completed. The Notes shall be payable as provided in Article III.

(d) Each Lender shall enter on a schedule attached to its Notes a notation with respect to each Loan made hereunder of: (i) the date and principal amount thereof, (ii) each payment and prepayment of principal thereof, (iii) whether the interest rate is initially to be determined in accordance with Section 3.2.1(a) or Section 3.2.1(b), and (iv) the Interest Period, if applicable. Such notations shall be conclusive and binding on the Borrower absent manifest error; provided, however, that the failure of any Lender to make a notation on the schedule to its Note as aforesaid shall not limit or otherwise affect the obligation of the Borrower to repay the Loans in accordance with their respective terms as set forth herein.

Swing Line.

(e) Upon the Borrower's request, and on the terms and subject to the conditions of this Agreement, Wachovia (in such capacity, the "**Swing Line Lender**") may, in its sole discretion, on and after the Effective Date and prior to the Facility A Commitment Termination Date, make swing line loans (each, a "**Swing Line Loan**") available to the Borrower under a swing line credit facility (the "**Swing Line**") in an aggregate amount of up to \$10,000,000 at any one time outstanding (the "**Swing Line Commitment**"); provided that the Swing Line Lender shall not in any event be permitted or required to make any Swing Line Loan under the Swing Line if, after giving effect thereto, (i) the sum of the then aggregate outstanding principal amount of all Facility A Loans, Facility C Working Capital Loans, and Swing Line Loans plus the then aggregate amount of all Facility A L/C Obligations would exceed the lesser of (x) the sum of the combined Facility A Commitments and the Effective Amount of all Facility C Working Capital Loans previously made and (y) the Borrowing Base, or (ii) the then aggregate outstanding principal amount of all Swing Line Loans made by the Swing Line Lender would exceed the Swing Line Commitment. The Swing Line Lender shall not be at any time obligated to make any Swing Line Loan.

(f) Each request for Swing Line Loans shall be made from time to time by the Borrower delivering a Swing Line Loan Request therefor to the Agent and the Swing Line Lender at or before 12:00 noon, New York time, on any Business Day. On the terms and subject to the conditions of this Agreement, each Swing Line Loan shall be disbursed on the Business Day on which the request therefor was timely made, in same day funds by wire transfer to the Borrower's Account. Swing Line Loans shall be in an aggregate minimum principal amount of \$100,000 and any integral multiple of \$50,000 in excess thereof.

(g) Each Swing Line Loan outstanding under the Swing Line shall accrue interest at a rate per annum equal to the interest accrued on a Base Rate Loan (the Alternate Base Rate plus the Applicable Base Rate Margin) which interest shall be payable quarterly in arrears on each Quarterly Payment Date and on the Facility A Commitment Termination Date, and shall be payable to the Swing Line Lender; provided

that, notwithstanding any other provision of this Agreement, each Swing Line Loan shall bear interest for a minimum of one (1) day.

(h) Each Swing Line Loan under the Swing Line shall be due and payable on the earlier of:

(i) at or before 10:00 a.m., New York time, on the fifth Business Day immediately following the date such Swing Line Loan was made pursuant to the Swing Line; and

(ii) in any event on the Facility A Commitment Termination Date;

provided that, if no Event of Default shall have occurred and be continuing, then unless the Borrower notifies the Swing Line Lender that it will repay such Swing Line Loan, on the due date of such Swing Line Loan, if and to the extent that the Borrower is permitted to borrow Facility A Loans under the terms of this Agreement (the Facility A Commitment being determined for such purpose without giving effect to any reduction thereof occasioned by such Swing Line Loans due and payable) at the time such Swing Line Loans are due and provided that the Agent shall have had sufficient prior written notice, the Borrower shall be deemed to have submitted a Borrowing Request for Facility A Loans at the Base Rate in an amount necessary to repay the amount demanded, and the provisions of Section 2.3 concerning the minimum principal amounts and integral multiples thereof required for Borrowings of Facility A Loans shall not apply to Facility A Loans made pursuant to this Section 2.7(d).

(i) The Borrower may, from time to time on any Business Day, make a voluntary prepayment, in whole or in part, of the outstanding principal amount of any Swing Line Loans, without incurring any premium or penalty; provided that:

(i) each such voluntary prepayment shall require prior written notice given to the Agent and Swing Line Lender no later than 11:00 a.m., New York time, on the day on which the Borrower intends to make a voluntary prepayment; and

(ii) each such voluntary prepayment shall be in a minimum amount of \$100,000 and in any integral multiple of \$50,000 in excess thereof (or, if less, the aggregate outstanding principal amount of all Swing Line Loans then outstanding).

(j) Each Lender shall be deemed to have unconditionally and irrevocably purchased a pro rata risk participation from the Swing Line Lender in such Swing Line Lender's Swing Line Loans, without recourse, representation or warranty in an amount equal to such Lender's Facility A Percentage of such Swing Line Loans. In addition, from and after the date that any Lender funds such participation pursuant to Section 2.7(g) below, such Lender shall, to the extent of its Facility A Percentage, be entitled to receive a ratable portion of any payment of principal and interest received by the Swing Line Lender on account of such Swing Line Loans, payable promptly to such Lender upon such receipt.

(k) The Swing Line Lender may, in its sole and absolute discretion at any time during the continuance of an Event of Default, upon prior written notice to the Borrower, the Agent and the Lenders not later than 10:00 a.m., New York time, on the same Business Day, terminate the Swing Line and cause all outstanding Swing Line Loans automatically upon the giving of such notice to be repaid from the proceeds of Facility A Loans made by the Lenders in accordance with their respective Facility A Percentages (which Facility A Loans shall be Base Rate Loans bearing interest at the applicable rate) in an aggregate amount sufficient to repay all outstanding Swing Line Loans, and the provisions of Section 2.3 concerning the minimum principal amounts and integral multiples thereof required for Borrowings of Facility A Loans shall not apply to Facility A Loans made pursuant to this Section 2.7(g); provided, that if any Insolvency Proceeding has been commenced with respect to the Borrower on or prior to the date on which any Swing Line Loan is due, and in lieu of funding its Facility A Percentage of Facility A Loans as provided above, each Lender shall immediately fund its risk participation in such Swing Line Loan by funding to the Agent, for the account of the Swing Line Lender, such Lender's pro rata share of such Swing Line Loan, based on such Lender's Facility A Percentage. None of the conditions precedent set forth in Section 2.3 and Section 6.2 shall apply to any funding by a Lender of its Facility A Percentage of Facility A Loans or its risk participation in a Swing Line Loan, in each case pursuant to this Section 2.7(g).

(l) The Swing Line Lender shall not, without the approval of all Lenders, make a Swing Line Loan if the Swing Line Lender then has received a written notice of Default from the Borrower, any Lender or the Agent of the type referred to in the first sentence of Section 10.5.

(m) Each Lender's obligation in accordance with this Agreement to make Facility A Loans upon the failure of a Swing Line Loan to be repaid in full when due, or to fund its participation in such Swing Line Loans, shall, in each case, be absolute and unconditional and without recourse to the Swing Line Lender and shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default, an Event of Default or any circumstance or event which could have a Material Adverse Effect; (iii) the receipt by the Swing Line Lender of a written notice of Default from the Borrower, any Lender or the Agent of the type referred to in the first sentence of Section 10.5 after a Swing Line Loan was made by the Swing Line Lender or (iv) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(n) The Swing Line Loans made by the Swing Line Lender shall be evidenced by one or more loan accounts or records maintained by the Swing Line Lender in the ordinary course of business. The loan accounts or records maintained by the Agent and the Swing Line Lender shall be conclusive absent manifest error of the amount of the Swing Line Loans made by the Swing Line Lender to the Borrower. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Swing Line

Loans. In case of a discrepancy between the entries in the Agent's books and the Swing Line Lender's books, the Agent's books shall be conclusive absent manifest error.

(o) Upon the request of the Swing Line Lender through the Agent, the Swing Line Loans made by the Swing Line Lender shall be evidenced by a single promissory note of the Borrower in substantially the form of Exhibit A-3 hereto (the "**Swing Line Note**") instead of loan accounts. The Swing Line Note shall be dated the Effective Date, shall be payable to the order of the Swing Line Lender in a principal amount equal to the Swing Line Commitment and shall otherwise be duly completed.

(p) The Swing Line Lender shall enter on a schedule attached to its Swing Line Note a notation with respect to each Swing Line Loan made hereunder of: (i) the date and principal amount thereof, and (ii) each payment and prepayment of principal thereof. Such notations shall be conclusive and binding on the Borrower absent manifest error; provided, however, that the failure of the Swing Line Lender to make a notation on the schedule to its Swing Line Note as aforesaid shall not limit or otherwise affect the obligation of the Borrower to repay the Swing Line Loans in accordance with their respective terms as set forth herein.

Facility Extension Options.

(a) In order to extend the Stated Maturity Date of the Facilities hereunder from June 30, 2006 to November 30, 2006, the Borrower shall, after April 1, 2006 but prior to May 15, 2006, provide irrevocable written notice to the Agent, of its intent to extend and shall, prior to June 30, 2006, provide evidence satisfactory to the Agent that the Borrower has (i) paid in full, or shall have refinanced in a manner satisfactory to the Agent, the Private Placement Debt consisting of the senior secured notes due August 1, 2006, as more fully described on Item 8.2.2(a)(i) of the Disclosure Schedule or (ii) established a cash liquidity reserve satisfactory to the Agent for the payment in full of such senior secured notes due August 1, 2006. Upon the receipt of satisfactory evidence of the foregoing by the Agent, the Stated Maturity Date shall be so extended, and the Agent shall promptly notify the Borrower and each Lender.

(b) So long as the conditions set forth in Section 2.8(a) have been satisfied, the Borrower may, after September 30, 2006 but prior to October 30, 2006, by irrevocable written notice to the Agent, elect to convert all or any portion of the Facility C Loans (other than the Facility C Working Capital Loans) outstanding on the Facility C Loan Conversion Date into term loans (the "**Facility C Term-Out Option**"), subject to the satisfaction, in Agent's reasonable discretion, of the following requirements:

(i) the ratio of SGP Consolidated Funded Debt to SGP Consolidated Operating Cash Flow as of the Facility C Loan Conversion Date shall be no greater than 5.00 to 1.00;

(ii) Holdings shall not have made any Restricted Payment since the date of the most recent Borrowing or Issuance of a Letter of Credit, unless, on the date of such Restricted Payment, the ratio of (x) SGP Consolidated Pro Forma

Operating Cash Flow to (y) SGP Consolidated Pro Forma Interest Expense plus the aggregate amount of SGP Restricted Payments made by Star Gas Partners to its equity holders during the period of determination, was greater than or equal to 0.75 to 1.00;

(iii) on the Facility C Loan Conversion Date, Star Gas Partners and its Subsidiaries shall have minimum weather insurance coverage of \$12,500,000 on a consolidated basis;

(iv) the Borrower shall have (i) paid in full, or shall have refinanced in a manner satisfactory to the Agent, the Private Placement Debt consisting of the senior secured notes due August 1, 2006, as more fully described on Item 8.2.2(a)(i) of the Disclosure Schedule or (ii) established a cash liquidity reserve satisfactory to the Agent for the payment in full of such senior secured notes due August 1, 2006;

(v) all representations and warranties in the Loan Documents shall be true, correct and complete as of the Facility C Loan Conversion Date; and

(vi) no Default or Event of Default shall exist as of Facility C Loan Conversion Date.

(c) The Facility C Loans converted into term loans pursuant to Section 2.8(b) shall be repaid pursuant to Section 3.1.1(c).

ARTICLE III

REPAYMENTS, PREPAYMENTS, INTEREST AND FEES

SECTION 3.1 Repayments and Prepayments.

Repayment

(a) Facility A Loans. The Borrower shall pay to the Agent for the account of each Lender (including, as applicable, the Swing Line Lender) on the Facility A Commitment Termination Date the aggregate principal amount of Facility A Loans and Swing Line Loans outstanding on such date, together with all accrued and unpaid interest thereon.

(b) Facility C Working Capital Loans. The Borrower shall pay to the Agent for the account of each Lender on the Facility C Loan Conversion Date the aggregate principal amount of Facility C Working Capital Loans outstanding on such date, together with all accrued and unpaid interest thereon.

(c) Other Facility C Loans. Except as provided in Section 3.1.1(b) above with respect to Facility C Working Capital Loans, (i) if the Borrower elects the Facility C Term-Out Option and satisfies the requirements of Section 2.8 with respect thereto, the Borrower shall pay to the Agent for the account of each Lender the principal of the

Facility C Loans made by such Lender outstanding at the close of business on the Facility C Loan Conversion Date in eight (8) consecutive quarterly installments on the Quarterly Payment Dates (together with all accrued and unpaid interest thereon) commencing on the Quarterly Payment Date immediately succeeding the Facility C Loan Conversion Date (provided that the last such payment shall be on November 30, 2008 in an amount sufficient to repay in full the principal amount of such Facility C Loans), with the amount of the installment paid on each Quarterly Payment Date to be equal to 1/8 of the principal of such Facility C Loans outstanding at the close of business on the Facility C Loan Conversion Date together with all accrued and unpaid interest thereon or (ii) if the Borrower does not elect the Facility C Term-Out Option or does not satisfy the requirements of Section 2.8(b) with respect thereto, the Borrower shall pay to the Agent for the account of each Lender on the Facility C Loan Conversion Date the aggregate principal amount of Facility C Loans outstanding on such date, together with all accrued and unpaid interest thereon.

Voluntary Prepayments. The Borrower may, from time to time on any Business Day, make a voluntary prepayment, in whole or in part, of the outstanding principal amount of any Loans; provided, however, that:

(d) any such prepayment shall be made pro rata among Loans of the same Type and, if applicable, having the same Interest Period of all Lenders;

(e) all such voluntary prepayments of LIBOR Loans shall require at least three (3) but no more than five (5) Business Days' prior written notice to the Agent and all such voluntary prepayments of Base Rate Loans shall require prior written notice to the Agent at least by 1:00 p.m., New York time, at least one (1) Business Day prior to such repayment but no more than five (5) Business Days prior to such repayment; and

(f) all such voluntary prepayments of LIBOR Loans or Facility C Loans shall be made in a minimum amount of \$3,000,000 and any integral multiple of \$100,000 in excess thereof, or in the whole outstanding principal amount of such Loans, and all such voluntary prepayments of Facility A Loans maintained as Base Rate Loans shall be made in a minimum amount of \$1,000,000 and an integral multiple of \$100,000, or in the whole outstanding principal amount of such Loan;

Each prepayment of any Loans made pursuant to this Section shall be without premium or penalty, except as required by Section 5.4.

Mandatory Prepayments.

(g) The Borrower shall, on each date when any reduction in the applicable Commitment shall become effective, including pursuant to Section 2.2, make a mandatory prepayment of all applicable Loans equal to the excess, if any, of the aggregate principal amount of all applicable Loans over the applicable Commitments.

(h) If at any time the sum of the Effective Amounts of the Facility A Loans, the Swing Line Loans, the Facility A L/C Obligations and Facility C Working Capital Loans exceed the lesser of (x) the sum of the Facility A Commitments then in effect and

the Effective Amount of Facility C Working Capital Loans and (y) the Borrowing Base, the Borrower shall immediately prepay such Facility A Loans and Swing Line Loans and Facility C Working Capital Loans (and, to the extent necessary, Cash Collateralize the Facility A Letters of Credit) in an aggregate principal amount equal to such excess. If at any time the sum of the Effective Amounts of the Facility A Loans, the Swing Line Loans and the Facility A L/C Obligations exceeds the lesser of (x) the Facility A Commitments then in effect and (y) the Borrowing Base minus the Effective Amount of Facility C Working Capital Loans, the Borrower shall immediately prepay such Facility C Working Capital Loans, Facility A Loans and Swing Line Loans (and, to the extent necessary, Cash Collateralize the Facility A Letters of Credit) in an aggregate principal amount equal to such excess. Any such prepayment shall be applied, first, to the Facility C Working Capital Loans, second, to the Swing Line Loans, third, to the Facility A Loans, and fourth, to Cash Collateralize, in a manner acceptable to the Agent, the Issuers, and the Lenders, the then outstanding Facility A L/C Obligations. Amounts prepaid pursuant to this Section may be reborrowed; provided that the aggregate Facility A Commitment is not exceeded thereby and the aggregate Facility C Commitment is not exceeded thereby.

(i) If at any time the Effective Amount of the Facility A L/C Obligations exceed \$20,000,000, the Borrower shall Cash Collateralize on such date the outstanding Facility A Letters of Credit in an amount equal to such excess.

(j) If at any time the Effective Amount of the Facility B L/C Obligations exceed the Facility B Commitment, the Borrower shall Cash Collateralize on such date the outstanding Facility B Letters of Credit in an amount equal to such excess.

(k) If at any time prior to the valid exercise of the Facility C Term-Out Option and the satisfaction of the conditions in Section 2.8, the Effective Amount of the Facility C Loans and the Effective Amount of the Facility C L/C Obligations exceed the Facility C Loan Commitments then in effect, the Borrower shall immediately prepay such Facility C Loans (and, to the extent necessary, Cash Collateralize the Facility C Letters of Credit) in an aggregate principal amount equal to such excess. Any such prepayment shall be applied, first, to the Facility C Loans, and second, to Cash Collateralize, in a manner acceptable to the Agent and the Lenders, the then outstanding Facility C L/C Obligations.

(l) In the event any Asset Disposition results in Excess Sale Proceeds which are (i) not reinvested within ninety (90) days of such disposition in replacement assets or not applied to refund the purchase price of assets acquired within one-hundred eighty (180) days prior to such disposition or not deposited with the Trustee within ninety (90) days of such disposition to be reinvested in such replacement assets, or (ii) deposited with the Trustee within ninety (90) days of such disposition but which are not reinvested within one-hundred eighty (180) days of such disposition or applied to refund the purchase price of assets acquired within the period one-hundred eighty (180) days prior to such disposition all as provided Section 8.2.8(b), such Excess Sale Proceeds shall be applied to the prepayment of the Senior Debt (other than Permitted Secured Interest Rate Contracts) in accordance with Section 4 of the Intercreditor Agreement.

(m) The Borrower shall, immediately upon any acceleration of the Stated Maturity Date of any Loans pursuant to Section 9.2 or Section 9.3, repay all such Loans and Cash Collateralize the outstanding aggregate amount of all L/C Obligations.

(n) The Borrower shall prepay amounts in accordance with Section 8.1.11.

(o) In the event any Casualty Event affecting any property of Holdings, the Borrower or any of the Material Subsidiaries which results in insurance, condemnation award or other compensation in excess of \$500,000 ("**Casualty Proceeds**") which Casualty Proceeds are (i) not reinvested within ninety (90) days of such receipt of Casualty Proceeds in replacement assets or not applied to refund the purchase price of replacement assets acquired within one-hundred eighty (180) days prior to such disposition or not deposited with the Trustee within ninety (90) days of receipt of such Casualty Proceeds to be reinvested, or (ii) deposited with the Trustee within ninety (90) days of receipt of such Casualty Proceeds but which are not reinvested in replacement assets within one-hundred eighty (180) days of such receipt of Casualty Proceeds or applied to refund the purchase price of replacement assets acquired within the period one-hundred eighty (180) days prior to the receipt of such Casualty Proceeds, such Casualty Proceeds shall be applied to the prepayment of the Senior Debt (other than Permitted Secured Interest Rate Contracts) in accordance with Section 4 of the Intercreditor Agreement.

Except as otherwise provided above, mandatory prepayments shall be applied first to the payment of the then outstanding Swing Line Loans, then the Facility C Loans, then the Facility A Loans, and then to Cash Collateralize the outstanding aggregate amount of all L/C Obligations. Subsequent to the Facility C Loan Conversion Date, each voluntary prepayment of Facility C Loans made pursuant to Section 3.1.2 and each mandatory prepayment of Facility C Loans made pursuant to Section 3.1.3 shall be applied, to the extent of such prepayment, to the repayments of the Facility C Loans installments in inverse order of maturity. Each prepayment of any Loans made pursuant to this Section shall be without premium or penalty, except as may be required by Section 5.4. No voluntary prepayment of principal of any Facility A Loan or Facility C Loan prior to the applicable Commitment Termination Date, shall cause a reduction in the Facility A Commitment or Facility C Commitment, as applicable.

Interest Provisions. Interest on the outstanding principal amount of Loans shall accrue and be payable in accordance with this Section 3.2.

Rates. Pursuant to an appropriately delivered Borrowing Request or Continuation/Conversion Notice, the Borrower may elect that Loans comprising a Borrowing accrue interest at a rate per annum:

(p) on and prior to the Facility C Loan Conversion Date,

(i) on that portion maintained from time to time as a Base Rate Loan, equal to the sum of the Alternate Base Rate from time to time in effect plus the Applicable Base Rate Margin; and

(ii) on that portion maintained as a LIBOR Loan, during each Interest Period applicable thereto, equal to the sum of the LIBOR (Reserve Adjusted) for such Interest Period plus the Applicable LIBOR Margin.

(q) after the Facility C Loan Conversion Date,

(i) on that portion maintained from time to time as a Base Rate Loan, equal to the sum of the Alternate Base Rate from time to time in effect plus the Applicable Base Rate Margin plus 0.25%; and

(ii) on that portion maintained as a LIBOR Loan, during each Interest Period applicable thereto, equal to the sum of the LIBOR (Reserve Adjusted) for such period plus the Applicable LIBOR Margin plus 0.25%.

All LIBOR Loans shall bear interest from and including the first day of the applicable Interest Period to (but not including) the last day of such Interest Period at the rate determined as applicable to such LIBOR Loan.

Post-Default Rate. Notwithstanding Section 3.2.1, whenever an Event of Default has occurred and is continuing, the Borrower shall pay interest on any Loan, and on any other amount payable by the Borrower hereunder (to the extent permitted by law) for the period commencing on the occurrence of such Event of Default until such Event of Default has been cured or waived as acknowledged in writing by the Agent at the applicable Post-Default Rate.

Payment Dates. Interest accrued on each Loan shall be payable, without duplication:

(r) on the Stated Maturity Date applicable to such Loan;

(s) with respect to any prepayment of a Loan in connection with a reduction in the applicable Commitment, on the date of any such prepayment;

(t) with respect to Base Rate Loans, on each Quarterly Payment Date occurring after the date of the initial Borrowing hereunder;

(u) with respect to LIBOR Loans, on the last day of each applicable Interest Period (and, if such Interest Period shall exceed three months, on the three month anniversary of the first day of such Interest Period);

(v) on that portion of any Loans the Stated Maturity Date of which is accelerated pursuant to Section 9.2 or Section 9.3, immediately upon such acceleration.

Interest accruing on the Loans or other monetary Obligations arising under this Agreement or any other Loan Document (i) shall be payable upon demand during the continuance of any Event of Default and (ii) shall include interest that accrues after the commencement of any proceeding under any Bankruptcy Law by or against any Obligor or any Subsidiary or Affiliate of any such Obligor.

Fees. The Borrower agrees to pay the fees set forth in this Section 3.3. All such fees shall be non-refundable.

Facility Fee. The Borrower shall pay to the Agent for the account of each Lender a facility fee on the daily actual amount of (a) such Lender's Facility A Commitment (whether or not used) from the date hereof until the Facility A Commitment Termination Date, (b) such Lender's Facility B Commitment (whether or not used) from the date hereof until the Facility B Commitment Termination Date and (c) such Lender's Facility C Commitment (whether or not used) from the date hereof until the Facility C Loan Conversion Date, in each case at the rate per annum set forth in the Pricing Grid. Accrued facility fees shall be payable in arrears on each Quarterly Payment Date and on the date on which the Commitments terminate as provided herein, commencing on the first of such dates to occur after the date hereof.

