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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934

Date of report (Date of earliest event reported) December 5, 2005

STAR GAS PARTNERS, L.P.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

011-14129
(Commission File Number)

06-1437793
(IRS Employer Identification No.)

2187 Atlantic Street, Stamford, CT
(Address of principal executive offices)

06902
(Zip Code)

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

Not Applicable
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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

Effective as of December 5, 2005, Star Gas Partners, L.P., a Delaware limited partnership (referred to herein as “Star Gas Partners,” “we” or “us”) and our general partner, Star Gas LLC, a Delaware limited liability company (“Star Gas”) entered into a unit purchase agreement with Kestrel Energy Partners, LLC, a Delaware limited liability company (“Kestrel”), and its wholly owned subsidiaries, Kestrel Heat LLC, a Delaware limited liability company (“Kestrel Heat”), and KM2, LLC, a Delaware limited liability company (“M2”), that provides for a strategic recapitalization of Star Gas Partners that will include the following three principal elements, which will occur simultaneously:

- The receipt by us of \$50 million in new equity financing through the issuance to Kestrel Heat and M2 of 7,500,000 common units at a purchase price of \$2.00 per unit for an aggregate of \$15 million and the issuance of an additional 17,500,000 common units in an offering of non-transferable rights to our common unitholders at an exercise price of \$2.00 per unit for an aggregate of \$35 million, with a standby commitment from M2 to purchase all units that are not subscribed for in the rights offering;
- The replacement of our general partner, Star Gas, for no consideration, with a new general partner, Kestrel Heat, and the issuance to Kestrel Heat of 325,729 general partner units, with terms discussed below; and
- The adoption of a second amended and restated agreement of limited partnership of Star Gas Partners, that will include, among others, the following changes to the terms of our partnership securities:
 - provide for the mandatory conversion of each outstanding senior subordinated unit and junior subordinated unit into one common unit;
 - change the minimum quarterly distribution to the common units from \$0.575 per quarter, or \$2.30 per year, to \$0.0675 per unit, or \$0.27 per year, which shall commence accruing October 1, 2008; and, eliminate all previously accrued cumulative distribution arrearages, which aggregated \$92.5 million at November 30, 2005;
 - suspend all distributions of available cash by us through the fiscal quarter ending September 30, 2008;

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- reallocate the incentive distribution rights so that, commencing October 1, 2008, the new general partner units in the aggregate will be entitled to receive 10% of the available cash distributed once \$.0675 per quarter, or \$0.27 per year, has been distributed to common units and general partner units and 20% of the available cash distributed in excess of \$0.1125 per quarter, or \$.45 per year, provided there are no arrearages in minimum quarterly distributions at the time of such distribution (under our current partnership agreement if quarterly distributions of available cash exceed certain target levels, the senior subordinated units, junior subordinated units and general partner units would receive an increased percentage of distributions, resulting in their receiving a greater amount on a per unit basis than the common units).

The unit purchase agreement provides (i) that Star Gas Partners and its representatives will not solicit or discuss any competing acquisition proposal ("Exclusivity Provision"); however, Star Gas Partners may explore any third party written proposal to determine if it is a superior proposal (as defined) and to negotiate with respect to any superior proposal and (ii) that Star Gas Partners will pay to Kestrel a \$4 million break up fee (plus certain out-of-pocket expenses) if (a) the Agreement is terminated by Kestrel following a breach of the Exclusivity Provision or by Star Gas Partners to accept a superior proposal (b) the Agreement is terminated for any reason (other than by Star Gas Partners based upon a breach by Kestrel) and at the time a superior proposal existed or (c) the Agreement is terminated for any reason (other than a breach by Kestrel) and at the time of such termination any acquisition proposal existed, and within 12 months of such termination Star Gas Partners consummates a transaction equal to or superior to the Kestrel proposal.

The recapitalization is subject to certain closing conditions, including, among others, the approval of our unitholders, approval of the lenders under our heating oil segment's revolving credit facility (the "Credit Facility"), and the successful completion of the tender offer for our senior notes, discussed below.

Agreements with Senior Noteholders

Effective as of December 5, we entered into agreements with an unaffiliated group of investors who hold approximately 94% of the principal amount of our outstanding 10.25% senior notes due 2013 (the "noteholders").

The obligations of the noteholders under the agreements are contingent upon the continued effectiveness of, and closing of the transactions contemplated by, the unit purchase agreement.

The agreements with the noteholders provide that:

- (a) The noteholders commit to, and will, tender their senior notes at par in exchange for (i) a pro rata portion of \$60 million or, at Star Gas Partners' option, up to approximately \$73.1 million in cash, (ii) approximately 13,434,000 new common units at a conversion price of \$2.00 per unit (which new units would be acquired by exchanging approximately \$26.9 million senior notes) and, (iii) new senior

notes representing the remaining face amount of the tendered senior notes. The tender offer is conditioned upon closing of the transactions under the unit purchase agreement and receipt of valid tenders from holders of at least 93% of the outstanding senior notes.

- (b) The noteholders will not, without the prior written consent of Star Gas Partners, sell, transfer, assign, pledge, grant an option on, grant proxies on, deposit with a voting trust, enter into a voting agreement with respect to or otherwise dispose of or encumber their senior notes, subject to the right to transfer notes to a person that becomes a signatory to the agreement.
- (c) The noteholders will not “short sell” any equity securities of Star Gas Partners other than in connection with the restructuring and will not take any action to oppose or interfere with the transactions contemplated by the unit purchase agreement, including the vote of unitholders contemplated by the unit purchase agreement.
- (d) The noteholders have agreed not to:
 - (i) take any action, and direct the trustee to take any action, to accelerate indebtedness due under the indenture for the senior notes; and
 - (ii) initiate, or have initiated on their behalf any litigation or proceeding with respect to the senior notes, Star Gas Partners or any act or omission of Star Gas Partners prior to the closing of the transactions under the unit purchase agreement.
- (e) The noteholders have further agreed, among other things, to:
 - (i) forbear from exercising any rights or remedies in respect of any default, breach or claim under the indenture governing the existing senior notes (“Indenture”) resulting from the sale of Star Gas Partners’ propane business in December 2004, including Star Gas Partners’ use of such proceeds to purchase working capital inventory and Star Gas Partners’ determination that “excess proceeds” (as defined in the Indenture) shall not include any amounts invested in such inventory, the granting of liens or collateral to the lenders pursuant to the Credit Facility and to oppose any request or attempt to assert any default under the Indenture arising from the same;
 - (ii) not to tender the senior notes held by such noteholders in the change of control offer which will be required to be made following the closing of the transactions under the unit purchase agreement;
 - (iii) to consent to the amendments to the amended indenture which Star Gas Partners and the noteholders shall agree to (which amended indenture will eliminate restrictive covenants); and

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- (iv) approve the indenture for the new senior notes which will, among other things, provide a restricted payments "basket" of \$22 million, provide a "basket" for acquisitions of \$60 million and provide that proceeds of asset sales may not be invested in current assets for purposes of the "asset sale" covenants.
 - (f) Following the termination of the Kestrel unit purchase agreement (other than as a result of a failure to obtain a favorable unitholder vote or because the Board of Directors of Star Gas accepts a superior proposal), certain of the noteholders will have the right, at the option of such noteholders, to "step into" the Kestrel transaction and effect the Kestrel transaction with Star Gas Partners.

The agreements provide for the termination of the noteholders' provisions in the event that, among other things, the Kestrel unit purchase agreement is no longer in effect or in the event that the unit purchase agreement has not closed by April 30, 2006.

Star Gas Partners has also entered into backstop agreements with two of the noteholders under which such noteholders each agreed to subscribe for 50% of the common units that are not subscribed for by other noteholders in connection with the exchange of \$26.9 million in senior notes for approximately 13,434,000 common units.

Amendment to Rights Agreement

On April 17, 2001, we adopted a rights agreement between us and American Stock Transfer & Trust Company as rights agent.

On December 2, 2005, we authorized an amendment to the rights agreement that provides that notwithstanding anything contained in the rights agreement to the contrary, Kestrel, M2 and their affiliates or associates shall not become or be an acquiring person solely by virtue of either:

(i) the execution, delivery and performance of either the unit purchase agreement or the ancillary documents (as defined in the unit purchase agreement); or

(ii) the consummation of the transaction (as defined in the unit purchase agreement) unless and until such time as any such person together with its respective affiliates and associates, is then the beneficial owner of 15% or more of the common units then outstanding (including, without limitation, by virtue of beneficial ownership referenced in clause (i) or (ii) above) and either (1) such person shall then purchase or otherwise become (as a result of actions taken by such person or its affiliates or associates) the beneficial owner of additional common units representing more than 1% of the common units then outstanding except as otherwise permitted by the unit purchase agreement and ancillary documents or (2) any other person who is the beneficial owner of more than 1% of the common units then outstanding shall become an affiliate or associate of Kestrel, Kestrel Heat or M2.

The description of the various agreements that are contained in this Form 8-K are qualified in their entirety to the text of the actual agreements that are filed as exhibits hereto.

Item 9.01(c) Exhibits

- 99.1 Form of Unit Purchase Agreement
- 99.2 Form of Second Amended and Restated Agreement of Limited Partnership (Exhibit A to the Unit Purchase Agreement)
- 99.3 First Amendment to Revolving Credit Facility Agreement (Exhibit B to the Unit Purchase Agreement) (Incorporated by reference to Exhibit 99.1 to Star Gas Partners' Form 8-K dated November 3, 2005)
- 99.4 Form of Noteholder Lock-Up Agreement with MacKay Shields LLC and Lehman Brothers Inc.
- 99.5 Form of Noteholder Lock-Up Agreement with Morgan Asset Management, Inc. and Third Point LLC
- 99.6 Form of Noteholder Lock-Up Agreement with Trilogy Capital, LLC
- 99.7 Form of Noteholder Lock-Up Agreement with Merrill Lynch Investment Managers and certain related entities
- 99.8 Form of Backstop Agreement with MacKay Shields LLC and Lehman Brothers Inc.
- 99.9 Form of new Indenture for the new senior notes
- 99.10 Form of Amended and Restated Indenture for the existing senior notes
- 99.11 Form of Amendment to Rights Agreement
- 99.12 Press Release dated December 5, 2005.

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

STAR GAS PARTNERS, L.P.
By: Star Gas LLC (General Partner)

By: _____ /s/ RICHARD AMBURY
Name: **Richard Ambury**
Title: **Chief Financial Officer**

Date: December 5, 2005

UNIT PURCHASE AGREEMENT

dated as of December 5, 2005

among

STAR GAS PARTNERS, L.P. and STAR GAS LLC

and

KESTREL ENERGY PARTNERS, LLC, KESTREL HEAT, LLC AND KM2, LLC

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UNIT PURCHASE AGREEMENT

This UNIT PURCHASE AGREEMENT (this "Agreement"), dated December 5, 2005, by and among Star Gas Partners, L.P., a Delaware limited partnership (the "Partnership") and its general partner, Star Gas LLC, a Delaware limited liability company (the "Partnership GP" and, together with the Partnership and their Subsidiaries, collectively referred to as the "Partnership Entities"); and Kestrel Energy Partners, LLC, a Delaware limited liability company ("Kestrel"), and its Subsidiaries Kestrel Heat LLC, a Delaware limited liability company ("Kestrel Heat"), and KM2, LLC., a Delaware limited liability company ("M2" and, together with Kestrel and Kestrel Heat, collectively referred to as the "Kestrel Entities"). Kestrel Heat and M2 are herein collectively referred to as "Buyers". Each of the Partnership Entities is sometimes referred to herein individually as a Partnership Entity and each of the Kestrel Entities is sometimes referred to herein individually as a Kestrel Entity.

WHEREAS, the Partnership desires to sell to Buyers, and Buyers desire to purchase from the Partnership, Common Units of the Partnership; and

WHEREAS, Kestrel Heat desires to be elected as the successor general partner of the Partnership and in connection therewith to acquire New General Partner Units in the Partnership;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the Partnership and Buyers hereby agree as follows:

ARTICLE I

TERMS OF THE TRANSACTION

1.1 Agreement to Sell and to Purchase Common Units. On the Closing Date, subject to the terms and subject to the conditions set forth in this Agreement, the Partnership shall sell and deliver to Buyers, and Buyers shall purchase and accept from the Partnership, the number of Units, as follows:

(a) 500,000 Common Units to be sold to and purchased by Kestrel Heat;

(b) 7,000,000 Common Units to be sold to and purchased by M2;

(c) 325,729 New General Partner Units issuable to the Successor General Partner;

(d) A number of Common Units equal to the number of Unsubscribed Units, if any, upon completion of the Rights Offering to be sold to and purchased by M2.

(e) All of the Common Units and New General Partner Units sold by the Partnership to Buyers pursuant to this Section 1.1 are referred to collectively as the "Units". All of the Units shall be issued pursuant to the Second Amended and Restated Partnership Agreement in the form attached hereto as Exhibit A (together with such changes thereto as Buyers may approve in writing, "New Partnership Agreement").

1.2 Purchase Price and Payment. The aggregate purchase price for the Common Units shall be equal to \$2.00 per Common Unit times the total number of Common Units to be purchased by Buyers at the Closing pursuant to Section 1.1 (the "Purchase Price"). The Purchase Price payable by Buyers for the Units to be purchased by it shall be paid at the Closing in immediately available funds by confirmed wire transfer to a bank account to be designated by the Partnership (such designation to occur no later than the third Business Day prior to the Closing Date). As further acknowledged in Section 5.10, the New General Partner Units shall be issuable for no consideration.

1.3 Intent of the Parties.

(a) The parties hereto intend that the purchase and sale of the Units at the Closing pursuant to this Agreement shall be made in conjunction with and conditioned upon (i) the withdrawal of the Partnership GP as general partner of the Partnership and, upon the approval of the requisite vote of its limited partners, the election of Kestrel Heat as successor general partner of the Partnership (the "Successor General Partner"), (ii) the approval of the requisite vote of the limited partners of the Partnership, the adoption of the New Partnership Agreement, (which provides, *inter alia*, for the conversion of each Senior Subordinated Unit and each Junior Subordinated Unit into Common Units on a one-to-one basis), (iii) an agreement with the holders of at least 93% of the Partnership's senior notes providing among other things that the noteholders commit to tender their senior notes at par in exchange for (a) a prorata portion of \$60 million in cash (less amounts required to be paid upon a change in control, (b) a prorata portion of approximately \$26.9 million in new common units at a price of \$2 per unit and (c) that the noteholders shall not take any action to accelerate the indebtedness due under the indenture for the senior notes ("Senior Notes Exchange Offer"), (iv) the approval by the Senior Lender of the Credit Facility Amendments (clauses (iii) and (iv) of this sentence are collectively referred to as the "Debt Amendments"), and (v) the closing of the Rights Offering, including the purchase by M2 of any Unsubscribed Units. The purchase and sale of the Units and the other events contemplated by clauses (i) through (v) of this Section 1.3 are herein collectively referred to as the "Transaction".

(b) As used herein, the "Rights Offering" shall mean that certain distribution by the Partnership to each record holder of Common Units, as of a record date after the Special Meeting to be set by the Partnership, of the non-transferable right (the "Rights") to purchase, at \$2.00 per share, a pro-rata portion of 17,500,000 Common Units (subject to rounding as set forth below). It is currently anticipated that in the Rights Offering (i) the Partnership will distribute .5441 non-transferable Rights with respect to each Common Unit outstanding as of the record date for the Rights Offering, at no cost to the record holders; (ii) one Right plus \$2.00 in cash will entitle the holder to purchase one Common Unit; (iv) the Rights will be evidenced by non-transferable subscription certificates; (v) no fractional Rights or cash in lieu thereof will be issued or paid, and the number of Rights distributed to each holder of Common Units will be rounded up to the nearest whole number of Rights (provided that such rounding shall not cause the total purchase price of the Common Units issuable upon exercise of the Right to exceed \$35,000,000); and (vi) brokers, dealers and other nominees holding Common Units on the record date for more than one beneficial owner will be entitled to obtain separate subscription certificates for their beneficial owners so that they may each receive the benefit of rounding.

ARTICLE II

CLOSING

The closing of the purchase and sale of the Units pursuant to Section 1.1 and the Rights Offering contemplated hereby (the "Closing") shall take place (i) at the offices of Phillips Nizer LLP, 666 Fifth Avenue, 28th Floor, New York, New York 10103, at 10:00 a.m., local time, on the third Business Day following the satisfaction or waiver (subject to Applicable Law) of each of the conditions to the obligations of the parties set forth in Articles VI and VII hereof to the Closing, or (ii) at such other times or places or on such other date or dates as the parties hereto shall agree. The date on which the Closing is required to take place is herein referred to as the "Closing Date". All closing transactions at the Closing shall be deemed to have occurred simultaneously.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE PARTNERSHIP

The Partnership Parties, for themselves and on behalf of the Partnership Entities, represent and warrant to Buyers as of the date hereof, that:

3.1 Organization and Existence. Schedule 3.1 sets forth the form of organization, legal name and the Organization State of each of the Partnership Entities. Each of the Partnership Entities is either a limited partnership, limited liability company or corporation, as indicated on Schedule 3.1, duly organized or formed, validly existing and in good standing under the laws of its Organization State. Each of the Partnership Entities has full power and authority to own, lease or otherwise hold and operate its properties and assets and to carry on its business as presently conducted, and in the case of Partnership GP, to act as general partner of the Partnership, in each case in all material respects as described in the SEC Reports. Each of the Partnership Entities is duly qualified and in good standing to do business as a foreign general partnership, limited partnership, limited liability company or corporation, as applicable, in each jurisdiction in which the conduct or nature of its business or the ownership, leasing, holding or operating of its properties makes such qualification necessary, except such jurisdictions where the failure to be so qualified or in good standing, individually or in the aggregate, would not have a Partnership Material Adverse Effect. Other than as set forth on Schedule 3.1, each of the Partnership Entities (other than the Partnership and the Partnership GP) are wholly owned, directly or indirectly, by the Partnership and the Partnership GP.

3.2 Capitalization of the Partnership Entities.

(a) All of the outstanding Common Units, Senior Subordinated Units, Junior Subordinated Units and General Partner Units have been duly authorized and validly issued in accordance with the Amended and Restated Agreement of Limited Partnership of the Partnership, as amended by Amendments No. 1, No. 2 and No. 3 (the "Original Partnership Agreement"), are fully paid (to the extent required under the Partnership Agreement) and nonassessable (except as such nonassessability may be affected by matters described in Sections 17-303 and 17-607 of the Delaware LP Act), and, as of the respective dates of the SEC Reports

and the Financial Statements, were issued and held as described therein. Partnership GP is the sole general partner of the Partnership with a 1% general partner interest in the Partnership. On the date hereof, the issued and outstanding limited partner interests of the Partnership consist of 32,165,528 Common Units, 3,391,982 Senior Subordinated Units, 345,364 Junior Subordinated Units, and 325,729 General Partner Units which General Partnership Units include 1,629 Units implied by Partnership GP's ownership of Star/Petro Inc. On the date hereof, there are no Class A or Class B Common Units issued and outstanding.

(b) The Common Units (and the limited partner interests represented thereby) and the New General Partner Units (and the general partner interests represented thereby) to be issued to the Buyers at the Closing, will be duly authorized in accordance with the New Partnership Agreement, and, when issued and delivered to the Buyers against payment therefor in accordance with the terms hereof, will be validly issued, fully paid (to the extent required under the New Partnership Agreement) and nonassessable (except as such nonassessability may be affected by matters described in Sections 17-303 and 17-607 of the Delaware LP Act) and will be issued free and clear of any lien, claim or Encumbrance.

(c) No Encumbrance exists upon any outstanding share (or other percentage ownership interests) of Capital Stock of any Partnership Entity which the Partnership directly or indirectly owns other than (i) the Encumbrances, if any, set forth in Schedule 3.2(c), and (ii) Permitted Encumbrances. Except as set forth in Schedule 3.2(c), the Partnership does not own, of record or beneficially, directly or indirectly through any Person, and does not control, directly or indirectly through any Person or otherwise, any Capital Stock of any entity other than a Partnership Entity. All of the outstanding shares of Capital Stock of the Partnership Entities that are corporations or limited liability companies have been duly authorized and validly issued and are fully paid and nonassessable. All of the outstanding shares of Capital Stock of the Partnership Entities that are general or limited partnerships have been duly authorized and validly issued in accordance with such Partnership Entity's partnership agreement and such Capital Stock has been fully paid for (to the extent required under such Partnership Entity's partnership agreement) and is nonassessable (except as such nonassessability may be affected by matters described in Sections 17-303 and 17-607 of the Delaware LP Act or similar partnership laws of its Organization State).

(d) Except (i) as described in the SEC Reports, (ii) arising under any Partnership Plan, and (iii) for the Common Units and the General Partner Units to be issued pursuant to this Agreement and the Rights Offering, there are no preemptive rights or other rights to subscribe for or to purchase, nor any restriction upon the voting or transfer of, any interests in the Partnership pursuant to the Original Partnership Agreement or any other agreement or instrument to which the Partnership is a party or by which either of them may be bound. Neither the offering nor the sale of the Common Units or the General Partner Units as contemplated by this Agreement gives rise to any rights for or relating to the issuance or registration of any Common Units or other securities of the Partnership or any other Partnership Entities, except pursuant to this Agreement, to the Rights Agreement, or such rights as have been waived or satisfied. Except (i) as set forth in the SEC Reports and (ii) pursuant to the Partnership Plans, no options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, Capital Stock of the Partnership are outstanding.

(e) The Common Units and the New General Partner Units when issued and delivered against payment therefor as provided herein, will conform in all material respects to the description thereof contained in the New Partnership Agreement. The Partnership has all requisite power and authority (other than the approval by the limited partners of the Transaction, or components thereof, as applicable, in accordance with Applicable Law, the Original Partnership Agreement and the rules of the NYSE) to issue, sell and deliver the Common Units and the New General Partner Units in accordance with and upon the terms and conditions set forth in this Agreement and the New Partnership Agreement. As of the Closing Date, all partnership and corporate action, as the case may be, required to be taken by the Partnership and the Partnership GP or any of their respective partners or members for the authorization, issuance, sale and delivery of the Common Units and the New General Partner Units shall have been validly taken, and no other authorization by any of such parties is required therefor.

3.3 Authority and Binding Agreement. Each of the Partnership Parties has full power and authority to execute, deliver and perform this Agreement and the Ancillary Documents (collectively, the "Transaction Documents") to which it is a party, and to consummate the Transaction. The execution, delivery and performance by the Partnership Parties of the Transaction Documents, and the consummation by them of the Transaction, have been duly authorized by all necessary action (other than the approval by the limited partners of the Transaction, or components thereof, as applicable, in accordance with Applicable Law, the Original Partnership Agreement and the rules of the NYSE). This Agreement has been duly executed and delivered by the Partnership Parties and constitutes, and each of the Transaction Documents and each other agreement, instrument or document executed or to be executed by the Partnership Parties in connection with the Transaction has been, or when executed will be, duly executed and delivered by such Person and constitutes, or when executed and delivered will constitute, a valid and legally binding obligation of such Person enforceable against it in accordance with its terms, except that such enforceability may be limited by (a) applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws affecting creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.4 Agreements of Limited Partnership. The Original Partnership Agreement has been, and prior to the Closing the New Partnership Agreement will be, duly authorized, executed and delivered by the Partnership GP and is, and will be, a valid and legally binding agreement of the Partnership GP, enforceable against Partnership GP in accordance with its terms, except that such enforceability may be limited by (a) applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws affecting creditors' rights generally and (b) general principles of equity.

3.5 Non-Contravention. Except as set forth on Schedule 3.5, the execution, delivery and performance by the Partnership Parties of the Transaction Documents to which they are a party, and the consummation by them of the Transaction do not and as of the Closing Date will not (a) conflict with or result in a violation of any provision of the respective certificate or agreement of limited partnership (and, in particular, the Original Partnership Agreement), charter or bylaws or other governing instruments of the Partnership Entities, (b) conflict with or result in a violation of any provision of, or constitute (with or without the giving of notice or the passage of time or both) a default under, or give rise (with or without the giving of notice or the passage

of time or both) to any right of termination, cancellation or acceleration under, any bond, debenture, note, mortgage, indenture, lease, contract, agreement or other instrument or obligation to which any of the Partnership Entities may be bound, (c) result in the creation or imposition of any Encumbrance upon any of the Partnership Entities or Partnership Assets, (d) assuming compliance with the matters referred to in Section 3.6, violate any Applicable Law binding upon the Partnership Entities or (e) conflict with or result in a violation of any Permit held by the Partnership Entities, except where such conflicts or violations, individually or in the aggregate, would not have a Partnership Material Adverse Effect.

3.6 Governmental Approvals. Except as set forth in Schedule 3.6 and except as may be obtained under state securities or “Blue Sky” laws, no consent, approval, order or authorization of, or declaration, filing or registration with, any Governmental Authority (“Governmental Approval”) is required to be obtained or made by the Partnership Entities in connection with the execution, delivery or performance of the Transaction Documents by the Partnership Parties or the consummation of the transactions contemplated thereby.

3.7 Title to Partnership Assets. As of the Closing, the Partnership Entities will have good and marketable title to, or valid leasehold interests in, all of the Partnership Assets, free and clear of all Encumbrances other than Permitted Encumbrances and Encumbrances set forth in Schedule 3.7, except where failure to have such title individually or in the aggregate, would not have a Partnership Material Adverse Effect.

3.8 SEC Reports.

(a) The Partnership’s annual report on Form 10-K for the year ended September 30, 2004, and the quarterly and current reports on Form 10-Q and 8-K, if any, filed by the partnership with the Securities and Exchange Commission (“SEC”) since September 30, 2004 (collectively, the “SEC Reports”) were timely filed with the SEC. Such documents, at the time they were filed with the SEC, complied in all material respects with the requirements of the Exchange Act and did not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. In addition, each of the statements made in such documents within the coverage of Rule 175(b) of the rules and regulations under the Securities Act of 1933, as amended (the “Securities Act”), was made by the Partnership with a reasonable basis and in good faith. Other than the SEC Reports, none of the Partnership Entities nor any of their respective subsidiaries is required to file any form, report or other document with the SEC that has not been filed.

(b) The draft of the Partnership’s annual report of Form 10-K for the year ended September 30, 2005, a copy of which has been delivered to the Buyers (the “2005 Form 10-K”), complies, and the version thereof actually filed with the SEC shall comply, in all material respects with the requirements of the Exchange Act and does not and will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading. In addition, each of the statements made in the 2005 Form 10-K and the version thereof actually filed with the SEC within the coverage of Rule 175(b) of the rules and

regulations under the Securities Act was made by the Partnership with a reasonable basis and in good faith.

(c) There are no agreements, contracts, indentures, leases or other instruments that are required to be described in the SEC Reports and the 2005 Form 10-K or to be filed as exhibits to the SEC Reports and the 2005 Form 10-K that are not and, with respect to the version of the 2005 Form 10-K actually filed with the SEC will not be, described or filed as required by the Exchange Act.

(d) Since September 30, 2005, no transaction has occurred between or among the Partnership GP, the Partnership Entities and any of their respective officers, directors, stockholders or Affiliates or, to the best knowledge of the Partnership GP, any Affiliate of any such officer, director or stockholder, that is required to be described in the SEC Reports and the 2005 Form 10-K that is not so described.

3.9 Financial Statements.

(a) Attached as Schedule 3.9(a) are copies of (i) the unaudited consolidated balance sheet as of September 30, 2005 and the related unaudited consolidated statements of income, cash flows and owners' equity for the fiscal year then ended (including in all cases the notes, if any, thereto) of the Partnership Entities (the "Financial Statements"). The Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with past practices, and fairly present the respective consolidated financial position of the Partnership Entities as of September 30, 2005 and the consolidated results of operations and cash flows for the Partnership Entities for the fiscal periods set forth therein.

(b) The books of account and other financial records of the Partnership Entities from which the Financial Statements were prepared: (i) reflect all items of income and expense and all assets and liabilities required to be reflected therein in accordance with GAAP applied on a basis consistent with past practices, (ii) are complete and correct, and do not contain or reflect any inaccuracies or discrepancies that are inconsistent with financial reporting requirements in accordance with GAAP and (iii) have been maintained in accordance with good business and accounting practices.

(c) Except as set forth in the Financial Statements, as of September 30, 2005, none of the Partnership Entities had any material liabilities or obligations (whether accrued, absolute, contingent, unliquidated or otherwise, whether or not known, and whether due or to become due), other than as set forth in the Schedules to this Agreement, that will create or result in any Encumbrances on the Partnership Assets or the Partnership Entities, except for Permitted Encumbrances.

(d) The Partnership has heretofore furnished to the Buyers complete and correct copies of (i) all agreements, documents and other instruments not yet filed by the Partnership with the SEC but that are currently in effect and that the Partnership expects to file with the SEC after the date of this Agreement (with the exception of documents contemplated by this Agreement to be filed with the Form 8-K expected to be filed with the SEC after the signing of this Agreement to disclose the Transaction) and (ii) all amendments and modifications that

have not been filed by the Partnership with the SEC to all agreements, documents and other instruments that previously have been filed by the Partnership with the SEC and are currently in effect.

(e) Schedule 3.9(e) sets forth a list of all outstanding Senior Subordinated Units and other equity interests in any of the Partnership Entities that have been granted under the Partnership Plans. Except for the Units issuable pursuant to this Agreement at the Closing, and Common Units issuable upon exercise of Rights in the Rights Offering, no other Common Units are or will be issuable as a result of the Closing and the consummation of the Transaction.

3.10 Absence of Certain Changes. Since September 30, 2005, except as disclosed in the Financial Statements, the SEC Reports and the 2005 Form 10-K and except for the execution and delivery of this Agreement and the Ancillary Agreements, (a) there has been no event that would have a material adverse effect on the financial condition, business, properties, or results of operations of the Partnership Entities, taken as a whole, except for changes affecting the economy generally or changes in commodity prices or other changes affecting the heating oil industry generally (a "Partnership Material Adverse Effect"); (b) the Partnership Business has been conducted only in the ordinary course consistent with past practice; (c) except for, or as contemplated by, this Agreement, none of the Partnership Entities has incurred any material liability, engaged in any material transaction or entered into any material agreement outside the ordinary course of business consistent with past practice that individually or in the aggregate would result in a Partnership Material Adverse Effect; (d) none of the Partnership Entities has suffered any material loss, damage, destruction or other casualty to any of the Partnership Assets that individually or in the aggregate would result in a Partnership Material Adverse Effect; and (e) none of the Partnership Entities has taken any of the actions set forth in Section 5.1 except as permitted thereunder.

3.11 Tax Matters.

(a) Except as set forth on Schedule 3.11(a): (i) each of the Partnership Entities has filed all material Tax Returns required to be filed with the IRS or other applicable taxing authority through the date hereof and such Tax Returns are complete and correct in all material respects, and each of the Partnership Entities has timely paid or accrued for all Taxes due on any such Tax Return and (ii) none of the Partnership Entities has any material liability for Taxes other than those incurred in the ordinary course of business and in respect of which adequate reserves are being maintained in accordance with GAAP. There are no material liens for Taxes upon any asset of any of the Partnership Entities except for Permitted Encumbrances. There are no Taxes that will be imposed on any of the Partnership Entities in connection with the execution of this Agreement or the Ancillary Documents or in connection with any of the transaction contemplated hereby or thereby. Except as set forth on Schedule 3.11(a), none of the Partnership Entities currently is the beneficiary of any extension of time within which to file any Tax Return.

(b) Schedule 3.11(b) lists all federal or state income and franchise Tax Returns filed on or after January 1, 2002 by any of the Partnership Entities or any affiliated, consolidated, combined, unitary or similar group of which any Partnership Entity is or was a member (i) that are as of the date hereof the subject of audit, (ii) in respect of which there is any

other suit, action, investigation or claim in progress by any taxing authority or (iii) in respect of which any issue has been raised by any taxing authority at an earlier time that is reasonably expected to be raised at a later time. Other than as set forth on Schedule 3.11(b), none of the Partnership Entities has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(c) Except as set forth on Schedule 3.11(c), none of the Partnership Entities has made any payment, is obligated to make any payment, or is a party to any agreement that under certain circumstances could obligate it to make any payment that will not be deductible under Section 280G of the Code.

(d) Except as set forth on Schedule 3.11(d), since October 1, 2001, none of the Partnership Entities (i) has been a member of an affiliated group (as defined in Section 1504(a) of the Code) or has been included in any “consolidated,” “unitary” or “combined” Tax Return (other than Tax Returns that include only the Partnership Entities) provided for under the laws of the United States, any foreign jurisdiction or any state or locality or (ii) has any liability for Taxes of any Person (other than the Partnership GP or a Partnership Entity) under Treas. Reg. 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract, or otherwise.

(e) Since its formation, the Partnership has been treated as a partnership for federal income tax purposes, and will immediately before, at, and immediately after, the Closing also be a partnership for federal income tax purposes. Moreover, for each taxable year of its existence and as reasonably estimated for the Partnership’s current taxable year, more than 90% of the gross income of the Partnership has or will constitute “qualifying income” within the meaning of Section 7704(d) of the Code.

(f) No Partnership Entity has received written notice of a claim made by any taxing authority in a jurisdiction where such entity does not file Tax Returns that such entity is or may be subject to Tax in such jurisdiction or if such claim has been received, is presently filing tax returns in such jurisdiction, and, to the best knowledge of the Partnership Entities, no such entity is required to file Tax Returns in any jurisdiction other than those set forth in Schedule 3.11(f).

(g) Except as set forth in Schedule 3.11(g), there are no Tax rulings, requests for rulings or closing agreements with any taxing authority with respect to any Partnership Entity.

(h) No Partnership Entity has deferred income reportable for a current Tax period (or portion thereof) or a period (or portion thereof) beginning after the Closing Date but that is attributable to a transaction (e.g., an installment sale) occurring in a period (or portion thereof) ending on or prior to the Closing Date.

(i) No Partnership Entity that is a corporation for federal tax purposes has distributed the stock of any corporation in a transaction satisfying the requirements of Section 355 of the Code since April 16, 1997. No stock of any Partnership Entity that is a corporation

for federal tax purposes has been distributed in a transaction satisfying the requirements of Section 355 of the Code since April 16, 1997.

(j) Each Partnership Entity has disclosed on its federal income Tax Returns all positions taken therein that would reasonably be expected to result in any “substantial understatement of federal income tax” within the meaning of Section 6662 of the Code.

(k) Except as set forth on Schedule 3.11(k), prior to the Transaction, none of the Tax attributes of any Partnership Entity are subject to the limitations of Code Sections 382, 383 or 384 or Treas. Reg. § 1.1502-21(c).

(l) No Partnership Entity has engaged in any “reportable transaction” within the meaning of Treasury Regulation section 1.6011-4(b)(2).

(m) There are no Tax sharing, allocation, indemnification or similar agreements or arrangements, whether written or unwritten, in effect under which any Partnership Entity could be liable for any material Taxes of any Person other than the Partnership Entities.

3.12 Compliance with Laws. Subject to the specific representations and warranties in this Agreement, which representations and warranties shall govern the subject matter thereof, the Partnership Entities have complied in all material respects with all Applicable Laws relating to the ownership or operation of the Partnership Assets and the conduct of the Partnership Business, except where failure to comply, individually or in the aggregate, would not have a Partnership Material Adverse Effect. Except as set forth in Schedule 3.12, none of the Partnership Entities has received notice that it is charged or, to the knowledge of the Partnership Parties, threatened with, or under investigation with respect to, any material violation of any Applicable Law relating to any aspect of the ownership or operation of the Partnership Assets or Partnership Business.

3.13 Legal Proceedings. Except as described in the SEC Reports or in Schedule 3.13, there is (i) no Proceeding before or by any Governmental Authority or arbitrator or official, domestic or foreign, now pending or, to the knowledge of the Partnership Parties, threatened, to which any of the Partnership Entities is or may be a party or to which the business or property of any of the Partnership Entities is or may be subject, (ii) no statute, rule, regulation or order that has been enacted, adopted or issued by any Governmental Authority or, to the knowledge of the Partnership Parties, that has been proposed by any Governmental Authority and (iii) no injunction, restraining order or order of any nature issued by a federal or state court or foreign court of competent jurisdiction to which any of the Partnership Entities is or may be subject, that, in the case of clauses (i), (ii) and (iii) above, is reasonably expected to (A) individually or in the aggregate have a Partnership Material Adverse Effect, (B) prevent or result in the suspension of the issuance and sale of the Common Units or New General Partner Units or (C) affect adversely the ability of the Partnership to consummate the Transaction as contemplated herein. Any and all probable and estimated liabilities of the Partnership Entities under any and all Proceedings now pending or, to the knowledge of the Partnership Parties, threatened, to which any of the Partnership Entities is or, to the knowledge of the Partnership Parties, may be a party or to which the business or property of any of the Partnership Entities, to the knowledge of the Partnership Parties, is or may be subject, are adequately covered (except for standard deductible amounts) by

the existing insurance maintained by the Partnership or reserves established by the Financial Statements. Schedule 3.13 sets forth all reserves established by the Financial Statements for each of the matters otherwise disclosed pursuant to this Section 3.13.

3.14 Sufficiency of Partnership Assets. The Partnership Assets constitute all the assets and properties the use or benefit of which are reasonably necessary for the operation of the Partnership Business as conducted on the date of this Agreement. All Partnership Assets necessary for the conduct of the Partnership Business are maintained in accordance with industry standards, normal wear and tear excepted, and are useable in the continued operation of the Partnership Business consistent with past practice.

3.15 Intellectual Property. Except as set forth on Schedule 3.15, each of the Partnership Entities owns or possesses or has the right to use, and at the Closing Date will own or possess or have the right to use in the localities where they are currently used by the Partnership Entities, all Intellectual Property described in the SEC Reports as being owned or used by it or any of the Partnership Entities or necessary for the conduct of its respective business, other than those which if not so owned or possessed would not have a Partnership Material Adverse Effect, and none of the Partnership Entities is aware of any claim to the contrary or any challenge by any other Person to the rights of the Partnership Entities with respect to the foregoing.

3.16 Permits. Each of the Partnership Entities has, or at the Closing Date will have, such Permits as are necessary to own its properties and to conduct its business in the manner described in the SEC Reports, subject to such qualifications as may be set forth in the SEC Reports and except for such Permits which, if not obtained, would not have, individually or in the aggregate, a Partnership Material Adverse Effect; each of the Partnership Entities has, or at the Closing Date will have, fulfilled and performed all its material obligations with respect to such Permits, and no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any impairment of the rights of the holder of any such Permit, except for such revocations, terminations and impairments that would not have a Partnership Material Adverse Effect; and, except as described in the SEC Reports, none of such Permits contains any restriction that is materially burdensome to the Partnership Entities considered as a whole.

3.17 Environmental Matters. Except as set forth in Schedule 3.17 or as would not reasonably be expected, individually or in the aggregate to result in a Partnership Material Adverse Effect:

(a) The Partnership Entities are in compliance in all material respects with all Environmental Laws including, without limitation, all restrictions, conditions, standards, limitations, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws or contained in any Governmental Approval.

(b) The Partnership Parties have provided to Kestrel with respect to each Partnership Facility, material assessments, reports, data, results of investigations or audits and other information that are in the possession of or reasonably available to the Partnership Parties regarding environmental matters pertaining to any Environmental Conditions related to the

Partnership Facilities or the Partnership Entities, or Environmental Compliance Liability or other compliance (or noncompliance) by the Partnership Entities with respect to any Environmental Laws; however, materials deemed to be privileged and that have not been delivered have been separately identified on Schedule 3.17(b).

(c) There is no Proceeding pending or, to the knowledge of the Partnership Parties, threatened, alleging potential liability (including, without limitation, potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries or penalties) arising out of, based on or resulting from (i) the presence or Release of any Material of Environmental Concern at any location, whether or not now or formerly owned or operated by the Partnership Entities or (ii) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law, that in either case is pending or, to the knowledge of the Partnership Parties, threatened against the Partnership Entities or, to the knowledge of the Partnership Parties, against any Predecessor whose potential liability for any Environmental Condition or Environmental Compliance Liability the Partnership Entities have retained or assumed either contractually or by operation of law.

(d) To the knowledge of the Partnership Parties, there are no actions, activities, circumstances, conditions, events or incidents, including, without limitation, the Release or presence of any Materials of Environmental Concern at any Partnership Facility that would reasonably be expected to result in Environmental Conditions or form the basis of any Proceeding against the Partnership Entities or against any Predecessor.

(e) Without in any way limiting the generality of the foregoing, to the knowledge of the Partnership Parties, (i) all on-site locations where the Partnership Entities have stored, disposed or arranged for the disposal of Materials of Environmental Concern are identified in Schedule 3.17(e); (ii) all underground storage tanks and above ground storage tanks owned or operated by the Partnership Entities, and the capacity and contents of such tanks, located on any property owned, leased or operated by the Partnership Entities are identified in Schedule 3.17(e); (iii) except as set forth in Schedule 3.17(e), to the knowledge of the Partnership Parties, there is no friable asbestos contained in or forming part of any building, building component, structure or office space owned, leased, operated or controlled by the Partnership Entities or the Partnership Business; and (iv) except as set forth in Schedule 3.17(e), to the knowledge of the Partnership Parties, no PCBs or PCB-containing items are used or stored at any property owned, leased, operated or controlled by the Partnership Entities.

(f) The Partnership Entities have not received any Environmental Notice that alleges that the Partnership Entities are in violation of any Environmental Laws and, to the knowledge of Partnership Parties, there are no circumstances that would reasonably be expected to give rise to such a violation. The Partnership Entities have not received any Environmental Notice from any governmental agency or private or public entity advising it that it is responsible for or potentially responsible for Expenses or Environmental Conditions or Environmental Compliance Liability with respect to any Partnership Facility and no legally binding agreements have been entered into concerning such Expenses or Environmental Conditions or Environmental Compliance Liability. No Partnership Facility is on any federal, state or local list of hazardous sites, such as the Environmental Protection Agency's Comprehensive Response, Compensation and Liability Information System List.

(g) The Partnership Entities are not subject to any Environmental Laws requiring (i) the performance of a site assessment for Materials of Environmental Concern or an audit for any potential Environmental Compliance Liability, (ii) the removal or remediation of Materials of Environmental Concern, (iii) the giving of notice to or receiving the approval of any Governmental Authority or (iv) the recording or delivery of any disclosure document or statement pertaining to environmental matters by virtue, regarding each of the foregoing, of the Transaction or as a condition to the effectiveness of the Transaction.

(h) Schedule 3.17(h) sets forth all reserves established by the Financial Statements for each of the matters otherwise disclosed pursuant to this Section 3.17.

3.18 Insurance. The Partnership maintains insurance covering the properties, operations, personnel and businesses of the Partnership Entities. Such insurance (less retentions and self-insurance) insures against such losses and risks as are reasonably adequate to protect the Partnership Entities and their businesses. None of the Partnership Entities has received notice from any insurer or agent of such insurer that substantial capital improvements or other expenditures will have to be made in order to continue such insurance; all such insurance is outstanding and duly in force on the date hereof and will be outstanding and duly in force on the Closing Date.

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

3.20 Employee Matters. Except to the extent set forth in Schedule 3.20, (a) each of the Partnership Entities is in compliance in all material respects with all Applicable Laws relating to employment and employment practices, terms and conditions of employment and wages and hours, and is not engaged in any unfair labor practice; (b) there is no unfair labor practice complaint against any of the Partnership Entities pending before the National Labor Relations Board; (c) there is no labor strike, dispute, slowdown or stoppage actually pending or, to the knowledge of Partnership Parties, threatened against or affecting any of the Partnership Entities; (d) no grievance proceeding or arbitration proceeding arising out of or under any collective bargaining agreements to which any Partnership Entity is a party is pending and no material claim therefor exists; (e) none of the Partnership Entities has experienced any work stoppage or other organized labor difficulty or attempts to organize employees by organized labor in the past five (5) years and (f) there is no litigation pending between the Partnership Entities and any employees nor, to the knowledge of Partnership Parties, is any such litigation threatened.

3.21 Consents. Schedule 3.21 sets forth each of the consents, approvals, orders, authorizations and waivers of, and declarations, filings and registrations with, all third parties

(including Governmental Authorities) that are necessary or required to permit the transactions contemplated by this Agreement and otherwise to consummate the Transaction (the "Partnership Consents"). Schedule 7.1(f) includes all of the Partnership Consents that, if not obtained and in full force and effect at the time of the Closing, could reasonably be expected to result in a Partnership Material Adverse Effect.

3.22 Disclosure. Neither this Agreement nor any Schedule or Exhibit hereto contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein not misleading.

3.23 Employee Benefit Plans.

(a) Schedule 3.23(a) contains a true and complete list of all employee benefit plans (within the meaning of Section 3(3) of ERISA), and all bonus, stock option, unit option, stock purchase, unit purchase, restricted stock, restricted unit, incentive, equity-based compensation, deferred compensation, disability, retiree medical, life or other benefits, supplemental retirement or other benefits, supplemental unemployment or income, dependent care, severance, and other similar fringe or benefit plans, programs or arrangements, and all employment, executive compensation, termination, severance, change of control or other contracts or agreements written or otherwise maintained or contributed to or for the benefit of or relating to any current or former employee, officer, director or other service provider of any of the Partnership Entities or their respective ERISA Affiliates other than a Multiemployer Plan, as defined below (collectively, referred to herein as the "Partnership Plans"). With respect to each Partnership Plan, the Partnership Parties have provided to Kestrel accurate and complete copies of (i) all written documents comprising such plan (including amendments, individual agreements, service agreements, trusts and other funding agreements), (ii) the three most recent annual returns in the Form 5500 series (including all schedules thereto) filed with respect to such plan, (iii) the most recent audited financial statement and accountant's report (if required), (iv) the summary plan description currently in effect and all material modifications thereto (if required), (v) for each such plan which is (or ever was) intended to qualify under Section 401(a) of the Code, the most recent determination letter or opinion letter issued by the Internal Revenue Service, (vi) any employee handbook which includes a description of such plan, (vii) any other written communications to any employee or employees, or to any other individual or individuals, to the extent that the provisions of such plan described therein differ materially from such provisions as set forth or described in the other information or materials furnished under this Section, and (viii) any communications with any Governmental Authority related to such plan, other than transmittal letters and other routine correspondence.

(b) None of the Partnership Entities has any express or implied commitment (i) to create, incur liability with respect to or cause to exist any other employee benefit plan, program or arrangement, (ii) to enter into any contract or agreement to provide compensation or benefits to any individual, or (iii) to modify, change or terminate any Partnership Plan, other than with respect to a modification, change or termination required by ERISA or the Code.

(c) Except as set forth in Schedule 3.23(c)(i), during the past six years the Partnership Entities and their respective ERISA Affiliates have not maintained, contributed to or had an obligation to contribute to (i) a multiemployer plan, within the meaning of Section 3(37)

of ERISA (a “Multiemployer Plan”), or (ii) a plan subject to Title IV of ERISA or Section 412 of the Code. The consummation of the Transaction will not result in a partial or complete withdrawal from any Multiemployer Plan. Schedule 3.23(c)(ii) sets forth the potential withdrawal liability to the Partnership Entities with respect to certain Multiemployer Plans listed on Schedule 3.23(c)(ii) as estimated by the administrator of each plan as of the dates indicated in the respective letters or filings of the plan administrators. Schedule 3.23(c)(iv) sets forth the amount of unfunded benefit liabilities under Section 4001(a)(18) of ERISA for each plan subject to Title IV of ERISA listed on Schedule 3.23(c)(i). Except to the extent set forth in Schedule 3.23(c)(v), none of the Partnership Plans (i) provides for the payment of separation, severance, termination or similar-type benefits to any person, (ii) obligates any Partnership Entity to pay separation, severance, or termination benefits or provide other benefits (including, without limitation, additional accruals or accelerated vesting of options) as a result of the Transaction (either alone or in connection with any additional or subsequent event or events), or (iii) obligates any Partnership Entity to make any payment or provide any benefit that could be subject to a tax under Section 4999 of the Code. Except as set forth on Schedule 3.23(c)(vi), none of the Partnership Plans provides for or promises retiree medical, disability or life insurance benefits to any current or former employee, officer, director or service provider of any Partnership Entity, except for continuation coverage required by Section 4980B of the Code, Sections 601 to 608 of ERISA or applicable state law. Except for Partnership Plans maintained pursuant to a collective bargaining agreement or as set forth on Schedule 3.23(c)(vii), each Partnership Plan that provides for or promises retiree medical, disability or life insurance benefits to any current or former employee, officer, director or service provider of any Partnership Entity, except for continuation coverage required by Section 4980B of the Code, Sections 601 to 608 of ERISA or applicable state law, may be terminated upon 60 days notice.

(d) No liability to the Pension Benefit Guaranty Corporation (the “PBGC”) has been or is presently expected to be incurred by the Partnership Entities or any of their respective ERISA Affiliates with respect to any Partnership Plan. No circumstance exists that constitutes grounds under Section 4042 of ERISA entitling the PBGC to institute proceedings to terminate, or appoint a trustee to administer, any Partnership Plan or trust created thereunder, nor has the PBGC instituted any such proceeding. None of the Partnership Entities nor any of their respective ERISA Affiliates has incurred or expects to incur any withdrawal liability under Title IV of ERISA with respect to any plan that is a Multiemployer Plan. There have been no reportable events (as such term is defined in Section 4043 of ERISA) with respect to any Multiemployer Plan that could result in the termination of such plan and give rise to a liability of the Partnership Entities or any of their respective ERISA Affiliates. None of the Partnership Entities has incurred or presently expects to incur liability under Sections 412 or 4971 of the Code, including the regulations and published interpretations thereunder.

(e) Except as provided on Schedule 3.23(e), (i) each Partnership Plan which is intended to be qualified under Section 401(a) or 401(k) of the Code is so qualified and to the knowledge of the Partnership Parties has always been so qualified, and (ii) if any Partnership Plan was previously not so qualified, such failure shall not affect its current qualified status nor result in or cause any cost or expense to any Partnership Entity, and there has been no event, condition or circumstance that has adversely affected or is likely to affect such qualified status. Except as provided in Schedule 3.23(e), (i) each Partnership Plan is now operated in all material respects in accordance with the requirements of Applicable Law, including, without limitation,

ERISA and the Code, and, to the knowledge of the Partnership Parties has always been so operated and (ii) if any Partnership Plan was ever previously operated not in accordance with Applicable Law, including, without limitation, ERISA and the Code, such failure shall not result in any cost or expense to any Partnership Entity, and each Partnership Entity has performed all obligations required to be performed by it under such Partnership Plan, is not in any respect in default under or in violation of, and has no knowledge of any default or violation by any party with respect to, any Partnership Plan.

(f) With respect to each Partnership Plan, there have been no prohibited transactions, or, to the knowledge of the Partnership Parties, breaches of fiduciary duties that could result in liability (directly or indirectly) for any Partnership Entity and the consummation of the Transaction will not result in a prohibited transaction or breach of fiduciary duty.