Letter of Credit Fee. The Borrower agrees to pay to the Agent, for the account of the Lenders, a fee for each Letter of Credit for the period from and including the date of the issuance of such Letter of Credit to (but not including) the date upon which such Letter of Credit expires, equal to the product of, the Applicable LIBOR Margin per annum times the face amount of such Letter of Credit. Such fee shall be payable by the Borrower in arrears on each Quarterly Payment Date, and on the relevant Commitment Termination Date (or November 30, 2008 (or such later expiry date if renewed at the sole discretion of the Issuer) in respect of Facility C Letters of Credit which have been Cash Collateralized and are outstanding after the Facility C Loan Conversion Date) for any period then ending for which such fee shall not theretofore have been paid, commencing on the first such date after the issuance of such Letter of Credit.

Letter of Credit Issuing Fee. The Borrower agrees to pay to the Issuer for its own account, an issuing fee for each Letter of Credit issued by the Issuer of 1/8 of 1% of the face amount of such Letter of Credit. Such fee shall be payable by the Borrower upon issuance of such Letter of Credit. In addition, the Borrower agrees to pay the Issuer from time to time on demand the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges of the Issuer relating to the Letters of Credit as from time to time in effect.

Other Fees. The Borrower shall pay to the Agent, for the account of the Lenders or the Agent (as applicable), the fees specified in a letter agreement dated October 10, 2003 among the Borrower, Wachovia and Wachovia Capital Markets, LLC, in each case at the times specified in such letter agreement.

ARTICLE IV

LETTERS OF CREDIT

SECTION 4.1 The Letter of Credit Facility and Subfacilities.

(a) On the terms and subject to the conditions set forth herein (i) the Issuer agrees from time to time on any Business Day during the period from the Effective Date

to the Facility A Commitment Termination Date to issue standby letters of credit (the "**Facility A Letters of Credit**") for the account of the Borrower in accordance with this Article IV, and to amend or renew, extend the expiration of or increase the amount of the Facility A Letters of Credit previously issued by and in accordance with Section 4.2(c) and Section 4.2(d) and (ii) the Lenders agree to participate in the Facility A Letters of Credit; provided, however, that the Issuer shall not be obligated to Issue, and no Lender shall be obligated to participate in, any Facility A Letter of Credit if, as of the date of Issuance of such Facility A Letter of Credit (the "**Facility A L/C Issuance Date**") (1) the Effective Amount of all Facility A L/C Obligations plus the Effective Amount of all Facility A Loans plus the Effective Amount of all Swing Line Loans exceeds the lesser of (x) the sum of the Facility A Commitments and (y) the Borrowing Base minus the Effective Amount of Facility C Working Capital Loans, or (2) the Effective Amount of the Facility A L/C Obligations exceeds \$20,000,000. Within the foregoing limits, and subject to the other terms and conditions hereof, the ability of the Borrower to obtain Facility A Letters of Credit shall be fully revolving, and accordingly, the Borrower may, during the foregoing period, obtain Facility A Letters of Credit to replace the Facility A Letters of Credit which have expired or which have been drawn upon and reimbursed.

(b) On the terms and subject to the conditions set forth herein (i) the Issuer agrees from time to time on any Business Day during the period from the Effective Date to the Facility B Commitment Termination Date to issue standby letters of credit (together with the Existing Facility B Letters of Credit, the "**Facility B Letters of Credit**") for the account of the Borrower in accordance with this Article IV, and to amend or renew, extend the expiration of or increase the amount of the Facility B Letters of Credit previously issued by and in accordance with Section 4.2(c) and Section 4.2(d) and (ii) the Lenders agree to participate in the Facility B Letters of Credit (including the Existing Facility B Letters of Credit); provided, however, that the Issuer shall not be obligated to issue, and no Lender shall be obligated to participate in, any Facility B Letter of Credit (including the Existing Facility B Letters of Credit) if, as of the date of issuance of such Facility B Letter of Credit (the "**Facility B L/C Issuance Date**") the Effective Amount of all Facility B L/C Obligations exceeds the combined Facility B Commitments. Within the foregoing limits, and subject to the other terms and conditions hereof, the ability of the Borrower to obtain Facility B Letters of Credit shall be fully revolving, and accordingly, the Borrower may, during the foregoing period, obtain Facility B Letters of Credit to replace the Facility B Letters of Credit which have expired or which have been drawn upon and reimbursed. For purposes of this Agreement, the Existing Facility B Letters of Credit shall be deemed issued under this Agreement and shall constitute Letters of Credit for all purposes under this Agreement. Within a reasonable period of time after the Effective Date, the Borrower shall cause the Existing Facility B Letter of Credit payable to Greenwich Insurance Company in the amount of \$1,947,577.00 and the Existing Facility B Letter of Credit payable to US Fire Insurance in the amount of \$19,680,000.00 to be terminated and shall request a new Facility B Letter of Credit to be issued by LaSalle Bank National Association as the Issuer to replace such Existing Facility B Letters of Credit. Upon the expiration date of the remaining Existing Facility B Letters of Credit, as shown on Schedule III, such Existing Facility B Letters of Credit shall expire pursuant to their terms and be replaced by a new

Facility B Letter of Credit to be issued by LaSalle Bank National Association as the Issuer.

(c) On the terms and subject to the conditions set forth herein (i) the Issuer agrees from time to time on any Business Day during the period from the Effective Date to the Facility C Loan Conversion Date to issue standby letters of credit (the "**Facility C Letters of Credit**") for the account of the Borrower in accordance with this Article IV, and to amend or renew, extend the expiration of or increase the amount of the Facility C Letters of Credit previously issued by and in accordance with Section 4.2(c) and Section 4.2(d) and (ii) the Lenders agree to participate in the Facility C Letters of Credit; provided, however, that the Issuer shall not be obligated to Issue, and no Lender shall be obligated to participate in, any Facility C Letter of Credit if, as of the date of Issuance of such Facility C Letter of Credit (the "**Facility C L/C Issuance Date**") the Effective Amount of all Facility C L/C Obligations plus the Effective Amount of all Facility C Loans exceeds the combined Facility C Commitments. Within the foregoing limits, and subject to the other terms and conditions hereof, the ability of the Borrower to obtain Facility C Letters of Credit shall be fully revolving, and accordingly, the Borrower may, during the foregoing period, obtain Facility C Letters of Credit to replace the Facility C Letters of Credit which have expired or which have been drawn upon and reimbursed.

(d) An Issuer is under no obligation to Issue any Letter of Credit if:

(i) any order, judgment or decree of any Government Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuer from issuing such Letter of Credit, or any Requirement of Law applicable to the Issuer or any request or directive (whether or not having the force of law) from any Government Authority with jurisdiction over the Issuer shall prohibit, or request that the Issuer refrain from, the Issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuer any restriction, reserve or capital requirement (for which the Issuer is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Issuer any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Issuer in good faith deems material to it;

(ii) the Issuer has received written notice from any Lender, the Agent or the Borrower, on or prior to the Business Day prior to the requested date of Issuance of such Letter of Credit, that one or more of the applicable conditions contained in Article VI is not then satisfied;

(iii) the expiry date of any requested Letter of Credit is (A) with respect to Facility A Letters of Credit, more than (1) one-hundred eighty (180) days after the Facility A L/C Issuance Date or (2) after the Facility A Commitment Termination Date, (B) with respect to the Facility B Letters of Credit, more than (1) three-hundred sixty (360) days after the Facility B L/C Issuance Date or (2) after the Facility B Commitment Termination Date or (C) with respect to the Facility C Letters of Credit, (1) if the Facility C Term-Out Option is elected and the Borrower has satisfied the requirements of Section 2.8, after November 30,

2008 or (2) if the Facility C Term-Out Option is not elected or the Borrower has not satisfied the requirements of Section 2.8, more than thirty (30) days after the Facility C Loan Conversion Date. It shall be a condition precedent to the issuance of each Facility C Letter of Credit that may be outstanding after the Facility C Loan Conversion Date, as provided in the immediately preceding clause (C)(2), that each such Facility C Letter of Credit be Cash Collateralized;

(iv) any requested Letter of Credit is not otherwise in form and substance acceptable to the Issuer, or the issuance of a Letter of Credit shall violate any applicable policies of the Issuer; and

(v) such Letter of Credit is to be used for a purpose other than as permitted by Section 8.1.13.

SECTION 4.2 Issuance, Amendment and Renewal of Letters of Credit.

(a) Each Letter of Credit shall be Issued upon the receipt by the Issuer of an L/C Application or L/C Amendment Application (with a copy sent by the Borrower to the Agent) prior to 10:00 a.m., New York time, at least three (3) Business Days prior to the proposed date of Issuance for Letters of Credit.

(b) Not later than 10:00 a.m., New York time, one (1) Business Day prior to the Issuance of any Letter of Credit, the Issuer will confirm with the Agent (by telephone or in writing) that the Agent has received a copy of the L/C Application or L/C Amendment Application from the Borrower and, if not, the Issuer will provide the Agent with a copy thereof. Unless the Issuer has on or before 11:00 a.m., New York time, on the Business Day the Issuer is to Issue a requested Letter of Credit (i) received notice from the Agent directing the Issuer not to Issue such Letter of Credit because such Issuance is not then permitted under Sections 4.1(a), 4.1(b), or 4.1(c) as a result of the limitations set forth therein; or (ii) received a notice described in Section 4.1(d)(ii), then, subject to the terms and conditions hereof, the Issuer shall, on the requested date, issue a Letter of Credit in accordance with the Issuer's usual and customary business practices.

(c) From time to time while a Letter of Credit is outstanding and prior to the relevant Commitment Termination Date, the Issuer will, upon the written, request of the Borrower received by the Issuer (with a copy sent by the Borrower to the Agent) at least three (3) Business Days (or such shorter time as the Issuer may agree in a particular instance in its sole discretion) prior to the proposed date of amendment, amend any Letter of Credit issued by it. Each such request for amendment of a Letter of Credit shall be made by facsimile made in the form of an L/C Amendment Application and shall specify in form and detail satisfactory to the Issuer: (i) the Letter of Credit to be amended; (ii) the proposed date of amendment of the Letter of Credit (which shall be a Business Day); (iii) the nature of the proposed amendment; and (iv) such other matters as the Issuer may reasonably require. The Issuer shall not amend any Letter of Credit if: (A) the Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms of this Agreement; or (B) the beneficiary of any such Letter of Credit does not accept the proposed amendment to the Letter of Credit. The Agent will

promptly notify the Lenders of the receipt by it of any L/C Application or L/C Amendment Application.

(d) Subject to Section 4.1(d), the Issuer and the Lenders agree that, while a Letter of Credit is outstanding and prior to the relevant Commitment Termination Date, at the option of the Borrower and upon the written request of the Borrower received by the Issuer (with a copy sent by the Borrower to the Agent) at least three (3) Business Days (or such shorter time as the Issuer and the Agent may agree in a particular instance in their sole discretion) prior to the proposed date of notification of renewal, the Issuer shall authorize the automatic renewal of any Letter of Credit issued by it. Each such request for renewal of a Letter of Credit shall be made by facsimile, confirmed promptly in an original writing, in the form of an L/C Amendment Application, and shall specify in form and detail satisfactory to the Issuer: (i) the Letter of Credit to be renewed; (ii) the proposed date of notification of renewal of the Letter of Credit (which shall be a Business Day); (iii) the revised expiry date of the Letter of Credit; and (iv) such other matters as the Issuer may reasonably require. The Issuer shall not renew any Letter of Credit if: (A) the Issuer would have no obligation at such time to issue or amend such Letter of Credit in its renewed form under the terms of this Agreement; or (B) the beneficiary of such Letter of Credit does not accept the proposed renewal of the Letter of Credit. If any outstanding Letter of Credit shall provide that it shall be automatically renewed in accordance with its terms unless the beneficiary thereof receives notice from the Issuer that such Letter of Credit shall not be renewed, and if at the time of renewal the Issuer would be required to authorize the automatic request renewal of such Letter of Credit in accordance with this Section 4.2(d) upon the request of the Borrower but the Issuer shall not have received any L/C Amendment Application from the Borrower with respect such renewal or other written direction by the Borrower with respect thereto, the Issuer shall nonetheless be permitted (upon prior written notice to the Agent) to allow such Letter of Credit to renew, and the Borrower and the Lenders hereby authorize such renewal, and, accordingly, the Issuer shall be deemed to have received an L/C Amendment Application from the Borrower requesting such renewal.

(e) The Issuer may, at its election (or as required by the Agent at the direction of the Required Lenders), deliver any notices of termination or other communications as appropriate, at any time and from time to time, in order to cause the expiry date of such Letter of Credit to be a date not later than the relevant Commitment Termination Date.

(f) This Agreement shall control in the event of any conflict with any L/C-Related Document (other than any Letter of Credit).

(g) The Issuer will also deliver to the Agent, concurrently or promptly following its delivery of a Letter of Credit, or amendment to or renewal of a Letter of Credit, to an advising bank or a beneficiary, a true and complete copy of such Letter of Credit or amendment to or renewal of a Letter of Credit.

Expenses. The Borrower agrees to pay to the Issuer all administrative expenses of the Issuer in connection with the issuance, maintenance, modification (if any) and administration of each Letter of Credit issued by the Issuer upon demand from time to time.

Other Lenders' Participation.

(h) Each Letter of Credit Issued pursuant to this Article IV, effective upon its issuance, and each Existing Letter of Credit, effective as of the Effective Date, shall, without further action, be issued (or deemed issued) on behalf of all Lenders (including the Issuer thereof) pro rata according to their respective relevant Percentages. Each Lender shall, to the extent of its relevant Percentage, be deemed irrevocably to have participated in the issuance of such Letter of Credit and shall be responsible to reimburse promptly the Issuer thereof for Reimbursement Obligations which have not been reimbursed by the Borrower in accordance with Section 4.5, or which have been reimbursed by the Borrower but must be returned, restored or disgorged by the Issuer for any reason, and each Lender shall, to the extent of its relevant Percentage, be entitled to receive from the Agent a ratable portion of the letter of credit fees received by the Agent pursuant to Section 3.3.2, with respect to each Letter of Credit. In the event that the Borrower shall fail to reimburse the Issuer, or if for any reason relevant Loans shall not be made to fund any Reimbursement Obligation (including without limitation, the failure to satisfy the conditions in Section 6.2 or an Insolvency Proceeding), all as provided in Section 4.5 and in an amount equal to the amount of any drawing honored by the Issuer under a Letter of Credit issued by it, or in the event the Issuer must for any reason return or disgorge such reimbursement, the Issuer shall promptly notify the Agent and each Lender of the unreimbursed amount of such drawing and of such Lender's respective participation therein. Each Lender shall make available to the Agent, who shall thereupon make available to the Issuer, whether or not any Default shall have occurred and be continuing, an amount equal to its respective participation in immediately available funds at the office of the Issuer specified in such notice not later than 11:00 a.m., New York time, on the Business Day after the date notified by the Issuer. In the event that any Lender fails to so make available the amount of such Lender's participation in such Letter of Credit as provided herein, the Issuer shall be entitled to recover such amount on demand from such Lender together with interest at the daily average Federal Funds Rate for three (3) Business Days (together with such other compensatory amounts as may be required to be paid by such Lender to the Agent pursuant to the Rules for Interbank Compensation of the Council on International Banking or the Clearinghouse Compensation Committee, as the case may be, as in effect from time to time) and thereafter at the Alternate Base Rate plus the Applicable Base Rate Margin plus 2%. The Issuer shall pay to the Agent, who shall distribute to each other Lender which has paid all amounts payable by it under this Section 4.4(a) with respect to any Letter of Credit issued by the Issuer, such other Lender's Percentage of all payments received by the Issuer from the Borrower in reimbursement of drawings honored by the Issuer under such Letter of Credit when such payments are received.

(i) Each Lender's obligation in accordance with this Agreement to fund its participation in Letters of Credit issued by the Issuer, shall, in each case, be absolute and unconditional and without recourse to the Issuer and shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Issuer, the Borrower or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default, an Event of Default or an event or circumstance which could have a Material Adverse Effect; or (iii) any other

circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

Disbursements. The Issuer will notify the Borrower and the Agent promptly of the presentment for payment of any Letter of Credit, together with notice of the date (a “**Disbursement Date**”) such payment shall be made. Subject to the terms and provisions of such Letter of Credit, the Issuer shall make such payment to the beneficiary (or its designee) of such Letter of Credit. Prior to 1:00 p.m., New York time, on the Disbursement Date, the Borrower will reimburse the Issuer for all amounts which the Issuer has notified the Borrower that it has disbursed under the Letter of Credit. To the extent the Issuer is not reimbursed in full in accordance with the third sentence of this Section, the Borrower’s Reimbursement Obligation shall accrue interest at a fluctuating rate determined by reference to the Alternate Base Rate plus the Applicable Base Rate Margin plus 2% per annum, payable on demand. In the event the Issuer is not reimbursed by the Borrower on the Disbursement Date, or if the Issuer must for any reason return or disgorge such reimbursement, the Lenders shall, on the terms and subject to the conditions of this Agreement, including without limitation [Section 6.2](#) and [Section 2.1.4](#), fund the Reimbursement Obligation (i) in respect of Facility A Letters of Credit and Facility C Letters of Credit therefor by making, on the next Business Day, either Facility A Loans or Facility C Loans, as applicable, which are Base Rate Loans as provided in [Section 3.2.1](#) (the Borrower being deemed to have given a timely Borrowing Request therefor for such amount), and (ii) in respect of the Facility B Letters of Credit by making, on the next Business Day, Facility A Loans, which are Base Rate Loans as provided in [Section 3.2.1](#) (the Borrower being deemed to have given a timely Borrowing Request for such amounts); **provided, further**, for the purpose of determining the availability of the Commitment in respect of such Loans to make such Loans immediately prior to giving effect to the application of the proceeds of such Loans, such Reimbursement Obligation shall be deemed not to be outstanding at such time.

Reimbursement. The Borrower’s obligation (a “**Reimbursement Obligation**”) under [Section 4.5](#) to reimburse the Issuer with respect to each disbursement (including interest thereon), and each Lender’s obligation to make participation payments in each drawing which has not been reimbursed by the Borrower, shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim, or defense to payment which the Borrower may have or have had against any Lender or any beneficiary of a Letter of Credit, including any defense based upon the occurrence of any Default, any draft, demand or certificate or other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient, the failure of any disbursement to conform to the terms of the applicable Letter of Credit (if, in the Issuer’s good faith opinion, such disbursement is determined to be appropriate) or any non-application or misapplication by the beneficiary of the proceeds of such disbursement, or the legality, validity, form, regularity, or enforceability of such Letter of Credit.

Cash Collateral Pledge. Upon (i) notice from the Agent or the Required Lenders, if, as of any Commitment Termination Date (or, with respect to any Facility C Letters of Credit outstanding after November 30, 2008), or upon the occurrence of an Event of Default, any Letters of Credit may for any reason remain outstanding and partially or wholly undrawn, or (ii) the occurrence of the circumstances described in [Section 3.1.3](#) requiring the Borrower to Cash Collateralize Letters of Credit, then the Borrower shall, unless waived by the Required Lenders,

immediately Cash Collateralize the L/C Obligations in an amount equal to the L/C Obligations. Cash Collateralized Letters of Credit shall be subject to the terms of the Intercreditor Agreement.

Nature of Reimbursement Obligations. The Borrower shall assume all risks of the acts, omissions, or misuse of any Letter of Credit by the beneficiary thereof. None of the Issuers, the Agent or any Lender (except to the extent of its own gross negligence or willful misconduct) shall be responsible for:

(j) the form, validity, sufficiency, accuracy, genuineness, or legal effect of any Letter of Credit or any document submitted by any party in connection with the application for and issuance or amendment of a Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent, or forged;

(k) the form, validity, sufficiency, accuracy, genuineness, or legal effect of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits, thereunder or proceeds thereof in whole or in part, which may prove to be invalid or ineffective for any reason;

(l) failure of the beneficiary to comply fully with conditions required in order to demand payment under a Letter of Credit;

(m) errors, omissions, interruptions, or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, or otherwise; or

(n) any loss or delay in the transmission or otherwise of any document or draft required in order to make a disbursement under a Letter of Credit or of the proceeds thereof.

None of the foregoing shall affect, impair, or prevent the vesting of any of the rights or powers granted the Issuers, the Agent or any Lender hereunder. In furtherance and extension, and not in limitation or derogation, of any of the foregoing, any action taken or omitted to be taken by either Issuer in good faith shall be binding upon the Borrower and shall not put the Issuers, the Agent or any Lender under any resulting liability to the Borrower.

Increased Costs; Indemnity. If by reason of:

(o) any change in applicable law, regulation, rule, decree or regulatory requirement or any change in the interpretation or application by any judicial or regulatory authority of any law, regulation, rule, decree or regulatory requirement occurring after the Effective Date; or

(p) compliance by any Issuer, the Agent or any Lender with any direction, request or requirement made after the Effective Date (whether or not having the force of law) of any governmental or monetary authority, including Regulation D of the F.R.S. Board:

(i) any Issuer, the Agent or any Lender shall be subject to any tax (other than taxes on net income including franchise taxes on income and

franchises), levy, charge or withholding of any nature or to any variation thereof or to any penalty with respect to the maintenance or fulfillment of its obligations under this Article IV, whether directly or by such being imposed on or suffered by any Issuer, or any Lender;

(ii) any reserve, deposit or similar requirement is or shall be applicable, imposed or modified in respect of any Letters of Credit issued by any Issuer or participations therein purchased by any Lender; or

(iii) there shall be imposed on any Issuer, the Agent or any Lender any other condition regarding this Article IV, any Letter of Credit or any participation therein;

and the result of the foregoing is directly or indirectly to increase the cost to the Issuer or such Lender of issuing, making or maintaining any Letter of Credit or of purchasing or maintaining any participation therein, or to reduce any amount receivable in respect thereof by the Issuer or Lender, when and in any such case the Issuer or Lender may, at any time after the additional cost is incurred or the amount received is reduced, notify the Borrower thereof (with copies to the Agent), and the Borrower shall within five (5) days of receipt of such notification pay on demand such amounts as the Issuer, the Agent or Lender may specify to be necessary to compensate the Issuer, the Agent or Lender for such additional cost or reduced receipt, together with interest on such amount from the date demanded until payment in full thereof at a rate equal at all times to the Alternate Base Rate plus the Applicable Base Margin plus 2% per annum; provided, however, neither the Issuer nor any Lender may make any demand for any amounts accrued for any period commencing on the later of (a) more than ninety (90) days prior to the date of demand or (b) should such cost have accrued retroactively, within ninety (90) days of the determination by such Lender or Issuer of such cost. The determination by the Issuer, the Agent or Lender, as the case may be, of any amount due pursuant to this Section 4.9, as set forth in a statement setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest error, be final and conclusive and binding on all of the parties hereto. In addition to amounts payable as elsewhere provided in this Article IV, the Borrower hereby agrees to protect, indemnify, pay and save the Issuer harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees and allocated costs of internal counsel) which the Issuer may incur or be subject to as a consequence, direct or indirect, of:

(A) the issuance of the Letters of Credit, other than as a result of the gross negligence or willful misconduct of the Issuer as determined by a court of competent jurisdiction, or

(B) the failure of the Issuer to honor a drawing under any 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 government authority.

Uniform Customs and Practice. The Uniform Customs and Practice for Documentary Credits as published by the International Chamber of Commerce most recently at the time of any Letter of

Credit shall (unless otherwise expressly provided in the Letters of Credit) apply to all Letters of Credit.

ARTICLE V

CERTAIN LIBOR AND OTHER PROVISIONS

LIBOR Lending Unlawful. If any Lender shall determine (which determination shall, upon notice thereof to the Borrower, the Agent and the Lenders, be conclusive and binding on the Borrower) that after the Effective Date the introduction of or any change in or in the interpretation of any law makes it unlawful, or any central bank or other government authority asserts that it is unlawful, for such Lender to make, continue or maintain any Loan as, or to convert any Loan into, a LIBOR Loan of a certain type, the obligations of such Lender to make, continue, maintain or convert any such Loans shall, upon such determination, forthwith be suspended until such Lender shall notify the Agent that the circumstances causing such suspension no longer exist, and all LIBOR Loans of such type shall automatically convert into Base Rate Loans at the end of the then current Interest Periods with respect thereto or sooner, if required by such law or assertion.

Deposits Unavailable. If the Agent shall have determined that:

- (a) Dollar deposits in the relevant amount and for the relevant Interest Period are not available to the Agent in the London interbank market; or
- (b) by reason of circumstances affecting the London interbank market, adequate means do not exist for ascertaining the interest rate applicable hereunder to LIBOR Loans of such type;

then, upon notice from the Agent to the Borrower and the Lenders, the obligations of all Lenders under Section 2.3 and Section 2.4 to make or continue any Loans as, or to convert any Loans into, LIBOR Loans of such type shall forthwith be suspended until the Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist.

Increased LIBOR Loan Costs, etc. The Borrower agrees to reimburse each Lender for any increase in the cost to such Lender of, or any reduction in the amount of any sum receivable by such Lender in respect of, making, continuing or maintaining (or of its obligation to make, continue or maintain) any Loans as, or of converting (or of its obligation to convert) any Loans into, LIBOR Loans, in any case from time to time by reason of:

- (c) to the extent not included in the calculation of the LIBOR (Reserve Adjusted), any reserve, special deposit, or similar requirement against assets of, deposits with or for the account of, or credit extended by such Lender, under or pursuant to any change in any law, treaty, rule, regulation (including any F.R.S. Board regulation), or requirement from that in effect on the Effective Date, or as the result of any Regulatory Change; or
- (d) any Regulatory Change which shall subject such Lender to any tax (other than taxes on net income including franchise taxes based on income and franchises), levy,

impost, charge, fee, duty, deduction, or withholding or any kind whatsoever or change the taxation of any Loan made or maintained as a LIBOR Loan and the interest thereon (other than any change which affects, and to the extent that it affects, the taxation of net income including franchise taxes based on income and franchises).

Such Lender shall promptly and in no event later than ninety (90) days after its knowledge of the occurrence of any such event notify the Agent and the Borrower in writing of the occurrence of any such event, such notice to state, in reasonable detail, the reasons therefor and the additional amount required fully to compensate such Lender for such increased cost or reduced amount; provided, however, no Lender may make any demand for any such amounts accrued under this Section 5.3 for any period commencing more than ninety (90) days prior to the receipt by the Borrower of such notice or, should such cost have accrued retroactively, within ninety (90) days of the determination by such Lender of such cost. Such additional amounts shall be payable by the Borrower directly to such Lender within five (5) days of its receipt of such notice, and such notice shall, in the absence of manifest error, be conclusive and binding on the Borrower.

Funding Losses. In the event any Lender shall incur any loss or expense (including any loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to make, continue or maintain any portion of the principal amount of any Loan as, or to convert any portion of the principal amount of any Loan into, a LIBOR Loan) as a result of:

(e) any conversion or repayment or prepayment of the principal amount of any LIBOR Loans on a date other than the scheduled last day of the Interest Period applicable thereto, whether pursuant to Section 3.1 or otherwise;

(f) any Loans not being made as LIBOR Loans in accordance with the Borrowing Request therefor; or

(c) any Loans not being continued as, or converted into, LIBOR Loans in accordance with the Continuation/Conversion Notice therefor;

then, upon the written notice of such Lender to the Borrower (with a copy to the Agent), the Borrower shall, within five (5) days of its receipt thereof, pay directly to such Lender such amount as will (in the reasonable determination of such Lender) reimburse such Lender for such loss or expense. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower.

Increased Capital Costs. If after the Effective Date any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase-in of, any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank, regulator or other government authority affects or would affect the amount of capital required or expected to be maintained by any Lender or any Person controlling such Lender, and such Lender determines (in its sole and absolute discretion) that the rate of return on its or such controlling Person's capital as a consequence of its Commitments or the Loans made by such Lender is reduced to a level below that which such Lender or such controlling Person could have achieved but for the occurrence of any such circumstance, then, in any such case upon notice

from time to time by such Lender to the Borrower (with copies to the Agent), the Borrower shall within five (5) days of its receipt thereof pay directly to such Lender additional amounts sufficient to compensate such Lender or such controlling Person for such reduction in rate of return. Such Lender shall promptly and in no event later than ninety (90) days after its knowledge of any such event notify the Agent and the Borrower of the occurrence of any such event; provided, however, no Lender may make any demand for any such amounts accrued under this Section 5.5 for any period commencing more than ninety (90) days prior to the receipt by the Borrower of any such notice or, should such cost have accrued retroactively, within ninety (90) days of the determination by such Lender of such cost. A statement of such Lender as to any such additional amount or amounts (including calculations thereof in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower. In determining such amount, such Lender may use any reasonable method of averaging and attribution that it (in its sole and absolute discretion) shall deem applicable.

Taxes. Without duplication of any payments made under any other provisions of this Article V, all payments by the Borrower of principal of, and interest on, the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future income, excise, stamp or franchise taxes and other taxes, fees, duties, withholdings or other charges of any nature whatsoever imposed by any taxing authority, but excluding franchise taxes and taxes imposed on or measured by any Lender's net income (including franchise taxes based upon income) or receipts (such non-excluded items, along with any related penalties and interest, being called "**Taxes**"). In the event that any withholding or deduction from any payment to be made by the Borrower hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then the Borrower will:

(g) pay directly to the relevant taxing authority the full amount required to be so withheld or deducted;

(h) promptly forward to the Agent an official receipt or other documentation satisfactory to the Agent evidencing such payment to such authority; and

(i) pay to the Agent for the account of the Agent and the Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by the Agent and each Lender will equal the full amount such Lender or the Agent would have received had no such withholding or deduction been required; provided that the Agent or each Lender shall notify the Agent and the Borrower of the same in writing;

provided, however, no Lender or the Agent may make any demand for any such amounts accrued under this Section 5.6 for any period commencing on the later of (i) ninety (90) days prior to the receipt by the Borrower of any such notice or (ii) should such cost have accrued retroactively, within ninety (90) days of the determination by such Lender or the Agent of such cost.

Moreover, if any Taxes are directly asserted against the Agent or any Lender with respect to any payment received by the Agent or such Lender hereunder, the Agent or such Lender may pay such Taxes and the Borrower will pay on demand such additional amounts (including any

penalties, interest or expenses) as is necessary in order that the net amount received by such person after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount such person would have received had not such Taxes been asserted.

If the Borrower fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to the Agent, for the account of the respective Lenders and the Agent, the required receipts or other required documentary evidence, the Borrower shall indemnify the Lenders and the Agent for any incremental Taxes, interest and penalties that may become payable by any Lender as a result of any such failure.

For purposes of this Section 5.6, a distribution hereunder by the Agent or any Lender to or for the account of any Lender or the Agent shall be deemed a payment by the Borrower.

Each Lender that is organized under the laws of a jurisdiction other than the United States shall, prior to the due date of any payments under the Notes, (i) execute and deliver to the Borrower and the Agent, on or about the first scheduled payment date in each Fiscal Year, one or more (as the Borrower or the Agent may reasonably request) United States Internal Revenue Service Forms W-8ECI or Forms W-8BEN or such other forms or documents (or successor forms or documents), appropriately completed, as may be applicable to establish the extent, if any, to which a payment to such Lender is exempt from withholding or deduction of Taxes, and (ii) comply with the requirements of Section 10.11. For any period with respect to which a Lender has failed to provide the Borrower and the Agent with the appropriate form pursuant to the first sentence of this paragraph (unless such failure is due to a change in treaty, law, or regulation occurring subsequent to the date on which a form originally was required to be provided), such Lender shall not be entitled to indemnification under this Section 5.6 with respect to Taxes imposed by the United States; provided, however, that should a Lender, which is otherwise exempt from withholding tax, become subject to Taxes because of its failure to deliver a form required hereunder, the Borrower shall take such steps as such Lender shall reasonably request to assist such Lender to recover such Taxes.

Payments, Computations, etc. Unless otherwise expressly provided, all payments by the Borrower pursuant to this Agreement, the Notes or any other Loan Document shall be made in Dollars, in immediately available funds by the Borrower to the Agent for the pro rata account of the Lenders entitled to receive such payment. All such payments required to be made to the Agent shall be made, without setoff, counterclaim, recoupment or other deduction, not later than 11:00 a.m., New York time, on the date due, in immediately available funds, to such account as the Agent shall specify from time to time by notice to the Borrower. Funds received after that time shall be deemed to have been received by the Agent on the next succeeding Business Day. The Agent shall promptly remit in same day funds to each Lender its share, if any, of such payments received by the Agent for the account of such Lender. All interest (other than interest computed at the Alternate Base Rate) and fees shall be computed on the basis of the actual number of days (including the first day but excluding the last day) occurring during the period for which such interest or fee is payable over a year comprised of three-hundred sixty (360) days. Interest computed at the Alternate Base Rate shall be computed on the basis of its actual number of days (including the first day but excluding the last day) occurring during the period for which such interest is payable over a year comprised of 365 or 366 days, as the case may be. Whenever any payment falls due on a day which is not a Business Day, such payment shall (except as

otherwise required by clause (c) of the definition of the term “Interest Period” with respect to LIBOR Loans) be made on the next succeeding Business Day and such extension of time shall be included in computing interest and fees, if any, in connection with such payment.

Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 5.3, 5.4 or 5.5) or Letter of Credit in excess of its pro rata share of payments then or therewith obtained by all Lenders, such Lender shall purchase from the other Lenders such participations in Loans made by them and/or Letters of Credit as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; provided, however, that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such recovery together with an amount equal to such selling Lender’s ratable share (according to the proportion of (a) the amount of such selling Lender’s required repayment to the purchasing Lender to (b) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 5.8 may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 5.9) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. 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 5.8 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 entitled under this Section 5.8 to share in the benefits of any recovery on such secured claim.

Setoff. Each Lender shall, upon the occurrence of any Default or any other Event of Default, have the right to appropriate and apply to the payment of the Obligations (whether or not then due), and (as security for such Obligations) the Borrower hereby grants to each Lender a continuing security interest in, any and all balances, credits, deposits, accounts or moneys of the Borrower then or thereafter maintained with such Lender; provided, however, that any such appropriation and application shall be subject to the provisions of Section 5.8. Each Lender agrees promptly to notify the Borrower and the Agent after any such setoff and application made by such Lender; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section 5.9 are in addition to other rights and remedies (including other rights of setoff under applicable law or otherwise) which such Lender may have.

Recourse. The Obligations of the Obligors to the Agent, the Issuers and the Lenders are secured and rank *pari passu* with all other Senior Debt. All of the Collateral of Holdings, the Borrower and the Material Subsidiaries will be pledged to secure the Obligations and all other Senior Debt (and the Borrower hereby acknowledges and agrees that the Obligations are Secured Obligations under (and as defined in) the Security Documents to which the Borrower is a party and confirms its pledge and grant of a security interest in and to the Collateral to secure the Obligations pursuant to such Security Documents). In the event and at the time that Holdings or the Borrower obtains or creates any Material Subsidiaries (a) each such Material Subsidiary must

issue and deliver to the Agent a guarantee of the Obligations and the Permitted Secured Interest Rate Contract Obligations in the form of Exhibit J-2 and each such guarantee will be in favor of the Trustee and secured by a pledge of all of the Material Subsidiary's accounts and notes receivable, inventory, cash, Customer Lists, Capital Stock, equipment, tanks, certain fixtures, certain vehicles pursuant to Section 8.1.18 and certain real property pursuant to Section 8.1.19, and (b) the Borrower shall cause the Security Documents to be amended to add such Material Subsidiary as an Obligor thereunder and shall deliver, or cause such Material Subsidiary to deliver, such other agreements, documents, instruments and opinions in connection therewith as the Agent may request. The Borrower shall promptly notify the Agent in the event that Holdings or the Borrower obtains or creates any Material Subsidiary.

In furtherance of Section 21 (a) of the Intercreditor Agreement, each Lender by its execution of this Agreement (or, if such Lender is an Assignee Lender, by its execution of an Assignment and Acceptance Agreement pursuant to Section 11.1.1.1) confirms for the benefit of the Trustee and the other parties to the Intercreditor Agreement that such Lender shall be bound by the terms of, and be entitled to the benefits and Security under, the Intercreditor Agreement as a Bank Lender thereunder. Each of the Lenders further confirms its consent to the amendment of the defined term "Bank Lenders" under the Intercreditor Agreement to include each of the Lenders listed on the signature pages to this Agreement and other Lenders under this Agreement from time to time, and each such Lender authorizes the Agent to execute an amendment to the Intercreditor Agreement to such effect on behalf of such Lender.

Replacement of Lenders. In the event any Lender shall provide notice to the Agent pursuant to Section 4.9, 5.3, 5.5 or 5.6 hereunder, the Borrower shall be permitted to replace such Lender, provided, however, that such Lender's replacement shall agree to all the obligations and conditions relating to an Assignee Lender contained in Section 11.1.1.1 hereto. Any such replacement shall be subject to the Agent's consent which consent shall not be unreasonably withheld.

ARTICLE VI

CONDITIONS TO BORROWING

Conditions to Effectiveness. The effectiveness of this Agreement shall be subject to the prior or concurrent satisfaction of each of the conditions precedent set forth in this Section 6.1 (all documents to be delivered to the Agent shall be in sufficient copy for the Agent and each of the Lenders).

Credit Agreement and Notes. This Agreement and the other Loan Documents shall have been executed by each party thereto and delivered to the Agent.

Closing Certificate. A certificate signed by a Responsible Officer of the Borrower, dated as of the Effective Date, certifying:

- (a) the representations and warranties contained in Article VII are true and correct on and as of such date, as though made on and as of such date;

(b) except as disclosed in the Borrower's Form 10-Q filed with the SEC for the Fiscal Quarter ended June 30, 2003, there has been no material adverse change from that set forth in the audited consolidated financial statements of Holdings dated as of September 30, 2002 for the period ending on that date in (i) the condition (financial or otherwise), business, prospects, operations, assets or properties of Star Gas Partners (individually) and Star Gas Partners and its Subsidiaries (taken as a whole), (ii) the condition (financial or otherwise), business, prospects, operations, assets or properties of Holdings, the Borrower and the Material Subsidiaries (taken as a whole), (iii) any Obligor's ability to perform its obligations under any Loan Document to which it is a party, (iv) the security interests (or the value or priority thereof) granted under the Security Documents, or (v) the validity of the Loan Documents;

(c) the financial statements previously delivered to the Lenders, the Issuers and the Agent are true and correct; and

(d) no action, suit, investigation or proceeding is pending or threatened in any court or before any arbitrator or governmental authority that could (i) materially and adversely affect Star Gas Partners, Holdings, the Borrower or their respective Subsidiaries, or (ii) affect any transaction contemplated hereby or the ability of Star Gas Partners, Holdings, the Borrower and their respective Subsidiaries or any other Obligor to perform their respective obligations under this Agreement or the other Loan Documents.

Organizational Documents. The Agent shall have received all of the following:

(d) copies of resolutions of the board of directors of the Borrower and Holdings, partnership authorizations for Star Gas Partners and resolutions of the board of directors or members, as applicable, of each Material Subsidiary authorizing the transactions contemplated hereby and the other Loan Documents to which it is a party, certified as of the Effective Date by the Secretary or an Assistant Secretary of such Person; and

(e) a certificate of the Secretary or Assistant Secretary of each of Star Gas Partners, Holdings, the Borrower and the Material Subsidiaries certifying the names and true signatures of its officers authorized to execute, deliver and perform, as applicable, on behalf of such Person the Loan Documents to which it is a party.

(f) the articles or certificate of incorporation and the bylaws of the Borrower and Holdings, certificate of limited partnership and the partnership agreement of Star Gas Partners and articles or certificate of incorporation and the bylaws or certificate of limited partnership and the partnership agreement, as applicable, of each Material Subsidiary, in each case as in effect on the Effective Date, certified by the Secretary or an Assistant Secretary of such Person, as of the Effective Date; and

(d) a good standing certificate for each of Star Gas Partners, Holdings, the Borrower and the Material Subsidiaries (where available in the case of a limited partnership) from the Secretary of State (or similar, applicable Governmental Authority) of its state of incorporation or organization, as applicable, and each other state, where

available, Star Gas Partners, Holdings, the Borrower or any of the Material Subsidiaries is qualified to do business as a foreign entity, in each case as of a recent date.

Permits. The Agent shall have received a certificate of a Responsible Officer of the Borrower certifying that there are no permits, licenses or regulatory approvals required for the execution, delivery and performance of the this Agreement and the other Loan Documents.

Post-Closing Agreement. The Post-Closing and Collateral Trustee Transfer Agreement, substantially in the form of Exhibit M attached hereto (the “*Post-Closing Agreement*”), duly executed by each party thereto. Each Lender hereby authorizes the Agent to enter into the Post-Closing Agreement on its behalf.

Opinion of Counsel. The Agent shall have received opinions, dated the Effective Date and addressed to the Agent and all Lenders, from Phillips Nizer LLP, special counsel to Star Gas Partners, Holdings, the Borrower and the Material Subsidiaries substantially in the form of Exhibit J hereto.

Closing Fees, Expenses, etc. The Agent shall have received evidence of payment for its own account, or for the account of each Lender or each Issuer, as the case may be, all fees, costs and expenses due and payable pursuant to Section 3.3 and, if then invoiced, Section 11.3.

Insurance. Insurance complying with the Loan Documents shall be in full force and effect and the Agent shall have received a certificate to that effect from the Borrower.

Facility A Notes. The Borrower shall have duly delivered to the Agent for the benefit of each Lender a duly executed Facility A Note payable to each Lender, if requested by such Lender.

Facility C Notes. The Borrower shall have duly delivered to the Agent for the benefit of each Lender a duly executed Facility C Note payable to each Lender, if requested by such Lender.

Borrowing Base Certificate. The Agent shall have received a Borrowing Base Certificate.

Collateral Related Documents. The Trustee on behalf of the Secured Parties shall hold a perfected first priority security interest in all of the Collateral subject only to Liens permitted by Section 8.2.3, and the following items shall have been delivered:

(g) to the Agent:

- (i) duly authorized, executed and delivered counterparts of the Security Documents;
- (ii) duly authorized, executed and delivered counterparts of the Intercreditor Agreement;

(iii) a duly completed and executed Perfection Certificate in substantially the form of Exhibit N (the “*Perfection Certificate*”) from the Borrower;

(iv) an acknowledgement copy, or other evidence, of the proper filing, registration or recordation of each document (including each Uniform Commercial Code financing statement) required by law or reasonably requested by the Lenders to be filed, registered or recorded, in each jurisdiction in which such filing, registration or recordation is so required or requested, in order to create in favor of the Trustee for the benefit of the Secured Parties a valid, legal and perfected security interest in or lien on the Collateral that is the subject of the Security Agreements;

(v) results of lien searches against the Borrower and the other Obligors in the locations set forth on Schedule V; and

(vi) environmental information relating to the real property owned or leased by Holdings, the Borrower and the Material Subsidiaries, reasonably requested by the Agent.

(h) to the Trustee:

(i) certificates representing at least 99% of all outstanding Capital Stock of Holdings, the Borrower, the Material Subsidiaries (or, in the case of any foreign Subsidiary, 65% of its outstanding Capital Stock), accompanied by undated stock powers endorsed in blank, duly executed and accompanied by undated assignments executed in blank;

(ii) subject to the Post-Closing Agreement, counterparts of each Mortgage requested by the Agent, duly executed by Holdings, the Borrower or the applicable Material Subsidiary, as the case may be, and such other documents relating to the Mortgaged Properties as may be requested by the Agent and other customary closing documents as shall be reasonably requested by the Agent (other than any such other closing documents as are immaterial in the judgment of the Required Lenders) and such legal opinions reasonably requested by the Agent; and

(iii) subject to the Post-Closing Agreement, an ALTA loan policy (10-17-92 form), or its equivalent, of title insurance, with respect to the properties and facilities so identified on Schedule VI, issued by a title company or companies authorized to issue title insurance in the states in which such properties or facilities are located, dated the Effective Date, insuring the interest of the Trustee under the Security Documents as valid first liens on the Mortgaged Properties, free of Liens (other than Liens permitted by Section 8.2.3) or other exceptions to title not approved and accepted by the Agent, such policies to be in an amount reasonably satisfactory to the Agent.

Flood Hazard Certificates. The Agent shall have received flood hazard certificates for each Mortgaged Property indicating whether the applicable Mortgaged Property is or is not in a flood zone and with respect to each Mortgaged Property that is located within a flood zone, either (a) evidence that the improvements on such Mortgaged Property are not in a flood zone or (b) evidence that Holdings, the Borrower or the applicable Material Subsidiary has obtained flood hazard insurance for such Mortgaged Property.

Solvency Certificate. The Agent shall have received a solvency certificate, substantially in the form of Exhibit K, dated as of the Effective Date, (i) from the chief financial officer or treasurer of Holdings, certifying as to the solvency of Holdings, the Borrower and their respective Subsidiaries after giving effect to the transactions contemplated hereby and (b) from the chief financial officer of Star Gas Partners, certifying as to the solvency of the Star Gas Partners and its Subsidiaries after giving effect to the transactions contemplated hereby.

Information. The Agent shall have received information regarding litigation, tax, accounting, labor, insurance, pension liabilities (actual or contingent), the Collateral, real estate leases, material contracts, debt agreements, property ownership, environmental matters, contingent liabilities and management of Star Gas Partners, Holdings, the Borrower and their respective Subsidiaries, and the Agent shall provide such information to any Lender upon written request from such Lender.

Financial Projections. The Agent shall have received projections of Holdings and its Subsidiaries and Star Gas Partners and its Subsidiaries through the Fiscal Year 2007.

Financial Statements. The Agent shall have received the financial statements described in Section 7.7 and such other financial information as the Agent may request.

Certified Documents. The Agent shall have received true and complete copies of the following documents, along with any amendments and supplements thereto, certified as of the Effective Date by the Secretary or an Assistant Secretary of the Borrower:

- (a) Note Agreements;
- (b) Intercreditor Agreement;
- (c) Existing Credit Agreement;
- (d) Security Agreements;
- (e) Guarantee Agreements; and
- (f) Affiliate Subordination Agreements.

Existing Credit Agreement. On or prior to the Effective Date, the Existing Credit Agreement shall have been paid in full (including interest, fees and other amounts owing thereunder) and all commitments thereunder and letters of credit issued thereunder shall have been irrevocably terminated.

Consent of Holders of Other Indebtedness. The holders of the Senior Debt (other than Senior Debt in respect of this Agreement) and the Existing Subordinated Debt shall, to the extent required by the agreements governing such Indebtedness, including but not limited to the Note Agreements and the Intercreditor Agreement, have given their consent to the transactions contemplated hereby and under the other Loan Documents, and the Agent shall have received evidence thereof.

Other Documents. The Agent or any Lender shall have received such other approvals, opinions, documents or materials as the Agent or such Lender may reasonably request.

All Borrowings and Issuances of Letters of Credit. The obligation of each Lender to fund any Loan on the occasion of any Borrowing (including the initial Borrowing) and the obligation of each Issuer to Issue any Letters of Credit shall be subject to the satisfaction of each of the conditions precedent set forth in this Section 6.2.