(g) All contributions to, and payments from, each Partnership Plan that are required to be made in accordance with the terms of the Partnership Plan and Applicable Law have been timely made. Any Partnership Plan that provides nonqualified deferred compensation within the meaning of Section 409A of the Code has been operated in good faith compliance with Section 409A of the Code. The Partnership Entities and their respective ERISA Affiliates maintain no employee benefit plan, program or arrangement required to comply with the laws of any foreign jurisdiction.

(h) No litigation or claim (other than routine claims for benefits), and no governmental administrative proceeding, audit or investigation, is pending or, to the knowledge of the Partnership Entities or their respective ERISA Affiliates, threatened with respect to any Partnership Plan.

(i) No sale contemplated by Section 5.1(h) will result in a partial or complete withdrawal from a Multiemployer Plan.

3.24 Finder's Fees. Except for the Brokerage Fee or as otherwise set forth on Schedule 3.24, none of the Partnership Entities, or any of their respective Affiliates, are obligated (directly or indirectly) under any agreement with any Person that would obligate any of the Partnership Entities or the Buyers or any of their respective Affiliates to pay any commission, brokerage or "finder's fee" in connection with the Transaction.

3.25 Regulation. Except as set forth on Schedule 3.25, none of the Partnership Entities is now, or after the consummation of the Transaction and application of the net proceeds thereof will be, (i) an "investment company" or a company "controlled by" an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" thereof, within the meaning of the Public Utility Holding Company Act of 1935, as amended.

3.26 No Violation. None of the Partnership Entities is in (i) violation of its certificate of formation, partnership agreement, certificate or articles of incorporation or bylaws or other governing instruments, or of any law, statute, ordinance, administrative or governmental rule or regulation applicable to it or of any decree of any Governmental Authority having jurisdiction over it or (ii) breach, default (or an event which, with notice or lapse of time or both, would

constitute such a default) or violation in the performance of any obligation, agreement or condition contained in any bond, debenture, note or any other evidence of indebtedness or in any agreement, indenture, lease or other instrument to which it is a party or by which it or any of its properties may be bound, which breach, default or violation would, if continued, have a Partnership Material Adverse Effect. To the Knowledge of the Partnership Parties, no third party to any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which any of the Partnership Entities is a party or by which any of them is bound or to which any of their properties are subject, is in default under any such agreement, which breach, default or violation would, if continued, have a Partnership Material Adverse Effect.

3.27 Certain Material Contracts. Schedule 3.27 contains a complete and accurate list of each of the following Contracts, which shall be deemed “Material Contracts” for purposes of this Agreement:

(a) each Contract that involves the supply to and purchase by any of the Partnership Entities of home heating oil inventory held for resale to its customers (*i.e.*, supply contracts), in each case in an amount or value in excess of \$5,000,000; and

(b) each Contract that involves any hedging arrangement or any other derivative instrument with respect to future purchases of inventory, in each case in an amount or value in excess of \$5,000,000.

(c) Each Material Contract is in full force and effect and embodies the complete understanding between parties thereto with respect to the subject matter thereof. Except as set forth on Schedule 3.27, (i) to the knowledge of the Partnership Parties, there exists no material default or claim thereof by any party to any Material Contract, (ii) to the knowledge of the Partnership Parties, there are no facts or conditions that, if continued or noticed, would result in a default under any Material Contract, (iii) none of the Partnership Parties has received any notice that any Person intends to cancel, modify or terminate any Material Contract or of exercise or non-exercise of any options thereof, (iv) none of the Partnership Entities has given any notice of cancellation, modification or termination of any Material Contract or of exercise of non-exercise of any options thereunder, (v) to the knowledge of the Partnership Parties, each Material Contract is a valid and binding agreement enforceable in accordance with its terms, and (vi) no consent or approval of the other parties to any Material contract or any Person pursuant to any Material Contract is required for the consummation of the Transaction, except those that will have been obtained and be in full force and effect on the Closing Date.

3.28 Listing. The outstanding Common Units and Senior Subordinated Units are listed for trading on the NYSE.

3.29 Opinion of Financial Advisor. The board of the Partnership GP has received the opinion of Jefferies as to the fairness of the Transaction from a financial point of view to the holders of the Common Units.

3.30 Exemption from Registration. Assuming the accuracy on the date hereof and the Closing Date of the representations and warranties of the Kestrel Entities set forth in Section 4.5 below, the issuance of the Units by the Partnership to Buyers hereunder, other than the Common

Units issuable pursuant to the Rights Offering, is exempt from the registration requirements of the Securities Act.

3.31 No Reliance. Except for the representations and warranties made by the Partnership Entities in this Agreement, including in any Schedule or Exhibit hereto or in any other certificate or instrument delivered to the Buyers at Closing by or on behalf of the Partnership or the Partnership GP in connection with this Transaction, none of the Partnership Entities or any other Person makes, or will make, any representation or warranty with respect to the Partnership or its business, operations, assets, liabilities, condition (financial or otherwise) or prospects. Without limiting the generality of the foregoing, Buyers acknowledge that no representations or warranties are made with respect to any projections, forecasts, estimates, budgets or prospect information that may have been made available to Buyers or any of their respective representatives.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYERS

Kestrel, for itself and on behalf of the Buyers, represents and warrants to the Partnership Parties as of the date hereof, that:

4.1 Organization. Schedule 4.1 sets forth the form of organization, legal name and the Organization State of the Kestrel Entities. Each of the Kestrel Entities is either a limited partnership, limited liability company or corporation, as indicated on Schedule 4.1, duly organized or formed, validly existing and in good standing under the laws of its Organization State.

4.2 Authority Relative to This Agreement. Each of the Kestrel Entities has full power and authority to execute, deliver and perform the Transaction Documents to which it is a party, and to consummate the Transaction. The execution, delivery and performance by the Kestrel Entities of the Transaction Documents, and the consummation by them of the Transaction, have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by the Kestrel Entities and constitutes, and each of the Transaction Documents and each other agreement, instrument or document executed or to be executed by the Kestrel Entities in connection with the Transaction has been, or when executed will be, duly executed and delivered by such Person and constitutes, or when executed and delivered will constitute, a valid and legally binding obligation of such Person enforceable against it in accordance with its terms, except that such enforceability may be limited by (a) applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws affecting creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.3 Noncontravention. The execution, delivery and performance by the Kestrel Entities of the Transaction Documents to which they are a party, and the consummation by them of the Transaction do not and will not (a) conflict with or result in a violation of any provision of the respective certificate or agreement of limited partnership, charter or bylaws or other governing instruments of the Kestrel Entities, (b) conflict with or result in a violation of any

provision of, or constitute (with or without the giving of notice or the passage of time or both) a default under, or give rise (with or without the giving of notice or the passage of time or both) to any right of termination, cancellation or acceleration under, any bond, debenture, note, mortgage, indenture, lease, contract, agreement or other instrument or obligation to which the Kestrel Entities may be bound, (c) result in the creation or imposition of any Encumbrance upon any of the properties of the Kestrel Entities, (d) assuming compliance with the matters referred to in Section 3.12, violate any Applicable Law binding upon the Kestrel Entities or (e) conflict with or result in a violation of any Permit held by the Kestrel Entities.

4.4 Governmental Approvals. Except as may be obtained under state securities or “Blue Sky” laws, no consent, approval, order or authorization of, or declaration, filing or registration with, any Governmental Authority is required to be obtained or made by the Kestrel Entities in connection with the execution, delivery or performance of this Agreement by the Kestrel Entities or the consummation of the Transaction.

4.5 Purchase for Investment.

(a) The Kestrel Entities have been furnished with all information that they have requested for the purpose of evaluating the proposed acquisition of the Units pursuant hereto, and the Kestrel Entities have had an opportunity to ask questions of and receive answers from the Partnership regarding the Partnership and its business, assets, results of operations, financial condition and prospects and the terms and conditions of the issuance of the Units.

(b) Each of the Buyers is acquiring the Units solely by and for its own account, for investment purposes only and not for the purpose of resale or distribution; and neither of the Buyers has any contract, undertaking, agreement or arrangement with any person or entity to sell, transfer or pledge to such person or anyone else any Units; and neither of the Buyers has any present plans or intentions to enter into any such contract, undertaking or arrangement.

(c) Other than the Units issued in connection with the Rights Offering, the Kestrel Entities acknowledge and understand that (i) no registration statement relating to the Units has been or is to be filed with the SEC under the Securities Act or pursuant to the securities laws of any state; (ii) the Units cannot be sold or transferred without compliance with the registration provisions of the Securities Act or compliance with exemptions, if any, available thereunder; (iii) the certificates representing the Units will include a legend thereon that refers to the foregoing; and (iv) the Partnership has no obligation or intention to register the Units under any federal or state securities act or law; except to the extent in each case that the terms of the New Partnership Agreement set forth as Exhibit A hereto shall otherwise provide.

(d) Each of the Kestrel Entities (i) is an “accredited investor” as defined in Rule 501 of the rules promulgated pursuant to the Securities Act; (ii) has such knowledge and experience in financial and business matters in general that it has the capacity to evaluate the merits and risks of an investment in the Units and to protect its own interest in connection with an investment in the Units; (iii) has such a financial condition that it has no need for liquidity with respect to its investment in the Units to satisfy any existing or contemplated undertaking,

obligation or indebtedness; and (iv) is able to bear the economic risk of its investment in the Units for an indefinite period of time and can afford the loss of its entire investment.

(e) Each of the Kestrel Entities has relied upon its own independent investigations of the business of the Partnership or upon its own independent advisers in evaluating its investment in the Units, provided that in conducting such investigations, they and their advisers have relied upon the information furnished to them by the Partnership and the representations and warranties herein contained.

(f) The acquisition of the Units by the Buyers at the Closing, as applicable, shall constitute Buyer's confirmation of the foregoing representations.

4.6 Financial Resources. Each of the Buyers has the funds necessary to consummate the Transactions and the financial resources available to it as are necessary to perform its obligations to acquire the Units pursuant to the terms of this Agreement.

4.7 Brokerage Fees. The Kestrel Entities have not retained any financial advisor, broker, agent, or finder or paid or agreed to pay any financial advisor, broker, agent, or finder on account of the sale by the Partnership and the purchase by Buyers of the Units pursuant to this Agreement or any other component of the Transaction.

4.8 True and Complete Disclosure. Taken in the aggregate, all factual information (excluding estimates) heretofore or contemporaneously furnished by Buyers to the Partnership in writing for purposes of or in connection with this Agreement or the Transaction has been true and accurate in all material respects on the date as of which such information is dated and not incomplete by omitting to state any material fact necessary to make the statements of fact contained therein, in the light of the circumstances under which they were made, not misleading at such date.

4.9 Governmental Regulation. Neither of the Buyers are an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

ARTICLE V

ADDITIONAL AGREEMENTS

5.1 Continuing Operations. From the date of this Agreement to the earlier of (i) the Closing Date, or (ii) the termination of this Agreement in accordance with its terms (the "Interim Period"), the Partnership Entities shall conduct their business in the ordinary and usual course, and none of the Partnership Entities shall, without the prior consent of Kestrel, except as expressly contemplated hereby or necessary to consummate the Transaction:

(a) amend its certificate of formation or partnership agreement; split (including any reverse split), combine, or reclassify any of its partnership interests; adopt resolutions authorizing a liquidation, dissolution, merger, consolidation, restructuring, recapitalization, or other reorganization of the any Partnership Entity; or make any other material changes in its capital structure; provided, however, that any Partnership Entity other than the

Partnership or Petro Holdings, Inc. may merge within or into any other Partnership Entity and any Partnership Entity other than the Partnership may change its authorized capitalization for state tax planning purposes.

(b) except in the ordinary course of business consistent with past practice, (i) incur any liability or obligation, (ii) become liable or responsible for the obligations of any other Person (other than Subsidiaries) or (iii) except pursuant to the Senior Notes Exchange Offer, pay, discharge, or satisfy any claims, liabilities, or obligations (whether accrued, absolute, contingent, unliquidated, or otherwise, and whether asserted or unasserted), other than the payment, discharge, or satisfaction, in the ordinary course of business consistent with past practice, of liabilities reflected or reserved against in the financial statements; provided that, in no event shall any of the Partnership Entities enter into any settlement or compromise of any litigation or claims involving liability in excess of \$500,000, without the prior written approval of Kestrel which shall not be unreasonably withheld;

(c) incur any indebtedness for borrowed money, except for borrowings under the Credit Agreement or as permitted under its Credit Agreement;

(d) make any loans or advances to any person, other than (i) advances to employees in the ordinary and usual course of business and (ii) transactions among or between the Partnership Entities with respect to cash management conducted in the ordinary and usual course of the Partnership Business;

(e) declare or pay any dividend or make any other distribution with respect to its partnership interests, other than dividends paid by any Subsidiary to another of the Partnership Entities in the ordinary and usual course of the Partnership Business;

(f) except with respect to obligations under written agreements as of the date of this Agreement set forth on Schedule 5.1(f), issue, sell, or deliver (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase, or otherwise) any of its partnership interests or other securities other than as contemplated herein or purchase or otherwise acquire any of its partnership interests or debt securities;

(g) subject to Encumbrance any of its assets or properties, other than those Encumbrances arising by operation of law or in the ordinary and usual course of business and those Encumbrances incurred to secure the Existing Indebtedness or as permitted under its Credit Agreement;

(h) other than in the ordinary course of business, sell, lease, transfer, or otherwise dispose of, directly or indirectly, any assets, or waive, release, grant, or transfer any rights of value; provided, however, the Partnership Parties may sell certain assets of its heating oil operations within the limitations set forth in Schedule 5.1(h).

(i) acquire (by merger, consolidation, acquisition of stock or assets or otherwise) any corporation, partnership or other business organization or division thereof; or make any other investment or expenditure of a capital nature, other than any capital expenditure already included in the capital expenditure budget for the Partnership, as previously provided to and approved by Kestrel and other than expenditures not to exceed \$500,000;

(j) enter into, adopt, or (except as may be required by law) amend or terminate any collective bargaining agreement, Partnership Plan or other Benefit Plan; provided, however, that the Partnership Entities may renew or renegotiate collective bargaining agreements which have expired or which will expire prior to Closing; other than in the ordinary course of business and consistent with past practices, approve or implement any employment severance arrangements or retain or discharge any officers and executive management personnel; other than in the ordinary course of business and consistent with past practices, authorize or enter into any employment, severance, consulting services or other agreement with any officers and executive management personnel; or except (w) as budgeted in the 2006 business forecast of the Partnership Business provided to the Buyers, (x) as provided for in any incentive plan or program established by the Partnership Entities and described in Schedule 3.23(a) or (y) increases of employee compensation in the ordinary course of business consistent with past practice, change the compensation or benefits provided to any director, officer, employee or other service provider as of September 30, 2005;

(k) other than supply or other contracts entered into in the ordinary course of the Partnership Business and consistent with past practices, enter into any contract, agreement, lease or other commitment which is material to the business, assets, properties, or financial position of the Partnership Entities; or amend, modify, or change in any material respect any of the agreements pertaining to the Existing Indebtedness or any other existing contract, agreement, lease or other commitment which is material to the business, assets, properties, or financial position of the Partnership Entities;

(l) other than hedges to supply and sales agreements entered into in the ordinary course of the Partnership Business, enter into any speculative or commodity swaps, hedges or other derivatives transactions or purchase any securities for investment purposes, other than in connection with the Partnership Entities' cash management;

(m) other than in the ordinary course of the Partnership Business and consistent with past practices, authorize, enter into or amend any contract, agreement or other commitment with any director, officer, employee or other Affiliate (other than the Partnership Entities) pursuant to which any such person shall receive compensation, consideration or benefit of any kind (whether cash or property) from any of the Partnership Entities; or

(n) make or change any material Tax election, change any method of Tax accounting, grant any extension of time to assess any Tax or settle any Tax claim, amend any Tax Return in any material respect or settle or compromise any material Tax liability.

5.2 Press Releases. Except as may be required by Applicable Law or by the rules of the NYSE, neither Buyers nor the Partnership shall issue any press release with respect to this Agreement or the Transaction without the prior consent of the other party (which consent shall not be unreasonably withheld under the circumstances). Any such press release required by Applicable Law or by the rules of any national securities exchange shall only be made after reasonable notice to the other party.

5.3 Stock Exchange Listing. The Partnership shall use its reasonable best efforts to cause the Common Units to be approved for listing on the NYSE, subject to official notice of issuance, prior to the Closing Date.

5.4 Fees and Expenses: Break-up Fee.

(a) The Partnership shall be responsible for the payment of all expenses incurred by the Partnership in connection with the proposed Transaction, regardless of whether the Transaction closes, including, without limitation, all fees and expenses incurred in connection with the Registration Statement and the Proxy Statement and the fees and expenses of the Partnership's legal counsel and all third party consultants engaged by the Partnership to assist in the Transaction. Subject to receipt of appropriate documentation, the Partnership shall also reimburse the Kestrel Entities for all out of pocket expenses reasonably incurred by them in connection with the proposed Transaction, including, without limitation, the fees and expenses of Kestrel's legal counsel and all third party consultants engaged by the Kestrel Entities to assist in the Transaction, subject to the requirement that any such third party consultants other than accountants or environmental consultants, shall be subject to the approval of the Partnership, which approval will not be unreasonably withheld. Such reimbursements to the Kestrel Entities shall be due at the Closing, or promptly following any earlier termination of this Agreement by any of the parties for any reason, other than a termination by the Partnership pursuant to Section 8.1(c); provided, that in the event of such earlier termination (other than a termination by the Partnership pursuant to Section 8.1(c)) the maximum amount of reimbursement to which the Kestrel Entities are entitled is \$500,000, except in the case of a termination of this Agreement pursuant to Section 8.1(b) and Section 8.1(e), in which case the maximum amount of reimbursement shall be \$350,000.

(b) In addition to the fees and expenses for which the Partnership is obligated to reimburse the Kestrel Entities pursuant to Section 5.4(a), the Partnership hereby agrees to pay, or cause to be paid to Kestrel by wire transfer of immediately available funds to an account designated by Kestrel, in accordance with Section 5.4(c), the amount of \$4,000,000 cash (the "Termination Fee") if:

- (i) this Agreement is terminated pursuant to Section 8.1(h) or Section 8.1(i);
- (ii) this Agreement is terminated for any reason, other than by the Partnership pursuant to Section 8.1(c), and at the time of such termination a Superior Proposal existed; or
- (iii) (x) this Agreement is terminated for any reason, other than by the Partnership pursuant to Section 8.1(c), (y) an Acquisition Proposal existed at any time during the term of this Agreement and (z) prior to the twelve-month anniversary of such termination, the Partnership or any of its Affiliates consummates an Acquisition Proposal that is, from the financial point of view of the holders of the Common Units, equal to or superior to the transactions contemplated by this Agreement and such Acquisition Proposal resulted, directly or indirectly, from any communication with respect to such Acquisition Proposal

which occurred either during the term of this Agreement or within six months following the termination of this Agreement; provided, however, that if this Agreement is terminated by the Kestrel Entities pursuant to Section 8.1(d) or Section 8.1(f) and one or more of the Consenting Noteholders consummate an Acquisition Proposal pursuant to Section 4 of the Lock-up Agreement and; provided further, that none of the Consenting Noteholders has, directly or indirectly, interfered with the transactions contemplated by this Agreement or is otherwise in breach of the Lock-up Agreement irrespective of whether the Partnership enforces its rights with respect to such breach, then the Kestrel Entities shall only be entitled to reimbursement of expenses pursuant to Section 5.4(a).

(c) The parties acknowledge that it would be difficult to establish the amount of actual damages that the Kestrel Entities would incur as a result of the circumstances described in Section 5.4(b) and, as a consequence, the Termination Fee shall serve as liquidated damages. Any amounts payable pursuant to Section 5.4(b)(i) and Section 5.4(b)(ii) shall be payable promptly following the termination of this Agreement. Any amounts payable pursuant to Section 5.4(b)(iii) shall be payable concurrently with the consummation of an Acquisition Proposal; provided, however, that if the parties disagree as to whether the consummated Acquisition Proposal is, from the financial point of view of the holders of the Common Units, equal to or superior to the transactions contemplated by this Agreement for purposes of triggering the payment of the Termination Fee, the Partnership and Kestrel shall jointly engage and equally share the expense of a mutually-acceptable, nationally recognized investment banking firm within 30 days of the date of the consummation of the Acquisition Proposal to make such determination and the decision of such investment banking firm shall be binding upon all parties. Except for claims for indemnification pursuant to Article IX or circumstances involving fraud, any amount payable pursuant to Section 5.4 shall, when paid, be the sole and exclusive remedy of Kestrel and shall be in lieu of all remedies at law or equity of the Kestrel Parties.

5.5 Brokers, etc. The Partnership shall be solely responsible for the payment of any amounts owed to Jefferies in connection with the sale and purchase of the Units as contemplated herein, and the Partnership shall be solely responsible for the payment of any commission or other compensation payable to any financial advisor, broker, agent, finder, or similar intermediary retained by or acting on behalf of the Partnership in connection with the consummation of the Debt Amendments and the Rights Offering.

5.6 Special Meeting; Proxy Statement.

(a) The Partnership shall take all commercially reasonable action necessary in accordance with Applicable Law and the Partnership's Original Partnership Agreement to duly call, give notice of, convene and hold a special meeting of its limited partners (the "Special Meeting") as promptly as practicable after the date hereof to consider and vote upon the adoption and approval of the Transaction, to the extent such limited partner approval is necessary with respect to the effectuation of any part of the Transaction. The limited partner vote required for the adoption and approval of the Transaction shall be the vote required by Applicable Law, the Original Partnership Agreement, and the rules of the NYSE, as represented by the Partnership in

Section 3.3. The Board of Directors of the Partnership GP shall, subject to its fiduciary obligations to the Partnership's limited partners under Applicable Law, taking into account the advice of counsel, (i) recommend to such limited partners that they vote in favor of the adoption and approval of all matters necessary to effectuate the Transaction, (ii) use its reasonable best efforts to solicit from such limited partners proxies in favor of such adoption and approval, and (iii) take all other action reasonably necessary to secure a vote of such limited partners in favor of such adoption and approval. The Partnership GP shall also use its reasonable best efforts to obtain a statement from all of its officers and directors that own partnership interests in the Partnership and entitled to vote at the Special Meeting that such persons intend to vote all such partnership interests owned by such limited partners in favor of the Transaction at the Special Meeting.

(b) As promptly as practicable after the date hereof, the Partnership shall prepare, shall file with the SEC under the Exchange Act, shall use all reasonable best efforts to have cleared by the SEC, and promptly thereafter shall mail to its limited partners, a proxy statement with respect to the Special Meeting. The term "Proxy Statement", as used herein, means such proxy statement and all related proxy materials and all amendments and supplements thereto, if any. Except to the extent otherwise determined in good faith by the Board of Directors of the Partnership GP in the exercise of its fiduciary duties, taking into account the advice of counsel, the Proxy Statement shall contain the recommendation of the Board that limited partners of the Partnership vote in favor of the adoption and approval of all matters necessary to effectuate the Transaction. The Partnership shall notify Buyers promptly of the receipt of any comments on, or any requests for amendments or supplements to, the Proxy Statement by the SEC, and the Partnership shall supply Buyers with copies of all correspondence between it and its representatives, on the one hand, and the SEC or members of its staff, on the other, with respect to the Proxy Statement. The Partnership, after consultation with Buyers, shall use its reasonable best efforts to respond promptly to any comments made by the SEC with respect to the Proxy Statement. The Partnership and Buyers shall cooperate with each other in preparing the Proxy Statement, and the Partnership and Buyers shall each use its reasonable best efforts to obtain and furnish the information required to be included in the Proxy Statement. The Partnership and Buyers each agree promptly to correct any information provided by it for use in the Proxy Statement if and to the extent that such information shall have become false or misleading in any material respect, and the Partnership further agrees to take all steps necessary to cause the Proxy Statement as so corrected to be filed with the SEC and to be disseminated promptly to the limited partners of the Partnership, in each case as and to the extent required by Applicable Law.

5.7 Debt Amendments. The Partnership Parties shall use their reasonable best efforts to promptly negotiate and enter into such amendments to the Credit Facility together with amendments to the indenture for the Senior Notes, and such waiver, forbearance and other definitive agreements and instruments required to effect the Debt Amendments, all of which shall be in form and substance reasonably satisfactory to Buyers (the "Debt Amendment Documents"), it being understood that the Lock-up Agreement and the exhibits thereto are in form and substance reasonably satisfactory to Buyers. The obligations contained in this Section are not intended, nor shall they be construed, to benefit or confer any rights upon any person other than the parties hereto.

5.8 Rights Offering. The Partnership shall promptly prepare and submit to Buyers for review, a form of subscription agreement, subscription certificate and all other documents and instruments required in connection with the Rights Offering, all of which shall be in form and substance reasonably satisfactory to Buyers (the “Rights Offering Documents”). The Rights Offering Documents shall provide, among other things, that the Rights Offering shall be generally conducted in the manner described in Section 1.3(b) of this Agreement.

5.9 Registration Statement. As promptly as practicable after the date hereof, the Partnership shall prepare and file with the SEC a registration statement on Form S-3 (or Form S-1 if Form S-3 is not available) for the purpose of registering under the Securities Act the offering, sale, and delivery of the securities issuable in the Rights Offering. The term “Registration Statement”, as used herein, means such registration statement and all amendments and supplements thereto, if any. The Partnership shall use all reasonable best efforts to have the Registration Statement declared effective under the Securities Act as promptly as practicable after the Special Meeting. The Partnership shall notify Buyers promptly of the receipt of any comments on, or any requests for amendments or supplements to, the Registration Statement by the SEC, and the Partnership shall supply Buyers with copies of all correspondence between it and its representatives, on the one hand, and the SEC or members of its staff, on the other, with respect to the Registration Statement. The Partnership, after consultation with Buyers, shall use its reasonable best efforts to respond promptly to any comments made by the SEC with respect to the Registration Statement. Kestrel shall use its reasonable best efforts to obtain and furnish to the Partnership the information pertaining to the Kestrel Entities and their Affiliates to the extent required to be included in the Registration Statement. The Partnership and Buyers each agree promptly to correct any information provided by it for use in the Registration Statement if and to the extent that such information shall have become false or misleading in any material respect, and the Partnership further agrees to use its reasonable best efforts to cause the Registration Statement (or the prospectus contained therein) as so corrected to be filed with the SEC and to be disseminated to the extent required by Applicable Law. The Partnership shall also take any action (other than qualifying to do business in any jurisdiction in which it is not now so qualified) reasonably required to be taken under any applicable state securities laws in connection with the issuance of securities pursuant to the Registration Statement.

5.10 Withdrawal of General Partner. On the Closing Date, subject to the terms and conditions set forth in this Agreement, the Partnership GP hereby agrees to withdraw as sole general partner of the Partnership and recommend in the Proxy Material that the limited partners elect the Successor General Partner in substitution therefor and to transfer its equity interest in Star/Petro Inc. to the Partnership. In connection with its withdrawal as general partner, the Partnership GP acknowledges and agrees that the current fair market value of its general partnership interest in the Partnership is zero and, consequently, shall not exercise its option to require the Successor General Partner to purchase such general partnership interest.

5.11 Exclusivity Agreement.

(a) Subject to the other provisions of this Section 5.11, from the date of this Agreement to the earlier of (i) the Closing Date, or (ii) the termination of this Agreement in accordance with its terms (but not including upon or due to a breach of this Agreement by the Partnership) (the “Exclusivity Period”), the Partnership Parties agree that its officers and

directors will not, and agree to use reasonable efforts to insure that their respective Affiliates, advisors, representatives and employees do not, directly or indirectly, solicit any offer from, initiate or engage in any discussions or negotiations with, or provide any information other than publicly available information to, any Person (other than the Kestrel Entities, holders of the Senior Notes, the Senior Lender and their Affiliates and representatives; provided that each of the foregoing is subject to non-disclosure agreements with the Partnership) concerning any Acquisition Proposal. In addition, subject to the other provisions of this Section 5.11, the Partnership Parties will not engage in any communications whatsoever, directly or indirectly, with any party that initiates discussions regarding a potential Acquisition Proposal except for communications that are wholly unrelated to such a potential Acquisition Proposal or to notify such party that it will not engage in any communications at such time. The Partnership shall promptly advise Kestrel orally and in writing of any inquiry or proposal by a third party regarding an Acquisition Proposal.

(b) Notwithstanding the foregoing, nothing contained in this Section 5.11 prohibits the Partnership from (x) in the event of an unsolicited Acquisition Proposal, requesting from the third party such information in writing as may be reasonably necessary for the board of directors of the Partnership GP (on behalf of itself and as Partnership GP) to inform itself as to the material terms of such Acquisition Proposal for the sole purpose of determining whether such Acquisition Proposal constitutes a Superior Proposal, (y) taking (and disclosing to the Partnership's unitholders or partners) its position with respect to a tender or exchange offer by a third party pursuant to Rules 14d-9 and 14e-2 under the Exchange Act or (z) making such disclosure to the Partnership's unitholders or partners as in the good-faith judgment of the board of directors of the Partnership GP, after receipt of advice from outside legal counsel to the Partnership, that such disclosure is advisable for the board of directors of the Partnership GP to comply with its fiduciary duties under Applicable Law.

(c) Notwithstanding the foregoing, prior to the Closing Date, the Partnership may furnish information concerning the Partnership Business or the assets associated with the Partnership Business to any Person pursuant to a confidentiality agreement with terms no less favorable to the Partnership or its Affiliates than those contained in the Confidentiality Agreement and may negotiate and participate in discussions and negotiations with such Person concerning an Acquisition Proposal if, but only if, (i) such Acquisition Proposal is reasonably likely to be consummated (taking into account the legal aspects of the proposal, the Person making the Acquisition Proposal and approvals required in connection therewith), (ii) such Person has on an unsolicited basis, and in the absence of any violation of this Section 5.11 by the Partnership or its Affiliates, submitted a bona fide, written proposal to the Partnership relating to any such transaction that the board of directors of the Partnership GP determines in good faith, after receiving advice from the Partnership's financial advisors, may reasonably be expected to be more favorable to the Partnership or the Partnership's unitholders or partners from a financial point of view than the transactions contemplated by this Agreement, and (iii) in the good faith opinion of the board of directors of the Partnership GP, after consultation with outside legal counsel to the Partnership, providing such information or access or engaging in such discussions or negotiations is in the best interests of the Partnership and its unitholders or partners and necessary in order for the board of directors of the Partnership GP to discharge its fiduciary duties to the Partnership's unitholders or partners under applicable Law (an Acquisition Proposal that satisfies clauses (i), (ii) and (iii) being referred to as a "Superior Proposal"). The Partnership

shall promptly, and in any event within three business days following receipt of a Superior Proposal and prior to providing any Person with any material non-public information, notify Buyers of the receipt of the same. The Partnership shall promptly provide to Buyers any material non-public information regarding the Partnership, the Business or the assets associated with the Partnership Business provided to any Person that was not previously provided to Buyers, such additional information to be provided no later than the date of provision of such information to such Person.

(d) Except as set forth in this Section 5.11, neither the board of directors of the Partnership GP nor any committee thereof may (i) withdraw or modify, or propose to withdraw or modify, in a manner adverse to the transactions contemplated by this Agreement or to Buyers, the approval or recommendation by the board of directors of the Partnership GP of this Agreement or the transactions contemplated by this Agreement, (ii) approve or recommend or propose to approve or recommend, any Acquisition Proposal or (iii) enter into any Contract or other agreement with respect to any Acquisition Proposal. Notwithstanding the foregoing, prior to the Closing, the board of directors of the Partnership GP may (subject to the terms of this and the following sentence) withdraw or modify its approval or recommendation of this Agreement or the transactions contemplated by this Agreement, approve or recommend a Superior Proposal, or enter into a Contract or other agreement with respect to a Superior Proposal (an "Acquisition Agreement"), in each case at any time after the third business day following the Partnership's delivery to Buyers of written notice advising Buyers that the board of directors of the Partnership GP has received a Superior Proposal, attaching the most current version of the Acquisition Agreement (including any subsequent modifications and amendments) and identifying the Person making such Superior Proposal; provided, however, that neither the Partnership nor any of its Affiliates may enter into an Acquisition Agreement with respect to a Superior Proposal unless the Partnership complies with this Section 5.11.

(e) The Partnership may terminate this Agreement and the Partnership or its Affiliates may enter into an Acquisition Agreement with respect to a Superior Proposal, provided that, prior to any such termination, (i) the Partnership has provided Buyers written notice that it intends to terminate this Agreement pursuant to this Section, identifying the Superior Proposal then determined to be more favorable and the parties thereto, and (ii) at least three business days after the Partnership has provided the notice referred to in clause (i) above, the Partnership delivers to Buyer (A) a written notice of termination of this Agreement pursuant to this Section 5.11, and (B) the Termination Fee pursuant to Section 5.4(b) and Section 5.4(c).

5.12 Access to Information; Partnership Facilities. During the Interim Period, the Partnership (i) shall give Buyers and their authorized representatives reasonable access to the Partnership's employees, Partnership Facilities, and all books and records of the Partnership Entities, (ii) shall permit Buyers and their authorized representatives to make such inspections, including such environmental assessments, investigations and testing, as they may reasonably require to verify the accuracy of any representation or warranty contained in ARTICLE III, and (iii) shall cause the Partnership's officers to furnish Buyers and their authorized representatives with such financial and operating data and other information with respect to the Partnership Entities as Buyers may from time to time reasonably request; provided, however, that no investigation pursuant to this Section shall affect any representation or warranty of the Partnership contained in this Agreement or in any agreement, instrument, or document delivered

pursuant hereto or in connection herewith; and provided further that the Partnership shall have the right to have a representative present at all times.

5.13 Reasonable Best Efforts. Each party hereto agrees that it will not voluntarily undertake any course of action inconsistent with the provisions or intent of this Agreement and will use its reasonable best efforts to take, or cause to be taken, all action and to do, or cause to be done, all things reasonably necessary, proper, or advisable under Applicable Laws to consummate the Transaction.

5.14 Cooperation and Information. Buyers shall cooperate fully with the Partnership in connection with the preparation and filing of the Proxy Statement and the Registration Statements, and Buyers shall obtain and furnish to the Partnership in writing the information regarding Buyers, its Affiliates and the prospective directors of the Successor General Partner required to be included (based upon the advice of its counsel) in the Proxy Statement and the Registration Statement.

5.15 Amendment to Certificate of Limited Partnership. Promptly following the Closing, the Successor General Partner will cause the Partnership to amend its certificate of limited partnership to reflect that the Successor General Partner is the general partner of the Partnership.

5.16 Taxes.

(a) Notwithstanding anything to the contrary herein, the Partnership GP shall use its best efforts to not permit the Partnership to enter into any agreement, commitment, guarantee, obligation or activity, including any acquisitions or borrowings, that could result in the recognition of UBTI by any Unit holder by reason of its ownership of Units.

(b) All first-tier Subsidiaries of the Partnership will be formed and remain corporations for United States tax purposes or the Partnership GP shall cause such Subsidiaries to be classified and treated as corporations for United States tax purposes, in each case from their inception and for all times thereafter.

5.17 Directors' And Officers' Indemnification And Insurance.

(a) For the period of six years from and after the Closing Date, the Partnership shall (i) indemnify and hold harmless, against any costs or expenses (including attorney's fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, and provide advancement of expenses to, all past and present directors, officers and employees of Star LLC (in all of their capacities) (the "Covered Parties") (a) to the same extent such persons are indemnified or have the right to advancement of expenses as of the date of this agreement by the Partnership pursuant to the Original Partnership Agreement and indemnification agreements, if any, in existence on the date hereof with any directors, officers and employees of Star LLC and (B) without limitation to clause (A), to the fullest extent permitted by Applicable Law, (ii) to the extent permissible under then Applicable Law in effect at the time, include and cause to be maintained in effect in the Partnership's (or any successor's) agreement of limited partnership and bylaws, the current provisions regarding elimination of

liability of directors, indemnification of officers, directors and employees and advancement of expenses contained in the Original Partnership Agreement and (iii) cause to be maintained for a period of six years after the Closing Date the current policies of directors' and officers' liability insurance and fiduciary liability insurance ("D&O Insurance") maintained by the Partnership (provided that the Partnership (or any successor) may substitute therefor policies of at least the same coverage and amounts containing terms and conditions which are, in the aggregate, no less advantageous to the insured) with respect to claims arising from facts or events that occurred on or before the Closing Date (including for acts or omissions occurring in connection with the approval of this Agreement and the consummation of the transactions contemplated hereby); and provided, further, that in no event shall the Partnership be required to expend in any one year more than the current annual premium expended by the Partnership to maintain or procure such D & O Insurance immediately prior to the Closing Date (such amount, the "Maximum Annual Premium"); provided, further, that if the annual premiums of such insurance coverage exceed such amount, the Partnership shall be obligated to obtain a policy with the greatest coverage available for a cost not exceeding the Maximum Annual Premium. Alternatively, the Partnership may purchase a six-year "tail" prepaid policy covering liabilities arising from facts or events that occurred on or prior to the Closing Date (including acts and omissions occurring in connection with the approval of this Agreement and the transactions contemplated hereby) on terms and conditions no less advantageous to the insured than the D & O Insurance; provided, that in no event shall the Partnership be required to expend in excess of the Maximum Annual Premium. The Partnership shall consult with Kestrel as to its decision whether to maintain the D&O or to secure such "tail" coverage and keep Kestrel informed throughout the process. If such "tail" prepaid policy has been obtained by the Partnership prior to the Closing Date, (i) the Partnership shall not be obligated to maintain D & O Insurance as described above, and (ii) the Partnership shall maintain such "tail" policy in full force and effect, for its full term, and continue to honor their respective obligations thereunder. The obligations of the Partnership under this Section 5.17 shall not be terminated or modified in such a manner as to adversely affect any Covered Party without the consent of such affected Covered Party (it being expressly agreed that the Covered Parties shall be third party beneficiaries of this Section 5.17. In the event any claim or claims are asserted or made pursuant to the indemnification rights set forth in this Section 5.17, all rights to indemnification in respect of any such claim or claims shall continue until the disposition of any and all such claims. Any determination required to be made with respect to whether an indemnified party's conduct complies with the applicable standard of conduct which governs the availability of such indemnification shall be made by independent legal counsel selected by the indemnified party and reasonably acceptable to the Partnership.

(b) If the Partnership or any of its successors or assigns (i) shall consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving entity or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any individual, corporation or other entity, then, and in each such case, proper provisions shall be made so that the successors and assigns of the surviving entity shall assume all of the obligations of the Partnership set forth in this Section 5.17.

5.18 Certain Agreement. The Buyers have been advised that the Partnership GP has requested the Partnership to reimburse it for all past and future obligations of the Partnership GP under an agreement dated March 7, 2005 between the Partnership GP and Irik Sevin and Buyers acknowledge that the Partnership is bound, and Buyers agree to cause the Partnership to make

such reimbursement without offsets, defenses or counterclaims, except that the Partnership shall have such defenses as may become available to the Partnership GP pursuant to such Agreement.

ARTICLE VI

CONDITIONS TO OBLIGATIONS OF THE PARTNERSHIP PARTIES

6.1 Conditions to Closing. The obligations of the Partnership Parties to consummate the Transaction shall be subject to the fulfillment on or prior to the Closing Date of each of the following conditions:

(a) Representations and Warranties True. All the representations and warranties of Kestrel for itself and behalf of the Buyers contained in this Agreement shall be true and correct on and as of the Closing Date (except to the extent otherwise contemplated by this Agreement or the Ancillary Documents); provided, however, that (i) to the extent that any such representation or warranty is made as of a specified date, such representation or warranty shall have been true and correct as of such specified date, and (ii) with respect to each representation and warranty that is not otherwise qualified by its terms by a materiality standard, this condition shall be satisfied if such representation or warranty shall be true and correct in all material respects.

(b) Covenants and Agreements Performed. Buyers shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Opinion of Counsel. The Partnership shall have received an opinion of legal counsel to Buyers, dated the Closing Date, in form reasonably satisfactory to the Partnership, covering those matters set forth in Exhibit 6.1(c) attached hereto, subject to customary assumptions, limitations and exclusions.

(d) Legal Proceedings. On the Closing Date, other than suits to enforce this Agreement, there shall not be (i) any effective injunction, writ, or temporary restraining order or any other order of any nature issued by a court or Governmental Authority of competent jurisdiction directing that any aspect of the Transaction not be consummated, (ii) any Proceeding pending in which it is or may be sought to prohibit, substantially delay, or rescind this Agreement, the Debt Amendments Documents, the Rights Offering Documents or any aspect of the Transaction or to obtain an award of damages in connection with the Transaction and which, in the good faith judgment of either of the parties, is material, or (iii) any Proceedings pending against the Partnership Entities which, in the good faith judgment of either of the parties, would be expected to have a Partnership Material Adverse Effect.

(e) Limited Partner Approval. The holders of the requisite number of outstanding units of limited partnership interests in the Partnership shall have duly and validly approved all items necessary to effectuate the Transaction to the extent that limited partner approval is required.

(f) Stock Exchange Listing. The Common Units issuable upon exercise of the Rights shall have been approved for listing on the NYSE, subject to official notice of issuance.

(g) Completion of Debt Amendments. All conditions precedent to the closing of the Debt Amendments, including the execution and delivery of the Debt Amendments Documents and the successful completion and closing of the Senior Notes Exchange Offer, shall have been satisfied or duly waived and such closings shall occur simultaneously with the Closing.

(h) Certificate. The Partnership shall have received a certificate executed by a duly authorized person on behalf of Buyers dated the Closing Date, representing and certifying, in such detail as the Partnership may reasonably request, that the conditions set forth in this Section 6.1 have been fulfilled.

(i) Completion of Rights Offering. The Rights Offering shall have commenced and expired and the number of Unsubscribed Units shall have been determined.

ARTICLE VII

CONDITIONS TO OBLIGATIONS OF BUYERS

7.1 Conditions to Closing. The obligations of Buyers to consummate the Transaction shall be subject to the fulfillment on or prior to the Closing Date of each of the following conditions:

(a) Representations and Warranties True. The representations and warranties of the Partnership Parties for themselves and on behalf of the Partnership Entities contained in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, shall be true and correct in all material respects as of the Closing Date as if made on and as of the Closing Date (or, if given as of a specific date, at and as of such date); provided, however, such representations and warranties shall be deemed to be true in all material respects for the purposes of this Section 7.1(a) unless one or more breaches of such representations and warranties either individually or in the aggregate would reasonably be expected to result in loss or liability to the Partnership Entities of \$2,500,000 or more; and provided, further, that nothing in this Section 7.1(a) shall limit or affect the Kestrel Entities' rights to assert a claim for indemnification pursuant to Article IX relating to any such breach or breaches.

(b) Covenants and Agreements Performed. The Partnership Parties shall have performed and complied with the agreements contained in Section 5.1 at all times during the Interim Period, and the Partnership Parties shall have performed and complied in all material respects with all other covenants and agreements required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Opinion of Counsel. Buyers shall have received an opinion of legal counsel to the Partnership, dated the Closing Date, in form reasonably satisfactory to Buyers,

covering those matters set forth in Exhibit 7.1(c) attached hereto, subject to customary assumptions, limitations and exclusions.

(d) Legal Proceedings. On the Closing Date, other than suits to enforce this Agreement, there shall not be (i) any effective injunction, writ, or temporary restraining order or any other order of any nature issued by a court or Governmental Authority of competent jurisdiction directing that any aspect of the Transaction not be consummated, (ii) any Proceeding pending in which it is or may be sought to prohibit, substantially delay, or rescind this Agreement, the Debt Amendments Documents, the Rights Offering Documents or any aspect of the Transaction or to obtain an award of damages in connection with the Transaction and which, in the good faith judgment of either of the parties, is material, or (iii) any Proceedings pending against the Partnership Entities which, in the good faith judgment of either of the parties, would be expected to have a Partnership Material Adverse Effect.

(e) Limited Partner Approval. The holders of the requisite number of outstanding units of limited partnership interests in the Partnership shall have duly and validly approved all items necessary to effectuate the Transaction to the extent that limited partner approval is required.

(f) Consents. All Partnership Consents set forth on Schedule 7.1(f) shall have been obtained or made and shall be in full force and effect as to the Partnership Parties at the time of the Closing, and with respect to any such Partnership Consent related to the Debt Amendments, such Partnership Consent shall have been given (and any such amendment shall have been made) on terms that are reasonably acceptable to Buyers, which acceptance shall not be unreasonably withheld, conditioned or delayed.

(g) No Adverse Changes. Since the date of this Agreement, there shall not have been any Partnership Material Adverse Effect.

(h) Completion of Debt Amendments. All conditions precedent to the closing of the Debt Amendments, including the execution and delivery of the Debt Amendments Documents and the successful completion and closing of the Senior Notes Exchange Offer, shall have been satisfied or duly waived and such closings shall occur simultaneously with the Closing.

(i) Stock Exchange Listing. The Common Units issuable upon exercise of the Rights shall have been approved for listing on the NYSE, subject to official notice of issuance.

(j) New Partnership Agreement. The New Partnership Agreement will have been adopted on or prior to the Closing Date.

(k) Directors and Officers Insurance. Each of the representatives of Buyers serving on the Board of Directors of the Successor General Partner shall obtain comparable insurance coverage under new or replacement director and officer insurance policies and under indemnification agreements as the Partnership's directors receive as of the date hereof (including coverage for liabilities arising before the date of taking office to the extent arising from such

person's status as a prospective director), such policies shall be in full force and effect in accordance with their terms in existence as of the Closing Date.

(l) Certificates. Buyers shall have received a certificate or certificates representing the Units purchased at the Closing, in definitive form representing the Units, registered in the respective name of each Buyer and duly executed by the Partnership GP.

(m) Officer Certificate. Buyers shall have received a certificate executed on behalf of the Partnership GP by its chief executive officer or the chief financial officer, dated the Closing Date, representing and certifying, in such detail as Buyers may reasonably request, that the conditions set forth in this Section 7.1 have been fulfilled.

(n) Completion of Rights Offering. The Rights Offering shall have commenced and expired and the number of Unsubscribed Units shall have been determined.

ARTICLE VIII

TERMINATION, AMENDMENT, AND WAIVER

8.1 Termination Prior to Closing. This Agreement may be terminated and the Transaction abandoned at any time prior to the Closing in the following manner:

(a) by mutual written consent of the Partnership and Kestrel; or

(b) by the Partnership or Kestrel after April 30, 2006 if the Closing shall not have occurred by the close of business on such date, so long as the failure to consummate the Transaction on or before such date does not result from a breach of this Agreement by the party seeking termination of this Agreement; or

(c) by the Partnership, if (i) any of the representations and warranties of Kestrel for itself and on behalf of the Buyers contained in this Agreement shall not be true and correct when made or at any time prior to the Closing as if made at and as of such time, except (A) as contemplated hereby or (B) with respect to each representation and warranty that is not otherwise qualified by its terms by a materiality standard, such representation and warranty shall not be true and correct in all material respects, or (ii) Buyers shall have failed to fulfill any of their obligations in this Agreement in all material respects; and, in the case of each of clauses (i) and (ii), such misrepresentation, breach of warranty, or failure (provided it can be cured) has not been cured within five days of actual knowledge thereof by Buyers; or

(d) by Buyers, if (i) any of the representations and warranties of the Partnership Parties for themselves and on behalf of the Partnership Entities contained in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, shall not be true and correct in all material respects as of the Closing Date as if made on and as of the Closing Date (or, if given as of a specific date, at and as of such date) except where the failure to be true and correct would not reasonably be expected to result in loss or liability to the Partnership Entities of \$2,500,000 or more, (ii) the Partnership Parties shall have failed to fulfill any of their obligations under Section 5.1, or (iii) the Partnership Parties shall have failed to fulfill any of its obligations in this Agreement (other

than those obligations set forth in Section 5.1) in all material respects; and, in the case of each of clauses (i), (ii) and (iii), such misrepresentation, breach of warranty, or failure (provided it can be cured) has not been cured within 10 days of actual knowledge thereof by the Partnership Parties ; or

(e) by the Partnership or Kestrel, if the limited partners of the Partnership shall have failed to adopt at a meeting the matters contained in the Proxy Statement that are necessary in order to adopt and approve the Transaction; or

(f) by Kestrel or the Partnership, upon the occurrence of a Bankruptcy Event; or

(g) by Kestrel, upon the occurrence of any default by the Partnership Entities under the Credit Facility or the Senior Notes if the holders of indebtedness pursuant to the Credit Facility or the holders of the Senior Notes entitled to declare a default, or any trustee or representative thereof, shall have taken any steps to accelerate any such indebtedness or shall have commenced the exercise of any remedies permitted pursuant to the agreement or other instruments creating such indebtedness; or

(h) by the Partnership Entities as provided in Section 5.11(e); or

(i) by Kestrel at any time following an Exclusivity Breach.

8.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 8.1 by the Partnership, on the one hand, or Kestrel, on the other, written notice thereof shall forthwith be given to the other party specifying the provision hereof pursuant to which such termination is made, and this Agreement shall become void and have no effect, except that the provisions contained in this ARTICLE VIII, ARTICLE IX and in Sections 5.4 and 5.5 and the Confidentiality Agreement shall survive the termination hereof. Nothing contained in this Section shall relieve any party from liability for any willful breach of this Agreement.

8.3 Amendment. This Agreement may not be amended except by an instrument in writing signed by or on behalf of all the parties hereto.

8.4 Waiver. No failure or delay by a party hereto in exercising any right, power, or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The provisions of this Agreement may not be waived except by an instrument in writing signed by or on behalf of the party against whom such waiver is sought to be enforced.

ARTICLE IX

SURVIVAL OF REPRESENTATIONS; INDEMNIFICATION

9.1 Survival. The representations and warranties of the parties hereto contained in Articles III and IV of this Agreement or in any certificate delivered pursuant to Section 6.1(i) or 7.1(m) hereof shall survive the Closing, respectively, regardless of any investigation made by or on behalf of any party, until the first anniversary of the Closing Date (the "Survival Date"). No

action may be brought with respect to a breach of any representation and warranty after the Survival Date unless, prior to such time, the party seeking to bring such an action has notified the other parties of such claim, specifying in reasonable detail the nature of the loss suffered. The provisions of this Section 9.1 shall have no effect upon any of the covenants of the parties set forth in Article V or any of the other obligations of the parties hereto under the Agreement, whether to be performed later, at or after the Closing.

9.2 Indemnification by Partnership.

(a) The Partnership shall indemnify, defend, and hold harmless each of the Kestrel Entities, their respective Affiliates and each of their respective directors, officers, employees and agents (collectively, the "Indemnified Parties") from and against any and all Indemnified Liabilities, REGARDLESS OF WHETHER SUCH INDEMNIFIED LIABILITIES ARE CAUSED BY THE NEGLIGENCE OF AN INDEMNIFIED PARTY; provided however, that the Partnership shall not be obligated to indemnify an Indemnified Party with respect to any Indemnified Liabilities to the extent it is ultimately determined by a final non-appealable judgment of a court of competent jurisdiction that such Indemnified Liabilities were caused by the gross negligence, willful misconduct or material breach of this Agreement of or by such Indemnified Party.