Compliance with Warranties, No Default, etc. Both before and after giving effect to any Borrowing and the Issuance of any Letter of Credit (but, if any Default of the nature referred to in Section 9.1.4 shall have occurred with respect to any other Indebtedness, without giving effect to the application, directly or indirectly, of the proceeds thereof) the following statements shall be true and correct:

(i) the representations and warranties set forth in Article VII and the Security Documents shall be true and correct with the same effect as if then made (unless stated to relate solely to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date);

(j) no Default or Event of Default shall have then occurred and be continuing;

(k) for Borrowings of Facility A Loans and Facility C Working Capital Loans and issuance of Facility A Letters of Credit, the ratio of Current Assets to Current Liabilities is not less than 1.00 to 1.00 at the end of each Fiscal Quarter during the period from December 31 through June 30 of each year and not less than 0.85 to 1.00 at the end of each Fiscal Quarter during the period from July 1 through December 30 of each year;

(l) no event or circumstance has occurred which could have a Material Adverse Effect;

(e) Star Gas Partners and its Subsidiaries shall have minimum weather insurance coverage of \$12,500,000 on a consolidated basis;

(f) the ratio of SGP Consolidated Funded Debt to SGP Consolidated Pro Forma Operating Cash Flow as of the end of the most recently ended Fiscal Quarter shall be no greater than 5.00 to 1.00;

(g) Holdings shall not have made any Restricted Payment since the date of the most recent Borrowing or Issuance of a Letter of Credit, unless, as of the end of the most recently ended Fiscal Quarter prior to such Restricted Payment, the ratio of (x) SGP Consolidated Pro Forma Operating Cash Flow to (y) SGP Consolidated Pro Forma

Interest Expense plus the aggregate amount of SGP Restricted Payments made by Star Gas Partners to its equity holders during the period of determination, was greater than or equal to 0.75 to 1.00; and

(h) Availability under the Star Propane Credit Agreement shall not have been restricted pursuant to Sections 4.02(f)(ii) and 4.02(f)(iii) (or analogous or superceding provision) of the Star Propane Credit Agreement.

Borrowing Request. The Agent shall have received a Borrowing Request, L/C Application or L/C Amendment Application (as applicable) or request for a Swing Line Loan pursuant to Section 2.7, as the case may be, for such Borrowing or Issuance of such Letter of Credit, as the case may be. Each of the delivery of a Borrowing Request, L/C Application or L/C Amendment Application (as applicable) or request for a Swing Line Loan pursuant to Section 2.7 and the acceptance by the Borrower of the proceeds of such Borrowing or the Issuance of the Letter of Credit, as applicable, shall constitute a representation and warranty by Star Gas Partners, Holdings, the Borrower and the Material Subsidiaries that on the date of such Borrowing (both immediately before and after giving effect to such Borrowing and the application of the proceeds thereof) or the Issuance of the Letter of Credit, as applicable, each of the statements made in Section 6.2.1 is true and correct.

Borrowing Base Certificate. In the case of each Facility A Loan and each Facility C Working Capital Loan, the Agent shall have received the most recent Borrowing Base Certificate in accordance with Section 8.1.1(k).

Satisfactory Legal Form. All documents executed or submitted pursuant hereto by or on behalf of the Borrower, any other Obligor or any Subsidiary shall be satisfactory in form and substance to the Agent and its counsel and the Issuer and its counsel in respect of any L/C-Related Document or in respect of the Issuance of the Letters of Credit; the Agent and its counsel shall have received all information, approvals, opinions, documents or instruments as the Agent or its counsel and the Issuers and their respective counsel in respect of any L/C-Related Document or in respect of the Issuance of the Letters of Credit may reasonably request.

Compliance Certificate. With respect to any Borrowing of Facility C Loans or Issuance of Facility C Letters of Credit, the Borrower shall have delivered to the Agent a certificate of a Responsible Officer of the Borrower certifying and demonstrating that, after giving effect to such Borrowing or Issuance, (a) Holdings, the Borrower and the Material Subsidiaries will be in compliance with the Leverage Ratio covenant set forth in Section 8.2.4(a) and (b) Holdings, the Borrower and the Material Subsidiaries will be in compliance with the Consolidated Cash Flow to Consolidated Interest Expense Ratio covenant set forth in Section 8.2.4(b).

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

In order to induce the Lenders, the Agent and the Issuers to enter into this Agreement and to make Loans and Issue Letters of Credit hereunder, the Borrower represents and warrants unto the Agent, each Issuer and each Lender as set forth in this Article VII.

Organization etc.

(a) Each of the Managing General Partner, Holdings, the Borrower and their Subsidiaries is a corporation (or a limited liability company in the case of the Managing General Partner, Richland General Partners, LLC and Columbia Petroleum Transportation, LLC) duly organized, validly existing and in good standing under the laws of its state of organization and has all requisite power and authority to own and operate its properties, to conduct its business as conducted on the Effective Date, to enter into this Agreement, the Notes and the other Loan Documents to which it is a party, and to carry out the terms of this Agreement, the Notes and such other Loan Documents.

(b) Each of Star Gas Partners and Meenan Oil Co., L.P. is a limited partnership duly organized, validly existing and in good standing under the laws of its state of its organization and has all requisite partnership power and authority to own and operate its properties, to conduct its business as conducted on the Effective Date, and to execute, deliver and carry out the terms of the Loan Documents to which it is a party.

(c) Item 7.1 of the Disclosure Schedule accurately and completely lists, as to each of Star Gas Partners, Holdings, the Managing General Partner, the Borrower and each Material Subsidiary: (i) the state of incorporation or organization of each such entity, and the type of legal entity that each of them is, (ii) as to each of them that is a corporation, the classes and number of authorized and outstanding shares of Capital Stock of each such corporation, and the owners of such outstanding shares of Capital Stock, (iii) as to each of them that is a legal entity other than a corporation (but not a natural person), the type and amount of Capital Stock authorized and outstanding of each such entity, and the owners of such Capital Stock, and (iv) the business in which each of such entities is engaged. All of the foregoing Capital Stock that is issued and outstanding have been duly and validly issued and are fully paid and non-assessable, and are owned by the Persons referred to in Item 7.1 of the Disclosure Schedule, free and clear of any Lien except as otherwise provided for herein. Except as set forth on Item 7.1 of the Disclosure Schedule, there are no outstanding warrants, options, contracts or commitments of any kind entitling any Person to purchase or otherwise acquire any shares of Capital Stock of Holdings, the Managing General Partner, the Borrower or any Material Subsidiary nor are there outstanding any securities that are convertible into or exchangeable for any shares of Capital Stock of Holdings, the Managing General Partner, the Borrower or any Material Subsidiary.

Subsidiaries. Except as disclosed in Item 7.2 of the Disclosure Schedule, Star Gas Partners, Holdings and the Borrower do not have any Subsidiaries or any Investments in any Person (other than Investments of the types permitted in Section 8.2.5). Holdings and the Borrower do not have any Nonmaterial Subsidiaries other than Petro Plumbing Corporation and RegionOil Plumbing, Heating and Cooling Co., Inc. and, after the Effective Date, will not have any other Nonmaterial Subsidiaries other than those Subsidiaries in respect of which a waiver has been granted by the Agent in writing.

Qualification. Each of the Star Gas Partners, Holdings, the Borrower and their Subsidiaries is duly qualified or registered and is in good standing as a foreign corporation or

partnership for the transaction of business in the jurisdictions in which the nature of their respective activities or the character of the properties they own, lease or use makes such qualification or registration necessary and in which the failure so to qualify or to be so registered could be reasonably expected to have a Material Adverse Effect. Item 7.3 of the Disclosure Schedule sets forth such jurisdictions as of the Effective Date.

Enforceability. Each of Star Gas Partners, Holdings, the Borrower and the Material Subsidiaries has taken all necessary partnership or corporate action to authorize the execution, delivery and performance by it of this Agreement, the Notes and each other Loan Document to which is a party. Each of Star Gas Partners, Holdings, the Borrower and the Material Subsidiaries has duly executed and delivered each of this Agreement, the Notes and the other Loan Documents to which it is a party, and each of them constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws of general application relating to or affecting the rights and remedies of creditors and by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law; provided, however, that such laws shall not materially interfere with the practical realization of the Security Documents or the Liens created thereby, except for (i) possible delay, (ii) situations that may arise under Chapter 11 of the Bankruptcy Code, and (iii) equitable orders of a bankruptcy court.

Due Authorization; Non-contravention; etc. The execution, delivery and performance by each of Star Gas Partners, Holdings, the Borrower and the Material Subsidiaries of this Agreement, the Notes and each other Loan Document required to be executed by it hereunder are within Star Gas Partners', Holdings', the Borrower's and each Material Subsidiary's powers, have been duly authorized by all necessary action, and do not:

(d) contravene Star Gas Partners', Holdings', the Borrower's or any Material Subsidiary's Organic Documents;

(e) contravene any contractual restriction, law or governmental regulation or court decree or order binding on or affecting Star Gas Partners, Holdings, the Borrower or any Material Subsidiary; or

(f) result in, or require the creation or imposition of, any Lien on any of Star Gas Partners', Holdings', the Borrower's or such Material Subsidiary's properties, except as contemplated hereby.

Government Approvals; Regulations, etc. No authorization or approval or other action, by, and no notice to or filing with, any government authority or regulatory body or other Person (that has not been obtained) is required for the due execution, delivery or performance by Star Gas Partners, Holdings, the Borrower or any Material Subsidiary of this Agreement, the Notes or any other Loan Document to which it is a party. All such required authorizations and approvals have been obtained and such required notices and filings have been made.

Business; Financial Statements.

(g) The unaudited consolidated financial statements of the Borrower and its Subsidiaries for the 2002 Fiscal Year and for the Fiscal Quarter ended June 30, 2003, in each case together with the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal periods ended on those respective dates:

(i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein;

(ii) fairly present in accordance with GAAP the financial condition of the Borrower and its Subsidiaries as of the date thereof and results of operations for the period covered thereby; and

(iii) show all material indebtedness and other liabilities, direct or contingent of the Borrower and its Subsidiaries required to be disclosed in accordance with GAAP as of the date thereof including liabilities for taxes, material commitments and Contingent Liabilities.

(h) The audited consolidated financial statements of Holdings and its Subsidiaries for the 2002 Fiscal Year, and the unaudited consolidated financial statements of Holdings and its Subsidiaries for their Fiscal Quarter ended June 30, 2003, in each case together with the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal periods ended on those respective dates:

(i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein;

(ii) fairly present in accordance with GAAP the financial condition of Holdings and its Subsidiaries as of the date thereof and results of operations for the period covered thereby; and

(iii) show all material indebtedness and other liabilities, direct or contingent of Holdings and its Subsidiaries required to be disclosed in accordance with GAAP as of the date thereof including liabilities for taxes, material commitments and Contingent Liabilities.

(i) The audited consolidated financial statements of Star Gas Partners and its Subsidiaries for the 2002 Fiscal Year, and the unaudited consolidated financial statements of Star Gas Partners and its Subsidiaries for their Fiscal Quarter ended June 30, 2003, together with the related consolidated statements of income or operations, partners' capital and cash flow for the fiscal periods ended on those respective dates:

(i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein;

(ii) fairly present in accordance with GAAP the financial condition of Star Gas Partners and its Subsidiaries as of the date thereof and results of operations for the period covered thereby; and

(iii) show all material indebtedness and other liabilities, direct or contingent, of Star Gas Partners and its consolidated Subsidiaries required to be disclosed in accordance with GAAP as of the date thereof, including liabilities for taxes, material commitments and Contingent Liabilities.

(d) The Disclosure Schedule accurately sets forth all Senior Debt and Existing Subordinated Debt of Holdings, the Borrower and the Material Subsidiaries as of the date hereof.

No Material Adverse Change. Since the date of the financial statements described in Section 7.7 or, for any determination after the delivery of the first financial statements pursuant to Section 8.1.1(b), since the date of such financial statements (if such financial statements shall be satisfactory to the Required Lenders), there has been no material adverse change in (a) the condition (financial or otherwise), business, prospects, operations, assets or properties of Star Gas Partners (individually) and Star Gas Partners and its subsidiaries (taken as a whole), (b) the condition (financial or otherwise), business, prospects, operations, assets or properties of Holdings, the Borrower and the Material Subsidiaries (taken as a whole), (c) with respect to any Obligor's ability to perform its obligations under any Loan Document to which it is a party, (d) with respect to the security interests (or the value or priority thereof) granted under the Security Documents, or (e) with respect to the validity of the Loan Documents.

Litigation; Labor Controversies, etc. There is no pending or, to the knowledge of Star Gas Partners, Holdings, the Borrower, or any of their Subsidiaries, threatened litigation, action, proceeding, or labor controversy affecting Star Gas Partners, Holdings, the Borrower or any of their Subsidiaries, or any of their respective properties, businesses, assets or revenues, which has, or could have, a Material Adverse Effect.

Ownership of Properties; Liens. Star Gas Partners, Holdings, the Borrower and each of the Material Subsidiaries have (a) title to all of their respective assets constituting real property owned in fee simple, (b) good and valid leasehold interests in their respective assets constituting leased real property, pursuant to which they enjoy undisturbed possession thereof, except for defects in, or lack of recorded title and exceptions to, leasehold interests which could not, in the aggregate, be reasonably expected to have a Material Adverse Effect, and (c) sufficient title to the portion of their respective assets constituting personal property (including patents, trademarks, trade names, service marks, copyrights and other intellectual property rights) reasonably necessary for the use and operation of such personal property as it has been used in the past and as it is proposed to be used, in each case subject to no Liens except as permitted pursuant to Section 8.2.3. The Liens that have been created and granted by the Security Documents constitute valid perfected first Liens on the properties and assets covered by the Security Documents, subject to prior or equal Liens as permitted by Section 8.2.3.

Taxes. Star Gas Partners, Holdings, the Borrower and each Subsidiary, and any predecessor entity thereto, have filed all tax returns and reports required by law to have been

filed by them and have paid all taxes and governmental charges thereby shown to be owing, except (a) any such taxes or charges which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books, and (b) where the failure to do so could not have a Material Adverse Effect.

ERISA Compliance.

(j) Each Plan is in compliance in all material respects with its own terms, the applicable provisions of ERISA, the Code and other federal or state law. Each Plan which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service and, to the best knowledge of the Borrower, nothing has occurred which would cause the loss of such qualification. The Borrower and each ERISA Affiliate has made all required contributions to any Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan. No Lien in favor of PBGC or a Plan has arisen or is reasonably likely to arise on account of any Plan.

(k) To the extent applicable, the present value (determined using actuarial and other assumptions that are reasonable with respect to the benefits provided and the employees, if any, participating) of the liability of the Borrower and each ERISA Affiliate for post-retirement welfare benefits, if any, to be provided to their current and former employees under Plans that are welfare benefit plans (as defined in Section 3(1) of ERISA), net of all assets under all such Plans allocable to such benefits, is reflected on the Borrower's most recent annual financial statements in accordance with FAS 106, as amended by FAS 132.

(l) There are no pending or, to the best knowledge of Borrower, threatened claims, actions or lawsuits, or action by any Government Authority, with respect to any Plan which has resulted or could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) or breach of the fiduciary responsibility rules, or failure to be able to accurately value Plan assets with respect to any Plan which has resulted with respect to a Plan that has subjected or could be reasonably likely 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 could reasonably be expected to have a Material Adverse Effect.

(m) (i) No ERISA Event has occurred or could reasonably be expected to occur; (ii) the Pension Plans do not have any Unfunded Pension Liability in excess of \$7,000,000; (iii) neither the Borrower nor any ERISA Affiliate has incurred, or could reasonably be expected to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably could be expected to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, could result in such liability) under

Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could reasonably be expected to be subject to Section 4069 or 4212(c) of ERISA.

SECTION 7.2 Environmental Warranties.

(a) All facilities and property owned, leased, used, occupied or controlled (in whole or in part) by Star Gas Partners, Holdings, the Borrower or any of their respective Subsidiaries have been, and continue to be, owned, leased, used, occupied or controlled by Star Gas Partners, Holdings, the Borrower or such Subsidiary in compliance with all Environmental Laws except where the failure of any of the foregoing to be done, singly or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) Except as disclosed on Item 7.13(b) of the Disclosure Schedule, there have been no past, and there are no pending or threatened:

(i) Environmental Claims received by Star Gas Partners, Holdings, the Borrower or any of their respective Subsidiaries, or

(ii) any other written complaints, notices or inquiries to Star Gas Partners, Holdings, the Borrower or any of their respective Subsidiaries regarding any alleged violation, noncompliance, liability or potential liability regarding environmental matters or otherwise arising under any Environmental Law;

which in either the case of clause (i) or (ii) above, singly or in the aggregate, could be reasonably expected to have a Material Adverse Effect pursuant to clause (i) and (ii) of the definition thereof;

(c) To the knowledge of each of Star Gas Partners, Holdings, the Borrower and any of their respective Subsidiaries, no Hazardous Materials are present or have been Released in, on, under, around or migrated from any property now or previously owned, leased or otherwise occupied or controlled by Star Gas Partners, Holdings, the Borrower or any of their respective Subsidiaries that, singly or in the aggregate, have, or could reasonably be expected to have, a Material Adverse Effect;

(d) Star Gas Partners, Holdings, the Borrower and each of their respective Subsidiaries have obtained or been issued and are in compliance with all permits, certificates, approvals, licenses and other authorizations relating to environmental matters and necessary or desirable for their businesses the absence of or noncompliance with which would be materially adverse, and there have been no notices, orders or penalties alleging noncompliance, no Environmental Claim has been made, and, to the knowledge of Holdings or any of its Subsidiaries, no investigation or review has occurred or is pending or threatened by any Person with respect to any alleged failure by Star Gas Partners, Holdings, the Borrower or any of their respective Subsidiaries to obtain or comply with any such permit, certificate, approval, license or other authorization, except where the failure of any of the foregoing to be done could not reasonably be expected individually or in the aggregate to have a Material Adverse Effect;

(e) No property now or previously owned, leased, occupied or otherwise controlled (in whole or in part) by Star Gas Partners, Holdings, the Borrower or any of their respective Subsidiaries is listed or proposed for listing (with respect to owned property only) on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any similar state list of sites requiring investigation or clean-up where the circumstances giving rise to such listing or proposed listing or the effect of such listing or proposed listing has, singly or in the aggregate, or could reasonably be expected to have, a Material Adverse Effect;

(f) To the knowledge of each of Star Gas Partners, Holdings, the Borrower and their respective Subsidiaries, there are no underground storage tanks, active or abandoned, including petroleum storage tanks, on or under any property formerly or currently leased, used, occupied or controlled (in whole or in part) by Star Gas Partners, Holdings, the Borrower any of their respective Subsidiaries that, singly or in the aggregate, have, or could reasonably be expected to have, a Material Adverse Effect;

(g) To the knowledge of each of Star Gas Partners, Holdings, the Borrower and each of their respective Subsidiaries, none of Star Gas Partners, Holdings, the Borrower or any of their respective Subsidiaries has transported, disposed of or arranged for the transportation or disposal of any Hazardous Material to any location, including, without limitation, locations which are listed or proposed for listing on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any similar state list or which is the subject of federal, state or local enforcement actions or other investigations which, singly or in the aggregate, could reasonably be expected to have a Material Adverse Effect; and

(h) To the knowledge of each of Star Gas Partners, Holdings, the Borrower and each of their respective Subsidiaries, there are no polychlorinated biphenyls or friable asbestos present in, on, under or around any property now or previously owned, leased, used, occupied or controlled (in whole or in part) by Star Gas Partners, Holdings, the Borrower or any of their respective Subsidiaries that, singly or in the aggregate, have, or could reasonably be expected to have, a Material Adverse Effect.

Regulations U and X and Use of Proceeds.

(i) The Borrower is not engaged in the business of extending credit for the purpose of buying or carrying margin stock, and no proceeds of any Loans will be used for a purpose which violates, or would be inconsistent with, F.R.S. Board Regulation U or X. Terms for which meanings are provided in F.R.S. Board Regulation U or X or any regulations substituted therefor, as from time to time in effect, are used in this Section with such meanings.

(j) The Borrower shall (i) use the proceeds of the Facility A Loans and Swing Line Loans, and request the issuance of Facility A Letters of Credit, solely to support the purchase of inventory and accounts receivable and for other working capital purposes, (ii) request the issuance of Facility B Letters of Credit, solely in connection with surety bonds, worker's compensation, automobile and general liability claims, insurance claims,

rents and certain other financial guarantees, which are issued in the ordinary course of business, and (iii) request the issuance of Facility C Letters of Credit solely for the purpose of acquisitions and use the proceeds of the Facility C Loans solely for purposes of (x) financing and refinancing acquisitions or Capital Expenditures, provided, in the case of a refinancing, the refinancing must occur within 180 days of such acquisition or Capital Expenditure and (y) to refinance certain Existing Subordinated Debt identified on Item 8.2.2(a)(iii) of the Disclosure Schedule or Private Placement Debt (or principal installments thereof) identified on Item 8.2.2(a)(i) of the Disclosure Schedule pursuant to Section 8.1.13(b), provided that Facility C Loans may also be used to purchase inventory and finance accounts receivable and for other working capital purposes (such loans being “**Facility C Working Capital Loans**”) solely to the extent that there is insufficient availability to utilize the Facility A Commitments for such purposes at the time of the requested borrowing.

Accuracy of Information. All factual information heretofore or contemporaneously furnished by or on behalf of Star Gas Partners, Holdings or the Borrower in writing to the Agent or any Lender for purposes of or in connection with this Agreement or any transaction contemplated hereby and all other such factual information hereafter furnished by or on behalf of Star Gas Partners, Holdings, the Borrower or any of their Subsidiaries to the Agent or any Lender will be true and accurate in every material respect on the date as of which such information is dated or certified and as of the date of execution and delivery of this Agreement by the Agent and such Lender, and such information, when all such information is considered as a whole, is not, or shall not be, as the case may be, incomplete by omitting to state any material fact necessary to make such information not misleading.

Solvency. Neither Holdings, the Borrower nor any Material Subsidiary, both before and after giving effect to any Borrowing hereunder (including the initial Borrowings), (i) is “insolvent” (as such term is defined in §101(31)(A) of the Bankruptcy Code), (ii) is not able to pay its debts and other liabilities, contingent obligations and commitments as they mature, and (iii) has unreasonably small capital for the business in which it is engaged or for any business or transaction in which it is about to engage.

Compliance with Laws. None of Star Gas Partners, Holdings, the Borrower or any of their Subsidiaries is in default under any agreement by which it is bound or in violation of any statute, law or governmental rule or regulation or court or arbitrator’s judgment, decree or order, in any such case, which either individually or in the aggregate, could have a Material Adverse Effect.

Investment Company Act; Other Regulations. None of Star Gas Partners, Holdings, the Borrower or any Subsidiary is an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended. None of Star Gas Partners, Holdings, the Borrower or any Subsidiary is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act, any state public utilities code, or any other federal or state statute or regulation limiting its ability to incur Indebtedness.

Restrictive Agreements. None of Holdings, the Borrower or any Material Subsidiary is party to any agreement except the Loan Documents, the Note Agreements and the documents evidencing the Private Placement Debt, the Existing Subordinated Debt and the Affiliate Subordinated Debt which limits such Person's ability to pay dividends to Star Gas Partners, Holdings, the Borrower or to any of the Material Subsidiaries that own outstanding equity interests in such Person.

Tax Disclosure. The Borrower does not intend to treat the Loans as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4) or a "tax shelter" (within the meaning of Section 6111 of the Code).

ARTICLE VIII

COVENANTS

Affirmative Covenants. The Borrower agrees with the Agent and each Lender that, until all Commitments have terminated and all Obligations have been paid and performed in full, the Borrower will perform the obligations set forth in this Section 8.1.

Financial Information, Reports, Notices, etc. The Borrower will furnish, or will cause to be furnished, to the Agent, on behalf of Lenders, and the Agent will promptly distribute to each Lender, which distribution may be via acceptable electronic means, copies of the following financial statements, reports, notices and information:

(a) (i) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three quarterly fiscal periods in each Fiscal Year of the Borrower, consolidated and consolidating balance sheets of Holdings, the Borrower and the Material Subsidiaries as at the end of such period and the related consolidated statements of income, surplus or partners' capital, cash flows and stockholders' equity of Holdings, the Borrower and the Material Subsidiaries (1) for such period and (2) (in the case of the second and third quarterly periods) for the period from the beginning of the current Fiscal Year to the end of such quarterly period, setting forth in each case in comparative form the consolidated and, where applicable and as appropriate, consolidating figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail and certified by an authorized financial officer of the Borrower as presenting fairly, in all material respects, the information contained therein (subject to changes resulting from normal year-end adjustments), in accordance with GAAP applied on a basis consistent with prior fiscal periods;

(ii) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three quarterly fiscal periods in each Fiscal Year of Star Gas Partners, consolidated balance sheets of Star Gas Partners and its Subsidiaries as at the end of such period and the related consolidated and, as to statements of income and cash flows, if applicable, consolidating statements of income, surplus or partners' capital and cash flows of Star Gas Partners and its Subsidiaries (1) for such period and (2) (in the case of the second and third quarterly periods) for the period from the beginning of the current Fiscal Year of

Star Gas Partners to the end of such quarterly period, setting forth in each case in comparative form the consolidated and, where applicable and as appropriate, consolidating figures for the corresponding periods of the previous Fiscal Year of Star Gas Partners, all in reasonable detail and certified by an authorized financial officer of Star Gas Partners as presenting fairly, in all material respects, the information contained therein (subject to changes resulting from normal year-end adjustments), in accordance with GAAP applied on a basis consistent with prior fiscal periods;

(b) (i) as soon as practicable but in any event within ninety (90) days after the end of each Fiscal Year of the Borrower, consolidated and consolidating balance sheets of Holdings, the Borrower and the Material Subsidiaries as at the end of such year and the related consolidated statements of income, cash flows and stockholders' equity of Holdings, the Borrower and the Material Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the consolidated and, where applicable, consolidating figures for the previous Fiscal Year, all in reasonable detail, and accompanied by a report thereon of KPMG LLP or other independent public accountants of recognized national standing selected by the Borrower, which report shall (1) contain no limitation on the scope of the audit and no material qualification or exception and (2) state that such consolidated financial statements present fairly in all material respects the financial position of Holdings, the Borrower and the Material Subsidiaries as at the dates indicated and the results of their operations and cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years and that the audit by such accountants in connection with such consolidated financial statements has been made in accordance with GAAP;

(ii) as soon as practicable but in any event within ninety (90) days after the end of each Fiscal Year of Star Gas Partners, consolidated balance sheets of Star Gas Partners and its Subsidiaries as at the end of such year and the related consolidated (and, as to statements of income and cash flows, if applicable, consolidating) statements of income, partners' capital and cash flows of Star Gas Partners and its Subsidiaries for such Fiscal Year of Star Gas Partners, setting forth in each case in comparative form the consolidated figures for the previous Fiscal Year of Star Gas Partners, all in reasonable detail, and accompanied by a report thereon of KPMG LLP or other independent public accountants of recognized national standing selected by Star Gas Partners, which report shall (1) contain no limitation on the scope of the audit and no material qualification or exception and (2) state that such consolidated financial statements present fairly in all material respects the financial position of Star Gas Partners and its Subsidiaries as at the dates indicated and the results of their operations and cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years and that the audit by such accountants in connection with such consolidated financial statements has been made in accordance with GAAP;

(c) as soon as available and in any event within forty-five (45) days after the end of each of the first three (3) Fiscal Quarters of the Borrower and within ninety (90)

days after the end of each Fiscal Year of the Borrower, a Compliance Certificate with respect to the period covered by the financial statements referred to in Section 8.1.1(a) and 8.1.1(b) above together with supporting calculations and such other supporting detail as the Agent and the Required Lenders may require;

(d) promptly upon receipt thereof, copies of all reports, management letters and other detailed information (if any) prepared with respect to Star Gas Partners, Holdings, the Borrower or any Material Subsidiary by any independent public accountant in connection with each annual or interim audit of such Person;

(e) as soon as possible and in any event within three (3) Business Days after knowledge by a Responsible Officer of the occurrence of each Default or Event of Default, a statement of the chief financial officer of the Borrower setting forth details of such Default or Event of Default and the action which the applicable Obligor has taken and proposes to take with respect thereto;

(f) as soon as possible and in any event within three (3) Business Days after knowledge by a Responsible Officer of (x) the occurrence of any material adverse development with respect to any litigation, action, proceeding, or labor controversy described in Section 7.9 or (y) the commencement of any labor controversy, litigation, action, proceeding of the type described in Section 7.9, notice thereof and copies of all documentation relating thereto;

(g) within five (5) Business Days after the sending or filing thereof, all reports, registration statements and prospectuses which Star Gas Partners, Holdings the Borrower or any of their respective Subsidiaries files with the Securities and Exchange Commission or any national securities exchange;

(h) notice of the occurrence of any of the following events affecting Holdings or any ERISA Affiliate (but in no event more than ten (10) days after knowledge by a Responsible Officer of such event), and deliver to the Agent and each Lender a copy of any notice with respect to such event that is filed with the Government Authority and any notice delivered by a Government Authority to Holdings or any ERISA Affiliate with respect to such event:

- (i) an ERISA Event;
- (ii) a material increase in the Unfunded Pension Liability of any Pension Plan;
- (iii) the adoption of, or the commencement of contributions to, any Plan subject to Section 412 of the Code and/or to any Multiple Employer Plan or Multiemployer Plan by the Borrower or any ERISA Affiliate;
- (iv) the adoption of any amendment to a Plan subject to Section 412 of the Code, if such amendment could result in a material increase in contributions or Unfunded Pension Liability;

(v) any Pension Plan's having incurred an "accumulated funding deficiency" (as defined in Section 412 of the Code), or receiving notice from the PBGC, Internal Revenue Service or any governmental agency that it is the subject of an audit, review or any other governmental action; or

(vi) the existence of circumstances which the Borrower or any ERISA Affiliate reasonably believe will result in a Multiple Employer Plan's or Multiemployer Plan's assertion that a withdrawal under Title IV of ERISA has occurred by the Borrower or any ERISA Affiliate.

(i) (1) for all Pension Plans, a copy of each Pension Plan's Actuarial Valuation (which shall include a detailed calculation of the Unfunded Pension Liability of each Pension Plan) and each Pension Plan's Schedule B to Form 5500 at the earliest time that such is delivered to Holdings or any ERISA Affiliate but in no event later than November 1 of each year, (2) any additional information concerning any Plan as may be prepared from time to time by each Pension Plan's actuaries, including but not limited to, actuarial valuations, projections and other calculations and (3) for all Multiple Employer Plans and Multiemployer Plans, a copy of all actuarial and related information which the Borrower or any ERISA Affiliate receives regarding the funding status of such Multiple Employer Plan or Multiemployer Plan.

(j) within sixty (60) days after each Fiscal Quarter end, a certificate setting forth the net proceeds from Asset Dispositions, the application of such proceeds as permitted under Section 8.2.8, and the mandatory prepayments made as required by Section 3.1.3;

(k) on the fifteenth (15th) day of each month (or if such day shall not be a Business Day, the next preceding Business Day) and promptly after any day on which the Agent requests, a Borrowing Base Certificate showing the Borrowing Base as of the last day of the most recently ended calendar month or such other date as reasonably requested by the Agent, as the case may be, in each case certified as complete and correct by a Responsible Officer of the Borrower and a Responsible Officer of Holdings together with supporting documents reasonably acceptable to the Agent;

(l) promptly, but in any event within five (5) Business Days, after any Responsible Officer thereof knows of (i) the commencement of or significant development in any material litigation or material proceeding (including those regarding environmental matters) with respect to Star Gas Partners, Holdings, the Borrower or any Material Subsidiary or affecting the Star Gas Partners, Holdings, the Borrower or any Material Subsidiary or any of their assets, a written notice describing in reasonable detail such commencement of or significant development in such litigation or proceeding or (ii) any development that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect, a written notice describing in reasonable detail such development;

(m) promptly and in any event within ten (10) days of knowledge by a Responsible Officer of Star Gas Partners of any event of default by Star Gas Partners or

any of its Subsidiaries of any Indebtedness in excess of \$2,000,000, notice thereof and a statement of the chief financial officer of Star Gas Partners or such Subsidiary setting forth the details of such event of default and the action which has been taken and a proposal of the action to be taken in the future to remedy such event of default;

(n) within fifteen (15) days after being approved by the governing body of Holdings, and in any event not later than sixty (60) days after the end of each Fiscal Year, an annual operating forecast of Holdings for the next Fiscal Year; and

(o) promptly and in any event within ten (10) days of knowledge by a Responsible Officer thereof and to the extent not otherwise covered in clauses (a)–(m) above, any event or circumstance that could have a Material Adverse Effect, including without limitation an event or circumstance which leads the Borrower to believe that Holdings will not meet the financial covenants set forth in Section 8.2.4 on a pro forma basis.

Maintenance of Properties. Each of Star Gas Partners, Holdings and the Borrower will, and will cause each of their Subsidiaries to, maintain, preserve, protect and keep its properties in good repair, working order and condition, and make necessary and proper repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times unless Star Gas Partners, the Borrower or Holdings determines in good faith that the continued maintenance of any of its or its Subsidiaries' properties is no longer economically desirable.

Insurance. In addition to insurance requirements set forth in the Security Documents, Holdings and the Borrower shall maintain, and shall cause each of the Material Subsidiaries to maintain, with financially sound and reputable independent insurers, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons; including workers' compensation insurance, public liability, property, casualty and environmental insurance which amount shall not be reduced by Holdings, the Borrower or any Material Subsidiary in the absence of thirty (30) days' prior notice to the Trustee and the Agent. All such insurance shall name the Trustee as loss payee/mortgagee and as additional insured, for the benefit of the Lenders, as their interests may appear. All casualty insurance maintained by Holdings, the Borrower and the Material Subsidiaries shall name the Trustee as loss payee and all liability insurance shall name the Trustee as additional insured for the benefit of the Borrower, as its interests may appear. Upon request of the Agent, the Trustee or any Lender, the Borrower shall furnish the Agent, with sufficient copies for each Lender, at reasonable intervals (but not more than once per calendar year) a certificate of a Responsible Officer of the Borrower (and, if requested by the Agent, any insurance broker of the Borrower) setting forth the nature and extent of all insurance maintained by Holdings, the Borrower and the Material Subsidiaries in accordance with this Section or any Security Documents (and which, in the case of a certificate of a broker, were placed through such broker).

Payment of Obligations. Star Gas Partners, Holdings and the Borrower shall, and shall cause each of their Subsidiaries to, pay and discharge as the same shall become due and payable

(except to the extent the failure to so pay and discharge could not reasonably be expected to have a Material Adverse Effect), all their respective obligations and liabilities, including:

(p) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings and adequate reserves in accordance with GAAP are being maintained by Star Gas Partners, Holdings, the Borrower or such Material Subsidiary;

(q) all lawful claims which, if unpaid, would by law become a Lien upon its property; and

(r) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

Compliance with Laws. Each of Star Gas Partners, Holdings and the Borrower shall, and shall cause each Subsidiary to comply, in all material respects with all Requirements of Law of any Government Authority having jurisdiction over it or its business (including the Federal Fair Labor Standards Act), except such as may be contested in good faith or as to which a bona fide dispute may exist.

Books and Records. Star Gas Partners, Holdings and the Borrower will, and will cause each of the Material Subsidiaries to, keep books and records which accurately reflect all of its business affairs and transactions.

Inspection. The Borrower shall permit the representatives of each Lender and the Agent (at the expense of the Borrower at any time when a Default or Event of Default has occurred and is in existence or otherwise at their own expense with prior written notice) to visit and inspect its properties and to conduct any environmental tests or audits thereon, to perform audits of its accounts receivable and inventory and to inspect its books, financial records and other papers (including its journals, orders, receipts and correspondence which relate to its accounts receivable and inventory), to make copies and to take extracts therefrom, and to discuss its affairs, finances and accounts receivable and operations with its members, officers, employees and agents and its independent public accountants all at such reasonable times and intervals and as often as may be reasonably requested. Holdings and the Borrower hereby authorize Holdings', the Borrower's and the Material Subsidiaries' independent accountants, and shall upon such request deliver a letter to Holding's, the Borrower's and the Material Subsidiaries' independent public accountants authorizing them, to reply to and comply with the provisions of this Section 8.1.7.

Environmental Covenant. Star Gas Partners, Holdings and the Borrower will, and will cause each of the Subsidiaries to:

(s) use and operate all of its facilities and properties, whether owned, leased, occupied or otherwise controlled, in compliance with all Environmental Laws, obtain and keep all permits, approvals, certificates, licenses and other authorizations relating to environmental matters in effect and remain in compliance therewith, and handle all Hazardous Materials in compliance with all applicable Environmental Laws except where

non-compliance could not singly or in the aggregate be reasonably expected to have a Material Adverse Effect;

(t) immediately notify the Agent of and provide copies (where written documentation exists) upon receipt of all claims, complaints, notices or inquiries, including without limitation all Environmental Claims, relating to the condition of such facilities or properties, or compliance or alleged noncompliance with Environmental Laws other than those claims, complaints, notices or inquiries which singly or in the aggregate could not have a Material Adverse Effect, and shall promptly cure and have dismissed with prejudice to the satisfaction of the Agent any such actions or proceedings relating to compliance with Environmental Laws except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books; and

(u) provide such information and certifications which the Agent may reasonably request from time to time to evidence compliance with this Section 8.1.8.

Compliance with ERISA. Star Gas Partners, Holdings and the Borrower shall, and shall cause each of its ERISA Affiliates to: (a) maintain each Plan in compliance in all material respects with the applicable provisions of each Plan, ERISA, the Code and other federal or state law; (b) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification; (c) make all required contributions to any Plan subject to Section 412 of the Code; and (d) make, in a timely manner, all contributions due to Plans, and take reasonable steps to avoid liability to the Borrower or any ERISA Affiliate under Subtitle D or part 1 of Subtitle E of Title IV of ERISA. Neither the Borrower nor any ERISA Affiliate will (a) adopt or assume any new Pension Plan, (b) assume any new obligation to contribute to any Pension Plan or (c) permit the accrual of any further benefits or contribution obligations for any participant in a Pension Plan.

Ranking/Security. Holdings and the Borrower will cause the Obligations to be secured and rank *pari passu* with all other Senior Debt. All of the Collateral will be pledged to secure both the Obligations and all other Senior Debt. In the event that the Borrower or Holdings obtains or creates any Material Subsidiary (after the date hereof), the Borrower or Holdings (as applicable) shall (a) cause each such Material Subsidiary to issue a guarantee of the Obligations and the Permitted Secured Interest Rate Contract Obligations, and each such guarantee will be in favor of the Trustee and secured by a pledge of all of its intangible and current assets, including without limitation, accounts, notes receivable, inventory, cash, Customer Lists, Capital Stock, equipment, tanks, certain fixtures, certain vehicles pursuant to Section 8.1.18 and certain real property pursuant to Section 8.1.19 of such Material Subsidiary, and (b) cause the Security Documents to be amended to add such Material Subsidiary as an Obligor thereunder and shall deliver, or cause such Material Subsidiary to deliver, such other agreements, documents, instruments and opinions in connection therewith as the Agent or the Trustee may request.

Clean Down Period. The Borrower, for a period of forty-five (45) consecutive days during the period of April 1 to September 30 of each calendar year, will (a) make a repayment of the aggregate outstanding principal amount of all Facility A Loans, all Swing Line Loans and all Facility C Working Capital Loans, if any, in an amount sufficient so as to cause such aggregate outstanding principal amount thereof to equal \$0 during such period and (b) reduce all Facility A

L/C Obligations, if any, in an amount sufficient so as to cause such aggregate Facility A L/C Obligations not to exceed \$5,000,000 during such period.

Preservation of Corporate Existence. Star Gas Partners, Holdings and the Borrower shall, and Holdings and the Borrower shall cause each of their Subsidiaries to:

(v) preserve and maintain in full force and effect its corporate or partnership existence (as applicable) and good standing under the laws of its state or jurisdiction of organization or incorporation, except to the extent permitted by Section 8.2.7;

(w) preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary or desirable in the normal conduct of its business except in connection with transactions permitted by Section 8.2.7 and sale of assets permitted by Section 8.2.8 or where the lapse could not reasonably be expected to have a Material Adverse Effect;

(x) use reasonable efforts, in the ordinary course of business, to preserve its business organization and goodwill; and

(y) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could have a Material Adverse Effect.

Use of Proceeds.

(z) Holdings and the Borrower shall not, and shall not suffer or permit any Subsidiary to, use any portion of the Loan proceeds or any Letter of Credit, directly or indirectly for the purpose of buying or carrying margin stock or any purpose which violates, or would be inconsistent with F.R.S. Board Regulation U or X. Terms for which meanings are provided in F.R.S. Board Regulation U or X or any regulations substituted therefor, as from time to time in effect, are used in this Section with such meanings;

(aa) The proceeds of the Loans and the Letters of Credit shall be used for the purposes set forth in Section 7.14(b). Proceeds of the Facility C Loans to refinance matured Private Placement Debt identified on Item 8.2.2(a)(i) of the Disclosure Schedule (or scheduled installments thereof) and Existing Subordinated Debt identified on Item 8.2.2(a)(iii) of the Disclosure Schedule shall be limited to \$22,500,000 and, to the extent that the aggregate outstanding principal balance of Facility C Loans, used for such purpose exceeds \$10,000,000 (or would exceed \$10,000,000 upon giving effect to the proposed borrowing), then Facility C Loans may be incurred for such purpose only if, upon giving effect to such borrowings (x) the Leverage Ratio would be less than or equal to 3.75 to 1.00 and (y) the Consolidated Cash Flow to Consolidated Interest Expense Ratio would be greater than or equal to 2.75 to 1.00.

Update of Customer Lists. Each of Holdings and the Borrower shall, and shall cause its Material Subsidiaries to, provide to the Trustee for the benefit of the Agent, the Issuers and the Lenders on such dates as the Agent reasonably may request one or more computer tapes (or such other medium as may be acceptable to the Agent) containing each Customer List owned by Holdings, the Borrower or any of the Material Subsidiaries and within fifteen (15) days of such

request the Borrower and the Agent agree that each Lender shall be permitted to review such tapes (or other medium) during the reasonable business hours of the Agent; provided that the Agent and the Lenders shall not and the Trustee shall be caused not to disclose such information unless an Event of Default has occurred and is continuing; provided, however, that prior to an Event of Default, the Trustee, the Agent and the Lenders may disclose such information only to (a) their respective attorneys, auditors, employees, consultants or other agents, and (b) to any Government Authority to the extent required by such Government Authority.

Further Assurances.

(bb) The Borrower shall ensure that all written information, exhibits and reports furnished to the Agent, the Issuers, the Trustee or the Lenders do not and will not contain any untrue statement of a material fact and do not and will not omit to state any material fact or any fact necessary to make the statements contained therein not misleading in light of the circumstances in which made, and will promptly disclose to the Agent, the Issuers, the Trustee and the Lenders and correct any defect or error that may be discovered therein or in any Loan Document or in the execution, acknowledgement or recordation thereof.

(cc) Promptly upon request by the Agent, the Trustee or the Required Lenders, the Borrower shall (and shall cause any of its Subsidiaries to) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register, any and all such further acts, deeds, conveyances, security agreements, mortgages, assignments, estoppel certificates, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments the Agent, the Trustee or such Lenders, as the case may be, may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement or any other Loan Document, (ii) to subject to the Liens created by any of the Security Documents any of the properties, rights or interests covered by any of the Security Documents, (iii) to perfect and maintain the validity, effectiveness and priority of any of the Security Documents and the Liens intended to be created thereby, and (iv) to better assure, convey, grant, assign, transfer, preserve, protect and confirm to the Agent, the Trustee and Lenders the rights granted or now or hereafter intended to be granted to the Agent, the Trustee and the Lenders under any Loan Document or under any other document executed in connection therewith.

Tax Disclosure. In the event that the Borrower determines to take any action inconsistent with its intention not to treat the Loans as being a “reportable transaction” (within the meaning of the Treasury Regulation Section 1.6011-4) or a “tax shelter” (within the meaning of Section 6111 of the Code), the Borrower shall promptly notify the Agent thereof in writing.

Risk Management. Holdings and the Borrower shall comply, and require their Subsidiaries to comply, in all material respects with (i) the retail and wholesale inventory distribution and trading procedures, (ii) the dollar and volume limits, and (iii) all other material provisions of the Risk Management Policy.

Certain Vehicles.

(a) Without affecting the obligations of Holdings, the Borrower or any of the Material Subsidiaries under any of the Security Documents, Holdings, the Borrower and the Material Subsidiaries shall grant to the Trustee a first perfected security interest (subject only to Liens permitted by Section 8.2.3) in all motor vehicles (including truck and transport vehicles but excluding service vans and automobiles), constituting at least 75% of the aggregate fair market value of such motor vehicles owned by Holdings, the Borrower and the Material Subsidiaries (as determined by the Borrower in good faith). Holdings, the Borrower or such Material Subsidiary, as applicable, shall execute and deliver, or cause to be executed and delivered, to the Trustee, at the Borrower's expense, such documents (including, without limitation, motor vehicle titles) and other assurances as the Trustee may request in order to create and perfect Liens in such motor vehicles in favor of the Trustee, subject to no other Liens other than Liens permitted by Section 8.2.3.

(b) With respect to such motor vehicles owned as of the Effective Date, Holdings, the Borrower and the Material Subsidiaries shall satisfy the requirements set forth above subject to the Post-Closing Agreement.

Certain Real Property. Without affecting the obligations of Holdings, the Borrower or any of the Material Subsidiaries under any of the Security Documents, the Borrower shall, or shall cause Holdings or any of the Material Subsidiaries to do the following:

(a) With regard to any fee interest in real property, currently owned or held by the Borrower, any Material Subsidiary or Holdings with an original cost in excess of \$50,000 (as determined in good faith by the Borrower) (each such interest, an "**Existing Unmortgaged Property**"):

(i) grant to the Trustee, on behalf of the Secured Parties, a first priority perfected security interest in Existing Unmortgaged Properties by causing a duly executed Mortgage to be recorded within sixty (60) days after the Effective Date;

(ii) cause to be prepared and delivered to the Agent, at the Borrower's expense, information of the type referred to in Section 6.1.12(a)(vi) with respect to those certain Existing Unmortgaged Properties, within thirty (30) days of the Effective Date; and

(iii) deliver to the Agent a copy of each recorded Mortgage within sixty (60) days after the recordation thereof, together with such of the documents or instruments referred to in Section 6.1.12(b)(ii) as the Agent shall require.

(b) In the event that Holdings, the Borrower or any of the Material Subsidiaries at any time after the date hereof, whether directly or indirectly, acquires any fee interest in any real property with an original cost in excess of \$50,000 (as determined in good faith by the Borrower) (each such interest, an "**After Acquired Property**"):

(i) deliver, within ten (10) days after the acquisition of such Acquired Property, written notice thereof to the Agent, and such notice shall provide a

description of such After Acquired Property, the location of such After Acquired Property, the original cost of such After Acquired Property, any structures or improvements thereon and an appraisal or its good-faith estimate of the current value of such real property (the “*Current Value*”);

(ii) grant the Trustee, on behalf of the Secured Parties, a first priority perfected security interest in the After Acquired Properties by causing a duly executed Mortgage to be recorded within thirty (30) days after the acquisition of such Acquired Property;

(iii) cause to be prepared and delivered to the Agent, at the Borrower’s expense, information of the type referred to in Section 6.1.12(a)(vi) with respect to such After Acquired Property within thirty (30) days after the acquisition of such Acquired Property; and

(iv) deliver to the Agent a copy of each recorded Mortgage within sixty (60) days after the recordation thereof, together with such of the documents or instruments referred to in Section 6.1.12(b)(ii) as the Agent shall require.