(b) At the written request of an Indemnified Party, the Expenses incurred by an Indemnified Party in connection with any Proceeding, other than as provided in subparagraph (c), shall be paid by the Partnership as and when incurred by the Indemnified Party in advance of the final disposition of such Proceeding upon receipt by the Partnership of an undertaking by or on behalf of the Indemnified Party to repay promptly such amount to the extent that it is ultimately determined that the Indemnified Party is not entitled to be indemnified by the Partnership (a "Repayment Undertaking"). The request for advancement of Expenses by the Indemnified Party and the Repayment Undertaking need not be secured. Any advancement of Expenses shall be made no later than 20 days after receipt by the Partnership of the Repayment Undertaking from the Indemnified Party, and is required to be made notwithstanding any allegation by the Partnership or any other person that an Indemnified Party is not entitled to indemnification pursuant to the exception set forth in subparagraph (a) hereof.

(c) Notwithstanding any other provisions herein, the Partnership shall not be obligated hereunder to indemnify or advance Expenses to an Indemnified Party with respect to any Proceeding, or any claim therein, brought or made (i) by an Indemnified Party against the Partnership, other than a Proceeding, or a claim therein, made by an Indemnified Party in connection with successfully establishing or enforcing his right of indemnification or to receive advancement of Expenses, in whole or in part, hereunder or (ii) by the Partnership against Buyers pursuant to Section 9.3 hereof.

(i) Promptly after receipt by an Indemnified Party of notice of the commencement of any Proceeding against an Indemnified Party with respect to which an Indemnified Party demands indemnification or advancement of Expenses hereunder, such Indemnified Party shall promptly notify the Partnership in writing of the commencement thereof, provided that the failure to so notify the Partnership shall not relieve it from any liability that it may have to an Indemnified Party, except to the extent that such failure has materially prejudiced

the Partnership's ability to provide a defense in the Proceeding. The Partnership shall have the right to assume the defense of any such Proceeding, but the Indemnified Parties collectively shall have the right, at the expense of the Partnership, to retain not more than one counsel of their choice to represent the Indemnified Parties in such Proceeding. The counsel for the Indemnified Parties may participate in, but not control, the defense of such Proceeding.

(ii) The indemnity provided for herein shall cover the amount of any settlements entered into by an Indemnified Party in connection with any claim for which an Indemnified Party may be indemnified hereunder; provided that, no settlement binding on an Indemnified Party may be made without the consent of a Kestrel Indemnified Party and the Partnership (which consent shall not be reasonably withheld).

(iii) Any indemnification hereunder shall be made no later than 45 days after receipt by the Partnership of the written request of the Indemnified Party.

(d) If an Indemnified Party is entitled under any provision hereof to indemnification or to receive advancement by the Partnership for some or a portion of the Expenses, judgments, fines or amounts paid in settlement actually and reasonably incurred by the Indemnified Party in the investigation, defense, appeal, settlement or other disposition of any proceeding but not, however, for the total amount thereof, the Partnership shall nevertheless indemnify the Indemnified Party for the portion thereof to which the Indemnified Party is entitled.

(e) In the event of the Partnership's payment to an Indemnified Party hereunder, the Partnership shall be subrogated to the extent of such payment to all the rights of recovery of the Indemnified Party, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including without limitation the execution of such documents as may be necessary to enable the Partnership effectively to bring suit to enforce such rights.

(f) If any provision or provisions of this Section 9.2 shall be held to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby; and, to the fullest extent possible, the provisions of this Section 9.2 shall be construed so as to give effect to the intent manifested by the provisions held invalid, illegal or unenforceable.

(g) In the absence of fraud, each Indemnified Party's sole and exclusive remedy with respect to any and all claims relating to the subject matter of this Agreement will be pursuant to the indemnification provisions set forth in this Article 11; provided, that nothing in this provision shall be deemed to limit the rights of any Indemnified Party to (1) be indemnified by any other party to this Agreement (as opposed to a third party) pursuant to the indemnification obligations in ARTICLE IX or (2) to receive the Termination Fee, expense reimbursement and injunctive relief as provided herein.

(h) In the absence of fraud, the Partnership will not be liable to an Indemnified Party for any punitive damages resulting from or arising out of this Agreement or the transactions contemplated by this Agreement.

(i) Notwithstanding any other provision of this Section 9.2, the obligations of the Partnership to indemnify the Indemnified Parties for Indemnified Liabilities shall: (i) not apply to any individual claim of less than \$50,000 (a "Small Claim") until the aggregate of all Small Claims exceeds \$500,000 and then once the \$500,000 threshold is exceeded the Indemnified Parties shall be entitled to recovery from the first dollar of liability; and (ii) be limited to, and will not exceed, 25% of the aggregate Purchase Price.

9.3 Indemnification by Kestrel.

(a) Kestrel shall indemnify, defend, and hold harmless the Partnership from and against any and all claims, actions, causes of action, demands, assessments, losses, damages, liabilities, judgments, settlements, penalties, costs and Expenses of any nature whatsoever asserted against, resulting to, imposed upon, or incurred by the Partnership, directly or indirectly, by reason of or resulting from any breach by Kestrel of any of its representations, warranties, covenants, or agreements contained in this Agreement or in any certificate, instrument, or document delivered pursuant hereto regardless of whether discovered prior to or after the Closing and regardless of whether the Closing occurs.

(b) Promptly after receipt by the Partnership of notice of the commencement of any Proceeding against it with respect to which the Partnership demands indemnification hereunder, the Partnership shall promptly notify Kestrel in writing of the commencement thereof, provided that the failure to so notify Kestrel shall not relieve it from any liability that it may have to the Partnership, except to the extent that such failure has materially prejudiced Kestrel's ability to provide a defense in the Proceeding. Kestrel shall have the right to assume the defense of any such Proceeding, but the Partnership shall have the right, at the expense of Kestrel, to retain not more than one counsel of its choice to represent the Partnership in such Proceeding. The counsel for the Partnership may participate in, but not control, the defense of such Proceeding. The indemnity provided for herein shall cover the amount of any settlements entered into by the Partnership in connection with any claim for which the Partnership may be indemnified hereunder; provided that, no settlement binding on the Partnership may be made without the consent of the Partnership and Kestrel (which consent shall not be reasonably withheld). Any indemnification hereunder shall be made no later than 45 days after receipt by Kestrel of the written request of the Partnership.

(c) If the Partnership is entitled under any provision of this Section 9.3 to indemnification by Kestrel for some or a portion of the Expenses, judgments, fines or amounts paid in settlement actually and reasonably incurred by the Indemnified Party in the investigation, defense, appeal, settlement or other disposition of any proceeding but not, however, for the total amount thereof, Kestrel shall nevertheless indemnify the Partnership and/or the Partnership GP for the portion thereof to which the Partnership is entitled.

(d) In the event of Kestrel's payment to the Partnership hereunder, Kestrel shall be subrogated to the extent of such payment to all the rights of recovery of the Partnership, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including without limitation the execution of such documents as may be necessary to enable Kestrel effectively to bring suit to enforce such rights.

(e) If any provision or provisions of this Section 9.3 shall be held to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby; and, to the fullest extent possible, the provisions of this Section 9.3 shall be construed so as to give effect to the intent manifested by the provisions held invalid, illegal or unenforceable.

(f) In the absence of fraud, the Partnership's sole and exclusive remedy with respect to any and all claims relating to the subject matter of this agreement will be pursuant to the indemnification provisions set forth in this Article IX; provided, that nothing in this provision shall be deemed to limit the rights of the Partnership to (1) be indemnified by any other party to this Agreement (as opposed to a third party) pursuant to the indemnification obligations in ARTICLE IX or (2) to receive injunctive relief as provided herein.

(g) In the absence of fraud, Kestrel will not be liable to the Partnership for any punitive damages resulting from or arising out of this Agreement or the transactions contemplated by this Agreement.

(h) Notwithstanding any other provision of this Section 9.3, the obligations of Kestrel to indemnify the Partnership for Indemnified Liabilities shall: (i) not apply to any Small Claim until the aggregate of all Small Claims exceeds \$500,000 and then once the \$500,000 threshold is exceeded the Partnership shall be entitled to recovery from the first dollar of liability; and (ii) be limited to, and will not exceed, 25% of the aggregate Purchase Price.

ARTICLE X

MISCELLANEOUS

10.1 Notices. All notices, requests, demands, and other communications required or permitted to be given or made hereunder by any party hereto shall be in writing and shall be deemed to have been duly given or made if delivered personally, or transmitted by first class registered or certified mail, postage prepaid, return receipt requested, or sent by prepaid overnight delivery service, or telefax, to the parties at the addresses and telefax numbers set forth opposite their names on the signature page hereof (or at such other addresses and telefax numbers as shall be specified by the parties by like notice).

10.2 Entire Agreement. This Agreement (together with the Equity Maintenance Agreement entered into simultaneously herewith by and among the Kestrel Entities and Yorktown Energy Partners VI, L.P.) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, between the parties and their Affiliates with respect to the subject matter hereof, provided that, that certain Confidentiality Agreement between Kestrel and the Partnership dated April 14, 2005 (the "Confidentiality Agreement") shall remain in effect pending the Closing or upon termination of this Agreement and shall only terminate upon Closing.

10.3 Binding Effect; Assignment; No Third Party Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and

permitted assigns. Except as otherwise expressly provided in this Agreement, neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other party, except that any Buyer may assign to any Person in which Kestrel is the sole owner, or to any other Affiliate of Buyer, any of such Buyer's rights, interests, or obligations hereunder, upon notice to the Partnership Parties, but such assignment shall not in any way relieve such Buyer of any of its obligations under this Agreement. Prior to the Closing, any assignee of an initial Buyer executing this Agreement shall, upon such assignment, execute this Agreement as a Buyer. Except as provided in Section 5.17 (which is expressly intended for the benefit of "Covered Parties," as defined therein) and ARTICLE IX, nothing in this Agreement, express or implied, is intended to or shall confer upon any person other than the parties hereto, and their respective heirs, legal representatives, successors, and permitted assigns, any rights, benefits, or remedies of any nature whatsoever under or by reason of this Agreement.

10.4 Severability. If any provision of this Agreement is held to be unenforceable, then this Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects this Agreement shall remain in full force and effect to the maximum extent permitted by Applicable Law; provided, however, that (i) the provisions of Section 9.2(f) and 9.3(e) shall apply with respect to the severability of the provisions pertaining to the right to indemnification contained in Section 9.2 and 9.3, respectively, and (ii) if any provision of this Agreement other than Section 9.2 or Section 9.3 is held unenforceable, and the unenforceability of such provision would substantially impair the rights and benefits and/or increase the duties and obligations of either party contained in this Agreement, then this Agreement shall be terminated at the election of any party whose rights and benefits are impaired or duties and obligations increased, subject to the provisions of ARTICLE VIII thereof.

10.5 Injunctive Relief. The parties hereto acknowledge and agree that irreparable damage would occur in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement, and shall be entitled to enforce specifically the provisions of this Agreement, in any court of the United States or any state thereof having jurisdiction, in addition to any other remedy to which the parties may be entitled under this Agreement or at law or in equity.

10.6 Governing Law. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.**

10.7 Counterparts. This Agreement may be executed by the parties hereto in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all, the parties hereto.

10.8 Titles. The titles, captions or headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

10.9 Schedules. Disclosure of any fact or item in any section of the Disclosure Schedule referenced in this Agreement shall, should the existence of the fact or item or its contents be relevant to any other paragraph or section, be deemed to be disclosed with respect to such other paragraph or section whether or not an explicit cross-reference appears. Certain of the representations and warranties set forth in this Agreement contemplate that there will be included in the Disclosure Schedule information that might be “material” or have a “material adverse effect” or “Partnership Material Adverse Effect”. The Partnership may elect to include in such schedules items that are not material or are not likely to have a “material adverse effect” or “Partnership Material Adverse Effect” and, in order to avoid any misunderstanding, any such inclusion shall not be deemed to be an acknowledgment or representation that such items are material or would have a “material adverse effect” to establish any standard of materiality, “material adverse effect” or “Partnership Material Adverse Effect” or to define further the meaning of such terms for purposes of this Agreement.

ARTICLE XI

DEFINITIONS

11.1 Certain Defined Terms. As used in this Agreement, each of the following terms has the meaning given it in this Article:

“Acquisition Proposal” means (i) any proposal to commence or conduct a tender or exchange offer involving the Partnership or one or more of the Partnership Entities, (ii) any proposal for a merger, consolidation or other business combination involving the Partnership or one or more of the Partnership Entities, (iii) any proposal or offer to acquire in any manner a substantial equity interest in the Partnership or one or more of the Partnership Entities, (iv) any proposal or offer to acquire in any manner a substantial portion of the Partnership Business or the assets associated with the Partnership Business, (v) any proposal or offer with respect to any recapitalization or restructuring (whether of equity or debt or a combination thereof) with respect to the Partnership or one or more of the Partnership Entities, or (vi) any proposal or offer with respect to any other transaction similar to any of the foregoing with respect to the Partnership or any of the Partnership Entities.

“Affiliate” has the meaning specified in Rule 12b-2 promulgated under the Exchange Act.

“Ancillary Documents” means the New Partnership Agreement, the Rights Agreement Amendment and each agreement, instrument, and document (other than this Agreement) executed or to be executed by the Partnership or Buyers in connection with the sale and purchase of the Units as contemplated by this Agreement.

“Applicable Law” means any federal, state, local, municipal, foreign, international, multinational or other administrative statute, law, rule, or regulation or any judgment, order, writ,

injunction, or decree of any Governmental Authority to which a specified person or property is subject.

“Bankruptcy Event” means the occurrence of any of the following with respect to any of the Partnership Entities:

- (i) making an assignment for the benefit of creditors;
- (ii) filing a voluntary petition in bankruptcy;
- (iii) being adjudicated a bankrupt or insolvent, or having entered against it an order for relief in any bankruptcy or insolvency proceeding;
- (iv) filing a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
- (v) filing an answer or other pleading admitting to or failing to contest the material allegations of a petition filed against it in any proceeding of the nature described in clause (iv) above; or
- (vi) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of it or all or any substantial part of its properties.

“Benefit Plan” means any bonus, profit sharing, compensation, severance, termination, stock option, stock unit, stock appreciation right, unit appreciation right, restricted stock, restricted unit, performance unit, stock equivalent, stock purchase, pension, retirement, deferred compensation, employment, severance, health, life, disability, or any other employee benefit or fringe benefit agreement, policy, trust, plan, fund, or other arrangement for the benefit or welfare of any director, officer, employee or other service provider.

“Brokerage Fee” means the fees and expenses of Jefferies in connection with its services as financial advisor to the Partnership in connection with the Transaction.

“Business Day” shall mean any day other than a Saturday, a Sunday, or a day on which banking institutions in New York, New York are authorized or obligated by law or executive order to close.

“Code” means the Internal Revenue Code of 1986, as amended.

“Capital Stock” means, with respect to: (i) any corporation, any share, or any depositary receipt or other certificate representing any share, of an equity ownership interest in that corporation; and (ii) any other entity, any share, membership or other percentage interest, unit of participation or other equivalent (however designated) of an equity interest in that entity.

“Common Units” mean the units representing common limited partnership interests in the Partnership and having the rights and obligations specified with respect to the Common Units in the Original Partnership Agreement or the New Partnership Agreement, as applicable, together

with associated rights to purchase Class A Common Units of the Partnership pursuant to the Rights Agreement.

“Consenting Noteholders” mean the holders of the Partnership’s 10.25% Senior Notes due 2013 issued pursuant to the Indenture and that have executed the Lock-up Agreement.

“Contract” means any agreement, contract, lease, license, sublicense, or other undertaking (whether written or oral and whether express or implied) that is legally binding relating to the Partnership Business to which the Partnership Assets or any of the Partnership Entities is a party or by which any of them is bound.

“Credit Facility” means that certain \$260 million revolving credit facility agreement with a group of lenders led by the Senior Lender.

“Credit Facility Amendments” means certain amendments to the Credit Facility in substantially the form attached as Exhibit B.

“Encumbrances” means liens, charges, pledges, options, mortgages, deeds of trust, security interests, claims, restrictions (whether on voting, sale, transfer, disposition, or otherwise), easements, and other encumbrances of every type and description, whether imposed by law, agreement, understanding, or otherwise.

“Environment” means soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins and inland wetlands and water courses), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, and any other environmental medium or natural resource.

“Environmental Compliance Liability” means any and all liabilities, costs and expenses arising under, or related to, compliance with any Environmental Laws applicable to the Partnership Facilities or the Partnership Business or operations or assets associated with the Partnership Facilities or the Partnership Business, that would reasonably result in claims and/or demands under Environmental Laws and/or liabilities to third parties, including but not limited to, Governmental Authorities.

“Environmental Conditions” means all circumstances with respect to soil, surface waters, groundwaters, ponds, stream sediment, air and similar environmental media and building materials, both on-site and off-site of the property owned and/or operated and/or occupied by the Partnership Entities or any Predecessor at the Partnership Facilities, and all improvements thereto upon or in which the Partnership Business is now or was formerly operated that would reasonably require remedial action and/or that would reasonably result in claims and/or demands by and/or liabilities to third parties including, but not limited to, Governmental Authorities. This term shall expressly include on- and off-site liabilities asserted under the Comprehensive Environmental Response Compensation and Liability Act, as amended, (“CERCLA”) or analogous State or foreign statutes.

“Environmental Laws” means all Applicable Laws relating to pollution or protection of human health (as relating to exposure to Materials of Environmental Concern) or the Environment, including (without limitation), (i) emissions, discharges, releases or threatened

releases of Materials of Environmental Concern, (ii) the manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern, (iii) the preservation of the Environment or mitigation of adverse effects thereon, (iv) community right-to-know, hazard communication and noise concerns or (v) record keeping, notification, disclosure and reporting requirements respecting Materials of Environmental Concern.

“Environmental Notice” means any summons, citation, directive, order, claim, pleading, proceeding, judgment, letter or any other written communication from the United States Environmental Protection Agency (“USEPA”), or any other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional or unintentional act or omission which has resulted in or which threatens result in the Release of any Materials of Environmental Concern into the Environment or building material, or other violation or alleged violation of Environmental Laws.

“ERISA” means the Employee Retirement Income Security Act of 1974 (or any successor legislation thereto), as amended from time to time and any regulations promulgated thereunder.

“ERISA Affiliate” means, with respect to a Person, any entity which has ever been considered a single employer with such Person under Section 4001(b) of ERISA or Section 414(b), (c), (m) or (o) of the Code.

“Exclusivity Breach” means any breach by the Partnership of its agreements contained in this Section 5.11.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exercise Period” means that period of time during which holders of Rights may exercise rights to subscribe for Common Units in the Partnership.

“Existing Indebtedness” means all existing indebtedness of the Companies in respect of borrowed money, including the outstanding indebtedness under the Credit Facility and the Senior Notes.

“Expenses” shall mean any expenses incurred in connection with a Proceeding, including, without limitation, all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, or being or preparing to be a witness in a Proceeding.

“GAAP” means generally accepted accounting principles as in effect in the United States of America on the applicable date.

“General Partner Units” mean the units representing the general partnership interest in the Partnership and having the rights and obligations specified with respect to the General Partner Units in the Original Partnership Agreement.

“Governmental Authority” means any court or tribunal in any jurisdiction (domestic or foreign) or any public, governmental, or regulatory body, agency, department, commission, board, bureau, or other authority or instrumentality (domestic or foreign).

“Indemnified Liabilities” mean any and all claims, actions, causes of action, demands, losses, liabilities, obligations, losses, damages, penalties and Expenses of any kind or nature whatsoever with respect to or arising out of this Agreement and regardless of whether claimed or alleged by any of the parties hereto or any third party, the Transaction (including the Debt Amendments and the Rights Offering), the actual or proposed execution, delivery, enforcement and performance of this Agreement or the Ancillary Documents, and/or otherwise arising directly or indirectly, by reason of or resulting from any breach by the Partnership Parties of any of their representations, warranties, covenants, or agreements contained in this Agreement or in any certificate delivered pursuant hereto, regardless of whether discovered prior to or after the Closing and regardless of whether the Closing occurs.

“Indenture” means that certain indenture dated February 6, 2003 by and among the Partnership, Star Gas Finance Company and Union Bank of California, N.A., as Trustee.

“Intellectual Property” means patents, trademarks, service marks, trade names, service names, logos, marks, designs, copyrights and similar rights, and all registrations, applications, licenses and rights with respect to any of the foregoing.

“IRS” means the Internal Revenue Service.

“Jefferies” shall mean Jefferies & Company, Inc.

“Junior Subordinated Units” mean the units representing junior subordinated limited partnership interests in the Partnership and having the rights and obligations specified with respect to the Junior Subordinated Units in the Original Partnership Agreement, together with associated rights to purchase Class A Common Units of the Partnership pursuant to the Rights Agreement.

“knowledge of the Partnership Parties” means all facts and information that are either (a) within the actual Knowledge of Joseph P. Cavanaugh, Dan Donovan, Richard Ambury, Steve Goldman or Bill Olivier, or (b) that should have been known to such individuals in the exercise of reasonable care in the performance of the duties of their respective offices and (i) in the case of environmental matters, the actual knowledge of Dereck Cygan, (ii) in the case of employment matters, the actual knowledge of Jack Magruder, and in the case of tax matters, the actual knowledge of Jim Ferrara.

“Lock-up Agreement” means that certain letter agreement of even date herewith by and among the Consenting Noteholders, the Partnership and Star Gas Finance Company to effect the Senior Notes Exchange Offer.

“New General Partner Units” mean the units representing the general partnership interest in the Partnership and having the rights and obligations specified with respect to the New General Partner Units in the New Partnership Agreement.

“NYSE” means the New York Stock Exchange.

“Organization State” means, as applied to (i) any corporation, its state or other jurisdiction of incorporation, (ii) any limited liability company or limited partnership, the state or other jurisdiction under whose laws it is formed, organized and existing in that legal form, and (iii) any other entity, the state or other jurisdiction whose laws govern that entity’s internal affairs.

“Materials of Environmental Concern” means, to the extent regulated under any Environmental Laws, any petroleum or fraction thereof, petroleum product, petroleum by-product, fuel oil, waste oil, explosive, reactive material, ignitable material, corrosive material, hazardous chemical, hazardous waste, hazardous substance, extremely hazardous substance, toxic substance, toxic chemical, radioactive material, medical waste, biomedical waste, infectious material, pollutant, toxic pollutant, herbicide, fungicide, rodenticide, insecticide, contaminant or pesticide and including, but not limited to, any other element, compound, mixture, solution or substance which poses a present or potential hazard to human health or the Environment.

“Partnership Assets” means all assets and properties of every kind, character and description, whether tangible, intangible, real, personal or mixed, which are owned, used or held for use by the Partnership Entities as of the date hereof.

“Partnership Business” means all business activities of the Partnership Entities as conducted on the date hereof.

“Partnership Facilities” means the facilities of the Partnership Entities located on any real property currently or formerly owned and/or operated and/or leased by the Partnership Entities or any Predecessor, and all improvements thereon.

“Partnership Parties” mean the Partnership and the Partnership GP.

“Person” or “person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, enterprise, unincorporated organization, or Governmental Authority.

“Permitted Encumbrances” with respect to a party, means (a) the Encumbrances set forth in the Schedules to this Agreement, and specifically identified as such, (b) the Encumbrances permitted to be incurred under the Credit Facility as in effect on the date hereof (c) liens for Taxes not yet due and payable or the validity of which is being contested in good faith by appropriate legal proceedings and for which adequate reserves have been set aside, (d) statutory liens (including materialmen’s, mechanic’s, repairmen’s, landlord’s and other similar liens) arising in connection with the ordinary course of business securing payments not yet due and payable or, if due and payable, the validity of which is being contested in good faith by appropriate legal proceedings and for which adequate reserves have been set aside, (e) liens of landlords under lease agreements with respect to property located on the leased premises, and (f) such imperfections or irregularities of title, if any, as (i) are not substantial in character, amount or extent and do not materially detract from the value of the property subject thereto, (ii) do not materially interfere with either the present or intended use of such property and (iii) do not,

individually or in the aggregate, materially interfere with the conduct of the business of such party.

“Predecessor” means any Person which was merged into any of the Partnership Entities or which transferred all or substantially all of its assets to any of the Partnership Entities.

“Proceeding” means any action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit or proceeding.

“Release” means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, ejecting, escaping, leaching, disposing, seeping, infiltrating, draining or dumping, or as otherwise defined under Environmental Laws. As applicable, this term shall be interpreted to include the present, past and future tense, as appropriate.

“reasonable efforts or reasonable best efforts” means a party’s best efforts in accordance with reasonable commercial practice and without the incurrence of unreasonable expense.

“Rights” means the rights to subscribe to purchase Common Units issued by the Partnership pursuant to the Rights Offering.

“Rights Agreement” means that certain Unit Purchase Rights Agreement dated as of April 17, 2001 by and between the Partnership and American Stock Transfer and Trust Company.

“Rights Agreement Amendment” means that certain amendment to the Rights Agreement executed concurrently herewith in order that the Rights shall not be exercisable as a result of the Transaction contemplated hereby.

“Securities Act” means the Securities Act of 1933, as amended.

“Senior Lender” means J.P. Morgan Chase Bank, N.A.

“Senior Notes” means the 10.25% Senior Notes due 2013.

“Senior Subordinated Units” mean the units representing Senior Subordinated limited partnership interests in the Partnership and having the rights and obligations specified with respect to the Senior Subordinated Units in the Original Partnership Agreement, together with associated rights to purchase Class A Common Units of the Partnership pursuant to the Rights Agreement.

“Subsidiary” means , with respect to any Person, each entity as to which such Person (either alone or through or together with any other Subsidiary) (i) owns beneficially or of record or has the power to vote or control, 50% or more of the voting securities of such entity or of any class of equity interests of such entity the holders of which are ordinarily entitled to vote for the election of the members of the board of directors or other persons performing similar functions, (ii) in the case of a partnership, serves as a general partner, (iii) in the case of a limited liability company, serves as a managing member or owns a majority of the equity interests or (iv)

otherwise has the ability to elect a majority of the directors, trustees or managing members thereof.

“Taxes” means all taxes, charges, fees, duties, levies or other assessments, including, without limitation, income, gross receipts, net proceeds, ad valorem, turnover, real and personal property (tangible and intangible), sales, use, franchise, excise, value added, license, payroll, unemployment, environmental, customs duties, capital stock, disability, stamp, leasing, lease, user, transfer, fuel, excess profits, occupational and interest equalization, windfall profits, severance and employees’ income withholding and Social Security taxes imposed by the United States or any foreign country or by any state, municipality, subdivision or instrumentality of the United States or of any foreign country or by any other tax authority, including all applicable penalties and interest, and includes any interest, penalties or additions to tax attributable to such taxes.

“Tax Return” means any return or report, including any related or supporting information, with respect to Taxes.

“UBTI” means unrelated business taxable income within the meaning of Section 512 of the Code.

“Unsubscribed Units” shall mean the number of Common Units for which the holders of rights shall not have subscribed during the Exercise Period.

11.2 Certain Additional Defined Terms. In addition to such terms as are defined in the opening paragraph of and the recitals to this Agreement and in Section 11.1, the following terms are used in this Agreement as defined in the Sections set forth opposite such terms:

<u>Defined Term</u>	<u>Section Reference</u>
Acquisition Agreement	5.11(d)
CERCLA	11.1
Closing	ARTICLE 2
Closing Date	ARTICLE 2
Confidentiality Agreement	10.2
Covered Parties	5.17
Debt Amendment Documents	5.7
Debt Amendments	1.3(a)
D&O Insurance	5.17
Exclusivity Period	5.11
Financial Statements	3.9(a)
Governmental Approval	3.6
Kestrel	Preamble
Kestrel Entities	Preamble
Kestrel Heat	Preamble
Indemnified Parties	9.2(a)
Interim Period	5.1
M2	Preamble
Material Contracts	3.27

Multiemployer Plan	3.23(c)
New Partnership Agreement	1.1
Original Partnership Agreement	3.2(a)
Partnership	Preamble
Partnership Consents	3.21
Partnership Entities	Preamble
Partnership GP	Preamble
Partnership Material Adverse Effect	3.10
Partnership Plans	3.23(a)
Partnership Transaction	5.11
PBGC	3.23(d)
Proxy Statement	5.6(b)
Purchase Price	1.2
RCRA	3.17(a)
Registration Statement	5.9
Repayment Undertaking	9.2(b)
Rights	1.3(b)
Rights Offering	1.3(b)
Rights Offering Documents	5.8
SEC	3.8
SEC Reports	3.8
Securities Act	3.8
Senior Notes Exchange Offer	1.3
Small Claim	9.2(i)
Special Meeting	5.6
Successor General Partner	1.3(a)
Superior Proposal	5.11(c)
Survival Date	9.1
Survival Date	9.1
Termination Fee	5.4(b)
Transaction	1.3(a)
Transaction Documents	3.3
Units	1.1
USEPA	11.1

IN WITNESS WHEREOF, the parties have executed this Agreement, or caused this Agreement to be executed by their duly authorized representatives, all as of the day and year first above written.

Address:
2187 Atlantic Street
Stamford, CT 06902
Attention: Joe Cavanaugh
Fax: (203) 328-7393

with a copy to:

Phillips Nizer LLP
666 Fifth Avenue
28th Floor
New York, NY 10103
Attention: Alan Shapiro, Esq.
Fax: (212) 262-5152

Address:
2 Count Rumford Lane
Huntington, NY 11743
Attention: Paul A. Vermylen, Jr.
Fax: (631) 614-4238

with a copy to:
Thompson & Knight LLP
Suite 3300
Dallas, Texas 75201
Attention: Jeffrey A. Zlotky, Esq.
Fax: (214) 969-1751

THE PARTNERSHIP/PARTNERSHIP GP:

STAR GAS PARTNERS, L.P.

By: STAR GAS LLC, its general partner

By: _____
Name: _____
Title: _____

STAR GAS LLC

By: _____
Name: _____
Title: _____

KESTREL/BUYERS:

KESTREL ENERGY PARTNERS, LLC

By: _____
Paul A. Vermylen, Jr., President

KESTREL HEAT, LLC

By: _____
Paul A. Vermylen, Jr., President

KM2, LLC

By: _____
Paul A. Vermylen, Jr., President

EXHIBIT A
(New Partnership Agreement)

EXHIBIT B
(Credit Facility Amendments)

EXHIBIT 6.1(c)
(Opinion of Counsel to Buyers)

Matters to be Covered in Opinion of Counsel to Buyers

- due organization and valid existence of Kestrel Entities under the laws of the Organization State, and corporate/limited liability power to consummate the purchase of the Units pursuant to the Agreement - due authorization, execution and delivery of agreements - agreements are legal, valid and binding upon Buyers
- agreements and transaction will not conflict with or violate partnership agreement or applicable law or breach, violate or cause default under material contracts, judgments, orders etc., or result in creation of material lien upon properties
- any required consents, approvals, filings etc. required under applicable law have been obtained
- confirmation of no material adverse litigation and proceedings

EXHIBIT 7.1(c)
(Opinion of Counsel to the Partnership)

Matters to be Covered in Opinion of Counsel to the Partnership

- due incorporation, valid existence and good standing of the Partnership and significant subsidiaries under the laws of the Organization State, and partnership/limited liability company/corporate power to own, lease and operate properties and to carry on business as presently conducted - confirmation of outstanding Capital Stock of the Partnership Entities - issuance of Units duly authorized, and Units are validly issued, fully paid and nonassessable - issuance of the Units is not subject to any preemptive right under Applicable Law or the governing instruments of the Partnership - due authorization, execution and delivery of agreements - agreements are legal, valid and binding upon the Partnership and Partnership GP
- agreements and transaction will not conflict with or violate governing instruments or Applicable Law or breach, violate or cause default under material contracts, judgments, orders etc., or result in creation of material lien upon properties
- any required consents, approvals (including approvals by limited partners of the Partnership), filings etc. required under Applicable Law have been obtained
- confirmation of no material adverse litigation and proceedings

SECOND
AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
STAR GAS PARTNERS, L.P.

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SECOND AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP OF
STAR GAS PARTNERS, L.P.

THIS SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF STAR GAS PARTNERS, L.P. ("Second Amended and Restated Agreement") dated as of _____, 2006 ("Effective Date"), is entered into by and among STAR GAS LLC, a Delaware limited liability company (the "Withdrawing General Partner"), KESTREL HEAT LLC, a Delaware limited liability company (sometimes referred to herein as, the "Successor General Partner" or the "General Partner"), and those Persons who are or become Partners in the Partnership or parties hereto as provided herein In consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:

RECITALS:

WHEREAS, Star Gas Corporation, a Delaware corporation and the initial general partner of the Partnership (the "Initial General Partner"), and certain other parties organized the Partnership as a Delaware limited partnership pursuant to an Agreement of Limited Partnership dated as of December 20, 1995 (the "Original Agreement");

WHEREAS, the Withdrawing General Partner and certain other parties entered into an Amended and Restated Agreement of Limited Partnership, dated as of March 26, 1999 (the "First Amended and Restated Agreement");

WHEREAS, the First Amended and Restated Agreement was previously amended by Amendment No. 1, dated as of April 17, 2001, Amendment No. 2 dated as of July 25, 2003 and Amendment No. 3 dated as of November 29, 2004;

WHEREAS, the Partnership has entered into that certain unit purchase agreement dated as of _____ 2005 by and among the Partnership, Star Gas LLC, Kestrel Energy Partners, LLC, Kestrel Heat LLC ("Kestrel Heat") and KM2, LLC ("M2") (the "Transaction Agreement"), providing for, among other things, (i) the purchase and sale of newly issued Common Units and General Partner Units, (ii) the withdrawal of the Withdrawing General Partner and the admission of the Successor General Partner as the general partner of the Partnership and (iii) the execution of this Second Amended and Restated Agreement;

WHEREAS, in order to effect the transactions contemplated by the Transaction Agreement, it is necessary to amend this Agreement as provided herein;

WHEREAS, the Transaction Agreement and the transactions contemplated thereby have been (i) approved by the Board of Directors of the Withdrawing General Partner, and (ii) submitted to, and approved by the requisite vote of, the Limited Partners; and

WHEREAS, the General Partner has the authority to adopt certain amendments to this Agreement without the approval of any Limited Partner or Assignee to reflect, among other things: (i) subject to the terms of Section 4.4, any change that is necessary or desirable in connection with the authorization for issuance of any class or series of Partnership Securities

pursuant to Section 4.4 and (ii) a change that, in the sole discretion of the General Partner, does not adversely affect the Limited Partners in any material respect.

NOW, THEREFORE, the First Amended and Restated Agreement is hereby amended and, as so amended, is restated in its entirety as follows:

ARTICLE I

ORGANIZATIONAL MATTERS

Section 1.1 *Formation and Continuation.*

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

Section 1.2 *Name.*

The name of the Partnership is "Star Gas Partners, L.P." The Partnership's business may be conducted under any other name or names deemed necessary or appropriate by the General Partner, including the name of the General Partner. The words "Limited Partnership," "L.P.," "Ltd." or similar words or letters shall be included in the Partnership's name where necessary for the purpose of complying with the laws of any jurisdiction that so requires. The General Partner in its sole discretion may change the name of the Partnership at any time and from time to time and shall notify the Limited Partners of such change in the next regular communication to the Limited Partners.

Section 1.3 *Registered Office; Principal Office.*

Unless and until changed by the General Partner, the registered office of the Partnership in the State of Delaware shall be located at 615 South DuPont Highway, Dover, DE 19901, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office shall be The Prentice-Hall Corporation System, Inc. The principal office of the Partnership shall be located at, and the address of the General Partner shall be, 2187 Atlantic Street, Stamford, CT 06902, or such other place as the General Partner may from time to time designate by notice to the Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner deems necessary or appropriate.

(a) Each Limited Partner and each Assignee hereby constitutes and appoints each of the General Partner and, if a Liquidator shall have been selected pursuant to Section 14.3, the Liquidator, severally (and any successor to either thereof by merger, transfer, assignment, election or otherwise) and each of their authorized officers and attorneys-in-fact, with full power of substitution, as his true and lawful agent and attorney-in-fact, with full power and authority in his name, place and stead, to:

(i) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (A) all certificates, documents and other instruments (including this Agreement and the Certificate of Limited Partnership and all amendments or restatements thereof) that the General Partner or the Liquidator deems necessary or appropriate to form, qualify or continue the existence or qualification of the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware and in all other jurisdictions in which the Partnership may conduct business or own property; (B) all certificates, documents and other instruments that the General Partner or the Liquidator deems necessary or appropriate to reflect, in accordance with its terms, any amendment, change, modification or restatement of this Agreement; (C) all certificates, documents and other instruments (including conveyances and a certificate of cancellation) that the General Partner or the Liquidator deems necessary or appropriate to reflect the dissolution and liquidation of the Partnership pursuant to the terms of this Agreement; (D) all certificates, documents and other instruments relating to the admission, withdrawal, removal or substitution of any Partner pursuant to, or other events described in, Article XI, XII, XIII or XIV; (E) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges of any class or series of Partnership Securities issued pursuant to Section 4.4; and (F) all certificates, documents and other instruments (including agreements and a certificate of merger) relating to a merger or consolidation of the Partnership pursuant to Article XVI; and

(ii) execute, swear to, acknowledge, deliver, file and record all ballots, consents, approvals, waivers, certificates, documents and other instruments necessary or appropriate, in the sole discretion of the General Partner or the Liquidator, to make, evidence, give, confirm or ratify any vote, consent, approval, agreement or other action that is made or given by the Partners hereunder or is consistent with the terms of this Agreement or is necessary or appropriate, in the sole discretion of the General Partner or the Liquidator, to effectuate the terms or intent of this Agreement; provided, that when required by Section 15.3 or any other provision of this Agreement that establishes a percentage of the Limited Partners or of the Limited Partners of any class or series required to take any action, the General Partner or the Liquidator may exercise the power of attorney made in this Section 1.4(a)(ii) only after the necessary vote, consent or approval of the Limited Partners or of the Limited Partners of such class or series, as applicable.

Nothing contained in this Section 1.4(a) shall be construed as authorizing the General Partner to amend this Agreement except in accordance with Article XV or as may be otherwise expressly provided for in this Agreement.

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

Section 1.5 *Term.*

The Partnership commenced upon the filing of the Certificate of Limited Partnership in accordance with the Delaware Act and shall continue in existence until the close of Partnership business on December 31, 2085, or until the earlier dissolution of the Partnership in accordance with the provisions of Article XIV.

Section 1.6 *Possible Restrictions on Transfer.*

The General Partner may impose restrictions on the transfer of Partnership Interests if a subsequent Opinion of Counsel determines that such restrictions are necessary to avoid a significant risk of the Partnership's becoming taxable as a corporation or otherwise as an entity for federal income tax purposes. The restrictions may be imposed by making such amendments to this Agreement as the General Partner in its sole discretion may determine to be necessary or appropriate to impose such restrictions; *provided, however*, that any amendment that the General Partner believes, in the exercise of its reasonable discretion, could result in the delisting or suspension of trading of any class of Units on any National Securities Exchange on which such class of Units is then traded must be approved by the holders of at least a majority of the Outstanding Units of such class.

ARTICLE II

DEFINITIONS

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

"*Acquisition*" means any transaction in which any Group Member acquires (through an asset acquisition, merger, stock acquisition or other form of investment) control over all or a

portion of the assets, properties or business of another Person for the purpose of increasing the operating capacity of the Partnership Group from the operating capacity of the Partnership Group existing immediately prior to such transaction.

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

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

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

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

“*Additional Limited Partner*” means a Person admitted to the Partnership as a Limited Partner pursuant to Section 12.4 and who is shown as such on the books and records of the Partnership.

“*Adjusted Capital Account*” means the Capital Account maintained for each Partner as of the end of each fiscal year of the Partnership, (a) increased by any amounts that such Partner is obligated to restore under the standards set by Treasury Regulation Section 1.704-1(b)(2)(ii)(c) (or is deemed obligated to restore under Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5)) and (b) decreased by (i) the amount or all losses and deductions that, as of the end of such fiscal year, are reasonably expected to be allocated to such Partner in subsequent years under Sections 704(e)(2) and 706(d) of the Code and Treasury Regulation Section 1.751-1(b)(2)(ii), and (ii) the amount of all distributions that, as of the end of such fiscal year, are

reasonably expected to be made to such Partner in subsequent years in accordance with the terms of this Agreement or otherwise to the extent they exceed offsetting increases to such Partner's Capital Account that are reasonably expected to occur during (or prior to) the year in which such distributions are reasonably expected to be made (other than increases as a result of a minimum gain chargeback pursuant to Section 5.1(d)(i) or 5.1(d)(ii)). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith. The "Adjusted Capital Account" in respect of Common Unit, General Partner Unit or any other specified interest in the Partnership shall be the amount which such Adjusted Capital Account would be if such Common Unit, a General Partner Unit or other interest in the Partnership were the only interest in the Partnership held by a Partner.

"Adjusted Operating Surplus" for any period means Operating Surplus generated with respect to such period as adjusted to (a) decrease Operating Surplus by (i) any net increase in Working Capital Borrowings with respect to such period and (ii) any net reduction in cash reserves for Operating Expenditures with respect to such period not relating to an Operating Expenditure made with respect to such period, and (b) increase Operating Surplus by (i) any net decrease in Working Capital Borrowings with respect to such period and (ii) any net increase in cash reserves for Operating Expenditures with respect to such period required by any debt instrument for the repayment of principal, interest or premium. Adjusted Operating Surplus does not include that portion of Operating Surplus included in clause (a)(i) of the definition of Operating Surplus.

"Adjusted Property" means any property the Carrying Value of which has been adjusted pursuant to Section 4.8(d)(i) or 4.8(d)(ii).

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the Person in question. As used herein, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

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

"Agreed Allocation" means any allocation, other than a Required Allocation, of an item of income, gain, loss or deduction pursuant to the provisions of Section 5.1, including, without limitation, a Curative Allocation (if appropriate to the context in which the term "Agreed Allocation" is used).

"Agreed Value" of any Contributed Property means the fair market value of such property or other consideration at the time of contribution as determined by the General Partner using such reasonable method of valuation as it may adopt. The General Partner shall, in its sole discretion, use such method as it deems reasonable and appropriate to allocate the aggregate Agreed Value of Contributed Properties contributed to the Partnership in a single or integrated transaction among each separate property on a basis proportional to the fair market value of each Contributed Property.

“*Agreement*” means this Second Amended and Restated Agreement of Limited Partnership of Star Gas Partners, L.P., as it may be amended, supplemented or restated from time to time.

“*Assignee*” means a Non-citizen Assignee or a Person to whom one or more Units representing a Limited Partner Interest have been transferred in a manner permitted under this Agreement and who has executed and delivered a Transfer Application as required by this Agreement, but who has not become a Substituted Limited Partner.

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

“*Available Cash*,” as to any Quarter ending before the Liquidation Date, means

(a) the sum of (i) all cash and cash equivalents of the Partnership Group on hand at the end of such Quarter and (ii) all additional cash and cash equivalents of the Partnership Group on hand on the date of determination of Available Cash with respect to such Quarter resulting from Working Capital Borrowings subsequent to the end of such Quarter, less

(b) the amount of cash reserves that is necessary or appropriate in the reasonable discretion of the General Partner to (i) provide for the proper conduct of the business of the Partnership Group (including reserves for future capital expenditures) subsequent to such Quarter, (ii) provide funds for distributions under Sections 5.4 or 5.5 in respect of any one or more of the next four Quarters, or (iii) comply with applicable law or any debt instrument or other agreement or obligation to which any member of the Partnership Group is a party or its assets are subject; *provided, however*, that the General Partner may not establish cash reserves for distributions pursuant to Section 5.4 unless the General Partner has determined that in its judgment the establishment of reserves will not prevent the Partnership from distributing the Minimum Quarterly Distribution on all Common Units and any Common Unit Arrearages thereon with respect to the next four Quarters.

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

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

“*Book-Down Event*” means an event which triggers a negative adjustment to the Capital Accounts of the Partners pursuant to Section 4.8(d).

“*Book-Tax Disparity*” means with respect to any item of Contributed Property or Adjusted Property, as of the date of any determination, the difference between the Carrying

Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for federal income tax purposes as of such date. A Partner's share of the Partnership's Book-Tax Disparities in all of its Contributed Property and Adjusted Property will be reflected by the difference between such Partner's Capital Account balance as maintained pursuant to Section 4.8 and the hypothetical balance of such Partner's Capital Account computed as if it had been maintained strictly in accordance with federal income tax accounting principles.

"Book-Up Event" means an event which triggers a positive adjustment to the Capital Accounts of the Partners pursuant to Section 4.8(d).

"Business Day" means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States or the states of New York or Connecticut shall not be regarded as a Business Day.

"Capital Account" means the capital account maintained for a Partner pursuant to Section 4.8. The "Capital Account" in respect of a Common Unit, a General Partner Unit or any other specified interest in the Partnership shall be the amount which such Capital Account would be if such Common Unit, General Partner Unit or other interest in the Partnership were the only interest in the Partnership held by a Partner.

"Capital Contribution" means any cash, cash equivalents or the Net Agreed Value of Contributed Property that a Partner contributes or has contributed to the Partnership.

"Capital Improvements" means (a) additions or improvements to the capital assets owned by any Group Member or (b) the acquisition of existing or the construction of new capital assets (including retail distribution outlets, petroleum product tanks, propane tanks, pipeline systems, storage facilities and related assets), made to increase the operating capacity of the Partnership Group from the operating capacity of the Partnership Group existing immediately prior to such addition, improvement, acquisition or construction.

"Capital Surplus" has the following meaning: all Available Cash distributed by the Partnership from any source will be treated as distributed from Operating Surplus until the sum of all Available Cash distributed since the commencement of the Partnership equals the Operating Surplus as of the end of the Quarter prior to such distribution. Any excess Available Cash will be deemed to be Capital Surplus.

"Carrying Value" means (a) with respect to a Contributed Property, the Agreed Value of such property reduced (but not below zero) by all depreciation, amortization and cost recovery deductions charged to the Partners' and Assignees' Capital Accounts in respect of such Contributed Property, and (b) with respect to any other Partnership property, the adjusted basis of such property for federal income tax purposes, all as of the time of determination. The Carrying Value of any property shall be adjusted from time to time in accordance with Sections 4.8(d)(i) and 4.8(d)(ii) and to reflect changes, additions or other adjustments to the Carrying Value for dispositions and acquisitions of Partnership properties, as deemed appropriate by the General Partner.

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

“*Certificate*” means a certificate, (a) substantially in the form of Exhibit A hereto with respect to Common Units (b) issued in global form in accordance with the rules and regulations of the Depository, or (c) in such other form as may be adopted by the General Partner in its sole discretion, issued by the Partnership evidencing ownership of one or more Common Units, or a certificate in such form as may be adopted by the General Partner in its sole discretion, issued by the Partnership evidencing ownership of one or more other Units.

“*Certificate of Limited Partnership*” means the Certificate of Limited Partnership filed with the Secretary of State of the State of Delaware as referenced in Section 6.2, as such Certificate of Limited Partnership may be amended, supplemented or restated from time to time.

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

“*Claim*” has the meaning assigned to such term in Section 6.13(c).

“*Closing Price*” for any day means the last sale price on such day, regular way, or in case no such sale takes place on such day, the average of the closing bid and asked prices on such day, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the principal National Securities Exchange (other than the Nasdaq Stock Market) on which the Units of such class are listed or admitted to trading or, if the Units of such class are not listed or admitted to trading on any National Securities Exchange (other than the Nasdaq Stock Market), the last quoted price on such day or, if not so quoted, the average of the high bid and low asked prices on such day in the over-the-counter market, as reported by the Nasdaq Stock Market or such other system then in use, or, if on any such day the Units of such class are not quoted by any such organization, the average of the closing bid and asked prices on such day as furnished by a professional market maker making a market in the Units of such class selected by the Board of Directors of the General Partner, or if on any such day no market maker is making a market in the Units of such class, the fair value of such Units on such day as determined reasonably and in good faith by the Board of Directors of the General Partner.

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

“*Combined Interest*” has the meaning assigned to such term in Section 13.3(a).

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

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

“*Common Unit Arrearage*” means, with respect to any Common Unit, whenever issued, and as to any Quarter beginning after September 30, 2008, the excess, if any, of (a) the Minimum Quarterly Distribution then in effect with respect to such Common Unit over (b) the sum of all Available Cash distributed with respect to such Common Unit in respect of such Quarter pursuant to Section 5.4(i).

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

“*Contributed Property*” means each property or other asset, in such form as may be permitted by the Delaware Act, but excluding cash, contributed to the Partnership. Once the Carrying Value of a Contributed Property is adjusted pursuant to Section 4.8(d), such property shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.

“*Cumulative Common Unit Arrearage*” means, with respect to any Common Unit, whenever issued, and as of the end of any Quarter, the excess, if any, of (a) the sum resulting from adding together the Common Unit Arrearage as to a Common Unit for each of the Quarters beginning after September 30, 2008 and ending on or before the last day of such Quarter over (b) the sum of any distributions theretofore made pursuant to Section 5.4(ii) with respect to such Common Unit (including any distributions to be made in respect of the last of such Quarters).

“*Curative Allocation*” means any allocation of an item of income, gain, deduction, loss or credit pursuant to the provisions of Section 5.1(d)(xi).

“*Current Market Price*” as of any date of any class of Units listed or admitted to trading on any National Securities Exchange means the average of the daily Closing Prices per Unit of such class for the 20 consecutive Trading Days immediately prior to such date.

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

“*Departing Partner*” means a former General Partner from and after the effective date of any withdrawal or removal of such former General Partner pursuant to Section 13.1 or 13.2, including the Initial General Partner from and after the Initial Closing Date and the Withdrawing General Partner from and after the Effective Date.

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

“*Distribution Levels*” has the meaning assigned to such term in Section 5.8(a).

“*Distribution Ratio*” has the meaning assigned to such term in Section 5.8(b).

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

“*Effective Date*” has the meaning assigned to such term in the introductory paragraph.

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

“*Event of Withdrawal*” has the meaning assigned to such term in Section 13.1(a).

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

“*First Liquidation Target Amount*” has the meaning assigned to such term in Section 5.1 (c)(i)(D).

“*First Target Distribution*” means \$.1125 per Unit, subject to adjustment in accordance with Sections 5.6 and 5.7.

“*General Partner*” means Kestrel Heat LLC, a Delaware limited liability company, and its successor as general partner of the Partnership.

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

“*General Partner Unit*” means a Unit representing a fractional part of the General Partner Interest and having the rights and obligations specified with respect to the General Partner Interest.

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

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

“*Holder*” has the meaning assigned to such term in Section 6.13(a).

“*includes*” means includes, without limitation, and “*including*” means including, without limitation.

“*Indemnified Persons*” has the meaning assigned to such term in Section 6.13(c).

“*Indemnitee*” means (a) the General Partner, any Departing Partner, any Person who is or was an Affiliate of the General Partner or any Departing Partner, (b) any Person who is or was an officer, director, partner, agent or trustee of the General Partner or any Departing Partner or any such Affiliate, (c) any Person the General Partner designates as an Indemnitee for purposes of this Agreement or (d) any Person who is or was serving at the request of the General Partner or any Departing Partner or any such Affiliate as a director, officer, employee, partner, agent, fiduciary or trustee of another Person; provided, that a Person shall not be an Indemnitee pursuant to this clause (d) by reason of providing, on a fee-for-services basis, trustee, fiduciary or custodial services.