(c) In the event that at any time, the aggregate cost to the Borrower, its Material Subsidiaries and Holdings of each fee interest in real property for which a Mortgage in favor of the Trustee is not in effect and which was acquired by the Borrower, any Material Subsidiary or Holdings, whether directly or indirectly, at any time before or after the Effective Date, at an original cost equal to or less than \$50,000, exceeds \$500,000 (the “*Aggregate Cost of Unmortgaged Property*”):

(i) deliver to the Agent, within ten (10) days after the acquisition of such real property which caused the Aggregate Cost of Unmortgaged Property to exceed \$500,000, written notice thereof to the Agent, and such notice shall provide a description of such After Acquired Property, the location of such After Acquired Property, the original cost of such After Acquired Property, any structures or improvements thereon and an appraisal or its good-faith estimate of the Current Value;

(ii) grant the Trustee, on behalf of the Secured Parties, a first priority perfected security interest in those certain After Acquired Properties by causing a duly executed Mortgage to be recorded within thirty (30) days after the acquisition of such real property which caused the Aggregate Cost of Unmortgaged Property to exceed \$500,000;

(iii) cause to be prepared and delivered, at the Borrower’s expense, information of the type referred to in Section 6.1.12(a)(vi) with respect to those certain After Acquired Properties, within thirty (30) days after the acquisition of such real property which caused the Aggregate Cost of Unmortgaged Property to exceed \$500,000; and

(iv) deliver to the Agent a copy of each recorded Mortgage within sixty (60) days after the recordation thereof, together with such of the documents or instruments referred to in Section 6.1.12(b)(ii) as the Agent shall require.

(d) If the Borrower is required to record a Mortgage pursuant to subsection (a), (b) or (c) of this Section 8.1.19 on any individual parcel of real property with an aggregate cost in excess of \$500,000 (as determined in good faith by the Borrower), the Borrower shall deliver to the Agent, within 30 days after the recording of each such Mortgage, an ALTA loan policy (10-17-92 form), or its equivalent, of title insurance, with respect to such real property, issued by a title company or companies authorized to issue title insurance in the states in which the applicable real property is located, insuring the interest of the Trustee under the Security Documents as a valid first lien on such real property, free of Liens (other than Liens permitted by Section 8.2.3) or other exceptions to title not approved and accepted by the Agent, such policies to be in an amount reasonably satisfactory to the Agent.

(e) Notwithstanding anything herein to the contrary, no new Mortgage on After Acquired Property or Existing Unmortgaged Property shall be required if the costs that would be incurred as a result thereof are excessive in relation to the benefits conferred thereby in the reasonable judgment of the Agent and the Required Lenders.

(f) The amount secured by any Mortgage located in the State of New York or the State of Florida shall not exceed 125% of the fair market value of the applicable real property.

(g) The Borrower shall pay all fees and expenses, including reasonable attorneys' fees and expenses and expenses of any customary environmental due diligence review and all title insurance charges and premiums, in connection with the obligations of the Borrower, the Material Subsidiaries and Holdings under this Section 8.1.19; provided, the Agent shall not require the Borrower to prepare or conduct environmental due diligence on any real property in addition to the environmental due diligence customarily performed by the Borrower.

Mortgage Taxes. All documentary stamp taxes and nonrecurring intangible taxes due and payable, if any, in connection with the Obligations and the Permitted Secured Interest Rate Contract Obligations secured by the Mortgages will be paid in full upon recording of the Mortgages.

Negative Covenants. The Borrower agrees with the Agent and each Lender that, until all Commitments have terminated and all Obligations have been paid and performed in full, the Borrower will perform the obligations set forth in this Section 8.2.

Business Activities. Star Gas Partners, Holdings and the Borrower will not, nor will they permit any of the Material Subsidiaries to, engage in any line of business, if, as a result, the general nature of the business in which Star Gas Partners, Holdings, the Borrower and the Material Subsidiaries taken as a whole are engaged in would be substantially different from the nature of

the business in which Star Gas Partners, Holdings, the Borrower and the Material Subsidiaries are engaged in as of the Effective Date.

Indebtedness.

(a) Holdings and the Borrower will not, nor will they permit any of the Material Subsidiaries to, create, incur, assume or suffer to exist or otherwise become or be liable in respect of any Indebtedness, other than, without duplication, the following:

- (i) the Private Placement Debt identified on Item 8.2.2(a)(i) of the Disclosure Schedule;
- (ii) Indebtedness evidenced by the Obligations;
- (iii) the Existing Subordinated Debt and the Affiliate Subordinated Debt identified on Item 8.2.2(a)(iii) of the Disclosure Schedule;
- (iv) Indebtedness of Holdings, the Borrower or the Material Subsidiaries, in addition to Indebtedness permitted by clauses (i), (ii) and (iii) above, of the types described below:

(A) secured Indebtedness incurred in connection with Capitalized Lease Liabilities, provided the obligations incurred do not exceed the fair market value of such property or assets (as determined in good faith by the board of directors of Holdings);

(B) Indebtedness that is secured *pari passu* with the other Senior Debt, provided (i) the proceeds of such additional Indebtedness shall be used to renew, refund, refinance or otherwise repay Senior Debt constituting either (a) Private Placement Debt identified on Item 8.2.2(a)(i) of the Disclosure Schedule or (b) Facility C Loans used to refinance certain Private Placement Debt (or scheduled installments thereof) in accordance with Section 8.1.13; (ii) the principal amount of such Indebtedness shall not exceed the principal amount of such Senior Debt being renewed, refunded, refinanced or repaid together with any accrued interest and premium with respect thereto and any costs and expenses related to such renewal, refunding, refinancing or repayment; (iii) such Indebtedness (x) (1) in the case of such Private Placement Debt identified on Item 8.2.2(a)(i) of the Disclosure Schedule shall not mature prior to the stated maturity or scheduled date of repayment of such Senior Debt so renewed, refunded, refinanced or repaid and (2) in the case of such Facility C Loans, shall not mature prior to November 30, 2008 and (y) shall have an average life equal to or greater than the remaining average life of such Senior Debt so exchanged or refinanced; and (iv) the creditors in respect of such additional Indebtedness shall have become parties to the Intercreditor Agreement and the Intercreditor Agreement shall have been amended, as necessary, to reflect such Indebtedness as Parity Debt and otherwise shall be in form and substance satisfactory to the Agent and the Lenders;

(C) Indebtedness that is secured *pari passu* with the other Senior Debt incurred (1) for making Capital Expenditures or (2) to renew, refund, refinance or otherwise repay (x) Facility C Loans (other than Facility C Loans used to refinance certain Private Placement Debt (or scheduled installments thereof) in accordance with Section 8.1.13), (y) Indebtedness incurred pursuant to clause (1) above or (z) Existing Subordinated Debt in an aggregate principal amount not to exceed \$2,000,000, provided (i) the aggregate principal amount of such Indebtedness shall not exceed the amount of Net Capital Contributions by more than \$85,000,000 at anytime, and (ii) the creditors in respect of such additional Indebtedness shall have become parties to the Intercreditor Agreement as Parity Lenders (as defined in the Intercreditor Agreement) and the Intercreditor Agreement shall have been amended, as necessary, to reflect such Indebtedness as Parity Debt and otherwise shall be in form and substance satisfactory to the Agent and the Lenders;

(D) Permitted Secured Interest Rate Contract Obligations; or

(E) (i) Permitted Subordinated Debt and (ii) Indebtedness incurred to renew, refund, refinance or otherwise repay Permitted Subordinated Debt, provided, (a) the principal amount of such Indebtedness shall not exceed the principal amount of such Permitted Subordinated Debt being renewed, refunded, refinanced or repaid together with any accrued interest and premium with respect thereto and any costs and expenses related to such renewal, refunding, refinancing or repayment; (b) such Indebtedness shall not mature prior to the stated maturity or scheduled date of repayment of such Permitted Subordinated Debt so renewed, refunded, refinanced or repaid and (c) such Indebtedness shall have an average life equal to or greater than the remaining average life of such Permitted Subordinated Debt so exchanged or refinanced;

(v) to the extent not covered by paragraph (iv) above, Indebtedness in respect of the Permitted Hedging Agreements; and

(vi) Acquisition Debt if (A) the principal amount of any such Acquisition Debt shall not exceed the fair market value of the assets acquired with such Indebtedness and (B) no Default or Event of Default exists prior to or would exist after giving effect to such Indebtedness;

provided, in each case, no Default or Event of Default exists prior to or would exist after giving effect to the incurrence of such Indebtedness.

Notwithstanding the foregoing, in the case of the Material Subsidiaries only, the aggregate amount of all Indebtedness of the Material Subsidiaries (exclusive of Indebtedness in respect of Senior Debt) shall not exceed 5% of the Consolidated Total Assets of Holdings at any time.

(b) Star Gas Partners will not create, incur, assume or suffer to exist or otherwise become liable in respect of any Indebtedness except (i) Indebtedness set forth

on Item 8.2.2(b) of the Disclosure Schedule and (ii) unsecured Contingent Liabilities in an aggregate amount not exceeding \$50,000,000 at any time outstanding incurred solely by way of financial guarantees of obligations of its direct or indirect Wholly-Owned Subsidiaries; provided, however, if no Default or Event of Default shall have occurred and be continuing, the provisions of this clause (b) will not prevent Star Gas Partners from creating or incurring any Indebtedness, provided that (x) no Default or Event of Default exists prior to or would exist after giving effect to the incurrence of such Indebtedness, (y) after incurring such Indebtedness, the ratio of SGP Consolidated Pro Forma Operating Cash Flow to SGP Consolidated Pro Forma Interest Expense is greater than 2.00 to 1.0 for the period of the four (4) most recent Fiscal Quarters ending on or prior to the date of the incurrence of such Indebtedness and (z) after incurring such Indebtedness, availability to the Borrower under this Agreement shall not have been restricted pursuant to Article VI of this Agreement.

Liens. Star Gas Partners, Holdings and the Borrower shall not, nor shall they permit any of the Material Subsidiaries to, create, incur, assume or suffer to exist any Lien upon any of its property, revenues or assets, whether now owned or hereafter acquired, except with respect to Holdings, the Borrower and the Material Subsidiaries, any of the Liens referred to below and with respect to Star Gas Partners the Liens referred to in clauses (b), (d) and (g) below:

(c) Liens in the Collateral created in favor of the Trustee for the benefit of the Agent, the Issuers, the Lenders, the Private Placement Debt holders and the holders of other Parity Debt;

(d) Liens securing Indebtedness of the type set forth in Section 8.2.2(a)(iv);

(e) Liens for taxes, assessments or other governmental charges or levies not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(f) Liens of carriers, warehousemen, mechanics, materialmen, vendors and landlords incurred in the ordinary course of business for sums not yet overdue or the payment of which is not at the time required by Section 8.1.4, in each case not incurred in or made in connection with the borrowing of money, the obtaining of advances or credit (other than customary trade credit not to exceed thirty (30) days) or the payment of the deferred purchase price of property and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(g) Liens incurred in the ordinary course of business in connection with workmen's compensation, unemployment insurance or other forms of governmental insurance or benefits, or to secure performance of tenders, statutory obligations, leases and contracts (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds;

(h) Liens on personal property, which is subject to a lease under which Holdings or any of its Subsidiaries is lessee; provided (i) such lease is not a Capital

Lease, (ii) the lessee under such lease does not claim ownership of such personal property subject to the lease for federal income tax purposes and (iii) neither Holdings or any of its Subsidiaries is the lessor under such lease;

(i) the purchase money security interests on any property acquired or held by Holdings, the Borrower or Material Subsidiaries in the ordinary course of business, securing Indebtedness incurred or assumed for the purpose of financing all or any part of the cost of acquiring such property; provided that (i) any such Lien attaches to such property concurrently with or within twenty (20) days after the acquisition thereof, (ii) such Lien attaches solely to the property so acquired in such transaction, (iii) the principal amount of the debt secured thereby does not exceed 100% of the cost of such property and (iv) the principal amount of the Indebtedness secured by any and all such purchase money security interests shall not at any time exceed \$2,000,000; provided, further, that Liens on real estate shall be limited to real estate acquired after the Effective Date securing the purchase price thereof and not in excess of \$500,000 per Fiscal Year;

(j) leases or subleases granted to others, zoning restrictions, easements, licenses, reservations, rights-of-way, restrictions on the use of property or irregularities of title and other similar changes, encumbrances and Liens which do not materially impair the use thereof by Holdings, the Borrower or any of their Material Subsidiaries;

(k) Liens (other than any Lien imposed by ERISA and other than on the Collateral) consisting of pledges or deposits required in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation;

(j) Liens securing Capitalized Lease Liabilities of Holdings or its Subsidiaries, including, without limitation, protective filings, provided (i) such Capitalized Lease Liabilities are permitted under Section 8.2.2(a)(iv)(A), (ii) such Liens shall be created substantially simultaneously with the lease of fixed or capital assets and (iii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness; and

(k) Liens held by credit card or processing companies which process credit card payments of customers of Holdings, the Borrower and any Material Subsidiary in the ordinary course of business to secure payment of the obligations of Holdings, the Borrower and any Material Subsidiary under agreements relating to the processing of credit card payments on funds of Holdings, the Borrower or any Material Subsidiary; provided such funds are directly attributable to accounts receivable relating to such credit card payments obtained by such credit card or processing companies in the ordinary course of business.

Financial Covenants. The Borrower shall not permit:

(l) the Leverage Ratio based upon the most recent four Fiscal Quarters then ended to exceed 4.00 to 1.00 at the end of any Fiscal Quarter;

(m) the Consolidated Cash Flow to Consolidated Interest Expense Ratio to be equal to or less than 2.50 to 1.00 at the end of any Fiscal Quarter; and

(n) the ratio of Current Assets to Current Liabilities to be less than the following respective amounts at the end of any Fiscal Quarter during the following respective periods in which Facility A Loans, Facility A Letters of Credit or Facility C Working Capital Loans are outstanding:

<u>Period</u>	<u>Current Assets to Current Liabilities</u>
At December 31 through June 30 of each year	1.00 to 1
At July 1 through December 30 of each year	0.85 to 1

Investments. Subject to Section 8.2.6, none of Holdings, the Borrower or any of the Material Subsidiaries shall make or suffer to exist, any Investment in any Person, including without limitation, any shareholder of Holdings, the Borrower or any Subsidiary except (and in each case in accordance with Sections 2.03, 4.01 and 4.02 of the Security Agreements):

(o) Investments in:

- (i) obligations issued or guaranteed by the United States of America;
- (ii) certificates of deposit, bankers acceptances and other “money market instruments” issued by any bank or trust company organized under the laws of the United States of America or any State thereof and having capital and surplus in an aggregate amount of not less than \$100,000,000;
- (iii) open market commercial paper bearing the highest credit rating issued by Standard & Poor’s Rating Service or by another nationally recognized credit rating agency;
- (iv) repurchase agreements entered into with any bank or trust company organized under the laws of the United States of America or any State thereof and having capital and surplus in an aggregate amount of not less than \$100,000,000 relating to United States of America government obligations;
- (v) shares of “money market funds,” each having net assets of not less than \$100,000,000; and
- (vi) any joint venture, if immediately after giving effect to the making of such Investment, the aggregate amount of all such Investments made and outstanding pursuant to this subsection (vi) shall not at any time exceed \$10,000,000, net of cash distributions from all joint ventures.

in each case set forth in subsections (i) through (v) above, maturing or being due or payable in full not more than one-hundred eighty (180) days after Holdings', the Borrower's or any Material Subsidiary's acquisition thereof;

(p) Investments by Holdings or the Borrower in any Material Subsidiary (whether established before or after the Effective Date) and by any Material Subsidiary in the Borrower, Holdings or another Material Subsidiary; provided that, with respect to any Investment that involves an acquisition of any business: (i) the acquiree shall be primarily engaged in the Fuel Oil Distribution Business and (ii) immediately after giving effect to such acquisition, no Default or Event of Default will occur or be continuing and each of the representations and warranties of the Borrower in this Agreement shall be true on and as of the date of consummation of the acquisition, both before and after giving effect thereto; provided further that, if any such acquisition is not structured as an Investment under this Agreement, the provisions of this Section 8.2.5(b) shall nonetheless be required to be complied with in connection with such acquisition; and

(q) Investments by Holdings or the Borrower in any existing or future, direct or indirect, Subsidiary which exists for the sole purpose of obtaining and holding a license which Holdings or the Borrower deems necessary or advisable for its business, provided that (i) the total Investment in such Subsidiary does not exceed \$100,000 in the aggregate for any one such Subsidiary or \$200,000 in the aggregate for all such Subsidiaries and (ii) if the failure to have such license could reasonably be expected to have a Material Adverse Effect, the Subsidiary holding such license shall be a Material Subsidiary.

Restricted Payments, etc.

(r) Holdings will not directly or indirectly declare, order, pay, make or set apart any sum for any Restricted Payment, and Holdings and the Borrower will not, and will not permit any of the Material Subsidiaries to, make or authorize any Restricted Investment or any cash payment in respect of Affiliate Subordinated Debt (any such payment is hereinafter referred to as a "**Restricted Distribution**"), except that (i) Holdings may declare or order, and make, pay or set apart, once during each Fiscal Quarter a Restricted Payment, (ii) Holdings, the Borrower or any Material Subsidiary may make Restricted Investments during each Fiscal Quarter, and (iii) the Borrower may make cash payments in respect of interest on Affiliate Subordinated Debt, provided that (x) the aggregate amount of such Restricted Payments, Restricted Investments and cash payments in respect of interest on Affiliate Subordinated Debt in any Fiscal Quarter do not exceed (as applicable) Available Cash determined as of the date of each Restricted Distribution and after giving effect to all prior Restricted Distributions made in such Fiscal Quarter, (y) immediately after giving effect to any such proposed action no Default or Event of Default shall exist and be continuing, and (z) Restricted Investments may only be made in accordance with Sections 2.03 and 4.01 of the Security Agreements.

(s) Star Gas Partners will not permit payment of any partnership distribution, purchase any outstanding partnership units, or retire, prior to its maturity, any Indebtedness other than (x) Indebtedness that is being repaid with the proceeds of an

offering of equity securities by Star Gas Partners or (y) Indebtedness that is being refinanced by other Indebtedness on terms described in subsection (c) below (the “**SGP Restricted Payment**”) and Star Gas Partners will not, and will not permit any of its Subsidiaries to, make or authorize any Restricted Investment unless after giving effect to such action:

(i) the ratio of SGP Consolidated Pro Forma Operating Cash Flow to SGP Consolidated Pro Forma Interest Expense is greater than 1.75 to 1.0 for the period of the four (4) most recent Fiscal Quarters ending on or prior to the date of such SGP Restricted Payment or Restricted Investment, as the case may be; and

(ii) no Default or Event of Default exists or would exist after giving effect thereto.

(t) Any Indebtedness of Star Gas Partners that is being renewed, refunded, refinanced or otherwise repaid by other Indebtedness of Star Gas Partners shall: (i) be in a principal amount not to exceed the principal amount of such Indebtedness being renewed, refunded, refinanced or repaid together with any accrued interest and premium with respect thereto and any costs and expenses related to such renewal, refunding, refinancing or repayment; (ii) not mature prior to the stated maturity or scheduled date of repayment of such Indebtedness so renewed, refunded refinanced or repaid; and (ii) have an average life equal to or greater than the remaining average life of such Indebtedness so exchanged or refinanced.

(u) Any Restricted Payment and any SGP Restricted Payment must be payable within sixty (60) days of its declaration and if the Restricted Payment or the SGP Restricted Payment (as applicable) would have been permitted as of the date of such declaration such Restricted Payment or SGP Restricted Payment (as applicable) shall be permitted if made during such sixty (60) day period; provided, however, that no Default or Event of Default exists on the day of such distribution or would exist after making such distribution.

Consolidation, Merger, etc. Star Gas Partners, Holdings and the Borrower shall not, and shall not suffer or permit any Material Subsidiary to, merge, consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether nor owned or hereafter acquired) to or in favor of any Person, except:

(v) any Material Subsidiary may merge with the Borrower, provided that the Borrower shall be the continuing or surviving corporation, or with any one or more Subsidiaries, provided that if any transaction shall be between a Subsidiary and a Wholly-Owned Subsidiary, the Wholly-Owned Subsidiary shall be the continuing or surviving corporation; and

(w) any Material Subsidiary may sell all or substantially all of its assets (upon voluntary liquidation or otherwise), to the Borrower or another Wholly-Owned Material Subsidiary.

Asset Dispositions, etc. Except in connection with a transaction permitted under Section 8.2.7, none of Holdings, the Borrower or any of the Material Subsidiaries may sell or dispose of any portion of its property (excepting abandonment, sale of inventory or other dispositions in the ordinary course of business), or sell equity interests in any Material Subsidiary to any third party (all of the foregoing, are herein called "Asset Dispositions"), unless:

(x) immediately before and after giving effect to such transaction, no Default or Event of Default shall exist or be continuing;

(y) one of the following two conditions shall be satisfied:

(i) the aggregate net after tax proceeds from such Asset Disposition do not exceed 10% of the Consolidated Total Assets of Holdings during such Fiscal Year; or

(ii) in the event that such net after tax proceeds from such Asset Disposition exceed 10% of the Consolidated Total Assets of Holdings ("Excess Sale Proceeds"), the Borrower shall within one-hundred eighty (180) days of the date of the disposal of the assets giving rise to such proceeds, cause an amount equal to such Excess Sale Proceeds to be applied (x) to the acquisition of assets in replacement of the assets so disposed of or of assets which may be productively used in the United States in the conduct of Holdings', the Borrower's or any Material Subsidiary's business (and such newly acquired assets shall become part of the General Collateral (as defined in the Security Agreements) and shall be subjected to the Lien of the Security Documents) or applied to refund the purchase price of replacement assets acquired within one-hundred eighty (180) days prior to such disposition, or (y) to the extent not applied pursuant to the immediately preceding clause (x), for deposit with the Trustee no later than ninety (90) days of after such disposition to be reinvested in assets described in clause (x) and to the extent such Excess Sale Proceeds are not reinvested as described above within one-hundred eighty (180) days of such disposition or applied to refund the purchase price of assets acquired within the period one-hundred eighty (180) days prior to such disposition to the prepayment of the Senior Debt (other than Permitted Secured Interest Rate Contracts) in accordance with Section 4 of the Intercreditor Agreement; and

(z) 100% of the consideration received is in cash or marketable securities or notes secured by a standby letter of credit, or in the case of a disposition of the equity interests or all or a portion of the assets of Total Gas & Electric, Inc., a minimum of 66²/₃% of the consideration received is in cash or marketable securities and the remaining consideration is in the form of either a secured or unsecured note.

Modification of Certain Agreements. Neither Holdings, the Borrower nor any Material Subsidiary shall consent to any amendment, supplement or other modification of any of the terms or provisions contained in, or applicable to, any document or instrument evidencing or applicable to the Private Placement Debt (including the Note Agreements), other Parity Debt, the

Existing Subordinated Debt, the Affiliate Subordinated Debt or other Permitted Subordinated Debt, which increases any amount payable thereunder or shortens the term thereof or increases any installment or required prepayment.

Transactions with Affiliates. Star Gas Partners, Holdings and the Borrower will not, and will not permit any Material Subsidiary to, directly or indirectly, engage in any transaction with any Affiliate, including, without limitation, the purchase, sale or exchange of assets or the rendering of any service, to Star Gas Partners', Holdings', the Borrower's or such Material Subsidiary's business except upon fair and reasonable terms that are no less favorable to Star Gas Partners, Holdings, the Borrower or such Material Subsidiary, as the case may be, than those which might be obtained in an arm's-length transaction at the time such transaction is agreed upon from Persons which are not such an Affiliate.

Negative Pledges, Restrictive Agreements, etc. Holdings and the Borrower will not, and will not permit any of the Material Subsidiaries to, enter into any agreement (excluding this Agreement, any other Loan Document and any agreement governing any Indebtedness permitted herein) prohibiting the creation or assumption of any Lien upon its properties, revenues or assets, whether now owned or hereafter acquired, or the ability of the Borrower or any other Obligor to amend or otherwise modify this Agreement or any other Loan Document.