“*Initial Closing Date*” means December 20, 1995.

“*Initial Common Units*” means the Common Units sold in the Initial Offering.

“*Initial General Partner*” means Star Gas Corporation, a Delaware corporation.

“*Initial Limited Partners*” means Star Gas, Silgas, Inc. and Silgas of Illinois, Inc. and the Initial Underwriters, in each case admitted to the Partnership in accordance with Section 12.1.

“*Initial Offering*” means the initial offering and sale of Common Units to the public on December 20, 1995, as described in the Initial Registration Statement.

“*Initial Overallotment Closing Date*” means January 18, 1996.

“*Initial Registration Statement*” means the Registration Statement on Form S-1 (Registration No. 33-98490), as amended or supplemented from time to time, filed by the Partnership with the Commission under the Securities Act to register the offering and sale of the Initial Common Units in the Initial Offering.

“*Initial Underwriters*” means each person named as an underwriter in the Initial Offering.

“*Initial Unit Price*” means (a) with respect to each Common Unit and General Partner Unit, \$2.00 or (b) with respect to any other class or series of Units, the price per Unit at which such class or series of Units is initially sold by the Partnership, as determined by the General Partner, in each case adjusted as the General Partner determines to be appropriate to give effect to any distribution, subdivision or combination of Units.

“*Interim Capital Transactions*” means the following transactions if they occur prior to the Liquidation Date: (a) borrowings refinancings or refundings of indebtedness and sales of debt

securities (other than Working Capital Borrowings and other than for items purchased on open account in the ordinary course of business) by any Group Member; (b) sales of equity interests by any Group Member; and (c) sales or other voluntary or involuntary dispositions of any assets of any Group Member other than (x) sales or other dispositions of inventory in the ordinary course of business, (y) sales or other dispositions of other current assets, including receivables and accounts in the ordinary course of business, and (z) sales or other dispositions of assets as part of normal retirements or replacements.

“*Junior Subordinated Unit*” means a Junior Subordinated Unit of the Partnership Outstanding immediately prior to the Effective Date.

“*Kestrel Heat*” has the meaning assigned to such term in the Recitals to this Agreement.

“*Limited Partner*” means, unless the context otherwise requires, (a) the Organizational Limited Partner, each Initial Limited Partner, each Substituted Limited Partner, each Additional Limited Partner and any Departing Partner upon the change of its status from General Partner to Limited Partner pursuant to Section 13.3; and (b) solely for purposes of Articles IV, V, VI and IX and Sections 14.3 and 14.4, each Assignee.

“*Limited Partner Interest*” means the ownership interest of a Limited Partner in the Partnership which is evidenced by Common Units or other Partnership Securities and includes any and all benefits to which a Limited Partner is entitled as provided in this Agreement, together with all obligations of a Limited Partner to comply with the terms and provisions of this Agreement.

“*Liquidation Date*” means (a) in the case of an event giving rise to the dissolution of the Partnership of the type described in clauses (a) and (b) of the first sentence of Section 14.2, the date on which the applicable time period during which the holders of Outstanding Units have the right to elect to continue the business of the Partnership has expired without such an election being made, and (b) in the case of any other event giving rise to the dissolution of the Partnership, the date on which such event occurs.

“*Liquidator*” means the General Partner or other Person approved pursuant to Section 14.3 who performs the functions described therein.

“*M2*” has the meaning assigned to such term in the Recitals to this Agreement.

“*Merger Agreement*” has the meaning assigned to such term in Section 16.1.

“*Minimum Quarterly Distribution*” means, (a) for the period from the Effective Date through September 30, 2008, \$0.0 per Unit per Quarter, and (b) for each Quarter thereafter, \$0.0675 per Unit per Quarter, subject to adjustment in accordance with Sections 5.6 and 5.7.

“*National Securities Exchange*” means an exchange registered with the Commission under Section 6(a) of the Exchange Act or the Nasdaq Stock Market or any successor thereto.

“*Net Agreed Value*” means, (a) in the case of any Contributed Property, the Agreed Value of such property reduced by any liabilities either assumed by the Partnership upon such

contribution or to which such property is subject when contributed, and (b) in the case of any property distributed to a Partner or Assignee by the Partnership, the Partnership's Carrying Value of such property (as adjusted pursuant to Section 4.8(d)(ii)) at the time such property is distributed, reduced by any indebtedness either assumed by such Partner or Assignee upon such distribution or to which such property is subject at the time of distribution, in either case, as determined under Section 752 of the Code.

"Net Income" means, for any taxable year, the excess, if any, of the Partnership's items of income and gain (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year over the Partnership's items of loss and deduction (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year. The items included in the calculation of Net Income shall be determined in accordance with Section 4.8(b) and shall not include any items specially allocated under Section 5.1(d); provided that the determination of the items that have been specially allocated under Section 5.1(d) shall be made as if Section 5.1(d)(xii) were not in the Agreement.

"Net Loss" means, for any taxable year, the excess, if any, of the Partnership's items of loss and deduction (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year over the Partnership's items of income and gain (other than those items taken into account in the computation of Net Termination Gain or Net Termination Loss) for such taxable year. The items included in the calculation of Net Loss shall be determined in accordance with Section 4.8(b) and shall not include any items specially allocated under Section 5.1(d); provided that the determination of the items that have been specially allocated under Section 5.1(d) shall be made as if Section 5.1(d)(xii) were not in the Agreement.

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

"Net Termination Gain" means, for any taxable year, the sum, if positive, of all items of income, gain, loss or deduction recognized by the Partnership after the Liquidation Date. The items included in the determination of Net Termination Gain shall be determined in accordance with Section 4.8(b) and shall not include any items of income, gain or loss specially allocated under Section 5.1(d).

"Net Termination Loss" means, for any taxable period, the sum, if negative, of all items of income, gain, loss or deduction recognized by the Partnership after the Liquidation Date. The items included in the determination of Net Termination Loss shall be determined in accordance with Section 4.8(b) and shall not include any items of income, gain or loss specially allocated under Section 5.1(d).

"Non-citizen Assignee" means a Person whom the General Partner has determined in its sole discretion does not constitute an Eligible Citizen and as to whose Partnership Interest the General Partner has become the Substituted Limited Partner, pursuant to Section 11.5.

“*Non-competition Agreement*” means that certain non-competition agreement among Irik P. Sevin, the Partnership and a former subsidiary of the Partnership.

“*Nonrecourse Built-in Gain*” means with respect to any Contributed Properties or Adjusted Properties that are subject to a mortgage or pledge securing a Nonrecourse Liability, the amount of any taxable gain that would be allocated to the Partners pursuant to Sections 5.2(b)(i)(A), 5.2(b)(ii)(A) and 5.2(b)(iii) if such properties were disposed of in a taxable transaction in full satisfaction of such liabilities and for no other consideration.

“*Nonrecourse Deductions*” means any and all items of loss, deduction or expenditures (including, without limitation, any expenditure described in Section 705(a)(2)(B) of the Code) that, in accordance with the principles of Treasury Regulation Section 1.704-2(b), are attributable to a Nonrecourse Liability.

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

“*Notice of Election to Purchase*” has the meaning assigned to such term in Section 17.1(b).

“*Old Subordinated Units*” means the Subordinated Units issued to the Initial General Partner on the Initial Closing Date.

“*Operating Expenditures*” means all Partnership Group expenditures, including taxes, reimbursements of the General Partner, debt service payments, capital expenditures and all non-Pro Rata purchases of Outstanding Units (other than those made with the Proceeds of Interim Capital Transactions) subject to the following:

(a) Payments (including prepayments) of principal and premium on a debt shall not be an Operating Expenditure if the payment is (i) required in connection with the sale or other disposition of assets or (ii) made in connection with the refinancing or refunding of indebtedness with the proceeds from new indebtedness or from the sale of equity interests. For purposes of the foregoing, at the election and in the reasonable discretion of the General Partner, any payment of principal or premium shall be deemed to be refunded or refinanced by any indebtedness incurred or to be incurred by the Partnership Group within 180 days before or after such payment to the extent of the principal amount of such indebtedness.

(b) Operating Expenditures shall not include (i) capital expenditures made for Acquisitions or for Capital Improvements, (ii) payment of transaction expenses relating to Interim Capital Transactions, or (iii) distributions to Partners. Where capital expenditures are made in part for Acquisitions or Capital Improvements and in part for other purposes, the General Partner’s good faith allocation between the amounts paid for each shall be conclusive.

“*Operating Partnership*” means Star Gas Propane, L.P., a Delaware limited partnership, and any successors thereto.

“*Operating Surplus*,” as to any period ending before the Liquidation Date, means

(a) the sum of (i) \$22,000,000 plus all cash of the Partnership Group on hand on the Effective Date, (ii) all the cash receipts of the Partnership Group for the period beginning on the Effective Date and ending with the last day of such period, other than cash receipts from Interim Capital Transactions (except to the extent specified in Section 5.5) and (iii) all cash receipts of the Partnership Group after the end of such period but on or before the date of determination of Operating Surplus with respect to such period resulting from Working Capital Borrowings, less

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

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

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

“*Organizational Limited Partner*” means William G. Powers, Jr., in his capacity as the organizational limited partner of the Partnership.

“*Original Agreement*” has the meaning assigned to such term in the Recitals to this Agreement.

“*Outstanding*” means, with respect to Partnership Securities, all Partnership Securities that are issued by the Partnership and reflected as outstanding on the Partnership’s books and records as of the date of determination.

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

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

“*Partner Nonrecourse Deductions*” means any and all items of loss, deduction or expenditure (including, without limitation, any expenditure described in Section 705(a)(2)(B) of the Code) that, in accordance with the principles of Treasury Regulation Section 1.704-2(i), are attributable to a Partner Nonrecourse Debt.

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

“*Partnership*” means Star Gas Partners, L.P., a Delaware limited partnership, and any successors thereto.

“*Partnership Group*” means the Partnership and any Subsidiary of such entity, treated as a single consolidated entity.

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

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

“*Partnership Security*” means any class or series of Unit, any option, right, warrant or appreciation rights relating thereto, or any other type of equity interest that the Partnership may lawfully issue, or any unsecured or secured debt obligation of the Partnership that is convertible into any class or series of equity interests of the Partnership.

“*Percentage Interest*” means as of the date of such determination, (a) as to any Partner or Assignee holding Units, the product of (i) 100% less the percentage applicable to paragraph (b) multiplied by (ii) the quotient of the number of Units held by such Partner or Assignee divided by the total number of all Outstanding Units, and (b) as to the holders of additional Partnership Securities issued by the Partnership in accordance with Section 4.4, the percentage established as a part of such issuance.

“*Person*” means an individual or a corporation, limited liability company, partnership, joint venture, trust, unincorporated organization, association or other entity.

“*Pro Rata*” means (a) when modifying Units or any class thereof, apportioned equally among all designated Units in accordance with their respective Percentage Interests, and (b) when modifying Partners and Assignees or Record Holders, apportioned among all Partners and Assignees or Record Holders in accordance with their respective Percentage Interests.

“*Proxy Statement*” means that certain proxy statement dated _____ sent to Limited Partners in connection with the transactions contemplated by the Transaction Agreement.

“*Purchase Date*” means the date determined by the General Partner as the date for purchase of all Outstanding Units of a certain class (other than Units owned by the General Partner and its Affiliates) pursuant to Article XVII.

“*Quarter*” means, unless the context requires otherwise, a three-month period of time ending on March 31, June 30, September 30, or December 31.

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

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

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

“*Redeemable Units*” means any Partnership Interests for which a redemption notice has been given, and has not been withdrawn, pursuant to Section 11.6.

“*Remaining Net Positive Adjustments*” means as of the end of any taxable period, (i) with respect to the Limited Partners, as a class, the excess of (a) the Net Positive Adjustments of the Limited Partners as of the end of such period over (b) the sum of those Partners’ Share of Additional Book Basis Derivative Items for each prior taxable period, and (ii) with respect to the General Partner, the excess of (a) the Net Positive Adjustments of the General Partner as of the end of such period over (b) the sum of the General Partner’s Share of Additional Book Basis Derivative Items for each prior taxable period.

“*Required Allocations*” means any allocation (or limitation imposed on any allocation) of an item of income, gain, deduction or loss pursuant to (a) Section 5.1(b)(v) or (b) Sections 5.1(d)(i), 5.1(d)(ii), 5.1(d)(iv), 5.1(d)(v), 5.1(d)(vi), 5.1(d)(vii) and 5.1(d)(ix), such allocations (or limitations thereon) being directly or indirectly required by the Treasury Regulations promulgated under Section 704(b) of the Code.

“*Residual Gain*” or “*Residual Loss*” means any item of gain or loss, as the case may be, of the Partnership recognized for federal income tax purposes resulting from a sale, exchange or other disposition of a Contributed Property or Adjusted Property, to the extent such item of gain or loss is not allocated pursuant to Sections 5.2(b)(i)(A) or 5.2(b)(ii)(A), respectively, to eliminate Book-Tax Disparities.

“*Rights Agreement*” has the meaning assigned to such term in Article XIX.

“*Second Amended and Restated Agreement*” has the meaning assigned to such term in the introductory paragraph.

“*Second Liquidation Target Amount*” has the meaning assigned to such term in Section 5.1(c)(i)(F).

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

“*Senior Subordinated Unit*” means the Senior Subordinated Units of the Partnership in this Agreement Outstanding immediately prior to the Effective Date.

“*Share of Additional Book Basis Derivative Items*” means in connection with any allocation of Additional Book Basis Derivative Items for any taxable period, (a) with respect to the Limited Partners, as a class, the amount that bears the same ratio to such Additional Book Basis Derivative Items as the Limited Partners’ Remaining Net Positive Adjustments as of the end of such period bears to the Aggregate Remaining Net Positive Adjustments as of that time, and (b) with respect to the General Partner, the amount that bears the same ratio to such Additional Book Basis Derivative Items as the General Partner’s Remaining Net Positive Adjustments as of the end of such period bears to the Aggregate Remaining Net Positive Adjustments as of that time.

“*Special Approval*” means approval by the Conflicts Committee.

“*Star Gas*” means Star Gas Corporation, a Delaware corporation.

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

“*Substituted Limited Partner*” means a Person who is admitted as a Limited Partner to the Partnership pursuant to Section 12.2 in place of, and with all the rights of, a Limited Partner and who is shown as a Limited Partner on the books and records of the Partnership.

“*Successor General Partner*” has the meaning assigned to such term in the introductory paragraph.

“*Surviving Business Entity*” has the meaning assigned to such term in Section 16.2(b).

“*Termination Capital Transaction*” means a transaction in which Net Termination Gain or Net Termination Loss is recognized.

“*Trading Day*” means a day on which the principal National Securities Exchange on which the Units of any class are listed or admitted to trading is open for the transaction of business or, if Units of a class are not listed or admitted to trading on any National Securities Exchange, a day on which banking institutions in New York City generally are open.

“*Transaction Agreement*” has the meaning set forth in the Recitals to this Agreement.

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

“*Transfer Agent*” means such bank, trust company or other Person (including the General Partner or one of its Affiliates) as shall be appointed from time to time by the Partnership to act as registrar and transfer agent for the Common Units and as may be appointed from time to time by the General Partner to act as registrar and transfer agent for any other Partnership Securities; *provided* that if no Transfer Agent is specifically designated for any such other Partnership Securities, the General Partner shall act in such capacity.

“*Transfer Application*” means an application and agreement for transfer of Units in the form set forth on the back of a Certificate or in a form substantially to the same effect in a separate instrument.

“*Trigger Date*” has the meaning assigned to such term in Section 5.8(a).

“*Unit*” means a Partnership Interest of a Partner or Assignee in the Partnership representing a fractional part of the Partnership Interests of all Partners and Assignees and shall include Common Units and General Partner Units; *provided*, that each Unit at any time Outstanding shall represent the same fractional part of the Partnership Interests of all Partners and Assignees holding Units as each other Unit.

“*Unit Majority*” means, a majority of the Outstanding Common Units.

“*Unrealized Gain*” attributable to any item of Partnership property means, as of any date of determination, the excess, if any, of (a) the fair market value of such property as of such date (as determined under Section 4.8(d)) over (b) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 4.8(d) as of such date).

“*Unrealized Loss*” attributable to any item of Partnership property means, as of any date of determination, the excess, if any, of (a) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 4.8(d) as of such date) over (b) the fair market value of such property as of such date (as determined under Section 4.8(d)).

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

“*Withdrawing General Partner*” has the meaning assigned to such term in the introductory paragraph.

“*Working Capital Borrowings*” means borrowings for working capital purposes or to pay distributions to Partners pursuant to a facility or other arrangement requiring all borrowings thereunder to be reduced to a relatively small amount each year for an economically meaningful period of time. It being the intent hereof, that borrowings which are not intended exclusively for working capital purposes shall not be treated as Working Capital Borrowings.

ARTICLE III

PURPOSE

Section 3.1 *Purpose and Business.*

The purpose and nature of the business to be conducted by the Partnership shall be to (a) engage directly in, or to enter into or form any corporation, partnership, joint venture, limited liability company or other arrangement to engage indirectly in, any business activity that is approved by the General Partner and which lawfully may be conducted by a limited partnership organized pursuant to the Delaware Act and, in connection therewith, to exercise all of the rights and powers conferred upon the Partnership pursuant to the agreements relating to such business activity, and (b) do anything necessary or appropriate to the foregoing. The General Partner has no obligation or duty to the Partnership, the Limited Partners, or the Assignees to propose or approve, and in its sole discretion may decline to propose or approve, the conduct by the Partnership of any business.

Section 3.2 *Powers.*

The Partnership shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described in Section 3.1 and for the protection and benefit of the Partnership.

ARTICLE IV

CONTRIBUTIONS AND UNITS

Section 4.1 *Organization Contributions and Return.*

In connection with the formation of the Partnership under the Delaware Act, the Initial General Partner made an initial Capital Contribution to the Partnership and was admitted as the general partner of the Partnership, and the Organizational Limited Partner made an initial Capital Contribution to the Partnership and was admitted as a limited partner of the Partnership.

Section 4.2 *Contributions by Initial Limited Partners.*

On the Initial Closing Date, the Initial Underwriters contributed cash to the Partnership in exchange for 2,600,000 Common Units. On the Initial Overallotment Closing Date, the Initial Underwriters contributed cash to the Partnership in exchange for 275,000 Common Units. On the Initial Closing Date, the Initial General Partner, Silgas, Inc. and Silgas of Illinois, Inc. contributed their interests in the Operating Partnership to the Partnership in exchange for 2,396,078 Old Subordinated Units. Immediately after these contributions, the interest of the Organizational Limited Partner was terminated and the Organizational Limited Partner ceased to be a Limited Partner.

Section 4.3 *Prior Contributions; General Partner Contributions.*

(a) All Limited Partner Interests that were issued prior to the date hereof and are currently Outstanding shall be continued.

(b) Upon the making of any Capital Contribution to the Partnership by any Person, the General Partner, in its sole discretion, may make an additional Capital Contribution only to the extent necessary such that after taking into account the additional Capital Contribution made by such Person and the General Partner pursuant to this Section 4.3(b) the General Partner will have a Capital Account equal to at least 1.99% of the total of all Capital Accounts.

Section 4.4 *Issuances of Additional Partnership Securities.*

(a) The General Partner is authorized to cause the Partnership to issue additional Partnership Securities for any Partnership purpose at any time and from time to time to such Persons for such consideration and on such terms and conditions as shall be established by the General Partner in its sole discretion, all without the approval of any Limited Partners unless required by the rules of any National Securities Exchange on which the Units or any other Partnership Securities are listed for trading.

(b) Each additional Partnership Security authorized to be issued by the Partnership pursuant to Section 4.4(a) may be issued in one or more classes, or one or more series of any such classes, with such designations, preferences, rights, powers and duties (which may be senior to existing classes and series of Partnership Securities), as shall be fixed by the General Partner in the exercise of its sole discretion, including (i) the right to share Partnership profits and losses or items thereof; (ii) the right to share in Partnership distributions; (iii) the rights upon dissolution and liquidation of the Partnership; (iv) whether, and the terms and conditions upon which, the Partnership may redeem the Partnership Security; (v) whether such Partnership Security is issued with the privilege of conversion and, if so, the terms and conditions of such conversion; (vi) the terms and conditions upon which each Partnership Security will be issued, evidenced by certificates and assigned or transferred; and (vii) the right, if any, of each such Partnership Security to vote on Partnership matters, including matters relating to the relative rights, preferences and privileges of such Partnership Security.

(c) The General Partner is hereby authorized and directed to take all actions that it deems necessary or appropriate in connection with each issuance of Partnership Securities pursuant to this Section 4.4 and to amend this Agreement in any manner that it deems necessary or appropriate to provide for each such issuance, to admit Additional Limited Partners in connection therewith and to specify the relative rights, powers and duties of the holders of the Units or other Partnership Securities being so issued. The General Partner shall do all things necessary to comply with the Delaware Act and is authorized and directed to do all things it deems to be necessary or advisable in connection with any future issuance of Partnership Securities, including compliance with any statute, rule, regulation or guideline of any federal, state or other governmental agency or any National Securities Exchange on which the Units or other Partnership Securities are listed for trading.

(d) Upon the Effective Date, each Outstanding Senior Subordinated Unit and each Outstanding Junior Subordinated Unit shall thereupon and without any further action of the holder of any such Unit or of the Partnership shall be converted into a Common Unit. Upon the Effective Date, the Partnership shall issue to the Successor General Partner 325,579 General Partner Units and the Withdrawing General Partner shall contribute its General Partner Units to the Partnership, which General Partner Units so contributed to the Partnership shall be cancelled and no longer represent a General Partner Interest.

Section 4.5 [Intentionally Omitted].

Section 4.6 *Limited Preemptive Rights.*

No Person shall have any preemptive, preferential or other similar right with respect to the issuance of any Partnership Security, whether unissued, held in the treasury or hereafter created, except that the General Partner shall have the right, which it may from time to time assign in whole or in part to any of its Affiliates, to purchase Partnership Securities from the Partnership whenever, and on the same terms that, the Partnership issues Partnership Securities to Persons other than the General Partner and its Affiliates, to the extent necessary to maintain the Percentage Interests of the General Partner and its Affiliates equal to that which existed immediately prior to the issuance of such Partnership Securities.

Section 4.7 *Splits and Combinations.*

(a) Subject to Sections 4.8(d), 5.6 and 5.7 (dealing with adjustments of distribution levels), the General Partner may make a pro rata distribution of Partnership Securities to all Record Holders or may effect a subdivision or combination of Partnership Securities so long as, after any such event, each Partner shall have the same Percentage Interest in the Partnership as before such event, and any amounts calculated on a per Unit basis are proportionately adjusted retroactive to the beginning of the Partnership.

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

(c) Promptly following any such distribution, subdivision or combination, the General Partner may cause Certificates to be issued to the Record Holders of Units as of the applicable Record Date representing the new number of Units held by such Record Holders, or the General Partner may adopt such other procedures as it may deem appropriate to reflect such changes. If any such combination results in a smaller total number of Units Outstanding, the General Partner shall require, as a condition to the delivery to a Record Holder of such new

Certificate, the surrender of any Certificate held by such Record Holder immediately prior to such Record Date.

(d) The Partnership shall not issue fractional Units upon any distribution, subdivision or combination of Units. If a distribution, subdivision or combination of Units would result in the issuance of fractional Units but for the provisions this Section 4.7(d), each fractional Unit shall be rounded to the nearest whole Unit (and a 0.5 Unit shall be rounded to the next higher Unit).

Section 4.8 *Capital Accounts.*

(a) The Partnership shall maintain for each Partner (or a beneficial owner of Partnership Interests held by a nominee in any case in which the nominee has furnished the identity of such owner to the Partnership in accordance with Section 6031(c) of the Code or any other method acceptable to the General Partner in its sole discretion) owning a Partnership Interest a separate Capital Account with respect to such Partnership Interest in accordance with the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). Such Capital Account shall be increased by (i) the amount of all Capital Contributions made to the Partnership with respect to such Partnership Interest pursuant to this Agreement and (ii) all items of Partnership income and gain (including, without limitation, income and gain exempt from tax) computed in accordance with Section 4.8(b) and allocated with respect to such Partnership Interest pursuant to Section 5.1, and decreased by (x) the amount of cash or Net Agreed Value of all actual and deemed distributions of cash or property made with respect to such Partnership Interest pursuant to this Agreement and (y) all items of Partnership deduction and loss computed in accordance with Section 4.8(b) and allocated with respect to such Partnership Interest pursuant to Section 5.1.

(b) For purposes of computing the amount of any item of income, gain, loss or deduction to be reflected in the Partners' Capital Accounts, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes (including, without limitation, any method of depreciation, cost recovery or amortization used for that purpose), provided, that:

(i) All fees and other expenses incurred by the Partnership to promote the sale of (or to sell) a Partnership Interest that can neither be deducted nor amortized under Section 709 of the Code, if any, shall, for purposes of Capital Account maintenance, be treated as an item of deduction at the time such fees and other expenses are incurred and shall be allocated among the Partners pursuant to Section 5.1.

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

Accounts, the amount of such adjustment in the Capital Accounts shall be treated as an item of gain or loss.

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

(iv) In accordance with the requirements of Section 704(b) of the Code, any deductions for depreciation, cost recovery or amortization attributable to any Contributed Property shall be determined as if the adjusted basis of such property on the date it was acquired by the Partnership were equal to the Agreed Value of such property. Upon an adjustment pursuant to Section 4.8(d) to the Carrying Value of any Partnership property subject to depreciation, cost recovery or amortization, any further deductions for such depreciation, cost recovery or amortization attributable to such property shall be determined (A) as if the adjusted basis of such property were equal to the Carrying Value of such property immediately following such adjustment and (B) using a rate of depreciation, cost recovery or amortization derived from the same method and useful life (or, if applicable, the remaining useful life) as is applied for federal income tax purposes; *provided, however*, that if the asset has a zero adjusted basis for federal income tax purposes, depreciation, cost recovery or amortization deductions shall be determined using any reasonable method that the General Partner may adopt.

(v) If the Partnership's adjusted basis in a depreciable or cost recovery property is reduced for federal income tax purposes pursuant to Section 48(q)(1) or 48(q)(3) of the Code, the amount of such reduction shall, solely for purposes hereof, be deemed to be an additional depreciation or cost recovery deduction in the year such property is placed in service and shall be allocated among the Partners pursuant to Section 5.1. Any restoration of such basis pursuant to Section 48(q)(2) of the Code shall, to the extent possible, be allocated in the same manner to the Partners to whom such deemed deduction was allocated.

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

(d) (i) Consistent with the provisions of Treasury Regulation Section 1.704-1(b)(2)(iv)(f), on an issuance of additional Units for cash or Contributed Property, the conversion of Senior Subordinated Units and Junior Subordinated Units to Common Units pursuant to Section 4.4(d) or the conversion of the General Partner's Combined Interest to Common Units pursuant to Section 13.3(b), the Capital Account of all Partners and the Carrying Value of each Partnership property immediately prior to such issuance shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property, as if such Unrealized Gain or Unrealized Loss had been recognized on an actual sale of each such property immediately prior to such issuance and had been allocated to the Partners at such time pursuant to Section 5.1(c). In determining such Unrealized Gain or Unrealized Loss, the aggregate cash amount and fair market value of all Partnership assets (including, without limitation, cash or cash

equivalents) immediately prior to the issuance of additional Units shall be determined by the General Partner using such reasonable method of valuation as it may adopt; *provided, however*, the General Partner, in arriving at such valuation, must take fully into account the fair market value of the Partnership Interests of all Partners at such time. The General Partner shall allocate such aggregate value among the assets of the Partnership (in such manner as it determines in its sole discretion to be reasonable) to arrive at a fair market value for individual properties.

(ii) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), immediately prior to any actual or deemed distribution to a Partner of any Partnership property (other than a distribution of cash that is not in redemption or retirement of a Partnership Interest), the Capital Accounts of all Partners and the Carrying Value of all Partnership property shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property, as if such Unrealized Gain or Unrealized Loss had been recognized in a sale of such property immediately prior to such distribution for an amount equal to its fair market value, and had been allocated to the Partners, at such time, pursuant to Section 5.1(c). Any Unrealized Gain or Unrealized Loss attributable to such property shall be allocated in the same manner as Net Termination Gain or Net Termination Loss pursuant to Section 5.1(c); *provided, however*, that, in making any such allocation, Net Termination Gain or Net Termination Loss actually realized shall be allocated first. In determining such Unrealized Gain or Unrealized Loss the aggregate cash amount and fair market value of all Partnership assets (including, without limitation, cash or cash equivalents) immediately prior to a distribution shall (A) in the case of an actual distribution which is not made pursuant to Section 13.3 or 13.4 or (B) in the case of a liquidating distribution pursuant to Section 14.4, be determined and allocated by the Liquidator using such reasonable method of valuation as it may adopt.

Section 4.9 *Interest and Withdrawal.*

No interest shall be paid by the Partnership on Capital Contributions, and no Partner or Assignee shall be entitled to withdraw any part of its Capital Contributions or otherwise to receive any distribution from the Partnership, except as provided in Articles V, VII, XIII and XIV.

ARTICLE V

ALLOCATIONS AND DISTRIBUTIONS

Section 5.1 *Allocations for Capital Account Purposes.*

For purposes of maintaining the Capital Accounts and in determining the rights of the Partners among themselves, the Partnership's items of income, gain, loss and deduction

(computed in accordance with Section 4.8(b)) shall be allocated among the Partners in each taxable year (or portion thereof) as provided hereinbelow.

(a) *Net Income*. After giving effect to the special allocations set forth in Section 5.1(d), Net Income for each taxable period and all items of income, gain, loss and deduction taken into account in computing Net Income for such taxable period shall be allocated as follows:

(i) First, 100% to the General Partner until the aggregate Net Income allocated to the General Partner pursuant to this Section 5.1(a)(i) for the current taxable year and all previous taxable years is equal to the aggregate Net Losses allocated to the General Partner pursuant to Section 5.1(b)(vi) for all previous taxable years;

(ii) Second, 100% to the General Partner and the Limited Partners, in accordance with their respective Percentage Interests, until the aggregate Net Income allocated to such Partners pursuant to this Section 5.1(a)(ii) for the current taxable year and all previous taxable years is equal to the aggregate Net Losses allocated to such Partners pursuant to Section 5.1(b)(v) for all previous taxable years; and

(iii) Third, 100% to Partners holding Common Units, Pro Rata, until the aggregate Net Income allocated to each Common Unit pursuant to this Section 5.1(a)(iii) for the current taxable year and all previous taxable years is equal to the aggregate Minimum Quarterly Distributions payable with respect to such Unit for the current taxable year and all previous taxable years;

(iv) Fourth, 100% to the Partners holding General Partner Units, Pro Rata, until the aggregate Net Income allocated to each General Partner Unit pursuant to this Section 5.1(a)(iv) for the current taxable year and all previous taxable years is equal to the aggregate Minimum Quarterly Distributions distributed to such Partners pursuant to Section 5.4(a)(iii) for the current taxable year and all previous taxable years;

(v) Fifth, 90% to the Partners holding Common Units, Pro Rata, and 10% to the Partners holding General Partner Units, Pro Rata, until the aggregate Net Income allocated to such Partners pursuant to this Section 5.1(a)(v) is equal to the aggregate amount distributed to such Partners pursuant to Section 5.4(iv);

(vi) Sixth, the balance, if any, 80% to the Partners holding Common Units, Pro Rata and 20% to the Partners holding General Partner Units, Pro Rata.

(b) *Net Losses*. After giving effect to the special allocations set forth in Section 5.1(d), Net Losses for each taxable period and all items of income, gain, loss and deduction taken into account in computing Net Losses for such taxable period shall be allocated as follows:

(i) First, 80% to the Partners holding Common Units, Pro Rata, and 20% to the Partners holding General Partner Units, Pro Rata, until the aggregate Net Losses allocated pursuant to this Section 5.1(b)(i) for the current taxable year and all

previous taxable years is equal to the aggregate Net Income allocated to such Partners pursuant to Section 5.1(a)(vi) for all previous taxable years;

(ii) Second, 90% to the Partners holding Common Units, Pro Rata, and 10% to the Partners holding General Partner Units, Pro Rata, until the aggregate Net Losses allocated pursuant to this Section 5.1(b)(ii) for the current taxable year and all previous taxable years is equal to the aggregate Net Income allocated to such Partners pursuant to Section 5.1(a)(v) for all previous taxable years;

(iii) Third 100% to the Partners holding General Partner Units, Pro Rata, until the aggregate Net Losses allocated pursuant to this Section 5.1(b)(iii) for the current taxable year and all previous taxable years is equal to the aggregate Net Income allocated to such Partners pursuant to Section 5.1(a)(iv) for all previous taxable years;

(iv) Fourth, 100% to the Partners holding Common Units, Pro Rata, until the aggregate Net Losses allocated pursuant to this Section 5.1(b)(iv) for the current taxable year and all previous taxable years is equal to the aggregate Net Income allocated to such Partners pursuant to Section 5.1(a)(iii) for all previous taxable years;

(v) Fifth, 100% to the General Partner and the Limited Partners in accordance with their respective Percentage Interests; provided, that Net Losses shall not be allocated pursuant to this Section 5.1(b)(v) to the extent that such allocation would cause any Limited Partner to have a deficit balance in its Adjusted Capital Account at the end of such taxable year (or increase any existing deficit balance in its Adjusted Capital Account); and

(vi) Sixth, the balance, if any, 100% to the General Partner.

(c) *Net Termination Gains and Losses.* After giving effect to the special allocations set forth in Section 5.1(d), all items of income gain, loss and deduction taken into account in computing Net Termination Gain or Net Termination Loss for such taxable period shall be allocated in the same manner as such Net Termination Gain or Net Termination Loss is allocated hereunder. All allocations under this Section 5.1(c) shall be made after Capital Account balances have been adjusted by all other allocations provided under this Section 5.1 and after all distributions of Available Cash provided under Section 5.4 have been made with respect to the taxable period ending on the date of the Partnership's liquidation pursuant to Section 14.4.

(i) If a Net Termination Gain is recognized (or deemed recognized pursuant to Section 4.8(d)) from Termination Capital Transactions, such Net Termination Gain shall be allocated among the General Partner and the Limited Partners in the following manner (and the Capital Accounts of the Partners shall be increased by the amount so allocated in each of the following subclauses, in the order listed, before an allocation is made pursuant to the next succeeding subclause):

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

allocated Net Termination Gain equal to any such deficit balance in its Capital Account;

(B) Second, 100% to all Partners holding Common Units, Pro Rata, until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) its Unrecovered Initial Unit Price plus (2) the Minimum Quarterly Distribution for the Quarter during which such Net Termination Gain is recognized, reduced by any distribution pursuant to Sections 5.4(i) with respect to such Common Unit for such Quarter (the amount determined pursuant to this clause (2) is hereinafter defined as the "Unpaid MQD") plus (3) any then existing Cumulative Common Unit Arrearage;

(C) Third, 100% to all Partners holding General Partner Units, Pro Rata, until the Capital Account in respect of each General Partner Unit then Outstanding is equal to the sum of (i) its Unrecovered Initial Unit Price plus (ii) the Minimum Quarterly Distribution for the Quarter during which such Net Termination Gain is recognized, reduced by any distribution pursuant to Section 5.4(iii) with respect to such General Partner Unit for such Quarter;

(D) Fourth, 10% to all Partners holding General Partner Units, Pro Rata and 90% to all Partners holding Common Units, Pro Rata, until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) its Unrecovered Initial Unit Price, plus (2) the Unpaid MQD, if any, for such Common Unit with respect to the Quarter during which such Net Termination Gain is recognized, plus (3) any then existing Cumulative Common Unit Arrearage, plus (4) the excess of (aa) the First Target Distribution less the Minimum Quarterly Distribution for each Quarter of the Partnership's existence over (bb) the amount of any distributions of Operating Surplus that was distributed pursuant to Sections 5.4(iv) (the sum of (1) plus (2) plus (3) plus (4) is hereinafter defined as the "First Liquidation Target Amount");

(E) Finally, any remaining amount 20% to the Partners holding General Partner Units, Pro Rata, and 80% to all Partners holding Common Units, Pro Rata.

(ii) If a Net Termination Loss is recognized (or deemed recognized pursuant to Section 4.8(d)) from Termination Capital Transactions, such Net Termination Loss shall be allocated to the Partners in the following manner:

(A) First, 100% to all Partners holding Common Units, the Capital Account balances attributable to which are in excess of the Capital Account balances attributable to the remainder of the Common Units then Outstanding, Pro Rata, until the Capital Accounts in respect of each Common Unit then Outstanding are equal;

(B) Second, 100% to all Partners holding Common Units, Pro Rata, until the Capital Account in respect of each Common Unit then Outstanding has been reduced to zero; and

(C) Thereafter, the balance, if any, 100% to the General Partner.

(d) *Special Allocations.* Notwithstanding any other provision of this Section 5.1, the following special allocations shall be made for such taxable period:

(i) *Partnership Minimum Gain Chargeback.* Notwithstanding any other provision of this Section 5.1, if there is a net decrease in Partnership Minimum Gain during any Partnership taxable period, each Partner shall be allocated items of Partnership income and gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(f)(6), 1.704-2(g)(2) and 1.704-2(j)(2)(i), or any successor provision. For purposes of this Section 5.1(d), each Partner's Adjusted Capital Account balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 5.1(d) with respect to such taxable period (other than an allocation pursuant to Sections 5.1(d)(vi) and 5.1(d)(vii)). This Section 5.1(d)(i) is intended to comply with the Partnership Minimum Gain chargeback requirement in Treasury Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) *Chargeback of Partner Nonrecourse Debt Minimum Gain.* Notwithstanding the other provisions of this Section 5.1 (other than Section 5.1(d)(i)), except as provided in Treasury Regulation Section 1.704-2(i)(4), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain during any Partnership taxable period, any Partner with a share of Partner Nonrecourse Debt Minimum Gain at the beginning of such taxable period shall be allocated items of Partnership income and gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(i)(4) and 1.704-2(j)(2)(i), or any successor provisions. For purposes of this Section 5.1(d), each Partner's Adjusted Capital Account balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 5.1(d), other than Section 5.1(d)(i) and other than an allocation pursuant to Sections 5.1(d)(vi) and 5.1(d)(vii), with respect to such taxable period. This Section 5.1(d)(ii) is intended to comply with the chargeback of items of income and gain requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) *Priority Allocations.* If the amount of cash or the Net Agreed Value of any property distributed (except cash or property distributed pursuant to Section 14.4) to any Limited Partner with respect to a taxable year is greater (on a per Unit basis) than the amount of cash or the Net Agreed Value of property distributed to the other Limited Partners (on a per Unit basis), then (1) each Limited Partner receiving such greater cash or property distribution shall be allocated gross income in an amount equal to the product of (aa) the amount by which the distribution (on a per Unit basis) to such

Limited Partner exceeds the distribution (on a per Unit basis) to the Limited Partners receiving the smallest distribution and (bb) the number of Units owned by the Limited Partner receiving the greater distribution.

(iv) *Qualified Income Offset.* In the event any Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Partnership income and gain shall be specifically allocated to such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations promulgated under Section 704(b) of the Code, the deficit balance, if any, in its Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible unless such deficit balance is otherwise eliminated pursuant to Section 5.1(d)(i) or (ii).

(v) *Gross Income Allocations.* In the event any Partner has a deficit balance in its Capital Account at the end of any Partnership taxable period in excess of the sum of (A) the amount such Partner is required to restore pursuant to the provisions of this Agreement and (B) the amount such Partner is deemed obligated to restore pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), such Partner shall be specially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; provided, that an allocation pursuant to this Section 5.1(d)(v) shall be made only if and to the extent that such Partner would have a deficit balance in its Capital Account as adjusted after all other allocations provided for in this Section 5.1 have been tentatively made as if this Section 5.1(d)(v) were not in this Agreement.

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

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

(viii) *Nonrecourse Liabilities.* For purposes of Treasury Regulation Section 1.752-3(a)(3), the Partners agree that Nonrecourse Liabilities of the Partnership in excess of the sum of (A) the amount of Partnership Minimum Gain and (B) the total

amount of Nonrecourse Built-in Gain shall be allocated among the Partners in accordance with their respective Percentage Interests.

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

(x) *Economic Uniformity.* Upon the conversion of any Unit into another class after application of Section 4.4(d), items of gross income and gain or items of deduction or loss shall be allocated to the holder of such Unit until the Capital Account of such Unit is the same as the Capital Account per Unit of all other Units of the same class.

(xi) *Curative Allocation.*

(A) Notwithstanding any other provision of this Section 5.1, other than the Required Allocations, the Required Allocations shall be taken into account in making the Agreed Allocations so that, to the extent possible, the net amount of items of income, gain, loss and deduction allocated to each Partner pursuant to the Required Allocations and the Agreed Allocations, together, shall be equal to the net amount of such items that would have been allocated to each such Partner under the Agreed Allocations had the Required Allocations and the related Curative Allocation not otherwise been provided in this Section 5.1. Notwithstanding the preceding sentence, Required Allocations relating to (1) Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partnership Minimum Gain and (2) Partner Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partner Nonrecourse Debt Minimum Gain. Allocations pursuant to this Section 5.1(d)(xi)(A) shall only be made with respect to Required Allocations to the extent the General Partner reasonably determines that such allocations will otherwise be inconsistent with the economic agreement among the Partners. Further, allocations pursuant to this Section 5.1(d)(xi)(A) shall be deferred with respect to allocations pursuant to clauses (1) and (2) hereof to the extent the General Partner reasonably determines that such allocations are likely to be offset by subsequent Required Allocations.

(B) The General Partner shall have reasonable discretion, with respect to each taxable period, to (1) apply the provisions of Section 5.1(d)(xi)(A) in whatever order is most likely to minimize the economic distortions that might otherwise result from the Required Allocations, and (2) divide all allocations

pursuant to Section 5.1(d)(xi)(A) among the Partners in a manner that is likely to minimize such economic distortions.

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

(A) In the case of any allocation of Additional Book Basis Derivative Items (other than an allocation of Unrealized Gain or Unrealized Loss under Section 4.8(d) hereof), the General Partner shall allocate additional items of gross income and gain to the Limited Partners or additional items of deduction and loss to the General Partner to the extent that the Additional Book Basis Derivative Items allocated to the Limited Partners exceeds their Share of those Additional Book Basis Derivative Items. For this purpose, the Limited Partners shall be treated as being allocated Additional Book Basis Derivative Items to the extent that such Additional Book Basis Derivative Items have reduced the amount of income that would otherwise have been allocated to the Limited Partners under the Partnership Agreement (e.g., Additional Book Basis Derivative Items taken into account in computing cost of goods sold would reduce the amount of book income otherwise available for allocation among the Partners). Any allocation made pursuant to this Section 5.1(d)(xii)(A) shall be made after all of the other Agreed Allocations have been made as if this Section 5.1(d)(xii) were not in the Partnership Agreement and, to the extent necessary, shall require the reallocation of items that have been allocated pursuant to such other Agreed Allocations.

(B) In the case of any negative adjustments to the Capital Accounts of the Partners resulting from a Book-Down Event, such negative adjustment (1) shall first be allocated between the General Partner and the Limited Partners in proportion to and to the extent of their Remaining Net Positive Adjustments and (2) any remaining negative adjustment shall be allocated pursuant to Section 5.1(c) hereof. The aggregate amount so allocated to the Limited Partners in respect of each class or series of Units shall be allocated among them ratably on a per Unit basis.

(C) In making the allocations required under this Section 5.1(d)(xii), the General Partner, in its sole discretion, may apply whatever conventions or other methodology it deems reasonable to satisfy the purpose of this Section 5.1(d)(xii).

(xiii) *Depreciation*. Depreciation deductions of the Partnership for each period shall be allocated among the Partners in accordance with their relative Capital Account balances as they existed immediately after the most recent book adjustments pursuant to Section 4.8(d) of this Agreement that occurred prior to such period and without regard to allocations made after such adjustment.

(a) Except as otherwise provided herein, for federal income tax purposes, each item of income, gain, loss and deduction shall be allocated among the Partners in the same manner as its correlative item of “book” income, gain, loss or deduction is allocated pursuant to Section 5.1.

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

(i) (A) In the case of a Contributed Property, such items attributable thereto shall be allocated among the Partners in the manner provided under Section 704(c) of the Code that takes into account the variation between the Agreed Value of such property and its adjusted basis at the time of contribution; and (B) any item of Residual Gain or Residual Loss attributable to a Contributed Property shall be allocated among the Partners in the same manner as its correlative item of “book” gain or loss is allocated pursuant to Section 5.1.

(ii) (A) In the case of an Adjusted Property, such items shall (1) first, be allocated among the Partners in a manner consistent with the principles of Section 704(c) of the Code that takes into account the Unrealized Gain or Unrealized Loss attributable to such property and the allocations thereof pursuant to Section 4.8(d)(i) or (ii), and (2) second, in the event such property was originally a Contributed Property, be allocated among the Partners in a manner consistent with Section 5.2(b)(i)(A); and (B) any item of Residual Gain or Residual Loss attributable to an Adjusted Property shall be allocated among the Partners in the same manner as its correlative item of “book” gain or loss is allocated pursuant to Section 5.1.

(iii) The General Partner shall apply the principles of Treasury Regulation Section 1.704-3(d) to eliminate Book-Tax Disparities.

(c) For the proper administration of the Partnership and for the preservation of uniformity of the Units (or any class or classes thereof), the General Partner shall have sole discretion to (i) adopt such conventions as it deems appropriate in determining the amount of depreciation, amortization and cost recovery deductions; (ii) make special allocations for federal income tax purposes of income (including, without limitation, gross income) or deductions; and (iii) amend the provisions of this Agreement as appropriate (x) to reflect the proposal or promulgation of Treasury Regulations under Section 704(b) or Section 704(c) of the Code or (y) otherwise to preserve or achieve uniformity of the Units (or any class or classes thereof). The General Partner may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 5.2(c) only if such conventions, allocations or amendments would not have a material adverse effect on the Partners, the holders of any class or classes of Units issued and Outstanding or the Partnership, and if such allocations are consistent with the principles of Section 704 of the Code.

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

(e) Any gain allocated to the Partners upon the sale or other taxable disposition of any Partnership asset shall, to the extent possible, after taking into account other required allocations of gain pursuant to this Section 5.2, be characterized as Recapture Income in the same proportions and to the same extent as such Partners (or their predecessors in-interest) have been allocated any deductions directly or indirectly giving rise to the treatment of such gains as Recapture Income.

(f) All items of income, gain, loss, deduction and credit recognized by the Partnership for federal income tax purposes and allocated to the Partners in accordance with the provisions hereof shall be determined without regard to any election under Section 754 of the Code which may be made by the Partnership; *provided, however*, that such allocations, once made, shall be adjusted as necessary or appropriate to take into account those adjustments permitted or required by Sections 734 and 743 of the Code.

(g) Each item of Partnership income, gain, loss and deduction attributable to a transferred Partnership Interest shall, for federal income tax purposes, be determined on an annual basis and prorated on a monthly basis and shall be allocated to the Partners as of the opening of the New York Stock Exchange on the first Business Day of each month; *provided, however*, that gain or loss on a sale or other disposition of any assets of the Partnership other than in the ordinary course of business shall be allocated to the Partners as of the opening of the New York Stock Exchange on the first Business Day of the month in which such gain or loss is recognized for federal income tax purposes. The General Partner may revise, alter or otherwise modify such methods of allocation as it determines necessary, to the extent permitted or required by Section 706 of the Code and the regulations or rulings promulgated thereunder; *provided, further, however*, that for the Partnership's taxable year of 2006, each item of Partnership income, gain, loss deduction and credit shall be determined on the basis of an interim closing of the Partnership's books as of the close of business on the Effective Date and shall be allocated to the Partners by taking into account the Partners' varying interests during such taxable year in accordance with Section 706(d) of the Code.

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

Section 5.3 *Requirement and Characterization of Distributions.*

(a) All amounts of Available Cash distributed by the Partnership on any date from any source shall be deemed to be Operating Surplus until the sum of all amounts of Available Cash theretofore distributed by the Partnership to Partners pursuant to Section 5.4 equals the Operating Surplus from the Effective Date through the close of the immediately preceding Quarter. Any remaining amounts of Available Cash distributed by the Partnership on such date shall, except as otherwise provided in Section 5.5, be deemed to be from Capital Surplus.

(b) Notwithstanding the definitions of Available Cash and Operating Surplus contained herein, disbursements made or cash reserves established after the end of any Quarter but on or before the date on which the Partnership makes its distribution of Available Cash in respect of such Quarter pursuant to Section 5.3(a) shall be deemed to have been made, established, increased or reduced for purposes of determining Available Cash and Operating Surplus, within such Quarter if the General Partner so determines. Notwithstanding the foregoing, in the event of the dissolution and liquidation of the Partnership, all proceeds of such liquidation shall be applied and distributed in accordance with, and subject to the terms and conditions of, Section 14.4.

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

Section 5.4 *Distributions of Available Cash From Operating Surplus.*

There shall be no requirement to make distributions of Available Cash from Operating Surplus to the holders of Common Units prior to September 30, 2008. Available Cash with respect to any Quarter ending after September 30, 2008 that is deemed to be Operating Surplus pursuant to the provisions of Section 5.3 or 5.5 shall, subject to Section 5.3 and subject to Section 17-607 of the Delaware Act, be distributed as follows, except as otherwise required by Section 4.4(b) in respect of additional Partnership Securities issued pursuant thereto:

(i) First, 100% to the Common Units, Pro Rata, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Minimum Quarterly Distribution;

(ii) Second, 100% to the Common Units, Pro Rata, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Cumulative Common Unit Arrearage, if any, existing with respect to any prior Quarter;

(iii) Third, 100% to the General Partner Units, Pro Rata, until there has been distributed in respect of each General Partner Unit then Outstanding an amount equal to the Minimum Quarterly Distribution;

(iv) Fourth, (A) 90% to the Common Units, Pro Rata and (B) 10% to the General Partner Units, Pro Rata until there has been distributed in respect of each Common Unit then outstanding an amount equal to the excess of the First Target Distribution over the Minimum Quarterly Distribution;

(v) Thereafter, (A) 80% to the Common Units, Pro Rata and (B) 20% to the General Partner Units, Pro Rata;

provided, however, if the Minimum Quarterly Distribution and the First Target Distribution have been reduced to zero pursuant to the second sentence of Section 5.6(a), the distributions of Available Cash that is deemed to be Operating Surplus with respect to any Quarter will be made in accordance with Section 5.4(v).

Section 5.5 *Distributions of Cash from Capital Surplus.*

Available Cash that constitutes Capital Surplus shall, subject to Section 17-607 of the Delaware Act, be distributed, unless the provisions of Section 5.3 require otherwise, 100% to all Units, Pro Rata, until a hypothetical holder of a Common Unit on the Effective Date has received with respect to such Common Unit, during the period since the Effective Date through such date, distributions of Available Cash that are deemed to be Capital Surplus in an aggregate amount equal to the Initial Unit Price. Thereafter, all Available Cash shall be distributed as if it were Operating Surplus and shall be distributed in accordance with Section 5.4.