Limitation on Issuance of Stock. Except as otherwise permitted herein and except with respect to issuances of additional stock to the direct parent of Holdings, the Borrower or any Material Subsidiary, Holdings and the Borrower shall not and shall not permit any of the Material Subsidiaries to, directly or indirectly, issue, contingently or otherwise, any shares of Holdings', the Borrower's or such Material Subsidiary's capital stock, warrants, rights or options to purchase or acquire shares of Holdings, the Borrower's or such Subsidiary's capital stock.

Operating Leases.

(aa) The aggregate obligations of Holdings, the Borrower and the Material Subsidiaries for the payment of rent for any property under any lease or agreement to lease (including obligations of Holdings, the Borrower and the Material Subsidiaries under or with respect to Synthetic Leases) for any Fiscal Year shall not exceed \$15,000,000.

(bb) Star Gas Partners shall not have any obligations for the payment of rent of any property under a lease or an agreement to lease.

Prepayments. Other than as provided in Section 4 or Section 20 of the Intercreditor Agreement, none of Holdings, the Borrower or any Material Subsidiary shall make any voluntary or optional prepayment of any Indebtedness for borrowed money incurred or permitted to exist under the terms of this Agreement other than (i) the Indebtedness hereunder, (ii) Indebtedness repaid pursuant to Section 8.2.2(a)(iv)(B) or (C), (iii) Permitted Subordinated Debt refinanced in accordance with Section 8.2.2(a)(iv)(E), (iv) Acquisition Debt identified on Item 8.2.14 of the Disclosure Schedule and any other Acquisition Debt secured by Facility C Letters of Credit and (v) Indebtedness refinanced or repaid within thirty (30) days of the regularly scheduled maturity date thereof.

Organic Documents. Star Gas Partners, Holdings and the Borrower will not, and will not permit any Material Subsidiary, to alter any Organic Document of such entity in any manner which could have a Material Adverse Effect.

Capital Expenditures. Holdings and the Borrower will not, nor will they permit any of the Material Subsidiaries to, make at any time Capital Expenditures in respect of any line of business other than the Fuel Oil Distribution Business which in the aggregate, over the term of this Agreement, exceed 10% of the consolidated tangible assets of Holdings, the Borrower and the Material Subsidiaries as determined in accordance with GAAP at such time.

Contingent Liabilities. Star Gas Partners, Holdings and the Borrower shall not, and shall not suffer or permit any Material Subsidiary to, create, incur, assume or suffer to exist any Contingent Liabilities except:

(cc) endorsements for collection or deposit in the ordinary course of business;

(dd) Contingent Liabilities of Holdings, the Borrower and the Material Subsidiaries existing as of the Effective Date and listed in Item 8.2.17 of the Disclosure Schedule (including, without limitation, Contingent Liabilities in respect of the Obligations, the Parity Debt and subordinated Indebtedness referred to on the Disclosure Schedule), other Contingent Liabilities of such Persons permitted by Section 8.2.2(a) and Contingent Liabilities of Star Gas Partners permitted by Section 8.2.2(b); and

(c) (i) a guarantee by Holdings of the obligation of any of Holdings' Subsidiaries, (ii) a guarantee by any Subsidiary of Holdings of any obligation of Holdings or (iii) a guarantee by any Subsidiary of Holdings of the obligation of any other Subsidiary of Holdings, if such obligation referred to in clause (i), (ii) or (iii) of this subsection (c) could be incurred by Holdings or such Subsidiary, as the case may be, under this Agreement.

ERISA Star Gas Partners, Holdings and the Borrower shall not, and shall not suffer or permit any of its ERISA Affiliates to: (a) (i) engage in a prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan or (ii) otherwise act or fail to make a contribution which results in an Unfunded Pension Liability, if the liability of the Borrower and/or ERISA Affiliate with respect to any Pension Plan resulting from such action described in clause (i) or failure to make a contribution referred to in clause (ii) exceeds \$7,000,000 in the aggregate; (b) engage in a transaction that could be subject to Section 4069 or 4212(c) of ERISA; (c) permit to exist any "accumulated funding deficiency" (as defined in Section 412 of the Code) with respect to any Pension Plan; (d) terminate, or permit any ERISA Affiliate to terminate, any Plan of the Borrower or such ERISA Affiliate which could have a Material Adverse Effect; or (e) permit to exist any occurrence of a Reportable Event or any other event or condition that presents a material risk of termination by the PBGC of any Plan of the Borrower or such ERISA Affiliate and a material liability of the Borrower or ERISA Affiliate to the PBGC.

Accounting Changes. Star Gas Partners, Holdings and the Borrower shall not, and shall not suffer or permit any Material Subsidiary to, make any significant change in accounting

treatment or reporting practices, except as required by GAAP, or change the Fiscal Year of Holdings, the Borrower or of any Material Subsidiary.

Bank Accounts. None of Holdings, the Borrower or any of the Material Subsidiaries shall have any bank accounts other than (a) the Borrower's Account, (b) the other existing bank accounts listed on Schedule VII and (c) other accounts expressly permitted by Section 4.18(b) of each of the Security Agreements (provided that the Borrower shall have furnished to the Agent a copy of the Blocked Account Agreement required thereby at the time any such account is opened or, if permitted by the Security Agreements, within ninety (90) days thereafter as long as during any such period not more than \$1,000,000 shall be deposited in all accounts for which no Blocked Account Agreement has yet been delivered).

ARTICLE IX

EVENTS OF DEFAULT

Listing of Events of Default. Each of the following events or occurrences described in this Section 9.1 shall constitute an "*Event of Default*".

Non-Payment of Obligations. The Borrower shall default in the payment or prepayment when due of any principal or interest of any Loan, or the payment of any fee or other Obligation (including Reimbursement Obligations).

Breach of Warranty. Any material representation or warranty of the Borrower or any other Obligor made or deemed to be made hereunder or in any other Loan Document executed by it or any other writing or certificate furnished by or on behalf of the Borrower or any other Obligor to the Agent or any Lender for the purposes of or in connection with this Agreement or any such other Loan Document (including any certificates delivered pursuant to Article VI) is or shall be incorrect when made in any material respect.

Non-Performance of Other Covenants and Obligations.

(a) Any Obligor shall default in the due performance and observance of any term, covenant or agreement contained in any of Sections 8.1.1(i)(1), 8.1.5, 8.1.10, 8.1.11, 8.1.13 or 8.1.14 or in any section of Section 8.2; or

(b) any Obligor shall default in the due performance and observance of any other Obligation or agreement contained herein or in any other Loan Document, and such default shall continue unremedied for a period of thirty (30) days after actual knowledge thereof by a Responsible Officer.

Default on Other Indebtedness. Star Gas Partners, Holdings, the Borrower or any Subsidiary shall default (after notice and the expiration of any applicable grace period) in the payment of any amount of principal, premium or interest on any Indebtedness (other than Obligations), or any event shall occur or condition shall exist in respect of any Indebtedness of Star Gas Partners, Holdings, the Borrower or any of their Subsidiaries (other than Obligations) and the effect of such event or condition is to cause (or to permit the holders of such Indebtedness to cause) such Indebtedness to become due before its stated maturity, in each case,

if the outstanding principal balance of such Indebtedness is in excess of \$2,000,000 in the aggregate. Star Gas Partners, Holdings, the Borrower or any Subsidiary shall default (after notice and the expiration of any applicable grace period) under any Permitted Secured Interest Rate Contract.

Judgments. Any judgment or order for the payment of money in excess of \$1,000,000, net of insurance coverage, shall be rendered against Star Gas Partners, Holdings, the Borrower or any of their Subsidiaries and:

(c) such judgment or order is nonappealable, has not been stayed pending appeal, or all rights to appeal such judgment have expired or been exhausted; and

(d) such judgment or order shall remain undischarged for a period of sixty (60) consecutive days after the date due.

ERISA. (a) An ERISA Event or ERISA Events shall occur with respect to a Plan, Pension Plan, Multiple Employer Plan or Multiemployer Plan which has resulted or could result in liability of the Borrower or any ERISA Affiliate in an aggregate amount in excess of \$7,000,000; or (b) the aggregate amount of Unfunded Pension Liability among all Pension Plans as set forth in the most recent report by the actuary exceeds \$7,000,000; or (c) with respect to any Pension Plan, the Borrower or any ERISA Affiliate shall fail to pay when due, after the expiration of any applicable grace period, any contribution required or needed in order to avoid (i) an “accumulated funding deficiency” (as defined in Section 412 of the Code), or (ii) adverse PBGC action; or (d) the adoption by Borrower or any ERISA Affiliate of a Pension Plan, Multiemployer Plan or Multiple Employer Plan and/or the accrual of any benefit or contribution obligation (other than those already accrued on January 1, 2002) for any participant under a Pension Plan, Multiemployer Plan or Multiple Employer Plan.

Change in Control. Any Change in Control shall occur except as is permitted by Section 8.2.7.

Bankruptcy, Insolvency, etc. Any of the following events shall occur:

(e) filing by or on the behalf of the Managing General Partner, Star Gas Partners, Holdings, the Borrower, or any of their Subsidiaries of a voluntary petition or an answer seeking reorganization, arrangement, readjustment of its debts or for any other relief under any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar act or law, state or federal, now or hereafter existing (“*Bankruptcy Law*”), or any action by the Managing General Partner, Star Gas Partners, Holdings, the Borrower or any of their Subsidiaries for, or consent or acquiescence to, the appointment of a receiver, trustee or other custodian of the Managing General Partner, Star Gas Partners, Holdings, the Borrower or any of their Subsidiaries, or of all or a substantial part of its property; or the making by the Managing General Partner, Star Gas Partners, Holdings, the Borrower or any of their Subsidiaries of any assignment for the benefit of creditors; or the admission by the Managing General Partner, Star Gas Partners, Holdings, the Borrower or any of their Subsidiaries in writing of its inability to pay its debts as they become due; or

(f) filing of any involuntary petition against the Managing General Partner, Star Gas Partners, Holdings, the Borrower or any of their Subsidiaries in bankruptcy or seeking reorganization, arrangement, readjustment or its debts or for any other relief under any Bankruptcy Law and an order for relief by a court having jurisdiction in the premises shall have been issued or entered therein; or any other similar relief shall be granted under any applicable Federal or state law; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee or other officer having similar powers over the Managing General Partner, Star Gas Partners, Holdings, the Borrower or any of their Subsidiaries or over all or a part of its property shall have been entered; or the involuntary appointment of an interim receiver, trustee or other custodian of the Managing General Partner, Star Gas Partners, Holdings, the Borrower or any of their Subsidiaries or of all or a substantial part of its property; or the issuance of a warrant of attachment, execution or similar process against any substantial part of the property of the Managing General Partner, Star Gas Partners, Holdings, the Borrower or any of their Subsidiaries and continuance of any such event for sixty (60) consecutive days unless dismissed, bonded to the satisfaction of the court having jurisdiction in the premises or discharged; or

(g) taking any action authorizing, or in furtherance of, any of the foregoing by Star Gas Partners, Holdings, the Borrower or any their respective Subsidiaries.

Impairment of Security, etc. Any of the Security Documents or documents guaranteeing Obligations shall cease in any material respect to be in full force and effect or shall be declared to be null and void in whole or in a material part by the final judgment (which is non-appealable or has not been stayed pending appeal or as to which all rights to appeal have expired or have been exhausted) of a court or other governmental or regulatory authority having jurisdiction or the validity or enforceability thereof shall be contested by or on behalf of Holdings, the Borrower or any Material Subsidiary or Holdings, the Borrower or any Material Subsidiary shall renounce any of the same or deny that it has any or further liability thereunder or any security interest purported to be created by any Security Document shall cease to be, or shall be asserted by Holdings, the Borrower or any Material Subsidiary not to be, a valid, perfected, first priority (except as expressly otherwise provided in this Agreement or such Security Document) security interest in the collateral covered thereby.

Split-Up. Any order, judgment or decree is entered in any proceeding against Holdings or the Borrower decreeing a split-up of Holdings or the Borrower which requires the divestiture of assets representing a substantial part, or the divestiture of the stock of any Material Subsidiary whose assets represent a substantial part, of the consolidated assets of Holdings, the Borrower and Subsidiaries (determined in accordance with GAAP) or which requires the divestiture of assets, or stock of any of their Material Subsidiaries, which shall have contributed a substantial part of Consolidated Net Income for any of the three Fiscal Years then most recently ended, and such order, judgment or decree shall not be dismissed or execution thereon stayed pending appeal or review within sixty (60) days after entry thereof, or in the event of such a stay, such order, judgment or decree shall not be dismissed within sixty (60) days after such stay expires.

Guarantor Defaults. Any of Star Gas Partners, Holdings or any Material Subsidiary fails in any material respect to perform or observe any term, covenant or agreement in its Guarantee

Agreement; or any Guarantee Agreement is for any reason partially (including with respect to future advances) or wholly revoked or invalidated, or otherwise ceases to be in full force and effect, or any of Star Gas Partners, Holdings or any Material Subsidiary or any other Person contests in any manner the validity or enforceability thereof or denies that it has any further liability or obligation thereunder.

Action if Bankruptcy. If any Event of Default described in Section 9.1.8 shall occur, the Commitments and any obligation of the Issuer to issue Letters of Credit (if not theretofore terminated) shall automatically terminate and the outstanding principal amount of all outstanding Loans, the maximum aggregate amount that is or at any time thereafter may become available for drawing under any outstanding Letters of Credit and all other Obligations shall automatically be and become immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower.

Action if Other Event of Default.

(h) If any Event of Default (other than any Event of Default described in Section 9.1.8) shall occur for any reason, whether voluntary or involuntary, and be continuing, the Agent may, or upon the direction of the Required Lenders shall, by notice to the Borrower:

(i) declare the commitment of each Lender to make Loans and any obligation of the Issuer to issue Letters of Credit to be terminated, whereupon such commitments and obligation shall be terminated;

(ii) declare an amount equal to the maximum aggregate amount that is or at any time thereafter may become available for drawing under any outstanding Letters of Credit (whether or not any beneficiary shall have presented, or shall be entitled at such time to present, the drafts or other documents required to draw under such Letters of Credit) to be immediately due and payable as cash collateral for the obligations thereunder;

(iii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable (including, without limitation, amounts due under Section 5.4), without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(iv) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law.

(i) The affirmative vote of Lenders holding at least 66-2/3% of the outstanding principal amount of the Obligations may rescind or annul the acceleration at any time; provided that, all Events of Default have been cured or waived at such time.

(j) The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies

provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

ARTICLE X

THE AGENT

Appointment and Authorization of Agent.

(a) Each Lender hereby irrevocably (subject to Section 10.9) appoints, designates and authorizes the Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, the Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Loan Documents with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith until such time (and except for so long) as the Agent may agree at the request of the Required Lenders to act for the Issuer with respect thereto; provided, however, that the Issuer shall have all of the benefits and immunities (i) provided to the Agent in this Article X with respect to any acts taken or omissions suffered by the Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and the application and agreements for letters of credit pertaining to the Letters of Credit as fully as if the term “Agent” as used in this Article X included the Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the Issuer.

Delegation of Duties. The Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

Liability of Agent. No Agent-Related Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or

willful misconduct in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by Holdings, the Borrower or any Subsidiary or Affiliate of the Borrower or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of the Borrower or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or Participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of the Borrower or any of the properties, books or records of the Borrower's Subsidiaries or Affiliates.

Reliance by Agent.

(c) The Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement 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 counsel to the Borrower), independent accountants and other experts selected by the Agent. The Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, 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, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders or all the Lenders, if required hereunder, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and participants. Where this Agreement expressly permits or prohibits an action unless the Required Lenders or all the Lenders (as applicable) otherwise determine, the Agent shall, and in all other instances, the Agent may, but shall not be required to, initiate any solicitation for the consent or a vote of the Lenders.

(d) For purposes of determining compliance with the conditions specified in Section 6.1, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent by the Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender.

Notice of Default. The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Agent for the account of the Lenders, unless the Agent shall have received written notice from a Lender or the Borrower referring to this

Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” The Agent will notify the Lenders, the Swing Line Lender, the Issuers and the Borrower of its receipt of any such notice. The Agent shall take such action with respect to such Default or Event of Default as may be directed by the Required Lenders in accordance with Article IX; provided, however, that unless and until the Agent has received any such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Lenders.

Credit Decision; Disclosure of Information by Agent. Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by the Agent hereinafter taken, including any consent to and acceptance of any assignment or review of the affairs of Star Gas Partners, Holdings, the Borrower and its Subsidiaries thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to the Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and its Affiliates and Subsidiaries, and all applicable bank or other regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower and its Subsidiaries hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person 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 Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Agent herein, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Borrower which may come into the possession of any Agent-Related Person.

Indemnification of Agent. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of the Borrower and without limiting the obligation of the Borrower to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it. Without limitation of the foregoing, each Lender shall reimburse the Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including reasonable attorney costs) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Agent is not reimbursed for such expenses by or on behalf of the Borrower. Notwithstanding anything in this Section 10.7 to the contrary, no Lender shall be liable for the payment to any Agent-Related Person resulting from such Agent-Related Person’s gross negligence or willful misconduct; provided, however, that no

action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 10.7. The undertaking in this Section 10.7 shall survive termination of the Commitments, the payment of all Obligations hereunder and the resignation or replacement of the Agent.

Agent in its Individual Capacity. Wachovia and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Borrower and its Subsidiaries and Affiliates as though Wachovia (or such other lender) were not the Agent or an Issuer hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, Wachovia or its Affiliates may receive information regarding Holdings, the Borrower and their respective Affiliates (including information that may be subject to confidentiality obligations in favor of Holdings, the Borrower and their respective Affiliates) and acknowledge that the Agent shall be under no obligation to provide such information to them. With respect to its Loans, Wachovia shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not the Agent or an Issuer, and the terms “Lender” and “Lenders” include Wachovia in its individual capacity.

Successor Agent. The Agent may resign as Agent upon thirty (30) days’ notice to the Lenders. If the Agent resigns under this Agreement, the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders which appointment shall require the consent of the Borrower at all times other than during the existence of an Event of Default (which consent of the Borrower shall not be unreasonably withheld or delayed). If no successor agent is appointed prior to the effective date of the resignation of the Agent, the Agent may appoint, after consulting with the Lenders and the Borrower, a successor agent from among the Lenders. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term “Agent” shall mean such successor agent and the retiring Agent’s appointment, powers and duties as Agent shall be terminated. After any retiring Agent’s resignation hereunder as Agent, the provisions of this Article X and Sections 11.4 and 11.5 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent’s notice of resignation, the retiring Agent’s resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Any successor agent shall have a market capitalization equal to or greater than \$500,000,000.

Other Agents: Lead Managers. None of the Persons identified on the facing page or signature pages of this Agreement as a “syndication agent,” “co-documentation agent,” “co-lead arranger” or “sole book manager” shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of the Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

Foreign Lenders. Each Lender that is a “foreign corporation, partnership or trust” within the meaning of the Code (a “*Foreign Lender*”) shall deliver to the Agent, prior to receipt of any payment subject to withholding under the Code (or after accepting an assignment of an interest herein), two duly signed completed copies of either IRS Form W-8BEN or any successor thereto (relating to such Person and entitling it to an exemption from, or reduction of, withholding tax on all payments to be made to such Person by the Borrower pursuant to this Agreement) or IRS Form W-8ECI or any successor thereto (relating to all payments to be made to such Person by the Borrower pursuant to this Agreement) or such other evidence satisfactory to the Borrower and the Agent that such Person is entitled to an exemption from, or reduction of, U.S. withholding tax. Hereafter and from time to time, each such Person shall (a) promptly submit to the Agent such additional duly completed and signed copies of one of such forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then current United States laws and regulations to avoid, or such evidence as is satisfactory to the Borrower and the Agent of any available exemption from or reduction of, United States withholding taxes in respect of all payments to be made to such Person by the Borrower pursuant to this Agreement, (b) promptly notify the Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (c) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws that the Borrower make any deduction or withholding for taxes from amounts payable to such Person. If such Person fails to deliver the above forms or other documentation, then the Agent may withhold from any interest payment to such Person an amount equivalent to the applicable withholding tax imposed by Sections 1441 and 1442 of the Code, without reduction. If any Governmental Authority asserts that the Agent did not properly withhold any tax or other amount from payments made in respect of such Person, such Person shall indemnify the Agent therefor, including all penalties and interest, any taxes imposed by any jurisdiction on the amounts payable to the Agent under this Section, and costs and expenses (including Attorney Costs) of the Agent. The obligation of the Lenders under this Section shall survive the payment of all Obligations and the resignation or replacement of the Agent.

Collateral Matters.

Except as otherwise expressly provided in the Intercreditor Agreement:

(e) The Agent is authorized on behalf of all the Lenders and the Issuers, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action with respect to any Collateral or the Security Documents which may be necessary to perfect and maintain perfected the security interest in and Liens upon the Collateral granted pursuant to the Security Documents;

(f) The Lenders and the Issuers irrevocably authorize the Agent, at its option and in its discretion, to authorize the release of any Lien granted for the benefit of the Agent and the Lenders upon any Collateral (i) upon termination of the Commitments and payment in full of all Loans, all other Obligations and the Permitted Secured Interest Rate Contract Obligations known to the Agent and payable under this Agreement or any other Loan Document; (ii) constituting property sold or to be sold or disposed of as part of or in

connection with any disposition permitted hereunder; (iii) constituting property leased to Holdings, the Borrower or any Material Subsidiary under a lease which has expired or been terminated in a transaction permitted under this Agreement or is about to expire and which has not been, and is not intended by Holdings, the Borrower or such Material Subsidiary to be, renewed or extended; (iv) consisting of an instrument evidencing Indebtedness or other debt instrument, if the indebtedness evidenced thereby has been paid in full; (v) if authorized pursuant to the terms of this Agreement or the other Loan Documents; or (vi) if approved, authorized or ratified in writing by the Required Lenders or all the Lenders, as the case may be, as provided in Section 11.1. Upon request by the Agent at any time, the Lenders will confirm in writing the Agent's authority to authorize the release of particular types or items of Collateral pursuant to this Section 10.12(b); and

ARTICLE XI

MISCELLANEOUS PROVISIONS

Waivers, Amendments, etc. (a) Except as expressly provided in the Intercreditor Agreement, the provisions of this Agreement and of each other Loan Document may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and consented to by the Borrower and the Required Lenders (or in the case of any amendment, modification or waiver to the letter agreement referred to in Section 3.3.4, the Borrower and the Agent); provided, however, that no such amendment, modification or waiver which would:

(i) modify any requirement hereunder that any particular action be taken by all the Lenders or by the Required Lenders shall be effective unless consented to by each Lender;

(ii) modify this Section 11.1, change the definition of "Required Lenders," increase any Commitment or the Percentage of any Lender (other than (a) pursuant to Section 11.1.1.1 or (b) a one time increase in the Facility A Commitments or Facility B Commitments pursuant to a reallocation of the Facility A Commitments or the Facility B Commitments provided such reallocation is on a pro rata basis among the Lenders and the aggregate amount of the Commitments is not increased), reduce any fees described in Article III, release any substantial portion of Collateral or any Obligor with respect to any of the Obligations or the Permitted Secured Interest Rate Contract Obligations, except as otherwise specifically provided in any Loan Document, extend the Commitment Termination Date or Stated Maturity Date or change the interest provisions contained in Section 3.2 shall be made without the consent of each Lender and each holder of a Note (and, in the case of any release of any substantial portion of Collateral or any Obligor with respect to any of the Obligations or the Permitted Secured Interest Rate Contract Obligations, any Lender party to any Permitted Secured Interest Rate Contract);

(iii) except as otherwise specifically provided in any Loan Document, extend the due date for, or reduce the amount of, any scheduled repayment or prepayment of

principal of or interest on any Loan (or reduce the principal amount of or rate of interest on any Loan) shall be made without the consent of the holder of that Note evidencing such Loan;

(iv) affect adversely the interests, rights or obligations of the Agent shall be made without consent of the Agent; or

(v) affect adversely the interests, rights or obligations of the Issuer shall be made without the consent of the Issuer.