Section 5.6 *Adjustment of Minimum Quarterly Distribution and Target Distribution Levels.*

(a) The Minimum Quarterly Distribution and the First Target Distribution shall be proportionately adjusted in the event of any distribution, combination or subdivision (whether effected by a distribution payable in Units or otherwise) of Units or other Partnership Securities in accordance with Section 4.8. In the event of a distribution of Available Cash that is deemed to be from Capital Surplus, the Minimum Quarterly Distribution and First Target Distribution shall be adjusted proportionately downward to equal the product obtained by multiplying the otherwise applicable Minimum Quarterly Distribution and First Target Distribution as the case may be, by a fraction of which the numerator is the Unrecovered Initial Unit Price of the Common Units immediately after giving effect to such distribution and of which the denominator is the Unrecovered Initial Unit Price of the Common Units immediately prior to giving effect to such distribution.

(b) The Minimum Quarterly Distribution and First Target Distribution shall also be subject to adjustment pursuant to Section 5.7 and 5.8.

Section 5.7 *Entity-Level Taxation.*

If legislation is enacted or the interpretation of existing language is modified by the relevant governmental authority which causes the Partnership to be treated as an association

taxable as a corporation or otherwise subjects the Partnership to entity level-taxation for federal income tax purposes, the Minimum Quarterly Distribution, or First Target Distribution, as the case may be, shall be equal to the product obtained by multiplying (a) the amount thereof by (b) one minus the sum of (i) the highest marginal federal corporate (or other entity, as applicable) income tax rate of the Partnership for the taxable year of the Partnership in which such Quarter occurs (expressed as a percentage) plus (ii) the effective overall state and local income tax rate (expressed as a percentage) applicable to the Partnership for the calendar year next preceding the calendar year in which such Quarter occurs (after taking into account the benefit of any deduction allowable for federal income tax purposes with respect to the payment of state and local income taxes), but only to the extent of the increase in such rates resulting from such legislation or interpretation. Such effective overall state and local income tax rate shall be determined for the taxable year next preceding the first taxable year during which the Partnership is taxable for federal income tax purposes as an association taxable as a corporation or is otherwise subject to entity-level taxation by determining such rate as if the Partnership had been subject to such state and local taxes during such preceding taxable year.

Section 5.8 *Special Provisions Relating to Adjustment of Minimum Quarterly Distribution and Target Level Distributions in Connection with Rights.*

(a) Upon the date (the "Trigger Date") of a Triggering Event (as defined in the Rights Agreement), the Minimum Quarterly Distribution and the First Target Distribution (collectively, the "Distribution Levels") shall each automatically be adjusted so that the Distribution Levels thereafter shall equal the result obtained by multiplying the Distribution Levels in effect immediately prior to the date of a Triggering Event by the Distribution Ratio (defined below).

(b) The distribution ratio (the "Distribution Ratio") shall equal a fraction the numerator of which shall be the number of Units outstanding on the Trigger Date, plus the number of Common Units or other Partnership Securities, as the case may be, that the aggregate exercise price of the Rights would purchase at the current market price as defined in the Rights Agreement for the Common Units on the Trigger Date and the denominator of which shall be the number of Units outstanding on the Trigger Date, plus the number of Common Units or other Partnership Securities, as the case may be, that would be issuable upon the exercise in full of the Rights; provided, however, that if the General Partner shall have exercised the option pursuant to Section 24 of the Rights Agreement to exchange all or a part of the then outstanding and exercisable Rights for Common Units or other Partnership Securities, as the case may be, then the Distribution Ratio shall be adjusted accordingly to reflect the number of Common Units or other Partnership Securities, as the case may be, that would be issuable in connection within such exchange.

Section 5.9 *Special Provision Relating to Elimination of Cumulative Common Unit Arrearages.*

Notwithstanding anything to the contrary contained herein, all Cumulative Common Unit Arrearages (as such term is defined in the First Amended and Restated Agreement) that have accrued through the date of this Agreement are hereby eliminated.

ARTICLE VI

MANAGEMENT AND OPERATION OF BUSINESS

Section 6.1 *Management.*

(a) The General Partner shall conduct, direct and manage all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and no Limited Partner or Assignee shall have any management power over the business and affairs of the Partnership. In addition to the powers now or hereafter granted a general partner of a limited partnership under applicable law or which are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to Section 6.3, shall have full power and authority to do all things and on such terms as it, in its sole discretion, may deem necessary or appropriate to conduct the business of the Partnership, to exercise all powers set forth in Section 3.2 and to effectuate the purposes set forth in Section 3.1, including the following:

(i) the making of any expenditures, the lending or borrowing of money, the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness and the incurring of any other obligations;

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

(iii) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any or all of the assets of the Partnership or the merger or other combination of the Partnership with or into another Person (the matters described in this clause (iii) being subject, however, to any prior approval that may be required by Section 6.3) and Article XVI;

(iv) the use of the assets of the Partnership (including cash on hand) for any purpose consistent with the terms of this Agreement, including the financing of the conduct of the operations of the Partnership, the lending of funds to other Persons (including Group Members), the repayment of obligations of the Partnership;

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

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- (vi) the distribution of Partnership cash;
 - (vii) the selection and dismissal of employees, (including employees having titles such as “president,” “vice president,” “secretary” and “treasurer”) and agents, outside attorneys, accountants, consultants and contractors and the determination of their compensation and other terms of employment or hiring;
 - (viii) the maintenance of such insurance for the benefit of the Partnership Group and the Partners as it deems necessary or appropriate;
 - (ix) the formation of, or acquisition of an interest in, and the contribution of property and the making of loans to, any further limited or general partnerships, joint ventures, corporations, limited liability companies, or other relationships;
 - (x) the control of any matters affecting the rights and obligations of the Partnership, including the bringing and defending of actions at law or in equity and otherwise engaging in the conduct of litigation and the incurring of legal expense and the settlement of claims and litigation;
 - (xi) the indemnification of any Person against liabilities and contingencies to the extent permitted by law;
 - (xii) the entering into of listing agreements with any National Securities Exchange and the delisting of some or all of the Units from, or requesting that trading be suspended on, any such exchange (subject to any prior approval that may be required under Section 1.6); and
 - (xiii) the purchase, sale or other acquisition or disposition of Units (subject to Section 6.12 and Section 17.1).

(b) Notwithstanding any other provision of this Agreement, the Delaware Act or any applicable law, rule or regulation, each of the Partners and Assignees and each other Person who may acquire an interest in Units hereby agrees that the execution, delivery or performance by the General Partner, any Group Member or any Affiliate of any of them, of this Agreement or any agreement authorized or permitted under this Agreement (including the exercise by the General Partner or any Affiliate of the General Partner of the rights accorded pursuant to Article XVII), shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Limited Partners or the Assignees or any other Persons under this Agreement (or any other agreements) or of any duty stated or implied by law or equity.

Section 6.2 *Certificate of Limited Partnership.*

The General Partner has caused the Certificate of Limited Partnership to be filed with the Secretary of State of the State of Delaware as required by the Delaware Act and shall use all reasonable efforts to cause to be filed such other certificates or documents as may be determined by the General Partner in its sole discretion to be reasonable and necessary or appropriate for the

formation, continuation, qualification and operation of a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware or any other state in which the Partnership may elect to do business or own property, including an amendment to reflect the admission of the Successor General Partner as a successor to the Withdrawing General Partner. To the extent that such action is determined by the General Partner in its sole discretion to be reasonable and necessary or appropriate, the General Partner shall file amendments to and restatements of the Certificate of Limited Partnership and do all things to maintain the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability) under the laws of the State of Delaware or of any other state in which the Partnership may elect to do business or own property, including in connection with the transactions contemplated by the Transaction Agreement. Subject to the terms of Section 7.5(a), the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate of Limited Partnership, any qualification document or any amendment thereto to any Limited Partner or Assignee.

Section 6.3 *Restrictions on General Partner's Authority.*

(a) The General Partner may not, without written approval of the specific act by all of the Outstanding Units or by other written instrument executed and delivered by all of the Outstanding Units subsequent to the date of this Agreement, take any action in contravention of this Agreement, including, except as otherwise provided in this Agreement, (i) committing any act that would make it impossible to carry on the ordinary business of the Partnership; (ii) possessing Partnership property, or assigning any rights in specific Partnership property, for other than a Partnership purpose; (iii) admitting a Person as a Partner; (iv) amending this Agreement in any manner; or (v) transferring its interest as general partner of the Partnership.

(b) Except as provided in Articles XIV and XVI, the General Partner may not sell, exchange or otherwise dispose of all or substantially all of the Partnership's assets in a single transaction or a series of related transactions without the approval of holders of a Unit Majority; *provided, however*, that this provision shall not preclude or limit the General Partner's ability to mortgage, pledge, hypothecate or grant a security interest in all or substantially all of the assets of the Partnership and shall not apply to any forced sale of any or all of the assets of the Partnership pursuant to the foreclosure of, or other realization upon, any such encumbrance.

Section 6.4 *Reimbursement of the General Partner.*

(a) Except as provided in this Section 6.4 and elsewhere in this Agreement, the General Partner shall not be compensated for its services as general partner of any Group Member.

(b) The General Partner shall be reimbursed on a monthly basis, or such other basis as the General Partner may determine in its sole discretion, for (i) all direct and indirect expenses it incurs or payments it makes on behalf of the Partnership (including salary, bonus, incentive compensation and other amounts paid to any Person to perform services for the Partnership, or for the General Partner in the discharge of its duties to the Partnership), and (ii) all other necessary or appropriate expenses allocable to the Partnership or otherwise reasonably incurred by the General Partner in connection with operating the Partnership's business

(including expenses allocated to the General Partner by its Affiliates). The General Partner shall determine the expenses that are allocable to the Partnership in any reasonable manner determined by the General Partner in its sole discretion. Reimbursements pursuant to this Section 6.4 shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to Section 6.7.

(c) The General Partner, in its sole discretion and without the approval of the Limited Partners (who shall have no right to vote in respect thereof), may propose, adopt and amend on behalf of the Partnership employee benefit plans, employee programs and employee practices (including plans, programs and practices involving the issuance of Units), or issue Partnership Securities pursuant to any employee benefit plan, employee program or employee practice maintained or sponsored by the General Partner or any of its Affiliates, in each case for the benefit of employees of the General Partner, any Group Member or any Affiliate, or any of them, in respect of services performed, directly or indirectly, for the benefit of the Partnership Group. The Partnership agrees to issue and sell to the General Partner or any of its Affiliates any Units or other Partnership Securities that the General Partner or such Affiliate is obligated to provide to any employees pursuant to any such employee benefit plans, employee programs or employee practices. Expenses incurred by the General Partner in connection with any such plans, programs and practices (including the net cost to the General Partner or such Affiliate of Units or other Partnership Securities purchased by the General Partner or such Affiliate from the Partnership to fulfill options or awards under such plans, programs and practices) shall be reimbursed in accordance with Section 6.4(b). Any and all obligations of the General Partner under any employee benefit plans, employee programs or employee practices (other than agreements with former employees and post-retirement benefits thereunder) adopted by the General Partner as permitted by this Section 6.4(c) shall constitute obligations of the General Partner hereunder and shall be assumed by any successor General Partner approved pursuant to Section 13.1 or 13.2 or the transferee of or successor to all of the General Partner's Partnership Interest (which is represented by the General Partner Units) as a general partner in the Partnership pursuant to Section 11.2.

Section 6.5 *Outside Activities.*

(a) After the Effective Date, the General Partner, for so long as it is the general partner of the Partnership, shall not engage in any business or activity or incur any debts or liabilities except in connection with or incidental to (i) its performance as general partner of one or more Group Members or (ii) the acquiring, owning or disposing of debt or equity securities in any Group Member.

(b) Except as restricted by Section 6.5(a) and the Non-competition Agreement, each Indemnitee (other than the General Partner) shall have the right to engage in businesses of every type and description and other activities for profit and to engage in and possess an interest in other business ventures of any and every type or description, whether in businesses engaged in or anticipated to be engaged in by any Group Member, independently or with others, including business interests and activities in direct competition with the business and activities of any Group Member, and none of the same shall constitute a breach of this Agreement or any duty to any Group Member or any Partner or Assignee. Neither any Group Member, any Limited Partner nor any other Person shall have any rights by virtue of this

Agreement or the partnership relationship established hereby or thereby in any business ventures of any Indemnitee.

(c) Subject to Section 6.5(a) and the terms of the Non-competition Agreement, but otherwise notwithstanding anything to the contrary in this Agreement, (i) the engaging in competitive activities by any Indemnitees (other than the General Partner) in accordance with the provisions of this Section 6.5 is hereby approved by the Partnership and all Partners and (ii) it shall be deemed not to be a breach of the General Partner's fiduciary duty or any other obligation of any type whatsoever of the General Partner for the Indemnitee (other than the General Partner) to engage in such business interests and activities in preference to or to the exclusion of the Partnership (including, without limitation, the General Partner and the Indemnitees shall have no obligation to present business opportunities to the Partnership).

(d) The General Partner and any of its Affiliates may acquire Units or other Partnership Securities and, except as otherwise provided in this Agreement, shall be entitled to exercise all rights of an Assignee or Limited Partner, as applicable, relating to such Units or Partnership Securities. The term "Affiliates" when used in Section 6.5(d) with respect to the General Partner shall not include any Group Member or any Subsidiary of the Group Member.

Section 6.6 *Loans from the General Partner: Contracts with Affiliates: Certain Restrictions on the General Partner.*

(a) The General Partner or any Affiliate thereof may lend to any Group Member, and any Group Member may borrow, funds needed or desired by the Group Member for such periods of time and in such amounts as the General Partner may determine; *provided, however*, that in any such case the lending party may not charge the borrowing party interest at a rate greater than the rate that would be charged the borrowing party or impose terms less favorable to the borrowing party than would be charged or imposed on the borrowing party by unrelated lenders on comparable loans made on an arms'-length basis (without reference to the lending party's financial abilities or guarantees). The borrowing party shall reimburse the lending party for any costs (other than any additional interest costs) incurred by the lending party in connection with the borrowing of such funds. For purposes of this Section 6.6(a) and Section 6.6(b), the term "Group Member" shall include any Affiliate of the Group Member that is controlled by the Group Member. No Group Member may lend funds to the General Partner or any of its Affiliates.

(b) The Partnership may lend or contribute to any Group Member, and any Group Member may borrow, funds on terms and conditions established in the sole discretion of the General Partner; *provided, however*, that the Partnership may not charge the Group Member interest at a rate greater than the rate that would be charged to the Group Member (without reference to the General Partner's financial abilities or guarantees), by unrelated lenders on comparable loans. The foregoing authority shall be exercised by the General Partner in its sole discretion and shall not create any right or benefit in favor of any Group Member or any other Person.

(c) The General Partner may itself, or may enter into an agreement with any of its Affiliates to, render services to the Partnership or to the General Partner in the discharge of

its duties as general partner of the Partnership. Any services rendered to the Partnership by the General Partner or any of its Affiliates shall be on terms that are fair and reasonable to the Partnership; *provided, however*, that the requirements of this Section 6.6(c) shall be deemed satisfied as to (i) any transaction approved by Special Approval, (ii) any transaction, the terms of which are no less favorable to the Partnership than those generally being provided to or available from unrelated third parties or (iii) any transaction that, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership), is equitable to the Partnership. The provisions of Section 6.4 shall apply to the rendering of services described in this Section 6.6(c).

(d) The Partnership may transfer assets to joint ventures, other partnerships, corporations, limited liability companies or other business entities in which it is or thereby becomes a participant upon such terms and subject to such conditions as are consistent with this Agreement and applicable law.

(e) Neither the General Partner nor any of its Affiliates shall sell, transfer or convey any property to, or purchase any property from, the Partnership, directly or indirectly, except pursuant to transactions that are fair and reasonable to the Partnership; *provided, however*, that the requirements of this Section 6.6(e) shall be deemed to be satisfied as to (i) any transactions described in or contemplated by the Proxy Statement, (ii) any transaction approved by Special Approval, (iii) any transaction, the terms of which are no less favorable to the Partnership than those generally being provided to or available from unrelated third parties, or (iv) any transaction that, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership), is equitable to the Partnership. With respect to any contribution of assets to the Partnership in exchange for Units, the Conflicts Committee, in determining whether the appropriate number of Units are being issued, should take into account, among other things, the fair market value of the assets, the liquidated and contingent liabilities assumed, the tax basis in the assets, the extent to which tax-only allocations to the transferor will protect the existing partners of the Partnership against a low tax basis, and such other factors as the Conflicts Committee deems relevant under the circumstances.

(f) The General Partner and its Affiliates will have no obligation to permit any Group Member to use any facilities or assets of the General Partner and its Affiliates, except as may be provided in contracts entered into from time to time specifically dealing with such use, nor shall there be any obligation on the part of the General Partner or its Affiliates to enter into such contracts.

(g) Without limitation of Sections 6.6(a) through 6.6(f), and notwithstanding anything to the contrary in this Agreement, the existence of the conflicts of interest described in the Proxy Statement are hereby approved by all Partners.

Section 6.7 *Indemnification.*

(a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, all Indemnitees shall be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, joint or several,

expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as an Indemnitee; *provided*, that in each case the Indemnitee acted in good faith and in a manner that such Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Partnership and, with respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful; *provided, further*, no indemnification pursuant to this Section 6.7 shall be available to the Withdrawing General Partner or its Affiliates (other than Group Members) with respect to their obligations incurred pursuant to the Transaction Agreement or any agreement ancillary thereto (other than obligations incurred by the General Partner on behalf of the Partnership. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that the Indemnitee acted in a manner contrary to that specified above. Any indemnification pursuant to this Section 6.7 shall be made only out of the assets of the Partnership, it being agreed that the General Partner shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate such indemnification.

(b) To the fullest extent permitted by law, expenses (including legal fees and expenses) incurred by an Indemnitee who indemnified pursuant to Section 6.7(a) in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Partnership prior to the usual disposition of such claim, demand, action, suit or proceeding upon receipt by the Partnership of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined that the Indemnitee is not entitled to be indemnified as authorized in this Section 6.7.

(c) The indemnification provided by this Section 6.7 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, pursuant to any vote of the holders of Outstanding Units, as a matter of law or otherwise, both as to actions in the Indemnitee's capacity as an Indemnitee and as to actions in any other capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

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

(e) For purposes of this Section 6.7, the Partnership shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Partnership also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute "fines" within the meaning of Section 6.7(a); and action taken or omitted by it with respect to

any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is in, or not opposed to, the best interests of the Partnership.

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

(g) An Indemnitee shall not be denied indemnification in whole or in part under this Section 6.7 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(h) The provisions of this Section 6.7 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

(i) No amendment, modification or repeal of this Section 6.7 or any provision hereof shall in any manner terminate, reduce, or impair the right of any past, present or future Indemnitee to be indemnified by the Partnership, nor the obligations of the Partnership to indemnify any such Indemnitee under and in accordance with the provisions of this Section 6.7 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

Section 6.8 *Liability of Indemnitees.*

(a) Notwithstanding anything to the contrary set forth in this Agreement, no Indemnitee shall be liable for monetary damages to the Partnership, the Limited Partners, the Assignees or any other Persons who have acquired interests in the Units, for losses sustained or liabilities incurred as a result of any act or omission if such Indemnitee acted in good faith.

(b) Subject to its obligations and duties as General Partner set forth in Section 6.1(a), the General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and the General Partner shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the General Partner in good faith.

(c) Any amendment, modification or repeal of this Section 6.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the liability to the Partnership and the Limited Partners of the General Partner, its directors, officers and employees and any other Indemnitees under this Section 6.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

(a) Unless otherwise expressly provided in this Agreement, whenever a potential conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership, any Partner or any Assignee, on the other hand, any resolution or course of action in respect of such conflict of interest shall be permitted and deemed approved by all Partners, and shall not constitute a breach of this Agreement, of any agreement contemplated herein or therein, or of any duty stated or implied by law or equity, if the resolution or course of action is, or by operation of this Agreement is deemed to be, fair and reasonable to the Partnership. The General Partner shall be authorized but not required in connection with its resolution of such conflict of interest to seek Special Approval of a resolution of such conflict or course of action. Any conflict of interest and any resolution of such conflict of interest shall be conclusively deemed fair and reasonable to the Partnership if such conflict of interest or resolution is (i) approved by Special Approval, (ii) on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties or (iii) fair to the Partnership, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership). The General Partner may also adopt a resolution or course of action that has not received Special Approval. The General Partner (including the Conflicts Committee in connection with Special Approval) shall be authorized in connection with its determination of what is "fair and reasonable" to the Partnership and in connection with its resolution of any conflict of interest to consider (A) the relative interests of any party to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interest; (B) any customary or accepted industry practices and any customary or historical dealings with a particular Person; (C) any applicable generally accepted accounting practices or principles; and (D) such additional factors as the General Partner (including the Conflicts Committee) determines in its sole discretion to be relevant, reasonable or appropriate under the circumstances. Nothing contained in this Agreement, however, is intended to nor shall it be construed to require the General Partner (including the Conflicts Committee) to consider the interests of any Person other than the Partnership. In the absence of bad faith by the General Partner, the resolution, action or terms so made, taken or provided by the General Partner with respect to such matter shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or, to the extent permitted by law, under the Delaware Act or any other law, rule or regulation.

(b) Whenever this Agreement or any other agreement contemplated hereby provides that the General Partner or any of its Affiliates is permitted or required to make a decision (i) in its "sole discretion" or "discretion" that it deems "necessary or appropriate" or "necessary or advisable" or under a grant of similar authority or latitude, except as otherwise provided herein, the General Partner or such Affiliate shall be entitled to consider only such interests and factors as it desires and shall have no duty or obligation to give any consideration to any interest of, or factors affecting, the Partnership, any Limited Partner or any Assignee, (ii) it may make such decision in its sole discretion (regardless of whether there is a reference to "sole discretion" or "discretion") unless another express standard is provided for, or (iii) in "good faith" or under another express standard, the General Partner or such Affiliate shall act under such express standard and shall not be subject to any other or different standards imposed by this Agreement, any other agreement contemplated hereby or under the Delaware Act or any other

law, rule or regulation. In addition, any actions taken by the General Partner or such Affiliate consistent with the standards of “reasonable discretion” set forth in the definitions of Available Cash or Operating Surplus shall not constitute a breach of any duty of the General Partner to the Partnership or the Limited Partners. The General Partner shall have no duty, express or implied, to sell or otherwise dispose of any asset of the Partnership Group. No borrowing by any Group Member or the approval thereof by the General Partner shall be deemed to constitute a breach of any duty of the General Partner to the Partnership or the Limited Partners by reason of the fact that the purpose or effect of such borrowing is directly or indirectly to enable distributions on the General Partner Units to exceed the General Partner’s Percentage Interest of the total amount distributed.

(c) Whenever a particular transaction, arrangement or resolution of a conflict of interest is required under this Agreement to be “fair and reasonable” to any Person, the fair and reasonable nature of such transaction, arrangement or resolution shall be considered in the context of all similar or related transactions.

(d) The Limited Partners hereby authorize the General Partner, on behalf of the Partnership as a partner of a Group Member, to approve of actions by the general partner of such Group Member similar to those actions permitted to be taken by the General Partner pursuant to this Section 6.9.

Section 6.10 *Other Matters Concerning the General Partner.*

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

(b) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the opinion (including an Opinion of Counsel) of such Persons as to matters that the General Partner reasonably believes to be with a such Person’s professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.

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

(d) Any standard of care and duty imposed by this Agreement or under the Delaware Act or any applicable law, rule or regulation shall be modified, waived or limited, to the extent permitted by law, as required to permit the General Partner to act under this Agreement or any other agreement contemplated by this Agreement and to make any decision pursuant to the authority prescribed in this Agreement, so long as such action is reasonably believed by the General Partner to be in, or not inconsistent with, the best interests of the Partnership.

Section 6.11 *Title to Partnership Assets.*

Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner or Assignee, individually or collectively, shall have any ownership interest in such Partnership assets or any portion thereof. Title to any or all of the Partnership assets may be held in the name: of the Partnership, the General Partner, one or more of its Affiliates, or one or more nominees, as the General Partner may determine. The General Partner hereby declares and warrants that any Partnership assets for which record title is held in the name of the General Partner or one or more of its Affiliates or one or more nominees shall be held by the General Partner or such Affiliate or nominee for the use and benefit of the Partnership in accordance with the provisions of this Agreement; *provided, however*, that the General Partner shall use its reasonable efforts to cause record title to such assets (other than those assets in respect of which the General Partner determines that the expense and difficulty of conveyancing makes transfer of record title to the Partnership impracticable) to be vested in the Partnership as soon as reasonably practicable; provided that, prior to the withdrawal or removal of the Withdrawing General Partner or as soon thereafter as practicable, the General Partner shall use reasonable efforts to effect the transfer of record title to the Partnership and prior to any such transfer, will provide for the use of such assets in a manner satisfactory to the Partnership. All Partnership assets shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which record title to such Partnership assets is held. The Withdrawing General Partner covenants and agrees that on the Effective Date, the Partnership Group shall have all licenses, permits, certificates, franchises, or other governmental authorizations or permits necessary for the ownership of their properties or for the conduct of their businesses, except for such licenses, permits, certificates, franchises, or other governmental authorizations or permits, failure to have obtained which will not, individually or in the aggregate, have a material adverse effect on the Partnership Group.

Section 6.12 *Purchase or Sale of Units.*

The General Partner may cause the Partnership to purchase or otherwise acquire Units with cash or property from any source, including Interim Capital Transactions. As long as Units are held by any Group Member, such Units shall not be considered Outstanding for any purpose, except as otherwise provided herein. The General Partner or any Affiliate of the General Partner (other than a Group Member) may also purchase or otherwise acquire and sell or otherwise dispose of Units for its own account, subject to the provisions of Articles XI and XII.

Section 6.13 *Registration Rights.*

(a) If (i) the General Partner or any Affiliate of the General Partner (including for purposes of this Section 6.13, any Person that is an Affiliate of the General Partner at the date hereof notwithstanding that it may later cease to be an Affiliate of the General Partner) holds Units or other Partnership Securities that it desires to sell and (ii) Rule 144 of the Securities Act (or any successor rule or regulation to Rule 144) or another exemption from registration is not available to enable such holder of Units (the "Holder") to dispose of the number of Units or other Partnership Securities it desires to sell at the time it desires to do so without registration under the Securities Act, then upon the request of the General Partner or any of its Affiliates, the Partnership shall file with the Commission as promptly as practicable after receiving such request, and use all reasonable efforts to cause to become effective and remain effective for a

period of not less than six months following its effective date or such shorter period as shall terminate when all Units or other Partnership Securities covered by such registration statement have been sold, a registration statement under the Securities Act registering the offering and sale of the number of Units or other Partnership Securities specified by the Holder, *provided however*, that the Partnership shall not be required to effect more than three registrations pursuant to this Section 6.13(a); and *provided, further, however*, that if the Conflicts Committee determines in its good faith judgment that a postponement of the requested registration for up to six months would be in the best interests of the Partnership and its Partners due to a pending transaction, investigation or other event, the filing of such registration statement or the effectiveness thereof may be deferred for up to six months, but not thereafter. In connection with any registration pursuant to the immediately preceding sentence, the Partnership shall promptly prepare and file (x) such documents as may be necessary to register or qualify the Partnership Securities subject to such registration under the securities laws of such states as the Holder shall reasonably request: *provided, however*, that no such qualification shall be required in any jurisdiction where, as a result thereof, the Partnership would become subject to general service of process or to taxation or qualification to do business as a foreign corporation or partnership doing business in such jurisdiction, and (y) such documents as may be necessary to apply for listing or to list the Partnership Securities subject to such registration on such National Securities Exchange as the Holder shall reasonably request, and do any and all other acts and things that may reasonably be necessary or advisable to enable the Holder to consummate a public sale of such Units in such states. Except as set forth in Section 6.13(c), all costs and expenses of any such registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.

(b) If the Partnership shall at any time propose to file a registration statement under the Securities Act for an offering of equity securities of the Partnership for cash (other than an offering relating solely to an employee benefit plan), the Partnership shall use all reasonable efforts to include such number or amount of Partnership Securities held by the Holder in such registration statement as the Holder shall request. If the proposed offering pursuant to this Section 6.13(b) shall be an underwritten offering, then, in the event that the managing underwriter of such offering advises the Partnership and the Holder in writing that in its opinion the inclusion of all or some of the Holder's Partnership Securities would adversely and materially affect the success of the offering, the Partnership shall include in such offering only that number or amount, if any, of Partnership Securities held by the Holder which, in the opinion of the managing underwriter, will not so adversely and materially affect the offering. Except as set forth in Section 6.13(c), all costs and expenses of any such registration and offering (other than the underwriting discounts and commissions) shall be paid by the Partnership, without reimbursement by the Holder.

(c) If underwriters are engaged in connection with any registration referred to in Section 6.13(a), the Partnership shall provide indemnification, representations, covenants, opinions and other assurance to the underwriters in form and substance reasonably satisfactory to such underwriters. Further, in addition to and not in limitation of the Partnership's obligation under Section 6.7, the Partnership shall, to the fullest extent permitted by law, indemnify and hold harmless the Holder, its officers, directors, and each Person who controls the Holder (within the meaning of the Securities Act) and any agent thereof (collectively, "Indemnified Persons") against any losses, claims, demands, actions, causes of action, assessments, damages, liabilities

(joint or several), costs and expenses (including interest, penalties and reasonable attorneys' fees and disbursements), resulting to, imposed upon, or incurred by the Indemnified Persons, directly or indirectly, under the Securities Act or otherwise (hereinafter referred to in this Section 6.13(c) as a "claim" and in the plural as "claims") based upon, arising out of or resulting from any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which any Units were registered under the Securities Act or any state securities or Blue Sky laws, in any preliminary prospectus (if used prior to the effective date of such registration statement), or in any summary or final prospectus or in any amendment or supplement thereto (if used during the period the Partnership is required to keep the registration statement current), or arising out of, based upon or resulting from the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements made therein not misleading; *provided, however*, that the Partnership shall not be liable to any Indemnified Person to the extent that any such claim arises out of, is based upon or results from an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, such preliminary, summary or final prospectus or such amendment or supplement in reliance upon and in conformity with written information furnished to the Partnership by or on behalf of such Indemnified Person specifically for use in the preparation thereof.

(d) The provisions of Section 6.13(a) and (b) shall continue to be applicable with respect to the General Partner (and any of the General Partner's Affiliates) (including the Withdrawing General Partner) after it ceases to be a Partner of the Partnership, during a period of two years subsequent to the effective date of such cessation and for so long thereafter as is required for the Holder to sell all of the Units or other Partnership Securities with respect to which it has requested during such two year period that a registration statement be filed; *provided however*, that the Partnership shall not be required to file successive registration statements covering the same Partnership Securities for which registration was demanded during such two-year period. The provisions of Section 6.13(c) shall continue in effect thereafter.

(e) Any request to register Partnership Securities pursuant to this Section 6.13 shall (i) specify the Partnership Securities intended to be offered and sold by the Person making the request, (ii) express such Person's present intent to offer such Partnership Securities for distribution, (iii) describe the nature or method of the proposed offer and sale of Partnership Securities, and (iv) contain the undertaking of such Person to provide all such information and materials and take all action as may be required in order to permit the Partnership to comply with all applicable requirements in connection with the registration of such Partnership Securities.

Section 6.14 *Reliance by Third Parties.*

Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner and any officer of the Partnership authorized by the General Partner to act on behalf of and in the name of the Partnership has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any contracts on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner or any such officer as if it were the Partnership's sole party in interest, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the General Partner or any such officer in connection with any such

dealing. In no event shall any Person dealing with the General Partner or any such officer or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the General Partner or any such officer or its representatives. Each and every certificate, document or other instrument executed on behalf of the Partnership by the General Partner or any such officer or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Partnership and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

ARTICLE VII

RIGHTS AND OBLIGATIONS OF LIMITED PARTNERS

Section 7.1 *Limitation of Liability.*

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

Section 7.2 *Management of Business.*

No Limited Partner or Assignee (other than the General Partner, any of its Affiliates or any officer, director, employee, partner, agent or trustee of the General Partner or any of its Affiliates, in its capacity as such, if such Person shall also be a Limited Partner or Assignee) shall participate in the operation, management or control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. The transaction of any such business by the General Partner, any of its Affiliates or any member, officer, director, employee, partner, agent or trustee of the General Partner or any of its Affiliates, in its capacity as such, shall not affect, impair or eliminate the limitations on the liability of the Limited Partners or Assignees under this Agreement.

Section 7.3 *Outside Activities.*

Subject to the provisions of Section 6.5 and the Non-competition Agreement, which shall continue to be applicable to the Persons referred to therein, regardless of whether such Persons shall also be Limited Partners or Assignees, any Limited Partner or Assignee shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including business interests and activities in direct competition with the Partnership Group. Neither the Partnership nor any of the other Partners or Assignees shall have any rights by virtue of this Agreement in any business ventures of any Limited Partner or Assignee.

Section 7.4 *Return of Capital.*

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

Section 7.5 *Rights of Limited Partners to the Partnership.*

(a) In addition to other rights provided by this Agreement or by applicable law, and except as limited by Section 7.5(b), each Limited Partner shall have the right, for a purpose reasonably related to such Limited Partner's interest as a limited partner in the Partnership, upon reasonable demand and at such Limited Partner's own expense:

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

(b) The General Partner may keep confidential from the Limited Partners and Assignees for such period of time as the General Partner deems reasonable, (i) any information that the General Partner reasonably believes to be in the nature of trade secrets or (ii) other information the disclosure of which the General Partner in good faith believes (A) is not in the best interests of the Partnership Group, (B) could damage the Partnership Group or (C) that any Group Member is required by law or by agreements with third parties to keep confidential (other than agreements with Affiliates the primary purpose of which is to circumvent the obligations set forth in Section 7.5).

ARTICLE VIII

BOOKS, RECORDS, ACCOUNTING AND REPORTS

Section 8.1 *Records and Accounting.*

The General Partner shall keep or cause to be kept at the principal office of the Partnership appropriate books and records with respect to the Partnership's business, including all books and records necessary to provide to the Limited Partners any information required to be provided pursuant to Section 7.5(a). Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including the record of the Record Holders and Assignees of Units or other Partnership Securities, books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard drives, punch cards, magnetic tape, photographs, micrographics or any other information storage device; *provided*, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial reporting purposes, on an accrual basis in accordance with generally accepted accounting principles.

Section 8.2 *Fiscal Year.*

The fiscal year of the Partnership shall be October 1 to September 30.

Section 8.3 *Reports.*

(a) As soon as practicable, but in no event later than 120 days after the close of each fiscal year of the Partnership, the General Partner shall cause to be mailed to each Record Holder of a Unit as of a date selected by the General Partner in its sole discretion, an annual report containing financial statements of the Partnership for such fiscal year of the Partnership, presented in accordance with generally accepted accounting principles, including a balance sheet and statements of operations, Partners' equity and cash flows, such statements to be audited by a firm of independent public accountants selected by the General Partner.

(b) As soon as practicable, but in no event later than 90 days after the close of each Quarter except the last Quarter of each fiscal year, the General Partner shall cause to be mailed to each Record Holder of a Unit, as of a date selected by the General Partner in its sole discretion, a report containing unaudited financial statements of the Partnership and such other information as may be required by applicable law, regulation or rule of any National Securities Exchange on which the Units are listed for trading, or as the General Partner determines to be necessary or appropriate.

ARTICLE IX

TAX MATTERS

Section 9.1 *Tax Returns and Information.*

The General Partner shall timely file all returns of the Partnership that are required for federal, state and local income tax purposes on the basis of the accrual method and a taxable year ending on December 31. The tax information reasonably required by Record Holders for federal and state income tax reporting purposes with respect to a taxable year shall be furnished to them within 90 days of the close of the calendar year in which the Partnership's taxable year ends. The classification, realization and recognition of income, gain, losses and deductions and other items shall be on the accrual method of accounting for federal income tax purposes.

Section 9.2 *Tax Elections.*

(a) The Partnership shall make the election under Section 754 of the Code in accordance with applicable regulations thereunder, subject to the reservation of the right to seek to revoke any such election upon the General Partner's determination that such revocation is in the best interests of the Limited Partners. For the purposes of computing the adjustments under Section 743(b) of the Code, the General Partner shall be authorized (but not required) to adopt a convention whereby the price paid by a transferee of Units will be deemed to be the lowest quoted closing price of the Units on any National Securities Exchange on which such Units are traded during the calendar month in which such transfer is deemed to occur pursuant to Section 5.2(g) without regard to the actual price paid by such transferee.

(b) Except as otherwise provided herein, the General Partner shall determine whether the Partnership should make any other elections permitted by the Code.

Section 9.3 *Tax Controversies.*

Subject to the provisions hereof, the General Partner is designated as the Tax Matters Partner (as defined in Section 6231 of the Code) and is authorized and required to represent the Partnership (at the Partnership's expense) in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner and to do or refrain from doing any or all things reasonably required by the General Partner to conduct such proceedings.

Section 9.4 *Withholding.*

Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that it determines in its sole discretion to be necessary or appropriate to cause the Partnership to comply with any withholding requirements established under the Code or any other federal, state, or local law including, without limitation, pursuant to Sections 1441, 1442, 1445 and 1446 of the Code. To the extent that the Partnership is required to withhold and pay over to any taxing authority any amount resulting from the allocation or distribution of income to any Partner or Assignee (including, without limitation, by reason of Section 1446 of the Code),

the amount withheld shall be treated as a distribution of cash pursuant to Section 5.3 in the amount of such withholding from such Partner.

ARTICLE X
CERTIFICATES

Section 10.1 *Certificates.*

Upon the Partnership's issuance of Common Units to any Person, the Partnership shall issue one or more Certificates in the name of such Person evidencing the number of such Units being so issued. Certificates shall be executed on behalf of the Partnership by the General Partner. No Common Unit Certificate shall be valid for any purpose until it has been countersigned by the Transfer Agent, *provided, however*, that if the General Partner elects to issue Units in global form, the Certificates shall be valid upon receipt of a certificate from the Transfer Agent certifying that such Units have been duly registered in accordance with the directions of the Partnership and the Underwriters. Partners holding Certificates evidencing Senior Subordinated Units and Junior Subordinated Units may exchange such Certificates for Certificates evidencing Common Units on and after the Effective Date.

Section 10.2 *Registration. Registration of Transfer and Exchange.*

(a) The General Partner shall cause to be kept on behalf of the Partnership a register in which, subject to such reasonable regulations as it may prescribe and subject to the provisions of Section 10.2(b), the General Partner will provide for the registration and transfer of Units. The Transfer Agent is hereby appointed registrar and transfer agent for the purpose of registering Common Units and transfers of such Units as herein provided. The Partnership shall not recognize transfers of Certificates representing Units unless such transfers are effected in the manner described in this Section 10.2. Upon surrender for registration of transfer of any Units evidenced by a Certificate, and subject to the provisions of Section 10.2(b), the General Partner on behalf of the Partnership shall execute, and the Transfer Agent shall countersign and deliver (or, in the case of Units issued in global form, register in accordance with the rules and regulations of the Depository), in the name of the holder or the designated transferee or transferees, as required pursuant to the holder's instructions, one or more new Certificates evidencing the same aggregate number of Units as was evidenced by the Certificate so surrendered.

(b) Except as otherwise provided in Section 11.5, the Partnership shall not recognize any transfer of Units until the Certificates evidencing such Units are surrendered for registration of transfer and such Certificates are accompanied by a Transfer Application duly executed by the transferee (or the transferee's attorney-in-fact duly authorized in writing). No charge shall be imposed by the Partnership for such transfer; provided, that as a condition to the issuance of any new Certificate under this Section 10.2, the General Partner may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed with respect thereto.

Section 10.3 *Mutilated, Destroyed, Lost or Stolen Certificates.*

(a) If any mutilated Certificate is surrendered to the Transfer Agent, the General Partner on behalf of the Partnership shall execute, and upon its request the Transfer Agent shall countersign and deliver in exchange therefor, a new Certificate evidencing the same number of Units as the Certificate so surrendered

(b) The General Partner on behalf of the Partnership shall execute, and upon its request the Transfer Agent shall countersign and deliver (or, in the case of Units issued in global form, register in accordance with the rules and regulations of the Depository) a new Certificate in place of any Certificate previously issued if the Record Holder of the Certificate:

(i) makes proof by affidavit, in form and substance satisfactory to the General Partner, that a previously issued Certificate has been lost, destroyed or stolen;

(ii) requests the issuance of a new Certificate before the Partnership has notice that the Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(iii) if requested by the General Partner, delivers to the Partnership a bond, in form and substance satisfactory to the General Partner with surety sureties and with fixed or open penalty as the General Partner may reasonably direct, in its sole discretion, to indemnify the Partnership, the General Partner and the Transfer Agent against any claim that may be made on account of the alleged loss, destruction or theft of the Certificate; and

(iv) satisfies any other reasonable requirements imposed by the General Partner.

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

(c) As a condition to the issuance of any new Certificate under this Section 10.3, the General Partner may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed, in relation, thereto and any other expenses (including the fees and expenses of the Transfer Agent) reasonably connected therewith.

Section 10.4 *Record Holders.*

In accordance with Section 10.2(b), the Partnership shall be entitled to recognize the Record Holder as the Limited Partner or Assignee with respect to any Units and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Units on the part of any other Person, regardless of whether the Partnership shall have actual or other notice thereof, except as otherwise provided by law or any applicable rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed for trading. Without limiting the foregoing, when a Person (such as a broker, dealer, bank, trust company or

clearing corporation or an agent of any of the foregoing) is acting as nominee, agent or in some other representative capacity for another Person in acquiring and/or holding Units, as between the Partnership on the one hand, and such other Persons, on the other, such representative Person (a) shall be the Limited Partner or Assignee (as the case may be) of record and beneficially, (b) must execute and deliver a Transfer Application and (c) shall be bound by this Agreement and shall have the rights and obligations of a Limited Partner or Assignee (as the case may be) hereunder and as provided for herein.

ARTICLE XI

TRANSFER OF INTERESTS

Section 11.1 *Transfer.*

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

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

(c) Nothing contained in this Article XI shall be construed to prevent a disposition by the members of the General Partner of any or all of the issued and outstanding member interests in the General Partner.

(d) Nothing contained in this Article XI, or elsewhere in this Partnership Agreement, shall preclude the settlement of any transactions involving Units entered into through the facilities of any National Securities Exchange on which the Units are listed for trading.

Section 11.2 *Transfer of a General Partner's Partnership Interest.*

Notwithstanding anything herein to the contrary, no transfer by the General Partner of all or any part of its General Partner Interest to another Person shall be permitted unless (i) the transferee agrees to assume the rights and duties of the General Partner under this Agreement and to be bound by the provisions of this Agreement, (ii) the Partnership receives an Opinion of Counsel that such transfer would not result in the loss of limited liability of any Limited Partner or of any limited partner of any Group Member or cause any Group Member to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes and (iii) such transferee also agrees to purchase all (or the appropriate portion thereof, if applicable) of the partnership interest of the General Partner as the general partner of each

Group Member. In the case of a transfer pursuant to and in compliance with this Section 11.2, the transferee or successor (as the case may be) shall, subject to compliance with the terms of Section 12.3, be admitted to the Partnership as a General Partner immediately prior to the transfer of the General Partner Interest, and the business of the Partnership shall continue without dissolution.

Section 11.3 *Transfer of Units.*

(a) Units may be transferred only in the manner described in Article X. The transfer of any Units and the admission of any new Partner shall not constitute an amendment to this Agreement.

(b) Until admitted as a Substituted Limited Partner pursuant to Article XII, the Record Holder of a Unit shall be an Assignee in respect of such Unit. Limited Partners may include custodians, nominees, or any other individual or entity in its own or any representative capacity.

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

(d) A transferee who has completed and delivered a Transfer Application shall be deemed to have (i) requested admission as a Substituted Limited Partner, (ii) agreed to comply with and be bound by and to have executed this Agreement, (iii) represented and warranted that such transferee has the right, power and authority and, if an individual, the capacity to enter into this Agreement, (iv) granted the powers of attorney set forth in this Agreement and (v) given the consents and approvals and made the waivers contained in this Agreement.

Section 11.4 *Restrictions on Transfers.*

Notwithstanding the other provisions of this Article XI, no transfer of any Unit or interest therein of any Limited Partner or Assignee shall be made if such transfer would (a) violate the then applicable federal or state securities laws or rules and regulations of the Commission, any state securities commission or any other governmental authorities with jurisdiction over such transfer, (b) affect any Group Member's existence or qualification as a limited partnership under the laws of the jurisdiction of its formation, or (c) result in entity-level taxation for federal income tax purposes of the Partnership.

Section 11.5 *Citizenship Certificates; Non-citizen Assignees.*

(a) If any Group Member is or becomes subject to any federal, state or local law or regulation that, in the reasonable determination of the General Partner, creates a substantial risk of cancellation or forfeiture of any property in which the Group Member has an interest based on the nationality, citizenship or other related status of a Limited Partner or

Assignee, the General Partner may request any Limited Partner or Assignee to furnish to the General Partner, within 30 days after receipt of such request, an executed Citizenship Certification or such other information concerning his nationality, citizenship or other related status (or, if the Limited Partner or Assignee is a nominee holding for the account of another Person, the nationality, citizenship or other related status of such Person) as the General Partner may request. If a Limited Partner or Assignee fails to furnish to the General Partner within the aforementioned 30-day period such Citizenship Certification or other requested information or if upon receipt of such Citizenship Certification or other requested information the General Partner determines, with the advice of counsel, that a Limited Partner or Assignee is not an Eligible Citizen, the Units owned by such Limited Partner or Assignee shall be subject to redemption in accordance with the provisions of Section 11.6. In addition, the General Partner may require that the status of any such Limited Partner or Assignee be changed to that of a Non-citizen Assignee and, thereupon, the General Partner shall be substituted for such non-citizen Assignee as the Limited Partner in respect of his Units.

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

(c) Upon dissolution of the Partnership, a Non-citizen Assignee shall have no right to receive a distribution in kind pursuant to Section 14.4 but shall be entitled to the cash equivalent, thereof, and the General Partner shall provide, cash in exchange for an assignment of the Non-citizen Assignee's share of the distribution in kind. Such payment and assignment shall be treated for Partnership purposes as a purchase by the General Partner from the Non-citizen Assignee of his Partnership Interest (representing his right to receive his share of such distribution in kind).

(d) At any time after he can and does certify that he has become an Eligible Citizen, a Non-citizen Assignee may, upon application to the General Partner, request admission as a Substituted Limited Partner with respect to any Units of such Non-citizen Assignee not redeemed pursuant to Section 11.6, and upon his admission pursuant to Section 12.2, the General Partner shall cease to be deemed to be the Limited Partner in respect of the Non-citizen Assignee's Units.

Section 11.6 *Redemption of Interests.*

(a) If at any time a Limited Partner or Assignee fails to furnish a Citizenship Certification or other information requested within the 30-day period specified in Section 11.5(a), or if upon receipt of such Citizenship Certification or other information the General Partner determines, with the advice of counsel, that a Limited Partner or Assignee is not an Eligible Citizen, the Partnership may, unless the Limited Partner or Assignee establishes to the satisfaction of the General Partner that such Limited Partner or Assignee is an Eligible Citizen or has transferred his Units to a Person who furnishes a Citizenship Certification to the General Partner prior to the date fixed for redemption as provided below, redeem the Partnership Interest of such Limited Partner or Assignee as follows:

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

(ii) The aggregate redemption price for Redeemable Units shall be an amount equal to the Current Market Price (the date of determination of which shall be the date fixed for redemption) of Units of the class to be so redeemed multiplied by the number of Units of each such class included among the Redeemable Units. The redemption price shall be paid in the sole discretion of the General Partner, in cash or by delivery of a promissory note of the Partnership in the principal amount of the redemption price, bearing interest at the rate of 10% annually and payable in three equal annual installments of principal together with accrued interest, commencing one year after the redemption date.

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

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

(b) The provisions of this Section 11.6 shall also be applicable to Units held by a Limited Partner or Assignee as nominee of a Person determined to be other than an Eligible Citizen.

(c) Nothing in this Section 11.6 shall prevent the recipient of a notice of redemption from transferring his Units before the redemption date if such transfer is otherwise permitted under this Agreement. Upon receipt of notice of such a transfer, the General Partner shall withdraw the notice of redemption, provided the transferee of such Units certifies in the Transfer Application that he is an Eligible Citizen. If the transferee fails to make such certification, such redemption shall be effected from the transferee on the original redemption date.

ARTICLE XII

ADMISSION OF PARTNERS

Section 12.1 *Admission of Initial Limited Partners.*

Upon the issuance by the Partnership of the Old Subordinated Units to the Initial General Partner in connection with the Initial Offering, the Initial General Partner was admitted to the Partnership as a Limited Partner. Upon the issuance by the Partnership of Common Units to the Initial Underwriters in connection with the Initial Offering and the execution by the Initial Underwriters of a Transfer Application, the Initial Underwriters were admitted to the Partnership as Initial Limited Partners.

Section 12.2 *Admission of Substituted Limited Partners.*

By transfer of a Unit representing a Limited Partner Interest in accordance with Article XI, the transferor shall be deemed to have given the transferee the right to seek admission as a Substituted Limited Partner subject to the conditions of, and in the manner permitted under, this Agreement. A transferor of a Certificate representing a Limited Partner Interest shall, however, only have the authority to convey to a purchaser or other transferee who does not execute and deliver a Transfer Application (a) the right to negotiate such Certificate to a purchaser or other transferee and (b) the right to transfer the right to request admission as a Substituted Limited Partner to such purchaser or other transferee in respect of the transferred Units. Each transferee of a Unit representing a Limited Partner Interest (including any nominee holder or an agent acquiring such Unit for the account of another Person) who executes and delivers a Transfer Application shall, by virtue of such execution and delivery, be an Assignee and be deemed to have applied to become a Substituted Limited Partner with respect to the Units so transferred to such Person. Such Assignee shall become a Substituted Limited Partner (x) at such time as the General Partner consents thereto, which consent may be given or withheld in the General Partner's sole discretion, and (y) when any such admission is shown on the books and records of the Partnership. If such consent is withheld, such transferee shall be an Assignee. An Assignee shall have an interest in the Partnership equivalent to that of a Limited Partner with respect to allocations and distributions, including liquidating distributions, of the Partnership. With respect to voting rights attributable to Units that are held by Assignees, the General Partner shall be deemed to be the Limited Partner with respect thereto and shall, in exercising the voting rights in respect of such Units on any matter vote such Units at the written direction of the Assignee who is the Record Holder of such Units. If no such written direction is received, such Units will not be voted. An Assignee shall have no other rights of a Limited Partner.

Section 12.3 *Admission of Successor General Partner.*

On the date hereof the General Partner is being admitted to the Partnership as successor to Star Gas LLC immediately prior to its withdrawal pursuant to Section 4.4(d). A successor General Partner approved pursuant to Section 13.1 or 13.2 or the transferee of or successor to all the General Partner Interest pursuant to Section 11.2 who is proposed to be admitted as a successor General Partner shall be admitted to the Partnership as the General Partner, effective immediately prior to the withdrawal or removal of the General Partner pursuant to Section 13.1 or 13.2 or the transfer of the General Partner Interest pursuant to Section 11.2; *provided, however*, that no such successor shall be admitted to the Partnership until compliance with the terms of Section 11.2 has occurred and such successor has executed and delivered such other documents or instruments as may be required to effect such admission. Any such successor shall, subject to the terms hereof, carry on the business of the Partnership without dissolution.

Section 12.4 *Admission of Additional Limited Partners.*

(a) A Person (other than the General Partner, an Initial Limited Partner or a Substituted Limited Partner) who makes a Capital Contribution to the Partnership in accordance with this Agreement shall be admitted to the Partnership as an Additional Limited Partner only upon furnishing to the General Partner (i) evidence of acceptance in form satisfactory to the General Partner of all of the terms and conditions of this Agreement, including the power of attorney granted in Section 1.4, and (ii) such other documents or instruments as may be required in the discretion of the General Partner to effect such Person's admission as an Additional Limited Partner.

(b) Notwithstanding anything to the contrary in this Section 12.4, no Person shall be admitted as an Additional Limited Partner without the consent of the General Partner, which consent may be given or withheld in the General Partner's sole discretion. The admission of any Person as an Additional Limited Partner shall become effective on the date upon which the name of such Person is recorded as such in the books and records of the Partnership, following the consent of the General Partner to such admission.

Section 12.5 *Amendment of Agreement and Certificate of Limited Partnership.*

To effect the admission to the Partnership of any Partner, the General Partner shall take all steps necessary and appropriate under the Delaware Act to amend the records of the Partnership to reflect such admission and, if necessary, to prepare as soon as practical an amendment of this Agreement and, if required by law, to prepare and file an amendment to the Certificate of Limited Partnership, and the General Partner may for this purpose, among others, exercise the power of attorney granted pursuant to Section 1.4.

ARTICLE XIII

WITHDRAWAL OR REMOVAL OF PARTNERS

Section 13.1 *Withdrawal of the General Partner.*

(a) The General Partner shall be deemed to have withdrawn from the Partnership upon the occurrence of any one of the following events (each such event herein referred to as an "Event of Withdrawal");

- (i) the General Partner voluntarily withdraws from the Partnership by giving written notice to the other Partners;
- (ii) the General Partner transfers all of his rights as General Partner pursuant to Section 11.2;
- (iii) the General Partner is removed pursuant to Section 13.2;
- (iv) the General Partner (A) makes a general assignment for the benefit of creditors; (B) files a voluntary bankruptcy petition for relief under Chapter 7 of the United States Bankruptcy Code; (C) files a petition or answer seeking for itself a

liquidation, dissolution or similar relief (but not a reorganization) under any law; (D) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (A)-(C) of this Section 13.1(a)(iv); or (E) seeks, consents to or acquiesces in the appointment of a trustee (but not a debtor in possession), receiver or liquidator of the General Partner or of all or any substantial part of its properties;

(v) a final and non-appealable order of relief under Chapter 7 of the United States Bankruptcy Code is entered by a court with appropriate jurisdiction pursuant to a voluntary or involuntary petition by or against the General Partner; or

(vi) a certificate of dissolution or its equivalent is filed for the General Partner, or 90 days expire after the date of notice to the General Partner of revocation of its charter without a reinstatement of its charter, under the laws of its state of incorporation or formation.

If an Event of Withdrawal specified in Section 13.1(a)(iv), (v) or (vi) occurs, the withdrawing General Partner shall give notice to the Limited Partners within 30 days after such occurrence. The Partners hereby agree that only the Events of Withdrawal described in this Section 13.1 shall result in the withdrawal of the General Partner from the Partnership.

(b) Withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall not constitute a breach of this Agreement under the following circumstances: (i) the General Partner voluntarily withdraws by giving at least 90 days' advance notice to the Limited Partners, such withdrawal to take effect on the date specified in such notice; or (ii) at any time that the General Partner ceases to be a General Partner pursuant to Section 13.1(a)(ii) or is removed pursuant to Section 13.2. The withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall also constitute the withdrawal of the General Partner as general partner of the other Group Members. If the General Partner gives a notice of withdrawal pursuant to Section 13.1(a)(i), holders of a Unit Majority may, prior to the effective date of such withdrawal, elect a successor General Partner. The Person so elected as successor General Partner shall automatically become the successor general partner of the other Group Members. If, prior to the effective date of the General Partner's withdrawal, a successor is not selected by the Limited Partners as provided herein, the Partnership shall be dissolved in accordance with Section 14.1. Any successor General Partner elected in accordance with the terms of this Section 13.1 shall be subject to the provisions of Section 12.3.

(c) On the Effective Date, the Successor General Partner is being admitted to the Partnership as the successor to the Withdrawing General Partner immediately prior to its withdrawal pursuant to Section 4.4(d). At such time, the withdrawal of the Withdrawing General Partner as general partner of the Partnership shall be effective and any notice of such withdrawal required by this Article XIII shall be waived.

Section 13.2 *Removal of the General Partner.*

The General Partner may be removed if such removal is approved by Limited Partners holding at least two-thirds of the Outstanding Units voting together as a single class (excluding those Units held by the General Partner and its Affiliates). Any such action by such Limited Partners for removal of the General Partner must also provide for the election of a successor General Partner by Limited Partners holding at least a majority of the Outstanding Units (excluding for purposes of such determination Units owned by the General Partner and its Affiliates). Such removal shall be effective immediately following the admission of a successor General Partner pursuant to Article XII. The removal of the General Partner shall also automatically constitute the removal of the General Partner as general partner of the other Group Members. If a person is elected as a successor General Partner in accordance with the terms of this Section 13.2, such person shall, upon admission pursuant to Article XII, automatically become the successor general partner of the other Group Members. The right of the Limited Partners holding Outstanding Units to remove the General Partner shall not exist or be exercised unless the Partnership has received an Opinion of Counsel that such removal would not result in the loss of the limited liability of any Limited Partner or of the limited partner of any Group Member or cause any Group Member to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes to the extent not already so treated or taxed. Any successor General Partner elected in accordance with the terms of this Section 13.2 shall be subject to the provisions of Section 12.3.

Section 13.3 *Interest of Departing Partner and Successor General Partner.*

(a) In the event of (i) withdrawal of the General Partner under circumstances where such withdrawal does not violate this Agreement or (ii) removal of the General Partner by the Limited Partners under circumstances where Cause does not exist, if a successor General Partner is elected in accordance with the terms of Section 13.1 or 13.2, the Departing Partner shall have the option exercisable prior to the effective date of the departure of such Departing Partner to require its successor to purchase its Partnership Interest as a general partner in the Partnership (which is represented by the General Partner Units) and its partnership interest as the general partner in the other Group Members (collectively, the "Combined Interest") in exchange for an amount in cash equal to the fair market value of such Combined Interest, such amount to be determined and payable as of the effective date of its departure. For purposes of this Section 13.3, the Withdrawing General Partner hereby waives the right to require the Successor General Partner to purchase its Combined Interest. If the General Partner is removed by the Limited Partners under circumstances where Cause exists or if the General Partner withdraws under circumstances where such withdrawal violates this agreement, and if a successor General Partner is elected in accordance with the terms of Section 13.1 or 13.2, such successor shall have the option, exercisable prior to the effective date of the departure of such Departing Partner, to purchase the Combined Interest of the Departing Partner for such fair market value of such Combined Interest. In either event, the Departing Partner shall be entitled to receive all reimbursements due such Departing Partner pursuant to Section 6.4, including any employee-related liabilities (including severance liabilities), incurred in connection with the termination of any employees employed by the General Partner for the benefit of the Partnership or the other Group Members.

For purposes of this Section 13.3(a), the fair market value of the Departing Partner's Combined Interest shall be determined by agreement between the Departing Partner and its successor or, failing agreement within 30 days after, the effective date of such Departing Partners departure, by an independent investment banking firm or other independent expert selected by the Departing Partner and its successor, which, in turn, may rely on other experts and the determination of which shall be conclusive as to such matter. If such parties cannot agree upon one independent investment banking firm or other independent expert within 45 days after the effective date of such departure, then the Departing Partner shall designate an independent investment banking firm or other independent expert, the Departing Partner's successor shall designate an independent investment banking firm or other independent expert, and such firms or experts shall mutually select a third independent investment banking firm or independent expert, which shall determine the fair market value of the Combined Interest. In making its determination, such independent investment banking firm or other independent expert shall consider the then current trading price of Units on any National Securities Exchange on which Units are then listed, the value of the Partnership's assets, the rights and obligations of the General Partner and other factors it may deem relevant.

(b) If the Combined Interest is not purchased in the manner set forth in Section 13.3(a), the Departing Partner shall become a Limited Partner and the Combined Interest shall be converted into Common Units pursuant to a valuation made by an investment banking firm or other independent expert selected pursuant to Section 13.3(a), without reduction in such Partnership Interest (but subject to proportionate dilution by reason of the admission of its successor). Any successor General Partner shall indemnify the Departing Partner as to all debts and liabilities of the Partnership arising on or after the date on which the Departing Partner becomes a Limited Partner. For purposes of this Agreement, conversion of the General Partner's Combined Interest to Common Units will be characterized as if the General Partner contributed its Combined Interest to the Partnership in exchange for the newly issued Common Units.

(c) If a successor General Partner is elected in accordance with the terms of Section 13.1 or 13.2 and the option described in Section 13.3(a) is not exercised by the party entitled to do so, the successor General Partner shall, at the effective date of its admission to the Partnership, contribute to the Partnership cash in an amount equal to the fair market value of the Combined Interest on such date. In such event, such successor General Partner shall, subject to the following sentence, be entitled to such Percentage Interest of all Partnership allocations and distributions and any other allocations and distributions to which the Departing Partner was entitled.

Section 13.4 *Withdrawal of Limited Partners.*

No Limited Partner shall have any right to withdraw from the Partnership; *provided however*, that when a transferee of a Limited Partner's Units becomes a Record Holder, such transferring Limited Partner shall cease to be a Limited Partner with respect to the Units so transferred.

ARTICLE XIV

DISSOLUTION AND LIQUIDATION

Section 14.1 *Dissolution.*

The Partnership shall not be dissolved by the admission of Substituted Limited Partners or Additional Limited Partners or by the admission of a successor General Partner in accordance with the terms of this Agreement. Upon the removal or withdrawal of the General Partner, if a successor General Partner is elected pursuant to Section 13.1 or 13.2, the Partnership shall not be dissolved and such successor General Partner shall continue the business of the Partnership. The Partnership shall dissolve, and (subject to Section 14.2) its affairs shall be wound up, upon:

- (a) the expiration of its term as provided in Section 1.5;
- (b) an Event of Withdrawal of the General Partner as provided in Section 13.1(a) (other than Section 13.1(a)(ii)), unless a successor is elected and an Opinion of Counsel is received as provided in Section 13.1(b) or 13.2 and such successor is admitted to the Partnership pursuant to Section 12.3;
- (c) an election to dissolve the Partnership by the General Partner that is approved by holders of at least a Unit Majority;
- (d) entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Delaware Act; or
- (e) the sale of all or substantially all of the assets and properties of the Partnership Group.

Section 14.2 *Continuation of the Business of the Partnership After Dissolution.*

Upon (a) dissolution of the Partnership following an Event of Withdrawal caused by the withdrawal or removal of the General Partner as provided in Section 13.1(a)(i) or (iii) and the failure of the Partners to select a successor to such Departing Partner pursuant to Section 13.1 or 13.2, then within 90 days thereafter, or (b) dissolution of the Partnership upon an event constituting an Event of Withdrawal as defined in Section 13.1(a)(iv), (v) or (vi), then, to the maximum extent permitted by law, within 180 days thereafter, holders of at least a majority of the Outstanding Units (excluding for purposes of such determination any Units held by the General Partner or its Affiliates) may elect to continue the business of the Partnership on the same terms and conditions set forth in this Agreement having as the successor general partner a Person approved by holders of at least a majority of the Outstanding Units (excluding for purposes of such determination any Units held by the General Partner or its Affiliates). Unless such an election is made within the applicable time period as set forth above, the Partnership shall conduct only activities necessary to wind up its affairs. If such an election is so made, then:

- (i) the Partnership shall continue without dissolution until the end of the term set forth in Section 1.5 unless earlier dissolved in accordance with this Article XIV;

(ii) if the successor General Partner is not the former General Partner, then the interest of the former General Partner shall be dealt with in the manner provided in Section 13.3(b); and

(iii) the successor General Partner shall be admitted to the Partnership as General Partner, effective as of the Event of Withdrawal, by agreeing in writing to be bound by this Agreement; provided, that the right of holders of at least a majority of Outstanding Units to approve a successor General Partner and to reconstitute and to continue the business of the Partnership shall not exist and may not be exercised unless the Partnership has received an Opinion of Counsel that (x) the exercise of the right would not result in the loss of limited liability of any Limited Partner and (v) neither the Partnership, nor any other Group Member would be treated as an association taxable as a corporation or otherwise be taxable as an entity for federal income tax purposes upon the exercise of such right to continue to the extent not already so treated or taxed.

Section 14.3 *Liquidator.*

Upon dissolution of the Partnership, unless the business of the Partnership is continued pursuant to Section 14.2, the General Partner, or in the event the dissolution is the result of an Event of Withdrawal, a liquidator or liquidating committee approved by holders of at least a majority of the Outstanding Units representing Limited Partner Interests, shall be the Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by holders of at least a majority of the Outstanding Units representing Limited Partner Interests. The Liquidator shall agree not to resign at any time without 15 days' prior notice and (if other than the General Partner) may be removed at any time, with or without cause, by notice of removal approved by holders of at least a majority of the Outstanding Units representing Limited Partner Interests. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be approved by holders of at least a majority of the Outstanding Units representing Limited Partner Interests. The right to approve a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XIV, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers other than the limitation on sale set forth in Section 6.3(b)) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided for herein.

Section 14.4 *Liquidation.*

The Liquidator shall proceed to dispose of the assets of the Partnership, discharge its liabilities, and otherwise wind up its affairs in such manner and over such period as the Liquidator determines to be in the best interest of the Partners, subject to the following:

(a) *Disposition of Assets.* The assets may be disposed of by public or private sale or by distribution in kind to one or more Partners on such terms as the Liquidator and such Partner or Partners may agree. If any property is distributed in kind, the Partner receiving the property shall be deemed for purposes of Section 14.4(c) to have received cash equal to its fair market value; and contemporaneously therewith, appropriate cash distributions must be made to the other Partners. For purposes of computing Net Termination Gain, gain or loss on distributed property shall be recognized as if such property had been sold for its fair market value.

(b) *Discharge of Liabilities.* Liabilities of the Partnership include amounts owed to Partners otherwise than in respect of their distribution rights under Article V. With respect to any liability that is contingent or is otherwise not yet due and payable, the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for its payment. When paid, any unused portion of the reserve shall be distributed as additional liquidation proceeds.

(c) *Liquidation Distributions.* All property and all cash in excess of that required to discharge liabilities as provided in Section 14.4(b) shall be distributed to the Partners in accordance with, and to the extent of, the positive balances in their respective Capital Accounts, as determined after taking into account all Capital Account adjustments (other than those made by reason of this clause) for the taxable year of the Partnership during which the liquidation of the Partnership occurs (with such date of occurrence being determined pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(g)), and such distribution shall be made by the end of such taxable year (or, if later, within 90 days after said date of such occurrence).

Section 14.5 *Cancellation of Certificate of Limited Partnership.*

Upon the completion of the distribution of Partnership cash and property as provided in Sections 14.3 and 14.4 in connection with the liquidation of the Partnership, the Partnership shall be terminated and the Certificate of Limited Partnership and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware shall be canceled and such other actions as may be necessary to terminate the Partnership shall be taken.

Section 14.6 *Return of Capital Contributions.*

The General Partner shall not be personally liable for, and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate, the return of the Capital Contributions of the Limited Partners, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

Section 14.7 *Waiver of Partition.*

To the maximum extent permitted by law, each Partner hereby waives any right to partition of the Partnership property.

Section 14.8 *Capital Account Restoration.*

No Limited Partner shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Partnership. The General Partner shall be obligated to

restore any negative balance in its Capital Account upon liquidation of its interest in the Partnership by the end of the taxable year of the Partnership during which such liquidation occurs, or, if later, within 90 days after the date of such liquidation.

ARTICLE XV

AMENDMENT OF PARTNERSHIP
AGREEMENT; MEETINGS; RECORD DATE

Section 15.1 *Amendment to be Adopted Solely by General Partner.*

Each Limited Partner agrees that the General Partner (pursuant to its powers of attorney from the Limited Partners and Assignees), without the approval of any Limited Partner or Assignee, may amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

(a) a change in the name of the Partnership, the location of the principal place of business of the Partnership, the registered agent of the Partnership or the registered office of the Partnership;

(b) admission, substitution, withdrawal or removal of Partners in accordance with this Agreement;

(c) a change that, in the sole discretion of the General Partner, is necessary or advisable to qualify or continue the qualification of the Partnership as a limited partnership or a partnership in which the limited partners have limited liability under the laws of any state or to ensure that the Partnership will be treated as an association taxable as a corporation or otherwise taxed as an entity for federal income tax purposes;

(d) a change that, in the sole discretion of the General Partner, (i) does not adversely affect the Limited Partners in any material respect, (ii) is necessary or advisable to (A) satisfy any requirements, conditions (including any particular class of Partnership Interests as compared to other classes of Partnership Interests) or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute (including the Delaware Act) or (B) facilitate the trading of the Units (including the division of Outstanding Units into different classes to facilitate uniformity of tax consequences within such classes of Units) or comply with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are or will be listed for trading, compliance with any of which the General Partner determines in its sole discretion to be in the best interests of the Partnership and the Limited Partners, (iii) is necessary or advisable in connection with action taken by the General Partner pursuant to Section 4.8, or (iv) is required to effect the intent of the provisions of this Agreement or is otherwise contemplated by this Agreement;

(e) a change in the fiscal year or taxable year of the Partnership and any changes that, in the sole discretion of the General Partner, are necessary or advisable as a result of a change in the fiscal year or taxable year of the Partnership including, if the General Partner

shall so determine, a change in the definition of “Quarter” and the dates on which distributions are to be made by the Partnership;

(f) an amendment that is necessary, in the Opinion of Counsel, to prevent the Partnership or the General Partner or its directors or officers from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, the Investment Advisers Act of 1940, as amended, or “plan asset” regulations adopted under the Employee Retirement Income Security Act of 1974, as amended, regardless of whether such are substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor;

(g) subject to the terms of Section 4.4, an amendment that, in the sole discretion of the General Partner, is necessary or advisable in connection with the authorization of issuance of any class or series of Partnership Securities pursuant to Section 4.4;

(h) any amendment expressly permitted in this Agreement to be made by the General Partner acting alone;

(i) amendment effected, necessitated or contemplated by a Merger Agreement approved in accordance with Section 16.3;

(j) an amendment that, in the sole discretion of the General Partner is necessary or advisable to reflect, account for and deal with appropriately the formation by the Partnership of, or investment by the Partnership in, any corporation, partnership, joint venture, limited liability company or other entity, in connection with the conduct by the Partnership of activities permitted by the terms of Section 3.1; or

(k) any other amendments substantially similar to the foregoing.

Section 15.2 *Amendment Procedures.*

Except as provided in Sections 15.1 and 15.3, all amendments to this Agreement shall be made in accordance with the following requirements. Amendments to this Agreement may be proposed only by or with the consent of the General Partner. A proposed amendment shall be effective upon its approval by the holders of at least a Unit Majority, unless a greater or different percentage is required under this Agreement or by Delaware law. Each proposed amendment that requires the approval of the holders of a specified percentage of Outstanding Units shall be set forth in a writing that contains the text of the proposed amendment. If such an amendment is proposed, the General Partner shall seek the written approval of the requisite percentage of Outstanding Units or call a meeting of the Limited Partners to consider and vote on such proposed amendment. The General Partner shall notify all Record Holders upon final adoption of any such proposed amendments.

Section 15.3 *Amendment Requirements.*

(a) Notwithstanding the provisions of Sections 15.1 and 15.2, no provision of this Agreement that establishes a percentage of Outstanding Units required to take any action shall be amended, altered, changed, repealed or rescinded in any respect that would have either (i) the effect of reducing such voting percentage or (ii) more than an immaterial effect on a

Unitholder unless such amendment is approved by the written consent or the affirmative vote of holders of Outstanding Units whose aggregate Outstanding Units constitute not less than the voting requirement sought to be reduced.

(b) Notwithstanding the provisions of Sections 15.1 and 15.2, no amendment to this Agreement may (i) enlarge the obligations of any Limited Partner without its consent, unless such shall be deemed to have occurred as a result of an amendment approved pursuant to Section 15.3(c), (ii) enlarge the obligations of, restrict in any way any action by or rights of, or reduce in any way the amounts distributable, reimbursable or otherwise payable to, the General Partner without its consent, which may be given or withheld in its sole discretion, (iii) change Section 14.1(a) or (c), or (iv) change the term of the Partnership or, except as set forth in Section 14.1(c), give any Person the right to dissolve the Partnership.

(c) Except as otherwise provided, and without limitation of the General Partner's authority to adopt amendments to this Agreement as contemplated in Section 15.1, any amendment that would have a material adverse effect on the rights or preferences of any class of Outstanding Units in relation to other classes of Units must be approved by the holders of not less than a majority of the Outstanding Units of the classes affected.

(d) Notwithstanding any other provision of this Agreement, except for amendments pursuant to Section 6.3 or 15.1 and except as otherwise provided by Section 16.3(b), no amendments shall become effective without the approval of the holders of at least 90% of the Outstanding Units unless the Partnership obtains an Opinion of Counsel to the effect that such amendment will not affect the limited liability of any Limited Partner or any limited partner of the other Group Members under applicable law.

(e) This Section 15.3 shall only be amended with the approval of the holders of at least 90% of the Outstanding Units.

(f) Notwithstanding anything to the contrary contained herein, following the Distribution Date the Partnership shall not supplement or amend the terms of the Partnership Agreement in any manner that may materially adversely affect the interests of the holders of Rights (other than an Acquiring Person or an Affiliate or an Associate of an Acquiring Person as such capitalized terms are defined in the Rights Agreement).

Section 15.4 *Meetings.*

All acts of Limited Partners to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XV. Meetings of the Limited Partners may be called by the General Partner or by Limited Partners owning 20% or more of the Outstanding Units of the class or classes for which a meeting is proposed. Limited Partners shall call a meeting by delivering to the General Partner one or more requests in writing stating that the signing Limited Partners wish to call a meeting and indicating the general or specific purposes for which the meeting is to be called. Within 60 days after receipt of such a call from Limited Partners or within such greater time as may be reasonably necessary for the Partnership to comply with any statutes, rules, regulations, listing agreements or similar requirements governing the holding of a meeting or the solicitation of proxies for use at such a meeting, the General Partner shall send a

notice of the meeting to the Limited Partners either directly or indirectly through the Transfer Agent. A meeting shall be held at a time and place determined by the General Partner on a date not less than 10 days nor more than 60 days after the mailing of notice of the meeting.

Section 15.5 *Notice of a Meeting.*

Notice of a meeting called pursuant to Section 15.4 shall be given to the Record Holders in writing by mail or other means of written communication in accordance with Section 18.1. The notice shall be deemed to have been given at the time when deposited in the mail or sent by other means of written communication.

Section 15.6 *Record Date.*

For purposes of determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners or to give approvals without a meeting as provided in Section 15.11, the General Partner may set a Record Date, which shall not be less than 10 nor more than 60 days before (a) the date of the meeting (unless such requirement conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed for trading, in which case the rule, regulation, guideline or requirement of such exchange shall govern) or (b) in the event that approvals are sought without a meeting, the date by which Limited Partners are requested in writing by the General Partner to give such approvals.

Section 15.7 *Adjournment.*

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than 45 days. At the adjourned meeting, the Partnership may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if a new Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with this Article XV.

Section 15.8 *Waiver of Notice; Approval of Meeting; Approval of Minutes.*

The transactions of any meeting of Limited Partners, however called and noticed, and whenever held, shall be as valid as if occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, Limited Partners representing such quorum who were present in person or by proxy and entitled to vote, sign a written waiver of notice or an approval of the holding of the meeting or an approval of the minutes thereof. All waivers and approvals shall be filed with the Partnership records or made a part of the minutes of the meeting. Attendance of a Limited Partner at a meeting shall constitute a waiver of notice of the meeting, except when the Limited Partner does not approve, at the beginning of the meeting, of the transaction of any business because the meeting is not lawfully called or convened; and except that attendance at a meeting is not a waiver of any right to disapprove the consideration of matters required to be included in the notice of the meeting, but not so included, if the disapproval is expressly made at the meeting.

Section 15.9 *Quorum.*

The holders of a majority of the Outstanding Units of the class or classes for which a meeting has been called represented in person or by proxy shall constitute a quorum at a meeting of Limited Partners of such class or classes unless any such action by the Limited Partners requires approval by holders of a greater percentage of such Units, in which case the quorum shall be such greater percentage. At any meeting of the Limited Partners duly called and held in accordance with this Agreement at which a quorum is present, the act of Limited Partners holding Outstanding Units that in the aggregate represent a majority of the Outstanding Units entitled to vote and be present in person or by proxy at such meeting shall be deemed to constitute the act of all Limited Partners, unless a greater or different percentage is required with respect to such action, under the provisions of this Agreement, in which case the act of the Limited Partners holding Outstanding Units that in the aggregate represent at least such greater or different percentage shall be required. The Limited Partners present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Limited Partners to leave less than a quorum, if any action taken (other than adjournment) is approved by the required percentage of Outstanding Units specified in this Agreement. In the absence of a quorum any meeting of Limited Partners may be adjourned from time to time by the affirmative vote of holders of at least a majority of the Outstanding Units represented either in person or by proxy, but no other business may be transacted, except as provided in Section 15.7.

Section 15.10 *Conduct of Meeting.*

The General Partner shall have full power and authority concerning the manner of conducting any meeting of the Limited Partners or solicitation of approvals in writing, including the determination of Persons entitled to vote, the existence of a quorum, the satisfaction of the requirements of Section 15.4, the conduct of voting, the validity and effect of any proxies and the determination of any controversies, votes or challenges arising in connection with or during the meeting or voting. The General Partner shall designate a Person to serve as chairman of any meeting and shall further designate a Person to take the minutes of any meeting. All minutes shall be kept with the records of the Partnership maintained by the General Partner. The General Partner may make such other regulations consistent with the applicable law and this Agreement as it may deem advisable concerning the conduct of any meeting of the Limited Partners or solicitation of approvals in writing, including regulations in regard to the appointment of proxies, the appointment and duties of inspectors of votes and approvals, the submission and examination of proxies and other evidence of the right to vote, and the revocation of approvals in writing.

Section 15.11 *Action Without a Meeting.*

Any action that may be taken at a meeting of the Limited Partners may be taken without a meeting if an approval in writing setting forth the action so taken is signed by Limited Partners owning not less than the minimum percentage of the Outstanding Units that would be necessary to authorize or take such action at a meeting at which all the Limited Partners were present and voted. Prompt notice of the taking of action without a meeting shall be given to the Limited Partners who have not approved in writing. The General Partner may specify that any written ballot submitted to Limited Partners for the purpose of taking any action without a meeting shall

be returned to the Partnership within the time period, which shall be not less than 20 days, specified by the General Partner. If a ballot returned to the Partnership does not vote all of the Units held by the Limited Partner, the Partnership shall be deemed to have failed to receive a ballot for the Units that were not voted. If approval of the taking of any action by the Limited Partners is solicited by any Person other than by or on behalf of the General Partner, the written approvals shall have no force and effect unless and until (a) they are deposited with the Partnership in care of the General Partner, (b) approvals sufficient to take the action proposed are dated as of a date not more than 90 days prior to the date sufficient approvals are deposited with the Partnership and (c) an Opinion of Counsel is delivered to the General Partner to the effect that the exercise of such right and the action proposed to be taken with respect to any particular matter (i) will not cause the Limited Partnership to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability, and (ii) is otherwise permissible under the state statutes then governing the rights, duties and liabilities of the Partnership and the Partners.

Section 15.12 *Voting and Other Rights.*

(a) Only those Record Holders of the Units on the Record Date set pursuant to Section 15.6 (and also subject to the limitations contained in the definition of "Outstanding") shall be entitled to notice of, and to vote at, a meeting of Limited Partners or to act with respect to matters as to which the holders of the Outstanding Units have the right to vote or to act. All references in this Agreement to votes of, or other acts that may be taken by, the Outstanding Units shall be deemed to be references to the votes or acts of the Record Holders of such Outstanding Units.

(b) With respect to Units that are held for a Person's account by another Person (such as a broker, dealer, bank, trust company or clearing corporation, or an agent of any of the foregoing), in whose name such Units are registered, such other Person shall, in exercising the voting rights in respect of such Units on any matter, and unless the arrangement between such Persons provides otherwise, vote such Units in favor of, and at the direction of, the Person who is the beneficial owner, and the Partnership shall be entitled to assume it is so acting without further inquiry. The provisions of this Section 15.12(b) (as well as all other provisions of this Agreement) are subject to the provisions of Section 10.4.

ARTICLE XVI

MERGER

Section 16.1 *Authority.*

The Partnership may merge or consolidate with one or more corporations, business trusts or associations, real estate investment trusts, common law trusts or unincorporated businesses, including a general partnership, limited partnership or limited liability company, formed under the laws of the State of Delaware or any other state of the United States of America, pursuant to

a written agreement of merger or consolidation (“Merger Agreement”) in accordance with this Article XVI.

Section 16.2 *Procedure for Merger or Consolidation.*

Merger or consolidation of the Partnership pursuant to this Article XVI requires the prior approval of the General Partner. If the General Partner shall determine, in the exercise of its sole discretion, to consent to the merger or consolidation, the General Partner shall approve the Merger Agreement, which shall set forth:

(a) The names and jurisdictions of formation or organization of each of the business entities proposing to merge or consolidate;

(b) The name and jurisdictions of formation or organization of the business entity that is to survive the proposed merger or consolidation (the “Surviving Business Entity”);

(c) The terms and conditions of the proposed merger or consolidation;

(d) The manner and basis of exchanging or converting the equity securities of each constituent business entity for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity; and (i) if any general or limited partner interests, securities or rights of any constituent business entity are not to be exchanged or converted solely for, or into, cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity, the cash, property or general or limited partner interests, rights, securities or obligations of any limited partnership, corporation, trust or other entity (other than the Surviving Business Entity) which the holders of such general or limited partner interests, securities or rights are to receive in exchange for, or upon conversion of their general or limited partner interests, securities or rights, and (ii) in the case of securities represented by certificates, upon the surrender of such certificates, which cash, property or general or limited partner interests, rights, securities or obligations of the Surviving Business Entity or any general or limited partnership, corporation, trust or other entity (other than the Surviving Business Entity), or evidences thereof, are to be delivered;

(e) A statement of any changes in the constituent documents or the adoption of new constituent documents (the articles or certificate of incorporation, articles of trust, declaration of trust, certificate or agreement of limited partnership, certificate of limited liability company or other similar charter or governing document) of the Surviving Business Entity to be effected by such merger or consolidation;

(f) The effective time of the merger, which may be the date of the filing of the certificate of merger pursuant to Section 16.4 or a later date specified in or determinable in accordance with the Merger Agreement (provided, that if the effective time of the merger is to be later than the date of the filing of the certificate of merger, the effective time shall be fixed no later than the time of the filing of the certificate of merger and stated therein); and

(g) Such other provisions with respect to the proposed merger or consolidation as are deemed necessary or appropriate by the General Partner.

Section 16.3 *Approval by Limited Partners of Merger or Consolidation.*

(a) The General Partner, upon its approval of the Merger Agreement, shall direct that the Merger Agreement be submitted to a vote of Limited Partners, whether at a meeting or by written consent, in either case in accordance with the requirements of Article XV. A copy or a summary of the Merger Agreement shall be included in or enclosed with the notice of a meeting or the written consent.

(b) The Merger Agreement shall be approved upon receiving the affirmative vote or consent of the holders of a Unit Majority unless the Merger Agreement contains any provision that, if contained in an amendment to this Agreement, the provisions of this Agreement or the Delaware Act would require the vote or consent of a greater percentage of the Outstanding Units or of any class of Limited Partners, in which case such greater percentage vote or consent shall be required for approval of the Merger Agreement.

(c) After such approval by vote or consent of the Limited Partners, and at any time prior to the filing of the certificate of merger pursuant to Section 16.4, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement.

Section 16.4 *Certificate of Merger.*

Upon the required approval by the General Partner and the Limited Partners of a Merger Agreement, a certificate of merger shall be executed and filed with the Secretary of State of the State of Delaware in conformity with the requirements of the Delaware Act.

Section 16.5 *Effect of Merger.*

(a) At the effective time of the certificate of merger:

(i) all of the rights, privileges and powers of each of the business entities that has merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those business entities and all other things and causes of action belonging to each of those business entities shall be vested in the Surviving Business Entity and after the merger or consolidation shall be the property of the Surviving Business Entity to the extent they were of each constituent business entity;

(ii) the title to any real property vested by deed or otherwise in any of those constituent business entities shall not revert and is not in any way impaired because of the merger or consolidation;

(iii) all rights of creditors and all liens on or security interests in property of any of those constituent business entities shall be preserved unimpaired; and

(iv) all debts, liabilities and duties of those constituent business entities shall attach to the Surviving Business Entity, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

(b) A merger or consolidation effected pursuant to this Article shall not be deemed to result in a transfer or assignment of assets or liabilities from one entity to another having occurred.

ARTICLE XVII
RIGHT TO ACQUIRE UNITS

Section 17.1 *Right to Acquire Units.*

(a) Notwithstanding any other provision of this Agreement, if at any time not more than 20% of the total Units of any class then Outstanding are held by Persons other than the General Partner and its Affiliates, the General Partner shall then have the right, which right it may assign and transfer to the Partnership or any Affiliate of the General Partner, exercisable in its sole discretion, to purchase all, but not less than all, of the Units of such class then Outstanding held by Persons other than the General Partner and its Affiliates, at the greater of (x) the Current Market Price as of the date three days prior to the date that the notice described in Section 17.1(b) is mailed, and (y) the highest cash price paid by the General Partner or any of its Affiliates for any such Unit purchased during the 90-day period preceding the date that the notice described in Section 17.1(b) is mailed.

(b) If the General Partner, any Affiliate of the General Partner or the Partnership elects to exercise the right to purchase Units granted pursuant to Section 17.1(a), the General Partner or the Partnership, as the case may be, shall deliver to the Transfer Agent notice of such election to purchase (the "Notice of Election to Purchase") and shall cause the Transfer Agent to mail a copy of such Notice of Election to Purchase to the Record Holders of such Units (as of a Record Date selected by the General Partner) at least 10, but not more than 60 days prior to the Purchase Date. Such Notice of Election to Purchase shall also be published for a period of at least three consecutive days in at least two daily newspapers of general circulation printed in the English language and published in the Borough of Manhattan, New York. The Notice of Election to Purchase shall specify the Purchase Date and the price (determined in accordance with Section 17.1(a)) at which Units will be purchased and state that the General Partner, its Affiliate or the Partnership, as the case may be, elects to purchase such Units, upon surrender of Certificates representing such Units in exchange for payment at such office or offices of the Transfer Agent as the Transfer Agent may specify, or as may be required by any National Securities Exchange on which the Units are listed or admitted to trading. Any such Notice of Election to Purchase mailed to a Record Holder of Units at his address as reflected in the records of the Transfer Agent shall be conclusively presumed to have been given regardless of whether the owner receives such notice. On or prior to the Purchase Date, the General Partner, its Affiliate or the Partnership, as the case may be, shall deposit with the Transfer Agent cash in an amount sufficient to pay the aggregate purchase price of all of the Units to be purchased in accordance with this Section 17.1. If the Notice of Election to Purchase shall have been duly given as aforesaid at least 10 days prior to the Purchase Date, and if on or prior to the Purchase Date the deposit described in the preceding sentence has been made for the benefit of the holders of Units subject to purchase as provided herein, then from and after the Purchase Date, notwithstanding that any Certificate shall not have been surrendered for purchase, all rights of the holders of such Units (including any rights pursuant to Articles IV, V and XIV) shall

thereupon cease, except the right to receive the purchase price (determined in accordance with Section 17.1(a)) for Units therefor, without interest, upon surrender to the Transfer Agent of the Certificates representing such Units, and such Units shall thereupon be deemed to be transferred to the General Partner, its Affiliate or the Partnership, as the case may be, on the record books of the Transfer Agent and the Partnership, and the General Partner or any Affiliate of the General Partner, or the Partnership, as the case may be, shall be deemed to be the owner of all such Units from and after the Purchase Date and shall have all rights as the owner of such Units (including all rights as owner of such Units pursuant to Articles IV, V and XIV).

(c) At any time from and after the Purchase Date, a holder of an Outstanding Unit subject to purchase as provided in this Section 17.1 may surrender his Certificate evidencing such Unit to the Transfer Agent in exchange for payment of the amount described in Section 17.1(a), therefor, without interest thereon.

ARTICLE XVIII

GENERAL PROVISIONS

Section 18.1 *Addresses and Notices.*

Any notice, demand, request, report or proxy materials required or permitted to be given or made to a Partner or Assignee under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication to the Partner or Assignee at the address described below. Any notice, payment or report to be given or made to a Partner or Assignee hereunder shall be deemed conclusively to have been given or made, and the obligation to give such notice or report or to make such payment shall be deemed conclusively to have been fully satisfied, upon sending of such notice, payment or report to the Record Holder of such Unit at his address as shown on the records of the Transfer Agent or as otherwise shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in such Unit or the Partnership Interest of a General Partner by reason of any assignment or otherwise. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 18.1 executed by the General Partner, the Transfer Agent or the mailing organization shall be prima facie evidence of the giving or making of such notice, payment or report. If any notice, payment or report addressed to a Record Holder at the address of such Record Holder appearing on the books and records of the Transfer Agent or the Partnership is returned by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver it, such notice, payment or report and any subsequent notices, payments and reports shall be deemed to have been duly given or made without further mailing (until such time as such Record Holder or another Person notifies the Transfer Agent or the Partnership of a change in his address) if they are available for the Partner or Assignee at the principal office of the Partnership for a period of one year from the date of the giving or making of such notice, payment or report to the other Partners and Assignees. Any notice to the Partnership shall be deemed given if received by the General Partner at the principal office of the Partnership designated pursuant to Section 1.3. The General Partner may rely and shall be protected in relying on any notice or other document from a Partner, Assignee or other Person if believed by it to be genuine.

Section 18.2 *References.*

Except as specifically provided otherwise, references to “Articles” and “Sections” are to Articles and Sections of this Agreement.

Section 18.3 *Pronouns and Plurals.*

Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 18.4 *Further Action.*

The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 18.5 *Binding Effect.*

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 18.6 *Integration.*

This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

Section 18.7 *Creditors.*

None of the provisions of this Agreement shall be for the benefit of or shall be enforceable by, any creditor of the Partnership.

Section 18.8 *Waiver.*

No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition.

Section 18.9 *Counterparts.*

This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto or, in the case of a Person acquiring a Unit, upon accepting the certificate evidencing such Unit or executing and delivering a Transfer Application as herein described, independently of the signature of any other party.

Section 18.10 *Applicable Law.*

This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

Section 18.11 *Invalidity of Provisions.*

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

Section 18.12 *Consent of Partners.*

Each Partner hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote or consent of less than all of the Partners, such action may be so taken upon the concurrence of less than all of the Partners and each Partner shall be bound by the results of such action.

ARTICLE XIX

RIGHTS AGREEMENT

All of the terms and provisions of that certain Rights Agreement, dated as of [April 17, 2001], a copy of which is attached hereto as Exhibit C, and the First Amendment to the Rights Agreement, a copy of which is attached hereto as Exhibit D (collectively the "Rights Agreement") are hereby incorporated into this Agreement by this reference.

ARTICLE XX

BUSINESS COMBINATIONS WITH INTERESTED HOLDERS

Section 20.1 *Limitation on Business Combinations.*

(a) Notwithstanding any other provisions of this Agreement, the Partnership shall not engage in any Business Combination (as defined below) with any Interested Holder (as defined below) for a period of 3 years following the time that such Person became an Interested Holder, unless:

(i) prior to such time the General Partner approved either the Business Combination or the transaction which resulted in the Person becoming an Interested Holder, or

(ii) upon consummation of the transaction which resulted in the Person becoming an Interested Holder, the Interested Holder owned at least 85% of the Outstanding Units at the time the transaction commenced, excluding for purposes of determining the number of Outstanding Units those Units owned by the General Partner and its Affiliates, or

(iii) at or subsequent to such time the Business Combination is approved by the General Partner and authorized at a meeting of Partners, and not by written consent, by the affirmative vote of at least 66²/₃% of the Outstanding Units which are not owned by the Interested Holder.

(b) The restrictions contained in this section shall not apply if:

(i) The Partnership, by action of Partners, adopts an amendment to this Agreement expressly electing not to be governed by this section, provided that, in addition to any other vote required by law, such amendment to this Agreement must be approved by the affirmative vote of a majority of the Outstanding Units. An amendment adopted pursuant to this paragraph shall not be effective until 12 months after the adoption of such amendment and shall not apply to any Business Combination between the Partnership and any person who became an Interested Holder on or prior to such adoption;

(ii) a Person becomes an Interested Holder inadvertently and (i) as soon as practicable divests itself of ownership of sufficient Units so that the Person ceases to be an Interested Holder and (ii) would not, at any time within the 3 year period immediately prior to a Business Combination between the Partnership and such Person, have been an Interested Holder but for the inadvertent acquisition of ownership;

(iii) the Business Combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required hereunder of a proposed transaction which (i) constitutes one of the transactions described in the second sentence of this paragraph; (ii) is with or by a Person who either was not an Interested Holder during the previous 3 years or who became an Interested Holder with the approval of the General Partner and (iii) is approved or not opposed by a Person that was the General Partner (the "Original General Partner") prior to any Person becoming an Interested Holder during the previous 3 years or was recommended for appointment to succeed such General Partner by the Original General Partner. The proposed transactions referred to in the preceding sentence are limited to (x) a merger or consolidation of the Partnership (except for a merger in respect of which no vote of the Partners is required); (y) a sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the Partnership or of any direct or indirect majority-owned subsidiary of the Partnership (other than to any direct or indirect wholly-owned subsidiary or to the Partnership) having an aggregate market value equal to 50% or more of either the aggregate market value of all of the assets of the Partnership determined on a consolidated basis or the aggregate market value of all the Outstanding Units of the Partnership; or (z) a proposed tender or exchange offer for 50% or more of the Outstanding Units of the Partnership. The Partnership shall give not less than 20 days notice to all Interested Holders prior to the consummation of any of the transactions described in clauses (x) or (y) of the second sentence of this paragraph.

As used in this section only, the term:

(a) “Business Combination,” when used in reference to the Partnership and any Interested Holder of the Partnership means:

(i) any merger or consolidation of the Partnership or any direct or indirect majority-owned subsidiary of the Partnership with (A) the Interested Holder, or (B) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the Interested Holder and as a result of such merger or consolidation subsection (a) of this section is not applicable to the surviving entity;

(ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a Partner of the Partnership, to or with the Interested Holder, whether as part of a dissolution or otherwise, of assets of the Partnership or of any direct or indirect majority-owned subsidiary of the Partnership which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Partnership determined on a consolidated basis or the aggregate market value of all the Outstanding Units of the Partnership;

(iii) any transaction which results in the issuance or transfer by the Partnership or by any direct or indirect majority-owned subsidiary of the Partnership of any securities of the Partnership or of such subsidiary to the Interested Holder, except (A) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into securities of the Partnership or any such subsidiary which securities were outstanding prior to the time that the Interested Holder became such, (B) pursuant to a merger of the Partnership with or into a single direct or indirect wholly-owned subsidiary of the Partnership in a transaction that would meet the requirements of Section 251(g) of the Delaware General Corporation Law, if the Partnership was a corporation, (C) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into securities of the Partnership or any such subsidiary which security is distributed, pro rata to all holders of a class or series of securities of such Partnership subsequent to the time the Interested Holder became such, (D) pursuant to an exchange offer by the Partnership to purchase Units made on the same terms to all holders of said Units, or (E) any issuance or transfer of Units by the Partnership, provided however, that in no case under (B)-(D) above shall there be an increase in the Interested Holder’s proportionate share of the securities of any class or series of the Partnership or of the Units of the Partnership;

(iv) any transaction involving the Partnership or any direct or indirect majority-owned subsidiary of the Partnership which has the effect, directly or indirectly, of increasing the proportionate share of the securities of any class or series, or securities convertible into the securities of any class or series, of the Partnership or of any such subsidiary which is owned by the Interested Holder, except as a result of immaterial

changes due to fractional unit adjustments or as a result of any purchase or redemption of any Units not caused, directly or indirectly, by the Interested Holder; or

(v) any receipt by the Interested Holder of the benefit, directly or indirectly (except proportionately as a Partner of such Partnership) of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in subparagraphs (i)-(iv) above) provided by or through the Partnership or any direct or indirect majority owned subsidiary.

(b) “control,” including the term “controlling,” “controlled by” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. A Person who is the owner of 20% or more of the outstanding voting securities of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such Person holds voting securities, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

(c) “Interested Holder” means any Person (other than the Partnership and any direct or indirect majority-owned subsidiary of the Partnership and the Successor General Partner, and any Affiliates or Associates of the Successor General Partner) that (i) is the owner of 15% or more of the Outstanding Units of the Partnership, or (ii) is an affiliate or associate of the Partnership and was the owner of 15% or more of the Outstanding Units of the Partnership at any time within the 3-year period immediately prior to the date an which it is sought to be determined whether such Person is an Interested Holder, and the Affiliates and Associates of such Person; provided, however, that the term “Interested Holder” shall not include any Person whose ownership of Units in excess of the 15% limitation set forth herein is the result of action taken solely by the Partnership provided that such person shall be an Interested Holder if thereafter such Person acquires additional Units, except as a result of further Partnership action not caused, directly or indirectly, by such Person. For the purpose of determining whether a person is an Interested Holder, the Outstanding Units shall include Units deemed to be owned by the Person through application of paragraph (e) of this subsection but shall not include any other unissued Units which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(d) “owner” including the terms “own” and “owned” when used with respect to any Units means a person that individually or with or through any of its affiliates or associates:

(i) beneficially owns such Units, directly or indirectly; or

(ii) has (A) the right to acquire such Units (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed

the owner of Units tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered Units is accepted for purchase or exchange; or (B) the right to vote such Units pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the owner of any Units because of such person's right to vote such Units if the agreement, arrangement or understanding to vote such Units arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more persons; or

(iii) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (B) of clause (ii) of this paragraph), or disposing of such Units with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such Units.

EXHIBIT A

**to the Second Amended and Restated
Agreement of Limited Partnership of
STAR GAS PARTNERS, L.P.**

**Certificate Evidencing Common Units
Representing Limited Partner Interests
STAR GAS PARTNERS, L.P.**

No. Common Units

KESTREL HEAT LLC, a Delaware limited liability company, as the General Partner of **STAR GAS PARTNERS, L.P.**, a Delaware limited partnership (the "*Partnership*"), hereby certifies that _____ (the "*Holder*") is the registered owner of ____ Common Units representing limited partner interests in the Partnership (the "*Common Units*") transferable on the books of the Partnership, in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed and accompanied by a properly executed application for transfer of the Common Units represented by this Certificate. The rights, preferences and limitations of the Common Units are set forth in, and this Certificate and the Common Units represented hereby are issued and shall in all respects be subject to the terms and provisions of the Second Amended and Restated Agreement of Limited Partnership of STAR GAS PARTNERS, L.P., as amended, supplemented or restated from time to time (the "*Partnership Agreement*"). Copies of the Partnership Agreement are on file at, and will be furnished without charge on delivery of written request to the Partnership at, the principal office of the Partnership located at _____. Capitalized terms used herein but not defined shall have the meaning given them in the Partnership Agreement.

The Holder, by accepting this Certificate, is deemed to have (i) requested admission as, and agreed to become, a Limited Partner and to have agreed to comply with and be bound by and to have executed the Partnership Agreement, (ii) represented and warranted that the Holder has all right, power and authority and, if an individual, the capacity necessary to enter into the Partnership Agreement, (iii) granted the powers of attorney provided for in the Partnership Agreement and (iv) made the waivers and given the consents and approvals contained in the Partnership Agreement.

This Certificate shall not be valid for any purpose unless it has been countersigned and registered by the Transfer Agent and Registrar.

Date: _____

Countersigned and Registered by: _____

as Transfer Agent and Registrar

By: _____
Authorized Signature

KESTREL HEAT LLC
as General Partner

By: _____
President

By: _____
Secretary

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Certificate, shall be construed, as follows according to applicable laws or regulations:

TEN COM-	as tenants in common	UNIF GIFT IN ACT Custodian	
TEN ENT-	as tenants by the entirety	(Cust)	(Minor)
JT TEM-	as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts to Minors Act	
		State	

Additional abbreviations, though not in the above list, may also be used.

**ASSIGNMENT OF COMMON UNITS
in
STAR GAS PARTNERS, L.P.**

**IMPORTANT NOTICE REGARDING INVESTOR RESPONSIBILITIES
DUE TO TAX SHELTER STATUS OF STAR GAS PARTNERS, L.P.**

You have acquired an interest in Star Gas Partners, L.P., _____, whose taxpayer identification number is 06-1437793. The Internal Revenue Service has issued Star Gas Partners, L.P. the following tax shelter registration number: _____

YOU MUST REPORT THIS REGISTRATION NUMBER TO THE INTERNAL REVENUE SERVICE IF YOU CLAIM ANY DEDUCTION, LOSS, CREDIT, OR OTHER TAX BENEFIT OR REPORT ANY INCOME BY REASON OF YOUR INVESTMENT IN STAR GAS PARTNERS, L.P.

You must report the registration number as well as the name and taxpayer identification number of Star Gas Partners, L.P. on Form 8271. FORM 8271 MUST BE ATTACHED TO THE RETURN ON WHICH YOU CLAIM THE DEDUCTION, LOSS, CREDIT, OR OTHER TAX BENEFIT OR REPORT ANY INCOMES BY REASON OF YOUR INVESTMENT IN STAR GAS, PARTNERS, L.P.

If you transfer your interest in Star Gas Partners, L.P. to another person, you are required by the Internal Revenue Service to keep a list containing (a) that person's name, address and taxpayer identification number, (b) the date on which you transferred the interest and (c) the name, address and tax shelter registration number of Star Gas Partners, L.P. If you do not want to keep such a list, you must (1) send the information specified above to the Partnership, which will keep the list for this tax shelter, and (2) give a copy of this notice to the person to whom you transfer your interest. Your failure to comply with any of the above-described responsibilities

could result in the imposition of a penalty under Section 6707(b) or 6708(a) of the Internal Revenue Code of 1986, as amended, unless such failure is shown to be due to reasonable cause.