(b) No failure or delay on the part of the Agent, any Lender, any Issuer or the holder of any Note in exercising any power or right under this Agreement or any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on the Borrower in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval by the Agent, any Issuer, any Lender or the holder of any Note under this Agreement or any other Loan Document shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

(c) In the event that any waiver, amendment or modification requires the prior written consent of each Lender pursuant to Section 11.1(a), and the Borrower has obtained the approval of all but one Lender, the Borrower shall have the right to replace such non-consenting Lender; provided, (i) such replacement does not conflict with any Requirement of Law, (ii) no Event of Default shall have occurred and be continuing at the time of such replacement, (iii) the replacement financial institution shall purchase, at par, all Loans and other amounts owing to such replaced Lender on or prior to the date of replacement, (iv) the Borrower shall be liable to such replaced Lender under Section 5.4 if any LIBOR Loan owing to such replaced Lender shall be purchased other than on the last day of the Interest Period relating thereto, (v) the replacement financial institution, if not already a Lender, shall be reasonably satisfactory to the Agent, (vi) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 11.11.1 (provided the Borrower shall be obligated to pay the registration and processing fee referred to therein) and (vii) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, the Agent or any other Lender shall have against the replaced Lender.

Notices. All notices and other communications provided to any party hereto under this Agreement or any other Loan Document shall be in writing or facsimile and addressed, delivered or transmitted to such party at its address or by facsimile number set forth on Schedule I or, with respect to Persons that become Lenders after the date hereof, set forth in the Assignment and Acceptance Agreement or at such other address or facsimile number as may be designated by such party in a notice to the other parties. Any notice, if mailed and properly addressed with postage prepaid or if properly addressed and sent by pre-paid courier service, shall be deemed given when received; any notice, if transmitted by facsimile, shall be deemed given when transmitted.

Payment of Costs and Expenses. The Borrower agrees to pay on demand all expenses of the Agent and the Co-Lead Arrangers (including the fees and out-of-pocket expenses of counsel to the Agent and the Co-Lead Arrangers and of local counsel, if any, who may be retained by counsel to the Agent and the allocated cost of internal counsel) in connection with:

- (a) the negotiation, preparation, execution, delivery, syndication and administration of this Agreement and of each other Loan Document, including schedules and exhibits, and any amendments, waivers, consents, supplements or other modifications to this Agreement or any other Loan Document, including but not limited to Section 2.8, as may from time to time hereafter be required, whether or not the transactions contemplated hereby are consummated;
- (b) the filing, recording, refiling or re-recording of the Security Documents and/or any Uniform Commercial Code financing statements relating thereto and all amendments, supplements and modifications to any thereof and any and all other documents or instruments of further assurance required to be filed or recorded or refiled or re-recorded by the terms hereof or of the Security Documents; and
- (c) the preparation and review of the form of any document or instrument relevant to this Agreement or any other Loan Document.

The Borrower agrees to pay to the Agent customary fees in connection with any amendment or waiver in respect of the Loan Documents in accordance with the then current market as determined by the Agent.

The Borrower further agrees to pay, and to save the Agent, the Co-Lead Arrangers and the Lenders harmless from all liability for, any stamp or other taxes which may be payable in connection with the execution or delivery of this Agreement, the borrowings hereunder, or the issuance of the Notes or any other Loan Documents. The Borrower also agrees to reimburse the Agent, the Co-Lead Arrangers, the Issuers and each Lender upon demand for all reasonable out-of-pocket expenses (including reasonable attorneys' fees, legal expenses and the allocated cost of internal counsel) incurred by the Agent, the Issuers, the Co-Lead Arrangers or such Lender in connection with (x) the negotiation of any restructuring or "work-out" whether or not consummated, of any Obligations and Permitted Secured Interest Rate Contract Obligations and (y) the enforcement of any Obligations and Permitted Secured Interest Rate Contract Obligations.

Indemnification. In consideration of the execution and delivery of this Agreement by each Lender and the extension of the Commitments, the Borrower hereby indemnifies, exonerates and holds the Agent, the Issuers, the Co-Lead Arrangers and each Lender and each of their respective officers, directors, employees and agents (collectively, the "**Indemnified Parties**") free and harmless from and against any and all actions, causes of action, suits, losses, costs (including settlement costs), liabilities and damages, and expenses incurred in connection therewith (irrespective of whether any such Indemnified Party is a party to the action for which indemnification hereunder is sought), including reasonable attorneys' fees and disbursements and the allocated cost of internal counsel (collectively, the "**Indemnified Liabilities**"), incurred by the Indemnified Parties or any of them as a result of, or arising out of, or relating to:

- (d) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Loan or the use of any Letter of Credit;

(e) the entering into and performance of this Agreement and any other Loan Document by any of the Indemnified Parties;

(f) any investigation, litigation or proceeding related to any acquisition or proposed acquisition by the Borrower or any Subsidiaries of all or any portion of the stock or assets of any Person, whether or not the Agent or such Lender is party thereto;

(g) any Environmental Claim or other matter relating to the protection of the environment or the Release by the Borrower or any Subsidiary of any Hazardous Material; or

(h) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or releases from, any real property owned or operated by the Borrower or any Subsidiary of any Hazardous Material (including any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Law), regardless of whether caused by, or within the control of, the Borrower or such Subsidiary,

except for any such Indemnified Liabilities arising for the account of a particular Indemnified Party by reason of the relevant Indemnified Party's gross negligence or willful misconduct. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

Survival. The obligations of the Borrower under Section 5.3, 5.4, 5.5, 5.6, 11.3 and 11.4, and the obligations of the Lenders under Section 10.1, shall in each case survive until the applicable statute of limitations has run on the bringing of any action thereon any termination of this Agreement, the payment in full of all Obligations and Permitted Secured Interest Rate Contract Obligations and the termination of all Commitments. The representations and warranties made by each Obligor in this Agreement and in each other Loan Document shall survive the execution and delivery of this Agreement and each such other Loan Document.

Severability. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or such Loan Document or affecting the validity or enforceability of such provision in any other jurisdiction.

Headings. The various headings of this Agreement and of each other Loan Document are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or such other Loan Document or any provisions hereof or thereof.

Execution in Counterparts, Effectiveness, etc. This Agreement may be executed by the parties hereto in several counterparts, all of which shall constitute together but one and the same agreement. This Agreement shall become effective when counterparts hereof executed on behalf

of the Borrower, the Agent, each Issuer and each Lender (or notice thereof satisfactory to the Agent) shall have been received by the Agent and notice thereof shall have been given by the Agent to the Borrower and each Lender and satisfaction of the conditions set forth in Section 6.1.

Governing Law; Entire Agreement. **THIS AGREEMENT, THE NOTES AND EACH OTHER LOAN DOCUMENT SHALL EACH BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.** On the Effective Date, this Agreement, the Notes, the Security Agreements and the other Loan Documents shall constitute the entire understanding among the parties hereto with respect to the subject matter hereof and supersede any prior agreements, written or oral, with respect thereto.

Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that:

(i) the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of the Agent, the Issuers and all Lenders (and any attempted or purported assignment or transfer in contravention of the foregoing shall be null and void); and

(j) the rights of sale, assignment and transfer of the Lenders are subject to Section 11.11.

Sale and Transfer of Loans and Notes; Participations in its Loans and Notes. Each Lender may assign or sell participations in, its Loans and Commitments to one or more other Persons in accordance with this Section 11.11.

Assignments. Any Lender:

(k) with the written consents of the Borrower and the Agent, the Issuers (which consents shall not be unreasonably delayed or withheld and which consent, in the case of the Borrower, shall be deemed to have been given in the absence of a written notice delivered by the Borrower to the Agent, on or before the fifth (5th) Business Day after receipt by the Borrower of such Lender's request for consent, stating, in reasonable detail, the reasons why the Borrower proposes to withhold such consent) may at any time assign and delegate to one or more Eligible Assignee; provided that such consent of the Borrower shall not be required at any time a Default has occurred and is continuing or if such assignment is in connection with a physical settlement of a credit derivatives transaction;

(l) with notice to the Borrower, the Issuers and the Agent, but without the consent of the Borrower, the Issuers or the Agent, may assign and delegate to any of its Affiliates or to any other Lender or any Affiliate of any Lender meeting the requirements of clause (ii) of the definition of Eligible Assignee; and

(m) notwithstanding the foregoing, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a

Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto;

(each Person described in either of the foregoing clauses as being the Person to whom such assignment and delegation is to be made, being hereinafter referred to as an “*Assignee Lender*”), all or any fraction of such Lender’s total Loans and Commitments (including participations in the Letters of Credit) which assignment shall be a pro rata portion of the assigning Lender’s Facility A Loans, Facility A Commitment, Facility B Commitment, Facility C Loans and Facility C Commitment in a minimum aggregate amount of \$5,000,000, or \$1,000,000, in the case of an assignment of a Facility C Loan after the Facility C Term-Out Option has been exercised pursuant to Section 2.8; provided, however, that any such Assignee Lender will comply, if applicable, with the provisions contained in Section 10.10 and the last sentence of Section 5.6 and provided, further, however, that the Borrower, each other Obligor and the Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned and delegated to an Assignee Lender until:

(n) written notice of such assignment and delegation, together with payment instructions, addresses (of credit and administrative contacts) and related information with respect to such Assignee Lender, shall have been given to the Borrower and the Agent by such Lender and such Assignee Lender;

(o) such Assignee Lender shall have executed and delivered to the Borrower and the Agent an Assignment and Acceptance Agreement, accepted by the Agent; and

(p) the processing fees described below shall have been paid.

From and after the date that the Agent accepts such Assignment and Acceptance Agreement, (x) the Assignee Lender thereunder shall be deemed automatically to have become a party hereto and to the extent that rights and obligations hereunder have been assigned and delegated to such Assignee Lender in connection with such Assignment and Acceptance Agreement, shall have the rights and obligations of a Lender hereunder and under the other Loan Documents, and (y) the assignor Lender, to the extent that rights and obligations hereunder have been assigned and delegated by it in connection with such Assignment and Acceptance Agreement, shall be released from its obligations hereunder and under the other Loan Documents. Such Assignee Lender must also pay a processing fee to the Agent upon delivery of any Assignment and Acceptance Agreement in the amount of \$3,500. Any attempted assignment and delegation not made in accordance with this Section 11.11.1 shall be null and void.

Participations. Any Lender may at any time sell to one or more commercial banks or other Persons (each of such commercial banks and other Persons being herein called a “*Participant*”) participating interests (or a subparticipating interest, in the case of a Lender’s participating interest in a Letter of Credit) in any of the Loans, Commitments, or other interests of such Lender hereunder; provided, however, that:

(q) no participation contemplated in this Section 11.11.2 shall relieve such Lender from its Commitments or its other obligations hereunder or under any other Loan Document;

(r) such Lender shall remain solely responsible for the performance of its Commitments and such other obligations;

(s) the Borrower, each other Obligor and the Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and each of the other Loan Documents;

(t) no Participant, unless such Participant is an Affiliate of such Lender, or is itself a Lender, shall be entitled to require such Lender to take or refrain from taking any action hereunder or under any other Loan Document, except that such Lender may agree with any Participant that such Lender will not, without such Participant's consent, take any actions of the type described in clause (b) or (c) of Section 11.1; and

(u) the Borrower shall not be required to pay any amount under Sections 5.3, 5.4, 5.5 or 5.6 that is greater than the amount which it would have been required to pay had no participating interest been sold.

The Borrower acknowledges and agrees that each subject to the preceding sentence Participant, for purposes of Sections 5.3, 5.4, 5.5, 5.6, 5.8, 5.9, 11.3 and 11.4, shall be considered a Lender.

Other Transactions. Nothing contained herein shall preclude the Agent, the Issuers, the Co-Lead Arrangers or any other Lender from engaging in any transaction, in addition to those contemplated by this Agreement or any other Loan Document, with Star Gas Partners, Holdings, the Borrower or any of their Subsidiaries or Affiliates in which any such party is not restricted hereby from engaging with any other Person. The Lenders and the Issuers hereby acknowledge that Wachovia is involved in other financings with Affiliates of Star Gas Partners, Holdings, the Borrower and the Material Subsidiaries (the "*Other Facilities*") and that Wachovia's decisions with respect to its exercise of rights and remedies with respect to the Other Facilities will be made independently and as if not involved in the credit facilities provided hereunder.

FORUM SELECTION AND CONSENT TO JURISDICTION. ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE AGENT, THE LENDERS OR THE BORROWER SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE INTERCREDITOR AGREEMENT, AT THE AGENT'S OPTION, IN THE COURTS OF AND JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH OF HOLDINGS AND THE

BORROWER HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION. EACH OF HOLDINGS AND THE BORROWER FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH OF HOLDINGS AND THE BORROWER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

WAIVER OF JURY TRIAL. EACH OF THE AGENT, THE LENDERS AND THE BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE AGENT, THE LENDERS OR THE BORROWER. THE BORROWER ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENT AND THE LENDERS ENTERING INTO THIS AGREEMENT AND EACH SUCH OTHER LOAN DOCUMENT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

BORROWER:

PETROLEUM HEAT AND POWER CO., INC.

By: _____

Name: Richard F. Ambury

Title: Vice President and Treasurer

Signature Page
to
Credit Agreement
(Petroleum Heat and Power Co., Inc.)

Acknowledged and Agreed:

STAR GAS PARTNERS, L.P.

By: Star Gas LLC, its General Partner

By: _____

Name: Richard F. Ambury
Title: Vice President and Treasurer

A.P. WOODSON COMPANY

By: _____

Name: Richard F. Ambury
Title: Vice President and Treasurer

COLUMBIA PETROLEUM TRANSPORTATION, LLC

By: _____

Name: Richard F. Ambury
Title: Vice President and Treasurer

MAREX CORPORATION

By: _____

Name: Richard F. Ambury
Title: Vice President and Treasurer

Signature Page
to
Credit Agreement
(Petroleum Heat and Power Co., Inc.)

MAXWHALE CORP.

By: _____

Name: Richard F. Ambury
Title: Vice President and Treasurer

MEENAN HOLDINGS OF NEW YORK, INC.

By: _____

Name: Richard F. Ambury
Title: Vice President and Treasurer

MEENAN OIL CO., INC.

By: _____

Name: Richard F. Ambury
Title: Vice President and Treasurer

MEENAN OIL CO., L.P.

By: _____

Name: Richard F. Ambury
Title: Vice President and Treasurer

ORTEP OF PENNSYLVANIA, INC.

By: _____

Name: Richard F. Ambury
Title: Vice President and Treasurer

Signature Page
to
Credit Agreement
(Petroleum Heat and Power Co., Inc.)

PETRO HOLDINGS, INC.

By: _____

Name: Richard F. Ambury
Title: Vice President and Treasurer

PETRO INC.

By: _____

Name: Richard F. Ambury
Title: Vice President and Treasurer

RICHLAND PARTNERS, LLC

By: _____

Name: Richard F. Ambury
Title: Vice President and Treasurer

TOTAL GAS & ELECTRIC, INC.

By: _____

Name: Richard F. Ambury
Title: Vice President and Treasurer

TOTAL GAS & ELECTRICITY (PA), INC.

By: _____

Name: Richard F. Ambury
Title: Vice President and Treasurer

Signature Page
to
Credit Agreement
(Petroleum Heat and Power Co., Inc.)

STAR GAS PARTNERS, L.P.,
STAR GAS FINANCE COMPANY,
AND
UNION BANK OF CALIFORNIA, N.A.,
AS TRUSTEE

10¼% Senior Notes due 2013

FIRST SUPPLEMENTAL INDENTURE

Dated as of January 22, 2004

Supplementing that certain Indenture dated as of February 6, 2003

FIRST SUPPLEMENTAL INDENTURE

FIRST SUPPLEMENTAL INDENTURE, dated as of January 22, 2004, between STAR GAS PARTNERS, L.P., a Delaware limited partnership (the "Company"), STAR GAS FINANCE COMPANY, a Delaware corporation (the "Co-Issuer", together with the Company, the "Issuers") and UNION BANK OF CALIFORNIA, N.A. (the "Trustee") as Trustee, supplementing that certain Indenture dated as of February 6, 2003 by and among the Issuers and the Trustee. All capitalized terms contained in this First Supplemental Indenture shall have the same meaning as set forth in the Indenture (as defined below) except as set forth herein.

RECITALS OF THE COMPANY

WHEREAS, the Issuers and the Trustee have entered into the Indenture, providing for the issuance of debt securities;

WHEREAS, on February 6, 2003, the Issuers issued an aggregate principal amount of \$200,000,000 of its 10¼% Senior Notes due 2013 (the "Original Notes") under the Indenture;

WHEREAS, as of the date hereof, for its lawful corporate purposes, the Issuers have created and authorized an additional aggregate principal amount of \$35,000,000 10¼% Senior Notes due 2013 (the "Additional Notes") to be authenticated and delivered pursuant to the Indenture;

WHEREAS, pursuant to Section 9.1 of the Indenture, the Issuers and the Trustee have elected to amend the Indenture without notice to or consent of any Securityholder in order to cure certain ambiguities, omissions, defects and inconsistencies under the Indenture; and

WHEREAS, the Original Notes have been and the Additional Notes are being issued under the Indenture, and are subject to the terms contained therein and this First Supplemental Indenture.

NOW, THEREFORE, for and in consideration of the mutual entry into this First Supplemental Indenture by the parties hereto, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, the parties hereto agree for the equal and ratable benefit of all Securityholders as follows:

PREAMBLE

1. **Amendment of PREAMBLE**. The second paragraph of the preamble to the Indenture is hereby modified and amended in its entirety to read in full as follows:

"Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Securityholders of (i) the Issuers' 10¼% Senior Notes due 2013, issued on the date hereof (the "Initial Securities"), (ii) if and when issued, an unlimited principal amount of additional 10¼% Senior Notes due 2013 in a non-registered offering or in a registered offering of the Issuers that may be offered from time to time subsequent to the Issue Date (the "Additional Securities" or the

“Additional Notes”) and (iii) if and when issued, the Issuers’ 10¼% Senior Notes due 2013 that may be issued from time to time in exchange for Initial Securities or any Additional Securities in an offer registered under the Securities Act as provided in a Registration Rights Agreement (as hereinafter defined the “Exchange Securities,” and together with the Initial Securities and the Additional Securities, the “Securities” or the “Notes”).”

ARTICLE I

Definitions and Incorporation by Reference

2. **Amendment of SECTION 1.1.** SECTION 1.1 of the Indenture is hereby modified to add the following defined term:

““Board Resolution” means (i) in the case of the Company, a resolution properly authorized and approved by the board of directors of the general partner of the Company; and (ii) in the case of the Co-Issuer, a resolution properly authorized and approved by the board of directors of the Co-Issuer.”

3. **Amendment of SECTION 1.1.** SECTION 1.1 of the Indenture is hereby modified to delete the following defined term in its entirety and substituting in lieu thereof the following:

““Registration Rights Agreement” means (i) in the case of the Original Notes, that certain registration rights agreement dated as of February 6, 2003 by and among the Company and the initial purchasers set forth therein; (ii) in the case of the Additional Notes, that certain registration rights agreement dated as of January 22, 2004 by and among the Company and the initial purchaser set forth therein; and (iii) in the case of the issuance of any other Additional Securities, that certain registration rights agreement dated as of and entered into in connection with the issuance of such Additional Securities.”

ARTICLE III

Covenants

4. **Amendment of SECTION 3.4(a)(3).** SECTION 3.4(a)(3) of the Indenture is hereby modified and amended in its entirety to read in full as follows:

“make any principal payment on, or purchase, defease, repurchase, redeem or otherwise acquire or retire for value, prior to any scheduled maturity, scheduled repayment, scheduled sinking fund payment or other Stated Maturity, any subordinated Indebtedness of the Company, other than any such Indebtedness owed to the Company or a Restricted Subsidiary; or”

5. **Amendment of SECTION 3.8(b)(2).** SECTION 3.8(b)(2) of the Indenture is hereby modified and amended in its entirety to read in full as follows:

“transactions permitted by Section 3.4 hereof;”

6. **GOVERNING LAW.** THIS FIRST SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

7. **Counterparts.** This First Supplemental Indenture may be executed in multiple counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same instrument.

8. **Effect of Headings.** The Section headings herein are for convenience only and shall not affect the construction of this First Supplemental Indenture.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed as of the day and year first above written.

STAR GAS PARTNERS, L.P.

By: STAR GAS LLC, its General Partner

By: _____

Name:

Title:

STAR GAS FINANCE COMPANY

By: _____

Name:

Title:

UNION BANK OF CALIFORNIA, N.A.
as Trustee

By: _____

Name:

Title:

CERTIFICATIONS

I, Irik P. Sevin, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Star Gas Partners, L.P. and Star Gas Finance Company ("Registrants");
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrants as of, and for, the periods presented in this quarterly report;
4. The registrants' other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrants and have:
 - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrants, including their consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
 - (b) evaluated the effectiveness of the registrants' disclosure controls and procedures and presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (c) disclosed in this quarterly report any change in the registrants' internal control over financial reporting that occurred during the registrants' most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrants' internal control over financial reporting; and
5. The registrants' other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrants' auditors and the audit committee of the registrants' board of directors:
 - (a) all significant deficiencies and material weaknesses the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrants' ability to record, process, summarize and report financial information and;
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrants' internal control over financial reporting.

Date: January 29, 2004

/s/ Irik P. Sevin

Irik P. Sevin
Chief Executive Officer
Star Gas Partners, L.P.
Star Gas Finance Company

CERTIFICATIONS

I, Ami Trauber, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Star Gas Partners, L.P. and Star Gas Finance Company; (“Registrants”);
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrants as of, and for, the periods presented in this quarterly report;
4. The registrants’ other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrants and have:
 - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrants, including their consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
 - (b) evaluated the effectiveness of the registrants’ disclosure controls and procedures and presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (c) disclosed in this quarterly report any change in the registrants’ internal control over financial reporting that occurred during the registrants’ most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrants’ internal control over financial reporting; and
5. The registrants’ other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrants’ auditors and the audit committee of the registrants’ board of directors:
 - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrants’ ability to record, process, summarize and report financial information; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrants’ internal control over financial reporting.

Date: January 29, 2004

/s/ Ami Trauber

Ami Trauber
Chief Financial Officer
Star Gas Partners, L.P.
Star Gas Finance Company

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Star Gas Partners, L.P. (the "Partnership") and Star Gas Finance Company on Form 10-Q for the quarterly period ended December 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Irik P. Sevin, Chief Executive Officer of the Partnership and Star Gas Finance Company, certify to my knowledge, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350) that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Partnership and Star Gas Finance Company.

STAR GAS PARTNERS, L.P.
STAR GAS FINANCE COMPANY
By: STAR GAS LLC (General Partner)

January 29, 2004

By: _____ /s/ Irik P. Sevin

Irik P. Sevin
Chief Executive Officer
Star Gas Partners, L.P.
Star Gas Finance Company

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Star Gas Partners, L.P. (the "Partnership") and Star Gas Finance Company on Form 10-Q for the quarterly period ended December 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ami Trauber, Chief Financial Officer of the Partnership and Star Gas Finance Company, certify to my knowledge, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350) that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Partnership and Star Gas Finance Company.

STAR GAS PARTNERS, L.P.
STAR GAS FINANCE COMPANY
By: STAR GAS LLC (General Partner)

By: _____ /s/ Ami Trauber

January 29, 2004

Ami Trauber
Chief Financial Officer
Star Gas Partners, L.P.
Star Gas Finance Company