ISSUANCE OF A REGISTRATION NUMBER DOES NOT INDICATE THAT THIS INVESTMENT OR THE CLAIMED TAX BENEFITS HAVE BEEN REVIEWED, EXAMINED, OR APPROVED BY THE INTERNAL REVENUE SERVICE.

FOR VALUE RECEIVED, _____ hereby assigns, conveys, sells and transfers unto

(Please print or typewrite name
and address of Assignee)

(Please print or typewrite name
and address of Assignee)

_____ Common Units representing limited partner interests evidenced by this Certificate, subject to the Partnership Agreement, and does hereby irrevocably constitute and appoint _____ as its attorney-in-fact with full power of substitution to transfer the same on the books of Star Gas Partners. L.P.

Date: _____

NOTE: The signature to any endorsement hereon must correspond with the name as written upon the face of this Certificate in every particular, without alteration, enlargement or change.

**SIGNATURE(S) MUST BE GUARANTEED
BY A MEMBER FIRM OF THE NATIONAL
ASSOCIATION OF SECURITIES DEALERS,
INC. OR BY A COMMERCIAL BANK OR
TRUST COMPANY**

(Signature)

(Signature)

SIGNATURE(S) GUARANTEED

No transfer of the Common Units evidenced hereby will be registered on the books of the Partnership, unless the Certificate evidencing the Common Units to be transferred is surrendered for registration or transfer and an Application for Transfer of Common Units has been executed by a transferee either (a) on the form set forth below or (b) on a separate application that the Partnership will furnish on request without charge. A transferor of the Common Units shall have no duty to the transferee with respect to execution of the transfer application in order for such transferee to obtain registration of the transfer of the Common Units.

APPENDIX A

No transfer of the Common Units evidenced hereby will be registered on the books of the Partnership, unless the Certificate evidencing the Common Units to be transferred is surrendered for registration or transfer and an Application for Transfer of Common Units has been executed by a transferee either (a) on the form set forth below or (b) on a separate application that the Partnership will furnish on request without charge. A transferor of the Common Units shall have no duty to the transferee with respect to execution of the transfer application in order for such transferee to obtain registration of the transfer of the Common Units.

APPLICATION FOR TRANSFER OF COMMON UNITS

The undersigned ("Assignee") hereby applies for transfer to the name of the Assignee of the Common Units evidenced hereby.

The Assignee (a) requests admission as a Substituted Limited Partner and agrees to comply with and be bound by and hereby executes, the Second Amended and Restated Agreement of Limited Partnership of Star Gas Partners, L.P., as amended, supplemented or restated to the date hereof (the "Partnership Agreement"), (b) represents and warrants that the Assignee has all right, power and authority and if an individual, the capacity necessary to enter into the Partnership Agreement, (c) appoints the General Partner and, if a Liquidator shall be appointed, the Liquidator of the Partnership as the Assignee's attorney-in-fact to execute, swear to, acknowledge and file any document, including, without limitation, the Partnership Agreement and any amendment thereto and the Certificate of Limited Partnership of the Partnership and any amendment thereto, necessary or appropriate for the Assignee's admission as a Substituted Limited Partner and as a party to the Partnership Agreement, (d) gives the powers of attorney provided for in the Partnership Agreement and (e) makes the waivers and gives the consents and approvals contained in the Partnership Agreement. Capitalized terms not defined herein have the meanings assigned to such terms in the Partnership Agreement.

Date: _____

Signature of Assignee

Social Security or other identifying number of Assignee

Name and Address of Assignee

Purchase Price including commissions, if any

Type of Entity (check one):

- Individual Partnership Corporation
 Trust Other (specify) _____

Nationality (check one):

- U.S. Citizen, Resident or Domestic Entity Non-resident Alien
 Foreign Corporation

If the U.S. Citizen, Resident or Domestic Entity box is checked, the following certification must be completed.

Under Section 1445(e) of the Internal Revenue Code of 1986, as amended (the "Code"), the Partnership must withhold tax with respect to certain transfers of property if a holder of an interest in the Partnership is a foreign person. To inform the Partnership that no withholding is required with respect to the undersigned interestholder's interest in it, the undersigned hereby certifies the following (or, if applicable, certifies the following on behalf of the interestholder).

Complete Either A or B:

A. Individual Interestholder

1. I am not a non-resident alien for purposes of U.S. income taxation.
2. My U.S. taxpayer identification number (Social Security Number) is
3. My home address is

B. Partnership, Corporation or Other Interestholder

1. _____ is not a foreign
(Name of Interestholder)

corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and Treasury Regulations).

2. The interestholder's U.S. employer identification number is
3. The interestholder's office address and place of incorporation (if applicable) is

The interestholder agrees to notify the Partnership within sixty (60) days of the date the interestholder becomes a foreign person. The interestholder understands that this certificate may

be disclosed to the Internal Revenue Service by the Partnership and that any false statement contained herein could be punishable by fine, imprisonment or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete and, if applicable, I further declare that I have authority to sign this document on behalf of

(Name of Interestholder)

Signature and Date

Title (if applicable)

Note: If the Assignee is a broker, dealer, bank, trust company, clearing corporation, other nominee holder or an agent of any of the foregoing, and is holding for the account of any other person, this application should be completed by an officer thereof or, in the case of a broker or dealer, by a registered representative who is a member of a registered national securities exchange or a member of the National Association of Securities Dealers, Inc. or, in the case of any other nominee holder, a person performing a similar function. If the Assignee is a broker, dealer, bank, trust company, clearing corporation, other nominee owner or an agent of any of the foregoing, the above certification as to any person for whom the Assignee will hold the Common Units shall be made to the best of the Assignee's knowledge.

Star Gas Partners, L.P.
2187 Atlantic Street
Stamford, Connecticut 06902

December 5, 2005

To the undersigned holder of Star Gas Partners, L.P. 10.25% Senior Notes due 2013 (the "Senior Notes"), issued pursuant to an indenture dated February 6, 2003, by and among Star Gas Partners, L.P., Star Gas Finance Company and Union Bank of California, N.A. as Trustee (the "Indenture") (the "Consenting Noteholder," the Consenting Noteholder together with each Senior Note holder that has entered into a Lock Up Agreement (defined below), the "Consenting Noteholders"):

Star Gas Partners, L.P. (the "Partnership") is simultaneously with the counter-signing of this letter agreement (this "Agreement") (a) entering into a Unit Purchase Agreement in the form attached hereto as Exhibit A (the "Kestrel Purchase Agreement") with Kestrel Energy Partners, LLC, Kestrel Heat, LLC ("Kestrel Heat") and KM2, LLC ("KM2") (collectively, "Kestrel") pursuant to which, among other things, Kestrel Heat will replace the General Partner of the Partnership, Kestrel Heat and KM2 will purchase an aggregate of 7,500,000 newly issued Partnership common units ("New Kestrel Units") from the Partnership at a price of \$2 per unit and Kestrel Heat and KM2 will agree to 'backstop' a \$35 million rights offering (the "Rights Offering") to be made to the outstanding common unitholders of the Partnership, and (b) agreeing with the Consenting Noteholders listed on Schedule 1 to, among other things, exchange a portion of such Consenting Noteholders' Senior Notes for New Units pursuant to the Tender Offer (as defined below).

References to the "Company" as used herein shall refer collectively to the Partnership, Star Gas Finance Company, and each of their respective subsidiaries and affiliates.

The Partnership, Kestrel, and certain of the Consenting Noteholders engaged in good faith negotiations with the objective of reaching an agreement to restructure the Senior Notes pursuant to the Tender Offer which Tender Offer shall be completed simultaneously with the closing (the "Kestrel Closing") of the transactions contemplated by the Kestrel Purchase Agreement, (such transactions are collectively referred to herein as the "Restructuring").

The Company and the Consenting Noteholders desire that the Company implement the Restructuring pursuant to the terms of this Agreement.

In exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and each Consenting Noteholder, intending to be legally bound, hereby agree as follows:

1. Agreement to Complete the Restructuring: Subject to the terms and conditions of this Agreement, the parties to this Agreement agree to use commercially reasonable efforts to promptly and diligently commence and consummate the Restructuring through the Rights Offering (as defined below), the Tender Offer, and the performance of the terms of this Agreement. The obligations of the parties hereunder are several and not joint, and no party hereto shall be responsible for the failure of any other party hereto to perform its obligations hereunder.
2. Appropriate Number and Amount of Consenting Noteholders: All obligations of the Company and the Consenting Noteholder under this Agreement are expressly conditioned upon the prior execution of agreements substantially similar to this Agreement (with certain agreed differences) between the Company and Consenting Noteholders (such agreements, including this Agreement, are collectively referred to herein as a "Lock Up Agreement") holding in the aggregate at least 84% (the "Required Tender Amount") of the principal amount of Senior Notes outstanding on the date hereof.
3. Consenting Noteholder's Conditions to Effectiveness: All obligations of the Consenting Noteholder under this Agreement are conditioned upon the following:
 - (a) the continued effectiveness of this Agreement;
 - (b) the Kestrel Purchase Agreement, and all documents relating thereto, including, but not limited to, the Second Amended and Restated Agreement of Limited Partnership of the Partnership, and all documents relating to the Tender Offer, including, but not limited to, the Amended Indenture (defined below), the New Indenture (defined below), the Equity Maintenance Agreement, and any amendments, revisions or other modifications to the organizational documents of the Company, each being in form, scope and substance reasonably satisfactory to three (3) or more Consenting Noteholders holding at least 66.7% in principal amount of the Senior Notes (the "Required Consenting Noteholders"), it being agreed that the Kestrel Purchase Agreement, the Amended Indenture and the New Indenture, each as attached hereto as Exhibits A-C respectively, are in form, scope and substance satisfactory to the Consenting Noteholder;
 - (c) the continued effectiveness of the Kestrel Purchase Agreement, unless the Kestrel Closing has already occurred or unless waived by the Required Consenting Noteholders; and
 - (d) the Kestrel Closing, unless the Kestrel Closing has already occurred or unless waived by the Required Consenting Noteholders.
4. Substitution of Consenting Noteholders: In the event that the Kestrel Purchase Agreement is terminated for any reason, the Company shall provide the Consenting Noteholder with written notice thereof within three (3) business days of such termination (the "Kestrel Termination Notice"). The Company agrees that, notwithstanding any other provision set forth herein or in the Kestrel Purchase Agreement, in the event that the Kestrel Purchase Agreement is terminated for any reason other than termination resulting

from the acceptance by the Company of a Superior Proposal (as defined in the Kestrel Purchase Agreement) or from the failure of the Partnership's Unitholders to vote in favor of the transactions contemplated by the Kestrel Purchase Agreement, one or more Consenting Noteholders may, within fourteen (14) business days from receipt of the Kestrel Termination Notice, deliver a written notice to the Company (the "Noteholder Rights Offering Notice"), informing the Company of such Consenting Noteholders' desire to (a) replace the General Partner of the Partnership, (b) consummate the transactions contemplated by the Tender Offer and (c) purchase an aggregate of 7,500,000 newly issued Partnership units from the Partnership at a price of \$2 per unit and 'backstop' the Rights Offering, pursuant to the terms of a separate agreement with the Company to be negotiated in good faith and mutually agreed to by the parties following receipt by the Company of the Noteholder Rights Offering Notice.

5. Amended Indenture and New Indenture: The Company and the Consenting Noteholder each approves the scope, form and substance of (a) the amendments to the Indenture set forth in the blackline of the indenture attached hereto as Exhibit B (the "Amended Indenture"), and (b) the Indenture for the New Notes (as herein defined) to be used in connection with the Tender Offer attached hereto as Exhibit C (the "New Indenture").
6. Consenting Noteholder's Forbearance and Consent:
 - (a) The Consenting Noteholder agrees to forbear, so long as this Agreement is in effect, or indefinitely if the closing of the Restructuring has occurred, and subject to the limitations contained in Section 6.4 of the Indenture: (i) from taking any action to accelerate the indebtedness due under the Senior Notes, or directing the Trustee under the Indenture to pursue any right or remedy under the Indenture or otherwise arising out of, or relating to, any act or omission of the Company prior to the Kestrel Closing; and (ii) initiating, or having initiated on its behalf, any litigation or proceeding of any kind with respect to the Senior Notes against the Company, its subsidiaries, affiliates, directors, officers, and/or employees arising out of, or relating to, any act or omission of the Company prior to the Kestrel Closing, other than to enforce this Agreement.
 - (b) Notwithstanding the general forbearance provision set forth in Section 6(a) above, the Consenting Noteholder specifically agrees, so long as this Agreement is in effect, or indefinitely if the closing of the Restructuring has occurred: (i) to forbear from exercising any rights or remedies in respect of any default or breach or any claim of potential default or breach under the Indenture resulting from (A) the sale of the Partnership's propane business effected on December 14, 2004, the Company's use of such proceeds to purchase working capital inventory, and the Company's determination that "Excess Proceeds" shall not include any amounts so invested in inventory, (B) the incurrence of additional indebtedness in connection with those certain \$230 million and \$265 million refinancings which closed on December 22, 2003, and December 17, 2004 respectively, and (C) the granting of liens or collateral to the lenders under that certain Credit Agreement, dated December 17, 2004, by and among Petroleum Heat and Power Co., Inc. and the Loan Parties and Lenders thereto and the amendment thereto dated November

3, 2005; (ii) to oppose, at the Company's sole cost and expense, any request or attempt by any Noteholder(s) to assert, or request the Trustee under the Indenture to assert, a default under the Indenture as a result of the matters described in clauses (i)(A), (i)(B) and (i)(C) above; (iii) not to tender the Senior Notes beneficially owned by the Consenting Noteholder in the Change of Control Offer (as defined in the Indenture) which will be required to be made following the Kestrel Closing, pursuant to Section 3.9 of the Indenture; and (iv) to forbear from exercising any rights or remedies with respect to any claims, rights or vote requirements under the Indenture arising from the transactions contemplated by the Kestrel Purchase Agreement.

- (c) The Consenting Noteholder agrees to consent to the amendments to the Amended Indenture set forth in the blackline of the Amended Indenture attached hereto as Exhibit B, which amendments will be effective upon the later of the Kestrel Closing or the closing of the Tender Offer.

7. Tender Offer:

- (a) As soon as practicable following the mailing of the proxy statement in connection with the vote of unitholders contemplated by the Kestrel Purchase Agreement, the Company shall make a tender offer (which shall be coupled with a consent solicitation relating to the waiver of potential defaults set forth in Section 6 hereof and the amendments to the Amended Indenture set forth in Exhibit B) (the "Tender Offer") to all holders of Senior Notes.
- (b) Pursuant to the Tender Offer, any holder of Senior Notes may tender its Senior Notes at par in exchange for:
- (i) a Pro Rata Portion (as defined below) of an amount of cash equal to at least \$60 million and not greater than \$73,132,075 million, which amount shall be determined by the Company, in its sole discretion (such discretion to be exercised at least ten (10) business days prior to the closing of the Tender Offer), (such amount to be reduced by any principal, interest and premium payments required to be offered to non-tendering holders of Senior Notes who will be entitled to receive payment from the Company that is required pursuant to the Change of Control Offer provisions set forth in Section 3.9 of the Indenture) (such net amount is referred to herein as the "Net Rights Offering Proceeds");
- (ii) at the option of a holder of Senior Notes, and pursuant to the Tender Offer, its New Unit Pro Rata Percentage (defined below) of 13,433,962 newly issued Partnership Units (the "New Units"), which New Units shall be exchanged for Senior Notes at a price of \$2.00 per New Unit (such exchange, the "New Unit Offering"); and

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- (iii) new notes (the "New Notes") in exchange for any remaining Senior Notes, which New Notes shall be issued pursuant to the terms of the New Indenture.
- (c) The Tender Offer will be subject to customary conditions as well as the following conditions:
- (i) that valid tenders shall have been received prior to the expiration of the Tender Offer from the holders of at least 93% of the outstanding principal amount of the Senior Notes;
 - (ii) the Kestrel Closing, unless otherwise waived by the Required Consenting Noteholders, shall have occurred or shall occur simultaneously with the closing of the Tender Offer; and
 - (iii) in the event of a Material Adverse Change (as defined below), the Consenting Noteholder may elect to reduce, in whole or in part, the principal amount of Senior Notes that it will exchange for New Units by providing written notice to the Company at any time prior to the closing of the Tender Offer. In the event that the Consenting Noteholder exercises such right and this Agreement is not otherwise terminated pursuant to its terms, any portion of the Senior Notes that would have otherwise been converted into New Units shall instead be converted into a separate new senior note, having substantially the same terms as the New Notes, except that such senior notes shall be redeemable by the Company at any time without premium or penalty. As used herein, "Material Adverse Change" means any event or series of events (except as disclosed in the Financial Statements (defined below), the SEC Reports (defined below) and the draft of the Partnership's annual report of Form 10-K for the year ended September 30, 2005, copies of which have been provided to the Consenting Noteholder's legal and financial advisors and have been made available to the Consenting Noteholder, and except for the execution and delivery of this Agreement and the ancillary documents related thereto) since September 30, 2005, that (a) would have a material adverse effect on the financial condition, business, properties, or results of operations of the Company, taken as a whole, except for a general deterioration in the economy or changes in commodity prices or other changes affecting the heating oil industry generally (a "Partnership Material Adverse Effect"); (b) results in the Company conducting its business not in the ordinary course consistent with past practice; (c) results in the Company incurring any material liability, engaging in any material transaction or entering into any material agreement outside the ordinary course of business consistent with past practice that individually or in the aggregate would result in a Partnership Material Adverse Effect; (d) results in the Company suffering any material loss, damage, destruction or other casualty to any of the assets of the Company that individually or in the aggregate would result in a Partnership Material Adverse Effect; or (e) results in a breach or default

by the Company of its agreements set forth in, or obligations under, the Kestrel Purchase Agreement; as used herein the term “SEC Reports” means the Partnership’s annual report on Form 10-K for the year ended September 30, 2004, and the quarterly and current reports on Form 10-Q and 8-K, if any, filed by the partnership with the Securities and Exchange Commission (“SEC”) since September 30, 2004; as used herein the term “Financial Statements” means the unaudited consolidated balance sheet as of September 30, 2005 and the related unaudited consolidated statements of income, cash flows and owners’ equity for the fiscal year then ended (including in all cases the notes, if any, thereto) of the Company.

- (d) The Consenting Noteholder agrees with the Company and each other Consenting Noteholder, as a third party beneficiary to this Agreement:
- (i) to tender all of the Senior Notes beneficially owned by the Consenting Noteholder (including any Senior Notes acquired after the date hereof) into the Tender Offer within ten (10) business days following the commencement of the Tender Offer in exchange for:
 - (1) its Pro Rata Portion of Net Rights Offering Proceeds (such pro rata portion shall be determined by dividing the principal amount of a tendering holder’s Senior Notes by the aggregate principal amount of all Senior Notes tendered in exchange for Net Rights Offering Proceeds (the “Pro Rata Portion”));
 - (2) its New Unit Pro Rata Percentage of New Units (as used herein, the term “New Unit Pro Rata Percentage” means, with respect to each holder of Senior Notes who elects to participate in the New Unit Offering, a percentage determined by dividing the principal amount of all of such holder’s Senior Notes entitled to participate in the New Unit Offering by \$178,000,000); and
 - (3) New Notes in an amount equal to the remaining outstanding principal amount of the Consenting Noteholder’s Senior Notes after the aggregate reduction in such Senior Notes resulting from the completion of the transactions contemplated in subsections (d)(i)(1) and (2) of this Section 7 (provided that outstanding accrued interest on the Senior Notes shall be included as interest on the New Notes payable on the first interest payment date thereunder so that, effectively, interest on the New Notes shall accrue from the date of the last interest payment on the Senior Notes).
 - (ii) subject to the terms of this Agreement, not to withdraw or revoke such tender unless and until this Agreement is terminated in accordance with its terms.

-
- (e) Each Consenting Noteholder acknowledges that by tendering its Senior Notes in the Tender Offer it will be deemed to have delivered the consent required for the amendments to the Indenture set forth in the Amended Indenture.
- (f) The Company agrees that it will (i) cause the offer and issuance of the New Notes and New Units pursuant to the Tender Offer to be exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), pursuant to Section 3(a)(9) of the Securities Act, or (ii) offer and issue the New Notes and the New Units pursuant to an effective registration statement filed with the SEC pursuant to the requirements of the Securities Act. The Company will, concurrently with the consummation of the Tender Offer, enter into a registration rights agreement with each holder of Senior Notes that, at the time of consummation of the Tender Offer, owns 10% or more of the then outstanding Partnership common units (a "10% Holder"), such registration rights agreement to be in customary form, to provide for two demand and unlimited piggy back registration rights with respect to the New Notes and the New Units, and be in form, scope and substance acceptable to the Company and to each 10% Holder. Notwithstanding the foregoing, if legal counsel, reasonably satisfactory to the Consenting Noteholder, issues a legal opinion addressed to the Consenting Noteholder, in a form satisfactory to the Consenting Noteholder, in its sole discretion and at the sole cost and expense of the Company, which states that no registration is required for the sale of the New Units, then the Company shall not be required to effect a registration pursuant to a Registration Rights Agreement, as required above.
- (g) The Company shall use its reasonable best efforts to cause the New Units to be approved for listing on the NYSE, subject to official notice of issuance, prior to the Kestrel Closing.
8. No Transfer: The Consenting Noteholder hereby agrees, without the prior written consent of the Company, not to, directly or indirectly, prior to the closing of the Tender Offer, (i) sell, transfer, assign, pledge, grant an option on, or otherwise dispose of or encumber any of the Consenting Noteholder's Senior Notes, or (ii) grant any proxies, deposit any of the Consenting Noteholder's Senior Notes into a voting trust or enter into a voting agreement with respect to any of the Consenting Noteholder's Senior Notes (such actions set forth in sub-parts (i) and (ii) above are collectively referred to herein as a "Transfer"); *provided, however*, that the Consenting Noteholder may, at any time, Transfer Senior Notes to a person that has countersigned a transferee acknowledgment in the form attached hereto as Exhibit D (the "Transferee Acknowledgment"), thereby unconditionally agreeing in writing with the Company to be bound by all of the terms and provisions of this Agreement. Any Transfer not effected in accordance with the foregoing shall be deemed void *ab initio*. In the event of a Transfer, the Consenting Noteholder shall, within three (3) business days after such Transfer, provide notice of such transfer to the Company, together with a copy of the Transferee Acknowledgment and, if the Consenting Noteholder has transferred all of its claims subject to this Agreement, then the Consenting Noteholder shall automatically be released from any further obligations hereunder. In addition, each Consenting Noteholder agrees that (a)

during the term of this Agreement, it will not “short sell” any equity securities of the Company, and (b) it will not take any action to oppose or interfere with the transactions contemplated by the Kestrel Purchase Agreement, including, without limitation, the vote of Unitholders contemplated by the Kestrel Purchase Agreement.

9. Additional Senior Notes Subject: Notwithstanding Section 8 hereof, nothing in this Agreement shall be deemed to limit or restrict the ability or right of any Consenting Noteholder to acquire any additional Senior Notes (“Additional Senior Notes”), provided, however, that in the event any Consenting Noteholder acquires any such Additional Senior Notes after the date hereof (other than any such Senior Notes that are already subject to the provisions of a Lock Up Agreement, which Senior Notes shall remain subject to the provisions of such agreement), the Consenting Noteholder shall advise the Company of such acquisition within three (3) business days of such acquisition and such Additional Senior Notes shall immediately upon such acquisition become subject to the terms of this Agreement, including, without limitation, Section 8 of this Agreement.
10. Representations of Consenting Noteholder: The Consenting Noteholder hereby represents and warrants to the Company as follows:
- (a) The Consenting Noteholder is duly organized, validly existing and in good standing under the laws of the Consenting Noteholder’s state of organization or formation;
 - (b) The Consenting Noteholder has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
 - (c) The execution and delivery of this Agreement and the performance by the Consenting Noteholder of its obligations hereunder have been duly authorized by all necessary action;
 - (d) This Agreement has been duly executed and delivered by the Consenting Noteholder and constitutes the valid and binding obligation of the Consenting Noteholder, enforceable against the Consenting Noteholder in accordance with its terms;
 - (e) As of the date hereof, the Consenting Noteholder is the beneficial owner of, and holder of investment and voting authority over:
 - (i) Senior Notes in the aggregate principal amount disclosed under to its name on the signature page hereof (the “Consenting Noteholder’s Senior Notes”), and beneficially owns, and has no investment and voting authority over other Senior Notes, and the registered holder and custodial party for the Consenting Noteholder’s Senior Notes are as set forth on the signature page hereof; and
 - (ii) outstanding Partnership units in the amount disclosed under its name on the signature page hereof;

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- (f) To the best of its knowledge, as of the date hereof, the Consenting Noteholder's Senior Notes are held free and clear of all claims, charges, leases, covenants, easements, encumbrances, pledges, security interests, liens, options, pledges, rights of others, mortgages, deeds of trust, hypothecations, conditional sales, or restrictions (whether on voting, sale, transfer, disposition, or otherwise), whether imposed by agreement, understanding, law, equity, or otherwise, except for any restrictions on transfer created by this Agreement or generally arising under any applicable federal or state securities law, and the Consenting Noteholder's Senior Notes have not been pledged or assigned to any person;
 - (g) The Consenting Noteholder has been furnished with all information that it has requested for the purpose of evaluating the transactions contemplated by this Agreement, and the Consenting Noteholder has had an opportunity to ask questions of and receive answers from the Company and its officers regarding the Company and its business, assets, results of operations, financial condition and prospects and the terms and conditions of the issuance of the New Units;
 - (h) If applicable, the Consenting Noteholder is acquiring the New Units solely by and for its own account, for investment purposes only and not for the purpose of resale or distribution; and the Consenting Noteholder does not have any contract, undertaking, agreement or arrangement with any person or entity to sell, transfer or pledge to such person or anyone else any New Units; and the Consenting Noteholder does not have any present plans or intentions to enter into any such contract, undertaking or arrangement;
 - (i) The Consenting Noteholder (i) is an "accredited investor" as defined in Rule 501 of the rules promulgated pursuant to the Securities Act; and (ii) has such knowledge and experience in financial and business matters in general that it has the capacity to evaluate the merits and risks of an investment in the New Units, if applicable, and to protect its own interest in connection with an investment in the New Units;
 - (j) The Consenting Noteholder has relied upon its own independent investigations of the business of the Company and the advice of its own advisors, if any, in evaluating its investment in the New Units; and
 - (k) The tender of the Senior Notes and closing of the Tender Offer shall constitute the Consenting Noteholder's confirmation of the foregoing representations.
11. Representations of the Company: The Company hereby represents and warrants to the Consenting Noteholder as follows:
- (a) the Partnership is a limited partnership duly organized, validly existing and in good standing under the laws of Delaware;
 - (b) the Company has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder;

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- (c) the execution and delivery of this Agreement and the performance by the Company of its obligations hereunder have been duly authorized by all necessary action; and
 - (d) this Agreement has been duly executed and delivered by the Company and constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms. The Company agrees that it will not enter into a material amendment of the Kestrel Purchase Agreement without the approval of the Required Consenting Noteholders.
12. Plan Provisions. Subject to the terms and conditions of this Agreement (including, without limitation Section 13 hereof):
- (a) In the event that the Company files a petition for protection pursuant to Title 11 of the United States Code, 11 U.S.C. §§101, et seq., as amended (“Chapter 11”), and within five (5) days of such filing files a disclosure statement (the “Disclosure Statement”) and plan (the “Plan”) that both comply in all material respects with the terms of this Agreement, each Consenting Noteholder agrees and expressly waives its right to (i) object to confirmation of the Plan or otherwise commence any action or proceeding to alter, oppose or add any other provision to the Plan or any other documents or agreements inconsistent with the Restructuring; (ii) object to the approval of the Disclosure Statement provided that it accurately describes the Restructuring; (iii) vote for, consent to, support, intentionally induce or participate directly or indirectly in the formation of any other plan of reorganization or liquidation proposed or filed, or to be proposed or filed, in any Chapter 11 case for the Company; (iv) commence or support any action or proceeding to shorten or terminate the period during which only the Company may propose and/or seek confirmation of the Plan; (v) directly or indirectly seek, solicit, support or encourage any other plan, sale, proposal or offer of winding up, liquidation, reorganization, merger, consolidation, dissolution or restructuring of the Company; or (vi) commence or support any action filed by the Company or any other party in interest to appoint a trustee, conservator, receiver or examiner for the Company, or to dismiss any Chapter 11 case, or to convert such Chapter 11 case to one under Chapter 7; and
 - (b) During the period commencing on the date of this Agreement and continuing until the termination of this Agreement as provided in Section 13 of this Agreement, each Consenting Noteholder agrees to timely vote its respective claim under the Indenture, or authorize and direct the Trustee thereunder to vote its respective claim in accordance with the Indenture, to accept the Plan and not revoke or withdraw such votes. The Consenting Noteholder agrees that this Agreement may be disclosed in solicitation materials prepared in connection with the Plan.
 - (c) The Company agrees to use its reasonable best efforts, if requested by any Consenting Noteholder, to support such Consenting Noteholder’s appointment to any official unsecured creditors’ committee (“Creditors’ Committee”) formed pursuant to 11 U.S.C. § 1102 in any Chapter 11 case. Notwithstanding anything

herein to the contrary, if any Consenting Noteholder is appointed to and serves on the Creditors' Committee in a Chapter 11 case, the terms of this Agreement shall not be construed so as to limit any actions taken in furtherance of such Consenting Noteholder's fiduciary duties to any person arising from its service on such Creditors' Committee, and any such exercise (in the sole discretion of such Consenting Noteholder) of such fiduciary duties shall not be deemed to constitute a breach of the terms of this Agreement.

13. Termination: Upon the occurrence of any of the following events or conditions:

- (a) the termination of the Kestrel Purchase Agreement by either the Company or Kestrel;
- (b) the Kestrel Purchase Agreement shall not have been finally closed as of April 30, 2006;
- (c) an Insolvency Action (as defined below), is taken by or against the Company in any jurisdiction without the prior written consent of the Required Consenting Noteholders. As used herein, an "Insolvency Action" means: (i) an administrator or liquidator (or other officer with similar powers) of the Company or the whole or part of the undertaking, assets and revenues of the Company is appointed (or petition is presented or application made for any such appointment); (ii) the Company takes any action for a readjustment or deferment of any of its obligations or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or declares a moratorium in respect of any of its debts given by it, other than for arrangements under this Agreement or related hereto; (iii) the Company ceases or threatens to cease to carry on all or any substantial part of its business other than pursuant to its current business plan; (iv) a petition is presented, or application is made, or an effective resolution is passed or notice is issued convening a meeting of creditors or shareholders for the purpose of passing any resolution, or other steps are taken for the bankruptcy, winding up, liquidation, dissolution, administration, reorganization (including a voluntary or involuntary Chapter 11 proceeding in the U.S.) or reconstruction of the Company; (v) any event occurs which has an analogous effect to any of the events referred to in paragraph (i) or (iv) above; (vi) an encumbrancer takes possession of any asset or property with a book value in excess of \$100,000 of the Company or any execution or attachment or other legal process is enforced against any asset or property with a book value in excess of \$100,000 of the Company;
- (d) there shall have occurred any material breach of this Agreement by the Company, or any representation or warranty made by the Company in this Agreement shall be incorrect in any material respect;
- (e) a court in any jurisdiction shall declare, in a final, non-appealable order, this Agreement to be unenforceable; or

(f) notwithstanding the terms set forth in Section 6 above, a default of any principal or interest payment obligation under the Indenture that arises after the date of this Agreement;

then:

all obligations of the Company and the Consenting Noteholders under this Agreement, except Section 4 hereof, which shall survive for a period of one hundred twenty (120) days from the date of any such termination, shall, except as provided below, automatically terminate and be of no further force or effect; *provided, however*, that no party shall have the right to terminate this Agreement upon the occurrence of any of the events and conditions described in sub-parts (a) through (d) of this Section 13 unless such party has given written notice thereof to the Company and each of the Consenting Noteholders specifically identifying the basis upon which such party is exercising its right to terminate, and the event or condition giving rise to such right is not cured or otherwise waived by the Required Consenting Noteholders within five (5) business days following receipt by the Company of such written notice; and, *provided, further*, that such event or condition shall be deemed cured if the relevant requirement is satisfied within such five (5) business day period. Termination in accordance with this paragraph shall not affect any party's remedies as a result of any breach by any other party. Notwithstanding anything to the contrary set forth in this Agreement, this Agreement shall terminate on April 30, 2006, unless the Required Consenting Noteholders have consented to the commencement of a Chapter 11 in accordance with Section 12(a), and in which case this Agreement will terminate one hundred twenty (120) days after the filing of such Chapter 11 or such other date as the Required Consenting Noteholders agree.

14. No Solicitation. Notwithstanding any other provision of this Agreement, nothing in this Agreement is intended to be or constitute, and nothing in this Agreement shall be deemed to be or constitute, a solicitation of any vote or any agreement to vote for any plan of reorganization.
15. Entire Agreement: This Agreement (together with the Exhibits and Schedules hereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. This Agreement shall not be amended, altered or modified in any manner whatsoever, except by a written instrument executed by the Company and the Consenting Noteholder. Except as set forth in this Agreement, neither party makes, nor has made any representation or warranty to the other party.
16. Governing Law; WAIVER OF JURY TRIAL: This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to the provisions thereof relating to conflicts of laws). **EACH PARTY HERETO HEREBY AGREES TO WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY**

WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT.

17. **Specific Performance:** The parties hereto acknowledge and agree that any breach of the terms of this Agreement would give rise to irreparable harm for which money damages would not be an adequate remedy and accordingly the parties hereto agree that each party shall be entitled to the sole and exclusive remedy of specific performance and injunctive or other equitable relief without the necessity of proving the inadequacy of money damages as a remedy or posting a bond or other security in connection with such remedy.
18. **Jurisdiction:** The Company and the Consenting Noteholder each hereby irrevocably and unconditionally submit to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
19. **Counterparts:** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts and by facsimile, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.
20. **Severability:** Any term or provision of this Agreement, which is invalid or unenforceable in any jurisdiction, shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.
21. **Headings:** The headings of the paragraphs of this Agreement are inserted for convenience only and shall not affect the interpretation hereof.
22. **Notices.** All notices, requests, elections, and demands under or in connection with this Agreement shall be in writing and shall be delivered by hand, sent by recognized overnight courier, or sent by facsimile or similar electronic means to the party as set forth under its signature hereto, or to such other address or facsimile number as such party shall provide to all other parties hereto in writing, and shall be deemed sent or given hereunder, in the case of personal delivery or delivery by recognized overnight courier, on the date of actual delivery, and in the case of transmission by facsimile or similar electronic means, on the date of actual transmission.
23. **Public Disclosures.** Prior to the issuance of any public disclosures regarding the Restructuring, the Company shall consult with the Consenting Noteholders (or so many of the Consenting Noteholders that are willing to receive restricted information at such time), as to the form and substance of such public disclosures, provided that at all times the Company shall be solely responsible for each public disclosure made by it. Without

limiting the generality of the foregoing, unless required by lawful subpoena issued by a court of competent jurisdiction, the Company shall not, and shall cause each of its direct and indirect subsidiaries not to, disclose (i) any Consenting Noteholder's identity or (ii) the amount of such Consenting Noteholder's holdings of Senior Notes or Partnership units, without the prior written consent of such Consenting Noteholder in each case; and, if such announcement or disclosure is so required, the Company shall afford the Consenting Noteholders a reasonable opportunity to review and comment upon any such announcement or disclosure prior to the applicable announcement or disclosure. Pursuant to the terms set forth in this Section 23, the Company agrees that within one (1) business day following the execution of this Agreement by at least the Required Tender Amount of the holders of the Senior Notes, the Company will file with the SEC on Form 8-K or other periodic report required or permitted to be filed under the Securities Exchange Act of 1934, as amended, an appropriate summary of any material nonpublic information (other than certain fiscal 2006 projections provided to Third Point LLC which need not be disclosed) previously provided in writing to any holder of Senior Notes pursuant to a Non-Disclosure Agreement between the Company and such holder and the Restructuring, so as to release each such holder from any restrictions on trading in the Company's securities resulting from its possession of such material nonpublic information.

24. Expenses. The Company shall continue to be bound by the terms of the Fee Agreement, dated as of August 26, 2005, by and among Bingham McCutchen LLP (as counsel to the Consenting Noteholders), Star Gas Partners, L.P. and Star Gas Finance Company and the Agreement, dated August 26, 2005, by and among Petrie Parkman (as financial advisor to the Consenting Noteholders), Bingham McCutchen LLP, Star Gas Partners, L.P. and Star Gas Financial Company.

[Signature Pages Follow]

Please sign in the space provided below to indicate your agreement and consent to the terms of this Agreement.

Star Gas Partners, L.P. [on its own behalf and on behalf of each of its subsidiaries and affiliates]

By: _____
Name: _____
Title: _____
Date: _____

Star Gas Finance Company [on its own behalf and on behalf of each of its subsidiaries and affiliates]

By: _____
Name: _____
Title: _____
Date: _____

Accepted and Agreed to:
Name of Consenting Noteholder:

By:
Name:
Title:
Date:

\$ _____
Principal Amount of Senior Notes
Beneficially Owned

_____ Number of Outstanding Partnership
Units Currently Held

Number of New Units: _____

Notice Address of Consenting Noteholder:

Tel: _____
Fax: _____
Attn: _____

Exhibit A

Kestrel Purchase Agreement

Exhibit B

Amended Indenture

Exhibit C

New Indenture

Exhibit D

Transferee Acknowledgment

[TO BE INSERTED INTO LETTERHEAD OF TRANSFEROR]

_____, 200_

_____ (the "Transferee")

Re: Transferee Acknowledgment

Ladies and Gentlemen:

This letter (this "Letter") is in reference to Section 8 of that certain letter agreement (the "Lock-Up Agreement") entered into as of December 5, 2005, among Star Gas Partners, L.P., Star Gas Finance Company, and each of their subsidiaries (collectively, the "Company") and the Consenting Noteholders. All capitalized terms used but not defined herein have the meanings given to them in the Lock-Up Agreement.

Section 8 of the Lock-Up Agreement provides as follows:

The Consenting Noteholder hereby agrees, without the prior written consent of the Company, not to, directly or indirectly, prior to the closing of the Tender Offer, (i) sell, transfer, assign, pledge, grant an option on, or otherwise dispose of or encumber any of the Consenting Noteholder's Senior Notes, or (ii) grant any proxies, deposit any of the Consenting Noteholder's Senior Notes into a voting trust or enter into a voting agreement with respect to any of the Consenting Noteholder's Senior Notes (such actions set forth in sub-parts (i) and (ii) above are collectively referred to herein as a "Transfer"); *provided, however*, that the Consenting Noteholder may, at any time, Transfer Senior Notes to a person that has countersigned a transferee acknowledgment in the form attached hereto as Exhibit D (the "Transferee Acknowledgment"), thereby unconditionally agreeing in writing with the Company to be bound by all of the terms and provisions of this Agreement. Any Transfer not effected in accordance with the foregoing shall be deemed void *ab initio*. In the event of a Transfer, the Consenting Noteholder shall, within three (3) business days after such Transfer, provide notice of such transfer to the Company, together with a copy of the Transferee Acknowledgment and, if the Consenting Noteholder has transferred all of its claims subject to this Agreement, then the Consenting Noteholder shall automatically be released from any further obligations hereunder. In addition, each Consenting Noteholder agrees that (a) during the term of

this Agreement, it will not “short sell” any equity securities of the Company, and (b) it will not take any action to oppose or interfere with the transactions contemplated by the Kestrel Purchase Agreement, including, without limitation, the vote of Unitholders contemplated by the Kestrel Purchase Agreement.

As of _____, 2005, we, the undersigned have agreed to Transfer the following principal amount of Senior Notes to the countersigning party:

<u>Issuance</u>	<u>Issue Amount</u>	<u>Maturity</u>	<u>Principal Amount Transferred</u>
10.25% Senior Notes	\$265 million	2013	\$ _____

By your countersignature in the space provided below, you, as transferee, represent and warrant that you have received the Lock-Up Agreement and each of the exhibits attached thereto (attached hereto as Exhibit A).

Please indicate your agreement to be bound by (a) the Lock-Up Agreement as a Consenting Noteholder and (b) the terms and conditions of this Letter, in each case in their entirety without revisions (including with respect to any and all claims or interests you already may hold against or in the Company prior to the Transfer of the interests described above), by countersigning below and returning a copy of this Letter to the transferor. This Letter may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Letter. Delivery of an executed signature page of this Letter by facsimile shall be effective as delivery of a manually executed signature page of this Letter. Upon receipt of your countersignature to this Letter, which is a precondition to any Transfer of the interests described above, this Letter shall be provided to the Company pursuant to Section 8 of the Lock-Up Agreement.

Very truly yours,

[INSERT NAME OF TRANSFEROR]

ACCEPTED AND AGREED

[INSERT NAME OF TRANSFEREE]

Exhibit A to Transferee Acknowledgment

Lock-Up Agreement

Schedule 1
Consenting Noteholders
Agreeing to Exchange
Senior Notes for New Units

1. MacKay Shields LLC
2. Lehman Brothers

Star Gas Partners, L.P.
2187 Atlantic Street
Stamford, Connecticut 06902

December 5, 2005

To the undersigned holder of Star Gas Partners, L.P. 10.25% Senior Notes due 2013 (the "Senior Notes"), issued pursuant to an indenture dated February 6, 2003, by and among Star Gas Partners, L.P., Star Gas Finance Company and Union Bank of California, N.A. as Trustee (the "Indenture") (the "Consenting Noteholder," the Consenting Noteholder together with each Senior Note holder that has entered into a Lock Up Agreement (defined below), the "Consenting Noteholders"):

Star Gas Partners, L.P. (the "Partnership") is simultaneously with the counter-signing of this letter agreement (this "Agreement") (a) entering into a Unit Purchase Agreement in the form attached hereto as Exhibit A (the "Kestrel Purchase Agreement") with Kestrel Energy Partners, LLC, Kestrel Heat, LLC ("Kestrel Heat") and KM2, LLC ("KM2") (collectively, "Kestrel") pursuant to which, among other things, Kestrel Heat will replace the General Partner of the Partnership, Kestrel Heat and KM2 will purchase an aggregate of 7,500,000 newly issued Partnership common units ("New Kestrel Units") from the Partnership at a price of \$2 per unit and Kestrel Heat and KM2 will agree to 'backstop' a \$35 million rights offering (the "Rights Offering") to be made to the outstanding common unitholders of the Partnership, and (b) agreeing with the Consenting Noteholders listed on Schedule 1 to, among other things, exchange a portion of such Consenting Noteholders' Senior Notes for New Units pursuant to the Tender Offer (as defined below).

References to the "Company" as used herein shall refer collectively to the Partnership, Star Gas Finance Company, and each of their respective subsidiaries and affiliates.

The Partnership, Kestrel, and certain of the Consenting Noteholders engaged in good faith negotiations with the objective of reaching an agreement to restructure the Senior Notes pursuant to the Tender Offer which Tender Offer shall be completed simultaneously with the closing (the "Kestrel Closing") of the transactions contemplated by the Kestrel Purchase Agreement, (such transactions are collectively referred to herein as the "Restructuring").

The Company and the Consenting Noteholders desire that the Company implement the Restructuring pursuant to the terms of this Agreement.

In exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and each Consenting Noteholder, intending to be legally bound, hereby agree as follows:

1. Agreement to Complete the Restructuring: Subject to the terms and conditions of this Agreement, the parties to this Agreement agree to use commercially reasonable efforts to promptly and diligently commence and consummate the Restructuring through the Rights Offering (as defined below), the Tender Offer, and the performance of the terms of this Agreement. The obligations of the parties hereunder are several and not joint, and no party hereto shall be responsible for the failure of any other party hereto to perform its obligations hereunder.
2. Appropriate Number and Amount of Consenting Noteholders: All obligations of the Company and the Consenting Noteholder under this Agreement are expressly conditioned upon the prior execution of agreements substantially similar to this Agreement (with certain agreed differences) between the Company and Consenting Noteholders (such agreements, including this Agreement, are collectively referred to herein as a "Lock Up Agreement") holding in the aggregate at least 84% (the "Required Tender Amount") of the principal amount of Senior Notes outstanding on the date hereof.
3. Consenting Noteholder's Conditions to Effectiveness: All obligations of the Consenting Noteholder under this Agreement are conditioned upon the following:
 - (a) the continued effectiveness of this Agreement;
 - (b) the Kestrel Purchase Agreement, and all documents relating thereto, including, but not limited to, the Second Amended and Restated Agreement of Limited Partnership of the Partnership, and all documents relating to the Tender Offer, including, but not limited to, the Amended Indenture (defined below), the New Indenture (defined below), the Equity Maintenance Agreement, and any amendments, revisions or other modifications to the organizational documents of the Company, each being in form, scope and substance reasonably satisfactory to three (3) or more Consenting Noteholders holding at least 66.7% in principal amount of the Senior Notes (the "Required Consenting Noteholders"), it being agreed that the Kestrel Purchase Agreement, the Amended Indenture and the New Indenture, each as attached hereto as Exhibits A-C respectively, are in form, scope and substance satisfactory to the Consenting Noteholder;
 - (c) the continued effectiveness of the Kestrel Purchase Agreement, unless the Kestrel Closing has already occurred or unless waived by the Required Consenting Noteholders; and
 - (d) the Kestrel Closing, unless the Kestrel Closing has already occurred or unless waived by the Required Consenting Noteholders.
4. Amended Indenture and New Indenture: The Company and the Consenting Noteholder each approves the scope, form and substance of (a) the amendments to the Indenture set forth in the blackline of the indenture attached hereto as Exhibit B (the "Amended Indenture"), and (b) the Indenture for the New Notes (as herein defined) to be used in connection with the Tender Offer attached hereto as Exhibit C (the "New Indenture").

5. Consenting Noteholder's Forbearance and Consent:

- (a) The Consenting Noteholder agrees to forbear, so long as this Agreement is in effect, or indefinitely if the closing of the Restructuring has occurred, and subject to the limitations contained in Section 6.4 of the Indenture: (i) from taking any action to accelerate the indebtedness due under the Senior Notes, or directing the Trustee under the Indenture to pursue any right or remedy under the Indenture or otherwise arising out of, or relating to, any act or omission of the Company prior to the Kestrel Closing; and (ii) initiating, or having initiated on its behalf, any litigation or proceeding of any kind with respect to the Senior Notes against the Company, its subsidiaries, affiliates, directors, officers, and/or employees arising out of, or relating to, any act or omission of the Company prior to the Kestrel Closing, other than to enforce this Agreement.
- (b) Notwithstanding the general forbearance provision set forth in Section 5(a) above, the Consenting Noteholder specifically agrees, so long as this Agreement is in effect, or indefinitely if the closing of the Restructuring has occurred: (i) to forbear from exercising any rights or remedies in respect of any default or breach or any claim of potential default or breach under the Indenture resulting from (A) the sale of the Partnership's propane business effected on December 14, 2004, the Company's use of such proceeds to purchase working capital inventory, and the Company's determination that "Excess Proceeds" shall not include any amounts so invested in inventory, (B) the incurrence of additional indebtedness in connection with those certain \$230 million and \$265 million refinancings which closed on December 22, 2003, and December 17, 2004 respectively, and (C) the granting of liens or collateral to the lenders under that certain Credit Agreement, dated December 17, 2004, by and among Petroleum Heat and Power Co., Inc. and the Loan Parties and Lenders thereto and the amendment thereto dated November 3, 2005; (ii) to oppose, at the Company's sole cost and expense, any request or attempt by any Noteholder(s) to assert, or request the Trustee under the Indenture to assert, a default under the Indenture as a result of the matters described in clauses (i)(A), (i)(B) and (i)(C) above; (iii) not to tender the Senior Notes beneficially owned by the Consenting Noteholder in the Change of Control Offer (as defined in the Indenture) which will be required to be made following the Kestrel Closing, pursuant to Section 3.9 of the Indenture; and (iv) to forbear from exercising any rights or remedies with respect to any claims, rights or vote requirements under the Indenture arising from the transactions contemplated by the Kestrel Purchase Agreement.
- (c) The Consenting Noteholder agrees to consent to the amendments to the Amended Indenture set forth in the blackline of the Amended Indenture attached hereto as Exhibit B, which amendments will be effective upon the later of the Kestrel Closing or the closing of the Tender Offer.

6. Tender Offer:

- (a) As soon as practicable following the mailing of the proxy statement in connection with the vote of unitholders contemplated by the Kestrel Purchase Agreement, the Company shall make a tender offer (which shall be coupled with a consent solicitation relating to the waiver of potential defaults set forth in Section 5 hereof and the amendments to the Amended Indenture set forth in Exhibit B) (the “Tender Offer”) to all holders of Senior Notes.
- (b) Pursuant to the Tender Offer, any holder of Senior Notes may tender its Senior Notes at par in exchange for:
 - (i) a Pro Rata Portion (as defined below) of an amount of cash equal to at least \$60 million and not greater than \$73,132,075 million, which amount shall be determined by the Company, in its sole discretion (such discretion to be exercised at least ten (10) business days prior to the closing of the Tender Offer), (such amount to be reduced by any principal, interest and premium payments required to be offered to non-tendering holders of Senior Notes who will be entitled to receive payment from the Company that is required pursuant to the Change of Control Offer provisions set forth in Section 3.9 of the Indenture) (such net amount is referred to herein as the “Net Rights Offering Proceeds”);
 - (ii) at the option of a holder of Senior Notes, and pursuant to the Tender Offer, its New Unit Pro Rata Percentage (defined below) of 13,433,962 newly issued Partnership Units (the “New Units”), which New Units shall be exchanged for Senior Notes at a price of \$2.00 per New Unit (such exchange, the “New Unit Offering”); and
 - (iii) new notes (the “New Notes”) in exchange for any remaining Senior Notes, which New Notes shall be issued pursuant to the terms of the New Indenture.
- (c) The Tender Offer will be subject to customary conditions as well as the following conditions:
 - (i) that valid tenders shall have been received prior to the expiration of the Tender Offer from the holders of at least 93% of the outstanding principal amount of the Senior Notes; and
 - (ii) the Kestrel Closing, unless otherwise waived by the Required Consenting Noteholders, shall have occurred or shall occur simultaneously with the closing of the Tender Offer.

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- (d) The Consenting Noteholder agrees with the Company and each other Consenting Noteholder, as a third party beneficiary to this Agreement:
- (i) to tender all of the Senior Notes beneficially owned by the Consenting Noteholder (including any Senior Notes acquired after the date hereof) into the Tender Offer in exchange for:
 - (1) its Pro Rata Portion of Net Rights Offering Proceeds (such pro rata portion shall be determined by dividing the principal amount of a tendering holder's Senior Notes by the aggregate principal amount of all Senior Notes tendered in exchange for Net Rights Offering Proceeds (the "Pro Rata Portion"));
 - (2) at its option, which option may be exercised at any time prior to the closing of the Tender Offer and pursuant to the terms of the Tender Offer, a number of New Units, which number shall not exceed its New Unit Pro Rata Percentage of New Units (as used herein, the term "New Unit Pro Rata Percentage" means, with respect to each holder of Senior Notes who elects to participate in the New Unit Offering, a percentage determined by dividing the principal amount of all of such holder's Senior Notes entitled to participate in the New Unit Offering by \$178,000,000); and
 - (3) New Notes in an amount equal to the remaining outstanding principal amount of the Consenting Noteholder's Senior Notes after the aggregate reduction in such Senior Notes resulting from the completion of the transactions contemplated in subsections (d)(i)(1) and (2) of this Section 6 (provided that outstanding accrued interest on the Senior Notes shall be included as interest on the New Notes payable on the first interest payment date thereunder so that, effectively, interest on the New Notes shall accrue from the date of the last interest payment on the Senior Notes).
 - (ii) subject to the terms of this Agreement, not to withdraw or revoke such tender unless and until this Agreement is terminated in accordance with its terms.
- (e) Each Consenting Noteholder acknowledges that by tendering its Senior Notes in the Tender Offer it will be deemed to have delivered the consent required for the amendments to the Indenture set forth in the Amended Indenture.
- (f) The Company agrees that it will (i) cause the offer and issuance of the New Notes and New Units pursuant to the Tender Offer to be exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), pursuant to Section 3(a)(9) of the Securities Act, or (ii) offer and issue the New Notes and the New Units pursuant to an effective registration statement filed with the SEC pursuant to the requirements of the Securities Act. The Company will, concurrently with the consummation of the Tender Offer, enter into a registration rights agreement with each holder of Senior Notes that, at the time of

consummation of the Tender Offer, owns 10% or more of the then outstanding Partnership common units (a “10% Holder”), such registration rights agreement to be in customary form, to provide for two demand and unlimited piggy back registration rights with respect to the New Notes and the New Units, and be in form, scope and substance acceptable to the Company and to each 10% Holder. Notwithstanding the foregoing, if legal counsel, reasonably satisfactory to the Consenting Noteholder, issues a legal opinion addressed to the Consenting Noteholder, in a form satisfactory to the Consenting Noteholder, in its sole discretion and at the sole cost and expense of the Company, which states that no registration is required for the sale of the New Units, then the Company shall not be required to effect a registration pursuant to a Registration Rights Agreement, as required above.

- (g) The Company shall use its reasonable best efforts to cause the New Units to be approved for listing on the NYSE, subject to official notice of issuance, prior to the Kestrel Closing.
7. No Transfer: The Consenting Noteholder hereby agrees, without the prior written consent of the Company, not to, directly or indirectly, prior to the closing of the Tender Offer, (i) sell, transfer, assign, pledge, grant an option on, or otherwise dispose of or encumber any of the Consenting Noteholder’s Senior Notes, or (ii) grant any proxies, deposit any of the Consenting Noteholder’s Senior Notes into a voting trust or enter into a voting agreement with respect to any of the Consenting Noteholder’s Senior Notes (such actions set forth in sub-parts (i) and (ii) above are collectively referred to herein as a “Transfer”); *provided, however*, that the Consenting Noteholder may, at any time, Transfer Senior Notes to a person that has countersigned a transferee acknowledgment in the form attached hereto as Exhibit D (the “Transferee Acknowledgment”), thereby unconditionally agreeing in writing with the Company to be bound by all of the terms and provisions of this Agreement. Any Transfer not effected in accordance with the foregoing shall be deemed void *ab initio*. In the event of a Transfer, the Consenting Noteholder shall, within three (3) business days after such Transfer, provide notice of such transfer to the Company, together with a copy of the Transferee Acknowledgment and, if the Consenting Noteholder has transferred all of its claims subject to this Agreement, then the Consenting Noteholder shall automatically be released from any further obligations hereunder. In addition, each Consenting Noteholder agrees that (a) during the term of this Agreement, it will not “short sell” any equity securities of the Company, and (b) it will not take any action to oppose or interfere with the transactions contemplated by the Kestrel Purchase Agreement, including, without limitation, the vote of Unitholders contemplated by the Kestrel Purchase Agreement.
8. Additional Senior Notes Subject: Notwithstanding Section 7 hereof, nothing in this Agreement shall be deemed to limit or restrict the ability or right of any Consenting Noteholder to acquire any additional Senior Notes (“Additional Senior Notes”), *provided, however*, that in the event any Consenting Noteholder acquires any such Additional Senior Notes after the date hereof (other than any such Senior Notes that are already subject to the provisions of a Lock Up Agreement, which Senior Notes shall remain subject to the provisions of such agreement), the Consenting Noteholder shall advise the

Company of such acquisition within three (3) business days of such acquisition and such Additional Senior Notes shall immediately upon such acquisition become subject to the terms of this Agreement, including, without limitation, Section 7 of this Agreement.

9. Representations of Consenting Noteholder: The Consenting Noteholder hereby represents and warrants to the Company as follows:
- (a) The Consenting Noteholder is duly organized, validly existing and in good standing under the laws of the Consenting Noteholder's state of organization or formation;
 - (b) The Consenting Noteholder has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
 - (c) The execution and delivery of this Agreement and the performance by the Consenting Noteholder of its obligations hereunder have been duly authorized by all necessary action;
 - (d) This Agreement has been duly executed and delivered by the Consenting Noteholder and constitutes the valid and binding obligation of the Consenting Noteholder, enforceable against the Consenting Noteholder in accordance with its terms;
 - (e) As of the date hereof, the Consenting Noteholder is the beneficial owner of, and holder of investment and voting authority over:
 - (i) Senior Notes in the aggregate principal amount disclosed under to its name on the signature page hereof (the "Consenting Noteholder's Senior Notes"), and beneficially owns, and has no investment and voting authority over other Senior Notes, and the registered holder and custodial party for the Consenting Noteholder's Senior Notes are as set forth on the signature page hereof; and
 - (ii) outstanding Partnership units in the amount disclosed under its name on the signature page hereof;
 - (f) To the best of its knowledge, as of the date hereof, the Consenting Noteholder's Senior Notes are held free and clear of all claims, charges, leases, covenants, easements, encumbrances, pledges, security interests, liens, options, pledges, rights of others, mortgages, deeds of trust, hypothecations, conditional sales, or restrictions (whether on voting, sale, transfer, disposition, or otherwise), whether imposed by agreement, understanding, law, equity, or otherwise, except for any restrictions on transfer created by this Agreement or generally arising under any applicable federal or state securities law, and the Consenting Noteholder's Senior Notes have not been pledged or assigned to any person;
 - (g) The Consenting Noteholder has been furnished with all information that it has requested for the purpose of evaluating the transactions contemplated by this

Agreement, and the Consenting Noteholder has had an opportunity to ask questions of and receive answers from the Company and its officers regarding the Company and its business, assets, results of operations, financial condition and prospects and the terms and conditions of the issuance of the New Units;

- (h) If applicable, the Consenting Noteholder is acquiring the New Units solely by and for its own account, for investment purposes only and not for the purpose of resale or distribution; and the Consenting Noteholder does not have any contract, undertaking, agreement or arrangement with any person or entity to sell, transfer or pledge to such person or anyone else any New Units; and the Consenting Noteholder does not have any present plans or intentions to enter into any such contract, undertaking or arrangement;
 - (i) The Consenting Noteholder (i) is an “accredited investor” as defined in Rule 501 of the rules promulgated pursuant to the Securities Act; and (ii) has such knowledge and experience in financial and business matters in general that it has the capacity to evaluate the merits and risks of an investment in the New Units, if applicable, and to protect its own interest in connection with an investment in the New Units;
 - (j) The Consenting Noteholder has relied upon its own independent investigations of the business of the Company and the advice of its own advisors, if any, in evaluating its investment in the New Units; and
 - (k) The tender of the Senior Notes and closing of the Tender Offer shall constitute the Consenting Noteholder’s confirmation of the foregoing representations.
10. Representations of the Company: The Company hereby represents and warrants to the Consenting Noteholder as follows:
- (a) the Partnership is a limited partnership duly organized, validly existing and in good standing under the laws of Delaware;
 - (b) the Company has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
 - (c) the execution and delivery of this Agreement and the performance by the Company of its obligations hereunder have been duly authorized by all necessary action; and
 - (d) this Agreement has been duly executed and delivered by the Company and constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms. The Company agrees that it will not enter into a material amendment of the Kestrel Purchase Agreement without the approval of the Required Consenting Noteholders.

11. Plan Provisions. Subject to the terms and conditions of this Agreement (including, without limitation Section 12 hereof):

- (a) In the event that the Company files a petition for protection pursuant to Title 11 of the United States Code, 11 U.S.C. §§101, et seq., as amended (“Chapter 11”), and within five (5) days of such filing files a disclosure statement (the “Disclosure Statement”) and plan (the “Plan”) that both comply in all material respects with the terms of this Agreement, each Consenting Noteholder agrees and expressly waives its right to (i) object to confirmation of the Plan or otherwise commence any action or proceeding to alter, oppose or add any other provision to the Plan or any other documents or agreements inconsistent with the Restructuring; (ii) object to the approval of the Disclosure Statement provided that it accurately describes the Restructuring; (iii) vote for, consent to, support, intentionally induce or participate directly or indirectly in the formation of any other plan of reorganization or liquidation proposed or filed, or to be proposed or filed, in any Chapter 11 case for the Company; (iv) commence or support any action or proceeding to shorten or terminate the period during which only the Company may propose and/or seek confirmation of the Plan; (v) directly or indirectly seek, solicit, support or encourage any other plan, sale, proposal or offer of winding up, liquidation, reorganization, merger, consolidation, dissolution or restructuring of the Company; or (vi) commence or support any action filed by the Company or any other party in interest to appoint a trustee, conservator, receiver or examiner for the Company, or to dismiss any Chapter 11 case, or to convert such Chapter 11 case to one under Chapter 7; and
- (b) During the period commencing on the date of this Agreement and continuing until the termination of this Agreement as provided in Section 12 of this Agreement, each Consenting Noteholder agrees to timely vote its respective claim under the Indenture, or authorize and direct the Trustee thereunder to vote its respective claim in accordance with the Indenture, to accept the Plan and not revoke or withdraw such votes. The Consenting Noteholder agrees that this Agreement may be disclosed in solicitation materials prepared in connection with the Plan.
- (c) The Company agrees to use its reasonable best efforts, if requested by any Consenting Noteholder, to support such Consenting Noteholder’s appointment to any official unsecured creditors’ committee (“Creditors’ Committee”) formed pursuant to 11 U.S.C. § 1102 in any Chapter 11 case. Notwithstanding anything herein to the contrary, if any Consenting Noteholder is appointed to and serves on the Creditors’ Committee in a Chapter 11 case, the terms of this Agreement shall not be construed so as to limit any actions taken in furtherance of such Consenting Noteholder’s fiduciary duties to any person arising from its service on such Creditors’ Committee, and any such exercise (in the sole discretion of such Consenting Noteholder) of such fiduciary duties shall not be deemed to constitute a breach of the terms of this Agreement.

12. Termination: Upon the occurrence of any of the following events or conditions:

- (a) the termination of the Kestrel Purchase Agreement by either the Company or Kestrel;

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- (b) the Kestrel Purchase Agreement shall not have been finally closed as of April 30, 2006;
 - (c) an Insolvency Action (as defined below), is taken by or against the Company in any jurisdiction without the prior written consent of the Required Consenting Noteholders. As used herein, an "Insolvency Action" means: (i) an administrator or liquidator (or other officer with similar powers) of the Company or the whole or part of the undertaking, assets and revenues of the Company is appointed (or petition is presented or application made for any such appointment); (ii) the Company takes any action for a readjustment or deferment of any of its obligations or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or declares a moratorium in respect of any of its debts given by it, other than for arrangements under this Agreement or related hereto; (iii) the Company ceases or threatens to cease to carry on all or any substantial part of its business other than pursuant to its current business plan; (iv) a petition is presented, or application is made, or an effective resolution is passed or notice is issued convening a meeting of creditors or shareholders for the purpose of passing any resolution, or other steps are taken for the bankruptcy, winding up, liquidation, dissolution, administration, reorganization (including a voluntary or involuntary Chapter 11 proceeding in the U.S.) or reconstruction of the Company; (v) any event occurs which has an analogous effect to any of the events referred to in paragraph (i) or (iv) above; (vi) an encumbrancer takes possession of any asset or property with a book value in excess of \$100,000 of the Company or any execution or attachment or other legal process is enforced against any asset or property with a book value in excess of \$100,000 of the Company;
 - (d) there shall have occurred any material breach of this Agreement by the Company, or any representation or warranty made by the Company in this Agreement shall be incorrect in any material respect;
 - (e) a court in any jurisdiction shall declare, in a final, non-appealable order, this Agreement to be unenforceable; or
 - (f) notwithstanding the terms set forth in Section 5 above, a default of any principal or interest payment obligation under the Indenture that arises after the date of this Agreement;

then:

all obligations of the Company and the Consenting Noteholders under this Agreement shall, except as provided below, automatically terminate and be of no further force or effect; *provided, however*, that no party shall have the right to terminate this Agreement upon the occurrence of any of the events and conditions described in sub-parts (a) through (d) of this Section 12 unless such party has given written notice thereof to the Company and each of the Consenting Noteholders specifically identifying the basis upon which such party is exercising its right to terminate, and the event or condition giving rise

- to such right is not cured or otherwise waived by the Required Consenting Noteholders within five (5) business days following receipt by the Company of such written notice; and, *provided, further*, that such event or condition shall be deemed cured if the relevant requirement is satisfied within such five (5) business day period. Termination in accordance with this paragraph shall not affect any party's remedies as a result of any breach by any other party. Notwithstanding anything to the contrary set forth in this Agreement, this Agreement shall terminate on April 30, 2006, unless the Required Consenting Noteholders have consented to the commencement of a Chapter 11 in accordance with Section 11(a), and in which case this Agreement will terminate one hundred twenty (120) days after the filing of such Chapter 11 or such other date as the Required Consenting Noteholders agree.
13. **No Solicitation.** Notwithstanding any other provision of this Agreement, nothing in this Agreement is intended to be or constitute, and nothing in this Agreement shall be deemed to be or constitute, a solicitation of any vote or any agreement to vote for any plan of reorganization.
 14. **Entire Agreement:** This Agreement (together with the Exhibits and Schedules hereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. This Agreement shall not be amended, altered or modified in any manner whatsoever, except by a written instrument executed by the Company and the Consenting Noteholder. Except as set forth in this Agreement, neither party makes, nor has made any representation or warranty to the other party.
 15. **Governing Law; WAIVER OF JURY TRIAL:** This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to the provisions thereof relating to conflicts of laws). **EACH PARTY HERETO HEREBY AGREES TO WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT.**
 16. **Specific Performance:** The parties hereto acknowledge and agree that any breach of the terms of this Agreement would give rise to irreparable harm for which money damages would not be an adequate remedy and accordingly the parties hereto agree that each party shall be entitled to the sole and exclusive remedy of specific performance and injunctive or other equitable relief without the necessity of proving the inadequacy of money damages as a remedy or posting a bond or other security in connection with such remedy.
 17. **Jurisdiction:** The Company and the Consenting Noteholder each hereby irrevocably and unconditionally submit to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be

conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

18. Counterparts: This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts and by facsimile, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.
19. Severability: Any term or provision of this Agreement, which is invalid or unenforceable in any jurisdiction, shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.
20. Headings: The headings of the paragraphs of this Agreement are inserted for convenience only and shall not affect the interpretation hereof.
21. Notices. All notices, requests, elections, and demands under or in connection with this Agreement shall be in writing and shall be delivered by hand, sent by recognized overnight courier, or sent by facsimile or similar electronic means to the party as set forth under its signature hereto, or to such other address or facsimile number as such party shall provide to all other parties hereto in writing, and shall be deemed sent or given hereunder, in the case of personal delivery or delivery by recognized overnight courier, on the date of actual delivery, and in the case of transmission by facsimile or similar electronic means, on the date of actual transmission.
22. Public Disclosures. Prior to the issuance of any public disclosures regarding the Restructuring, the Company shall consult with the Consenting Noteholders (or so many of the Consenting Noteholders that are willing to receive restricted information at such time), as to the form and substance of such public disclosures, provided that at all times the Company shall be solely responsible for each public disclosure made by it. Without limiting the generality of the foregoing, unless required by lawful subpoena issued by a court of competent jurisdiction, the Company shall not, and shall cause each of its direct and indirect subsidiaries not to, disclose (i) any Consenting Noteholder's identity or (ii) the amount of such Consenting Noteholder's holdings of Senior Notes or Partnership units, without the prior written consent of such Consenting Noteholder in each case; and, if such announcement or disclosure is so required, the Company shall afford the Consenting Noteholders a reasonable opportunity to review and comment upon any such announcement or disclosure prior to the applicable announcement or disclosure. Pursuant to the terms set forth in this Section 22, the Company agrees that within one (1) business day following the execution of this Agreement by at least the Required Tender Amount of the holders of the Senior Notes, the Company will file with the SEC on Form 8-K or other periodic report required or permitted to be filed under the Securities Exchange Act of 1934, as amended, an appropriate summary of any material nonpublic information (other than certain fiscal 2006 projections provided to Third Point LLC which need not

be disclosed) previously provided in writing to any holder of Senior Notes pursuant to a Non-Disclosure Agreement between the Company and such holder and the Restructuring, so as to release each such holder from any restrictions on trading in the Company's securities resulting from its possession of such material nonpublic information.

23. Expenses. The Company shall continue to be bound by the terms of the Fee Agreement, dated as of August 26, 2005, by and among Bingham McCutchen LLP (as counsel to the Consenting Noteholders), Star Gas Partners, L.P. and Star Gas Finance Company and the Agreement, dated August 26, 2005, by and among Petrie Parkman (as financial advisor to the Consenting Noteholders), Bingham McCutchen LLP, Star Gas Partners, L.P. and Star Gas Financial Company.
24. Units Not Subject to this Agreement. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing in this Agreement shall affect the Consenting Noteholder's ability to exercise any and all rights that it has, or may in the future have, in connection with its ownership of Partnership units.

[Signature Pages Follow]

Please sign in the space provided below to indicate your agreement and consent to the terms of this Agreement.

Star Gas Partners, L.P. [on its own behalf and on behalf of each of its subsidiaries and affiliates]

By: _____
Name: _____
Title: _____
Date: _____

Star Gas Finance Company [on its own behalf and on behalf of each of its subsidiaries and affiliates]

By: _____
Name: _____
Title: _____
Date: _____

Accepted and Agreed to:
Name of Consenting Noteholder:

By: _____
Name: _____
Title: _____
Date: _____

\$ _____
Principal Amount of Senior Notes
Beneficially Owned

_____ Number of Outstanding Partnership
Units Currently Held

Notice Address of Consenting Noteholder:

Tel: _____
Fax: _____
Attn: _____

Exhibit A

Kestrel Purchase Agreement

Exhibit B

Amended Indenture

Exhibit C

New Indenture

Exhibit D

Transferee Acknowledgment

[TO BE INSERTED INTO LETTERHEAD OF TRANSFEROR]

_____, 200_

_____ (the "Transferee")

Re: Transferee Acknowledgment

Ladies and Gentlemen:

This letter (this "Letter") is in reference to Section 7 of that certain letter agreement (the "Lock-Up Agreement") entered into as of December 5, 2005, among Star Gas Partners, L.P., Star Gas Finance Company, and each of their subsidiaries (collectively, the "Company") and the Consenting Noteholders. All capitalized terms used but not defined herein have the meanings given to them in the Lock-Up Agreement.

Section 7 of the Lock-Up Agreement provides as follows:

The Consenting Noteholder hereby agrees, without the prior written consent of the Company, not to, directly or indirectly, prior to the closing of the Tender Offer, (i) sell, transfer, assign, pledge, grant an option on, or otherwise dispose of or encumber any of the Consenting Noteholder's Senior Notes, or (ii) grant any proxies, deposit any of the Consenting Noteholder's Senior Notes into a voting trust or enter into a voting agreement with respect to any of the Consenting Noteholder's Senior Notes (such actions set forth in sub-parts (i) and (ii) above are collectively referred to herein as a "Transfer"); *provided, however*, that the Consenting Noteholder may, at any time, Transfer Senior Notes to a person that has countersigned a transferee acknowledgment in the form attached hereto as Exhibit D (the "Transferee Acknowledgment"), thereby unconditionally agreeing in writing with the Company to be bound by all of the terms and provisions of this Agreement. Any Transfer not effected in accordance with the foregoing shall be deemed void *ab initio*. In the event of a Transfer, the Consenting Noteholder shall, within three (3) business days after such Transfer, provide notice of such transfer to the Company, together with a copy of the Transferee Acknowledgment and, if the Consenting Noteholder has transferred all of its claims subject to this Agreement, then the Consenting Noteholder shall automatically be released from any further obligations hereunder. In addition, each Consenting Noteholder agrees that (a) during the term of

this Agreement, it will not “short sell” any equity securities of the Company, and (b) it will not take any action to oppose or interfere with the transactions contemplated by the Kestrel Purchase Agreement, including, without limitation, the vote of Unitholders contemplated by the Kestrel Purchase Agreement.

As of _____, 2005, we, the undersigned have agreed to Transfer the following principal amount of Senior Notes to the countersigning party:

<u>Issuance</u>	<u>Issue Amount</u>	<u>Maturity</u>	<u>Principal Amount Transferred</u>
10.25% Senior Notes	\$265 million	2013	\$ _____

By your countersignature in the space provided below, you, as transferee, represent and warrant that you have received the Lock-Up Agreement and each of the exhibits attached thereto (attached hereto as Exhibit A).

Please indicate your agreement to be bound by (a) the Lock-Up Agreement as a Consenting Noteholder and (b) the terms and conditions of this Letter, in each case in their entirety without revisions (including with respect to any and all claims or interests you already may hold against or in the Company prior to the Transfer of the interests described above), by countersigning below and returning a copy of this Letter to the transferor. This Letter may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Letter. Delivery of an executed signature page of this Letter by facsimile shall be effective as delivery of a manually executed signature page of this Letter. Upon receipt of your countersignature to this Letter, which is a precondition to any Transfer of the interests described above, this Letter shall be provided to the Company pursuant to Section 7 of the Lock-Up Agreement.

Very truly yours,

[INSERT NAME OF TRANSFEROR]

ACCEPTED AND AGREED

[INSERT NAME OF TRANSFEREE]

Exhibit A to Transferee Acknowledgment

Lock-Up Agreement

Schedule 1
Consenting Noteholders
Agreeing to Exchange
Senior Notes for New Units

1. MacKay Shields LLC
2. Lehman Brothers

Star Gas Partners, L.P.
2187 Atlantic Street
Stamford, Connecticut 06902

December 5, 2005

To the undersigned holder of Star Gas Partners, L.P. 10.25% Senior Notes due 2013 (the "Senior Notes"), issued pursuant to an indenture dated February 6, 2003, by and among Star Gas Partners, L.P., Star Gas Finance Company and Union Bank of California, N.A. as Trustee (the "Indenture") (the "Consenting Noteholder," the Consenting Noteholder together with each Senior Note holder that has entered into a Lock Up Agreement (defined below), the "Consenting Noteholders");

Star Gas Partners, L.P. (the "Partnership") is simultaneously with the counter-signing of this letter agreement (this "Agreement") entering into a Unit Purchase Agreement in the form attached hereto as Exhibit A (the "Kestrel Purchase Agreement") with Kestrel Energy Partners, LLC, Kestrel Heat, LLC ("Kestrel Heat") and KM2, LLC ("KM2") (collectively, "Kestrel") pursuant to which, among other things, Kestrel Heat will replace the General Partner of the Partnership, Kestrel Heat and KM2 will purchase an aggregate of 7,500,000 newly issued Partnership common units ("New Kestrel Units") from the Partnership at a price of \$2 per unit and Kestrel Heat and KM2 will agree to 'backstop' a \$35 million rights offering (the "Rights Offering") to be made to the outstanding common unitholders of the Partnership.

References to the "Company" as used herein shall refer collectively to the Partnership, Star Gas Finance Company, and each of their respective subsidiaries and affiliates.

The Partnership, Kestrel, and certain of the Consenting Noteholders engaged in good faith negotiations with the objective of reaching an agreement to restructure the Senior Notes pursuant to the Tender Offer (as defined below) which Tender Offer shall be completed simultaneously with the closing (the "Kestrel Closing") of the transactions contemplated by the Kestrel Purchase Agreement, (such transactions are collectively referred to herein as the "Restructuring").

The Company and the Consenting Noteholders desire that the Company implement the Restructuring pursuant to the terms of this Agreement.

In exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and each Consenting Noteholder, intending to be legally bound, hereby agree as follows:

1. Agreement to Complete the Restructuring: Subject to the terms and conditions of this Agreement, the parties to this Agreement agree to use commercially reasonable efforts to promptly and diligently commence and consummate the Restructuring through the Rights Offering (as defined below), the Tender Offer, and the performance of the terms of this

Agreement. The obligations of the parties hereunder are several and not joint, and no party hereto shall be responsible for the failure of any other party hereto to perform its obligations hereunder.

2. Appropriate Number and Amount of Consenting Noteholders: All obligations of the Company and the Consenting Noteholder under this Agreement are expressly conditioned upon the prior execution of agreements substantially similar to this Agreement (with certain agreed differences) between the Company and Consenting Noteholders (such agreements, including this Agreement, are collectively referred to herein as a "Lock Up Agreement") holding in the aggregate at least 84% (the "Required Tender Amount") of the principal amount of Senior Notes outstanding on the date hereof.
3. Consenting Noteholder's Conditions to Effectiveness: All obligations of the Consenting Noteholder under this Agreement are conditioned upon the following:
 - (a) the continued effectiveness of this Agreement;
 - (b) the Kestrel Purchase Agreement, and all documents relating thereto, including, but not limited to, the Second Amended and Restated Agreement of Limited Partnership of the Partnership, and all documents relating to the Tender Offer, including, but not limited to, the Amended Indenture (defined below), the New Indenture (defined below), the Equity Maintenance Agreement, and any amendments, revisions or other modifications to the organizational documents of the Company, each being in form, scope and substance reasonably satisfactory to three (3) or more Consenting Noteholders holding at least 66.7% in principal amount of the Senior Notes (the "Required Consenting Noteholders"), it being agreed that the Kestrel Purchase Agreement, the Amended Indenture and the New Indenture, each as attached hereto as Exhibits A-C respectively, are in form, scope and substance satisfactory to the Consenting Noteholder;
 - (c) the continued effectiveness of the Kestrel Purchase Agreement, unless the Kestrel Closing has already occurred or unless waived by the Required Consenting Noteholders; and
 - (d) the Kestrel Closing, unless the Kestrel Closing has already occurred or unless waived by the Required Consenting Noteholders.
4. Substitution of Consenting Noteholders: In the event that the Kestrel Purchase Agreement is terminated for any reason, the Company shall provide the Consenting Noteholder with written notice thereof within three (3) business days of such termination (the "Kestrel Termination Notice"). The Company agrees that, notwithstanding any other provision set forth herein or in the Kestrel Purchase Agreement, in the event that the Kestrel Purchase Agreement is terminated for any reason other than termination resulting from the acceptance by the Company of a Superior Proposal (as defined in the Kestrel Purchase Agreement) or from the failure of the Partnership's Unitholders to vote in favor of the transactions contemplated by the Kestrel Purchase Agreement, one or more Consenting Noteholders may, within fourteen (14) business days from receipt of the

Kestrel Termination Notice, deliver a written notice to the Company (the “Noteholder Rights Offering Notice”), informing the Company of such Consenting Noteholders’ desire to (a) replace the General Partner of the Partnership, (b) consummate the transactions contemplated by the Tender Offer and (c) purchase an aggregate of 7,500,000 newly issued Partnership units from the Partnership at a price of \$2 per unit and ‘backstop’ the Rights Offering, pursuant to the terms of a separate agreement with the Company to be negotiated in good faith and mutually agreed to by the parties following receipt by the Company of the Noteholder Rights Offering Notice.

5. Amended Indenture and New Indenture: The Company and the Consenting Noteholder each approves the scope, form and substance of (a) the amendments to the Indenture set forth in the blackline of the indenture attached hereto as Exhibit B (the “Amended Indenture”), and (b) the Indenture for the New Notes (as herein defined) to be used in connection with the Tender Offer attached hereto as Exhibit C (the “New Indenture”).
6. Consenting Noteholder’s Forbearance and Consent:
 - (a) The Consenting Noteholder agrees to forbear, so long as this Agreement is in effect, or indefinitely if the closing of the Restructuring has occurred, and subject to the limitations contained in Section 6.4 of the Indenture: (i) from taking any action to accelerate the indebtedness due under the Senior Notes, or directing the Trustee under the Indenture to pursue any right or remedy under the Indenture or otherwise arising out of, or relating to, any act or omission of the Company prior to the Kestrel Closing; and (ii) initiating, or having initiated on its behalf, any litigation or proceeding of any kind with respect to the Senior Notes against the Company, its subsidiaries, affiliates, directors, officers, and/or employees arising out of, or relating to, any act or omission of the Company prior to the Kestrel Closing, other than to enforce this Agreement.
 - (b) Notwithstanding the general forbearance provision set forth in Section 6(a) above, the Consenting Noteholder specifically agrees, so long as this Agreement is in effect, or indefinitely if the closing of the Restructuring has occurred: (i) to forbear from exercising any rights or remedies in respect of any default or breach or any claim of potential default or breach under the Indenture resulting from (A) the sale of the Partnership’s propane business effected on December 14, 2004, the Company’s use of such proceeds to purchase working capital inventory, and the Company’s determination that “Excess Proceeds” shall not include any amounts so invested in inventory, (B) the incurrence of additional indebtedness in connection with those certain \$230 million and \$265 million refinancings which closed on December 22, 2003, and December 17, 2004 respectively, and (C) the granting of liens or collateral to the lenders under that certain Credit Agreement, dated December 17, 2004, by and among Petroleum Heat and Power Co., Inc. and the Loan Parties and Lenders thereto and the amendment thereto dated November 3, 2005; (ii) to oppose, at the Company’s sole cost and expense, any request or attempt by any Noteholder(s) to assert, or request the Trustee under the Indenture to assert, a default under the Indenture as a result of the matters described in clauses (i)(A), (i)(B) and (i)(C) above; (iii) not to tender the Senior Notes

beneficially owned by the Consenting Noteholder in the Change of Control Offer (as defined in the Indenture) which will be required to be made following the Kestrel Closing, pursuant to Section 3.9 of the Indenture; and (iv) to forbear from exercising any rights or remedies with respect to any claims, rights or vote requirements under the Indenture arising from the transactions contemplated by the Kestrel Purchase Agreement.

- (c) The Consenting Noteholder agrees to consent to the amendments to the Amended Indenture set forth in the blackline of the Amended Indenture attached hereto as Exhibit B, which amendments will be effective upon the later of the Kestrel Closing or the closing of the Tender Offer.

7. Tender Offer:

- (a) As soon as practicable following the mailing of the proxy statement in connection with the vote of unitholders contemplated by the Kestrel Purchase Agreement, the Company shall make a tender offer (which shall be coupled with a consent solicitation relating to the waiver of potential defaults set forth in Section 6 hereof and the amendments to the Amended Indenture set forth in Exhibit B) (the "Tender Offer") to all holders of Senior Notes.
- (b) Pursuant to the Tender Offer, any holder of Senior Notes may tender its Senior Notes at par in exchange for:
- (i) a Pro Rata Portion (as defined below) of an amount of cash equal to at least \$60 million and not greater than \$73,132,075 million, which amount shall be determined by the Company, in its sole discretion (such discretion to be exercised at least ten (10) business days prior to the closing of the Tender Offer), (such amount to be reduced by any principal, interest and premium payments required to be offered to non-tendering holders of Senior Notes who will be entitled to receive payment from the Company that is required pursuant to the Change of Control Offer provisions set forth in Section 3.9 of the Indenture) (such net amount is referred to herein as the "Net Rights Offering Proceeds");
- (ii) at the option of a holder of Senior Notes, and pursuant to the Tender Offer, its New Unit Pro Rata Percentage (defined below) of 13,433,962 newly issued Partnership Units (the "New Units"), which New Units shall be exchanged for Senior Notes at a price of \$2.00 per New Unit (such exchange, the "New Unit Offering") (as used herein, the term "New Unit Pro Rata Percentage" means, with respect to each holder of Senior Notes who elects to participate in the New Unit Offering, a percentage determined by dividing the principal amount of all of such holder's Senior Notes by \$178,000,000); and

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- (iii) new notes (the "New Notes") in exchange for any remaining Senior Notes, which New Notes shall be issued pursuant to the terms of the New Indenture.
 - (c) The Tender Offer will be subject to customary conditions as well as the following conditions:
 - (i) that valid tenders shall have been received prior to the expiration of the Tender Offer from the holders of at least 93% of the outstanding principal amount of the Senior Notes; and
 - (ii) the Kestrel Closing, unless otherwise waived by the Required Consenting Noteholders, shall have occurred or shall occur simultaneously with the closing of the Tender Offer.
 - (d) The Consenting Noteholder agrees with the Company and each other Consenting Noteholder, as a third party beneficiary to this Agreement:
 - (i) to tender all of the Senior Notes beneficially owned by the Consenting Noteholder (including any Senior Notes acquired after the date hereof) into the Tender Offer within ten (10) business days following the commencement of the Tender Offer in exchange for:
 - (1) its Pro Rata Portion of Net Rights Offering Proceeds (such pro rata portion shall be determined by dividing the principal amount of the Consenting Noteholder's Senior Notes by the aggregate principal amount of all Senior Notes tendered in exchange for Net Rights Offering Proceeds (the "Pro Rata Portion")); and
 - (2) New Notes in an amount equal to the remaining outstanding principal amount of the Consenting Noteholder's Senior Notes after the aggregate reduction in such Senior Notes resulting from the completion of the transaction contemplated in subsection (d)(i)(1) of this Section 7 (provided that outstanding accrued interest on the Senior Notes shall be included as interest on the New Notes payable on the first interest payment date thereunder so that, effectively, interest on the New Notes shall accrue from the date of the last interest payment on the Senior Notes).
 - (ii) subject to the terms of this Agreement, not to withdraw or revoke such tender unless and until this Agreement is terminated in accordance with its terms; and
 - (iii) that it shall elect not to exchange any Senior Notes held as of the date of execution of this Agreement in connection with the New Unit Offering.

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- (e) Each Consenting Noteholder acknowledges that by tendering its Senior Notes in the Tender Offer it will be deemed to have delivered the consent required for the amendments to the Indenture set forth in the Amended Indenture.
- (f) The Company agrees that it will (i) cause the offer and issuance of the New Notes pursuant to the Tender Offer to be exempt from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”), pursuant to Section 3(a)(9) of the Securities Act, or (ii) offer and issue the New Notes pursuant to an effective registration statement filed with the Securities and Exchange Commission (the “SEC”) pursuant to the requirements of the Securities Act.
8. No Transfer: The Consenting Noteholder hereby agrees, without the prior written consent of the Company, not to, directly or indirectly, prior to the closing of the Tender Offer, (i) sell, transfer, assign, pledge, grant an option on, or otherwise dispose of or encumber any of the Consenting Noteholder’s Senior Notes, or (ii) grant any proxies, deposit any of the Consenting Noteholder’s Senior Notes into a voting trust or enter into a voting agreement with respect to any of the Consenting Noteholder’s Senior Notes (such actions set forth in sub-parts (i) and (ii) above are collectively referred to herein as a “Transfer”); *provided, however*, that the Consenting Noteholder may, at any time, Transfer Senior Notes to a person that has countersigned a transferee acknowledgment in the form attached hereto as Exhibit D (the “Transferee Acknowledgment”), thereby unconditionally agreeing in writing with the Company to be bound by all of the terms and provisions of this Agreement. Any Transfer not effected in accordance with the foregoing shall be deemed void *ab initio*. In the event of a Transfer, the Consenting Noteholder shall, within three (3) business days after such Transfer, provide notice of such transfer to the Company, together with a copy of the Transferee Acknowledgement and, if the Consenting Noteholder has transferred all of its claims subject to this Agreement, then the Consenting Noteholder shall automatically be released from any further obligations hereunder. In addition, each Consenting Noteholder agrees that (a) during the term of this Agreement, it will not “short sell” any equity securities of the Company, and (b) it will not take any action to oppose or interfere with the transactions contemplated by the Kestrel Purchase Agreement, including, without limitation, the vote of Unitholders contemplated by the Kestrel Purchase Agreement.
9. Additional Senior Notes Subject: Notwithstanding Section 8 hereof, nothing in this Agreement shall be deemed to limit or restrict the ability or right of any Consenting Noteholder to acquire any additional Senior Notes (“Additional Senior Notes”), *provided, however*, that in the event any Consenting Noteholder acquires any such Additional Senior Notes after the date hereof (other than any such Senior Notes that are already subject to the provisions of a Lock Up Agreement, which Senior Notes shall remain subject to the provisions of such agreement), the Consenting Noteholder shall advise the Company of such acquisition within three (3) business days of such acquisition and such Additional Senior Notes shall immediately upon such acquisition become subject to the terms of this Agreement, including, without limitation, Section 8 of this Agreement. Notwithstanding the foregoing provisions of this Section 9, if the Consenting Noteholder acquires any Senior Notes not subject to a Lock Up Agreement as of the date hereof, such

newly acquired Senior Notes shall not be restricted by the terms set forth in Section 7(d)(iii).

10. **Representations of Consenting Noteholder:** The Consenting Noteholder hereby represents and warrants to the Company as follows:
- (a) The Consenting Noteholder is duly organized, validly existing and in good standing under the laws of the Consenting Noteholder's state of organization or formation;
 - (b) The Consenting Noteholder has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
 - (c) The execution and delivery of this Agreement and the performance by the Consenting Noteholder of its obligations hereunder have been duly authorized by all necessary action;
 - (d) This Agreement has been duly executed and delivered by the Consenting Noteholder and constitutes the valid and binding obligation of the Consenting Noteholder, enforceable against the Consenting Noteholder in accordance with its terms;
 - (e) As of the date hereof, the Consenting Noteholder is the beneficial owner of, and holder of investment and voting authority over:
 - (i) Senior Notes in the aggregate principal amount disclosed under to its name on the signature page hereof (the "Consenting Noteholder's Senior Notes"), and beneficially owns, and has no investment and voting authority over other Senior Notes, and the registered holder and custodial party for the Consenting Noteholder's Senior Notes are as set forth on the signature page hereof; and
 - (ii) outstanding Partnership units in the amount disclosed under its name on the signature page hereof;
 - (f) To the best of its knowledge, as of the date hereof, the Consenting Noteholder's Senior Notes are held free and clear of all claims, charges, leases, covenants, easements, encumbrances, pledges, security interests, liens, options, pledges, rights of others, mortgages, deeds of trust, hypothecations, conditional sales, or restrictions (whether on voting, sale, transfer, disposition, or otherwise), whether imposed by agreement, understanding, law, equity, or otherwise, except for any restrictions on transfer created by this Agreement or generally arising under any applicable federal or state securities law, and the Consenting Noteholder's Senior Notes have not been pledged or assigned to any person;
 - (g) The Consenting Noteholder has been furnished with all information that it has requested for the purpose of evaluating the transactions contemplated by this Agreement, and the Consenting Noteholder has had an opportunity to ask

questions of and receive answers from the Company and its officers regarding the Company and its business, assets, results of operations, financial condition and prospects and the terms and conditions of the issuance of the New Units;

- (h) The Consenting Noteholder (i) is an “accredited investor” as defined in Rule 501 of the rules promulgated pursuant to the Securities Act; and (ii) has such knowledge and experience in financial and business matters in general that it has the capacity to evaluate the merits and risks of the Restructuring and to protect its own interest in connection with the Restructuring;
 - (i) The Consenting Noteholder has relied upon its own independent investigations of the business of the Company and the advice of its own advisors, if any, in evaluating the Restructuring; and
 - (j) The tender of the Senior Notes and closing of the Tender Offer shall constitute the Consenting Noteholder’s confirmation of the foregoing representations.
11. Representations of the Company: The Company hereby represents and warrants to the Consenting Noteholder as follows:
- (a) the Partnership is a limited partnership duly organized, validly existing and in good standing under the laws of Delaware;
 - (b) the Company has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
 - (c) the execution and delivery of this Agreement and the performance by the Company of its obligations hereunder have been duly authorized by all necessary action; and
 - (d) this Agreement has been duly executed and delivered by the Company and constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms. The Company agrees that it will not enter into a material amendment of the Kestrel Purchase Agreement without the approval of the Required Consenting Noteholders.
12. Plan Provisions. Subject to the terms and conditions of this Agreement (including, without limitation Section 13 hereof):
- (a) In the event that the Company files a petition for protection pursuant to Title 11 of the United States Code, 11 U.S.C. §§101, et seq., as amended (“Chapter 11”), and within five (5) days of such filing files a disclosure statement (the “Disclosure Statement”) and plan (the “Plan”) that both comply in all material respects with the terms of this Agreement, each Consenting Noteholder agrees and expressly waives its right to (i) object to confirmation of the Plan or otherwise commence any action or proceeding to alter, oppose or add any other provision to the Plan or any other documents or agreements inconsistent with the Restructuring; (ii) object to the approval of the Disclosure Statement provided that it accurately describes

the Restructuring; (iii) vote for, consent to, support, intentionally induce or participate directly or indirectly in the formation of any other plan of reorganization or liquidation proposed or filed, or to be proposed or filed, in any Chapter 11 case for the Company; (iv) commence or support any action or proceeding to shorten or terminate the period during which only the Company may propose and/or seek confirmation of the Plan; (v) directly or indirectly seek, solicit, support or encourage any other plan, sale, proposal or offer of winding up, liquidation, reorganization, merger, consolidation, dissolution or restructuring of the Company; or (vi) commence or support any action filed by the Company or any other party in interest to appoint a trustee, conservator, receiver or examiner for the Company, or to dismiss any Chapter 11 case, or to convert such Chapter 11 case to one under Chapter 7; and

- (b) During the period commencing on the date of this Agreement and continuing until the termination of this Agreement as provided in Section 13 of this Agreement, each Consenting Noteholder agrees to timely vote its respective claim under the Indenture, or authorize and direct the Trustee thereunder to vote its respective claim in accordance with the Indenture, to accept the Plan and not revoke or withdraw such votes. The Consenting Noteholder agrees that this Agreement may be disclosed in solicitation materials prepared in connection with the Plan.
 - (c) The Company agrees to use its reasonable best efforts, if requested by any Consenting Noteholder, to support such Consenting Noteholder's appointment to any official unsecured creditors' committee ("Creditors' Committee") formed pursuant to 11 U.S.C. § 1102 in any Chapter 11 case. Notwithstanding anything herein to the contrary, if any Consenting Noteholder is appointed to and serves on the Creditors' Committee in a Chapter 11 case, the terms of this Agreement shall not be construed so as to limit any actions taken in furtherance of such Consenting Noteholder's fiduciary duties to any person arising from its service on such Creditors' Committee, and any such exercise (in the sole discretion of such Consenting Noteholder) of such fiduciary duties shall not be deemed to constitute a breach of the terms of this Agreement.
13. Termination: Upon the occurrence of any of the following events or conditions:
- (a) the termination of the Kestrel Purchase Agreement by either the Company or Kestrel;
 - (b) the Kestrel Purchase Agreement shall not have been finally closed as of April 30, 2006;
 - (c) an Insolvency Action (as defined below), is taken by or against the Company in any jurisdiction without the prior written consent of the Required Consenting Noteholders. As used herein, an "Insolvency Action" means: (i) an administrator or liquidator (or other officer with similar powers) of the Company or the whole or part of the undertaking, assets and revenues of the Company is appointed (or petition is presented or application made for any such appointment); (ii) the

Company takes any action for a readjustment or deferment of any of its obligations or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or declares a moratorium in respect of any of its debts given by it, other than for arrangements under this Agreement or related hereto; (iii) the Company ceases or threatens to cease to carry on all or any substantial part of its business other than pursuant to its current business plan; (iv) a petition is presented, or application is made, or an effective resolution is passed or notice is issued convening a meeting of creditors or shareholders for the purpose of passing any resolution, or other steps are taken for the bankruptcy, winding up, liquidation, dissolution, administration, reorganization (including a voluntary or involuntary Chapter 11 proceeding in the U.S.) or reconstruction of the Company; (v) any event occurs which has an analogous effect to any of the events referred to in paragraph (i) or (iv) above; (vi) an encumbrancer takes possession of any asset or property with a book value in excess of \$100,000 of the Company or any execution or attachment or other legal process is enforced against any asset or property with a book value in excess of \$100,000 of the Company;

- (d) there shall have occurred any material breach of this Agreement by the Company, or any representation or warranty made by the Company in this Agreement shall be incorrect in any material respect;
- (e) a court in any jurisdiction shall declare, in a final, non-appealable order, this Agreement to be unenforceable; or
- (f) notwithstanding the terms set forth in Section 6 above, a default of any principal or interest payment obligation under the Indenture that arises after the date of this Agreement;

then:

all obligations of the Company and the Consenting Noteholders under this Agreement, except Section 4 hereof, which shall survive for a period of one hundred twenty (120) days from the date of any such termination, shall, except as provided below, automatically terminate and be of no further force or effect; *provided, however*, that no party shall have the right to terminate this Agreement upon the occurrence of any of the events and conditions described in sub-parts (a) through (d) of this Section 13 unless such party has given written notice thereof to the Company and each of the Consenting Noteholders specifically identifying the basis upon which such party is exercising its right to terminate, and the event or condition giving rise to such right is not cured or otherwise waived by the Required Consenting Noteholders within five (5) business days following receipt by the Company of such written notice; and, *provided, further*, that such event or condition shall be deemed cured if the relevant requirement is satisfied within such five (5) business day period. Termination in accordance with this paragraph shall not affect any party's remedies as a result of any breach by any other party. Notwithstanding anything to the contrary set forth in this Agreement, this Agreement shall terminate on April 30, 2006, unless the Required Consenting Noteholders have

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- consented to the commencement of a Chapter 11 in accordance with Section 12(a), and in which case this Agreement will terminate one hundred twenty (120) days after the filing of such Chapter 11 or such other date as the Required Consenting Noteholders agree.
14. No Solicitation. Notwithstanding any other provision of this Agreement, nothing in this Agreement is intended to be or constitute, and nothing in this Agreement shall be deemed to be or constitute, a solicitation of any vote or any agreement to vote for any plan of reorganization.
 15. Entire Agreement: This Agreement (together with the Exhibits) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. This Agreement shall not be amended, altered or modified in any manner whatsoever, except by a written instrument executed by the Company and the Consenting Noteholder. Except as set forth in this Agreement, neither party makes, nor has made any representation or warranty to the other party.
 16. Governing Law; WAIVER OF JURY TRIAL: This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to the provisions thereof relating to conflicts of laws). **EACH PARTY HERETO HEREBY AGREES TO WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT.**
 17. Specific Performance: The parties hereto acknowledge and agree that any breach of the terms of this Agreement would give rise to irreparable harm for which money damages would not be an adequate remedy and accordingly the parties hereto agree that each party shall be entitled to the sole and exclusive remedy of specific performance and injunctive or other equitable relief without the necessity of proving the inadequacy of money damages as a remedy or posting a bond or other security in connection with such remedy.
 18. Jurisdiction: The Company and the Consenting Noteholder each hereby irrevocably and unconditionally submit to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
 19. Counterparts: This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts and by facsimile, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

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20. Severability: Any term or provision of this Agreement, which is invalid or unenforceable in any jurisdiction, shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.
 21. Headings: The headings of the paragraphs of this Agreement are inserted for convenience only and shall not affect the interpretation hereof.
 22. Notices. All notices, requests, elections, and demands under or in connection with this Agreement shall be in writing and shall be delivered by hand, sent by recognized overnight courier, or sent by facsimile or similar electronic means to the party as set forth under its signature hereto, or to such other address or facsimile number as such party shall provide to all other parties hereto in writing, and shall be deemed sent or given hereunder, in the case of personal delivery or delivery by recognized overnight courier, on the date of actual delivery, and in the case of transmission by facsimile or similar electronic means, on the date of actual transmission.
 23. Public Disclosures. Prior to the issuance of any public disclosures regarding the Restructuring, the Company shall consult with the Consenting Noteholders (or so many of the Consenting Noteholders that are willing to receive restricted information at such time), as to the form and substance of such public disclosures, provided that at all times the Company shall be solely responsible for each public disclosure made by it. Without limiting the generality of the foregoing, unless required by lawful subpoena issued by a court of competent jurisdiction, the Company shall not, and shall cause each of its direct and indirect subsidiaries not to, disclose (i) any Consenting Noteholder's identity or (ii) the amount of such Consenting Noteholder's holdings of Senior Notes or Partnership units, without the prior written consent of such Consenting Noteholder in each case; and, if such announcement or disclosure is so required, the Company shall afford the Consenting Noteholders a reasonable opportunity to review and comment upon any such announcement or disclosure prior to the applicable announcement or disclosure. Pursuant to the terms set forth in this Section 23, the Company agrees that within one (1) business day following the execution of this Agreement by at least the Required Tender Amount of the holders of the Senior Notes, the Company will file with the SEC on Form 8-K or other periodic report required or permitted to be filed under the Securities Exchange Act of 1934, as amended, an appropriate summary of any material nonpublic information (other than certain fiscal 2006 projections provided to Third Point LLC which need not be disclosed) previously provided in writing to any holder of Senior Notes pursuant to a Non-Disclosure Agreement between the Company and such holder and the Restructuring, so as to release each such holder from any restrictions on trading in the Company's securities resulting from its possession of such material nonpublic information.
 24. Expenses. The Company shall continue to be bound by the terms of the Fee Agreement, dated as of August 26, 2005, by and among Bingham McCutchen LLP (as counsel to the Consenting Noteholders), Star Gas Partners, L.P. and Star Gas Finance Company and the

Agreement, dated August 26, 2005, by and among Petrie Parkman (as financial advisor to the Consenting Noteholders), Bingham McCutchen LLP, Star Gas Partners, L.P. and Star Gas Financial Company.

[Signature Pages Follow]

Please sign in the space provided below to indicate your agreement and consent to the terms of this Agreement.

Star Gas Partners, L.P. [on its own behalf and on behalf of each of its subsidiaries and affiliates]

By: _____
Name: _____
Title: _____
Date: _____

Star Gas Finance Company [on its own behalf and on behalf of each of its subsidiaries and affiliates]

By: _____
Name: _____
Title: _____
Date: _____

Accepted and Agreed to:
Name of Consenting Noteholder:

By:
Name:
Title:
Date:

\$ _____
Principal Amount of Senior Notes
Beneficially Owned

_____ Number of Outstanding Partnership
Units Currently Held

Notice Address of Consenting Noteholder:

Tel: _____
Fax: _____
Attn: _____

Exhibit A

Kestrel Purchase Agreement

Exhibit B

Amended Indenture

Exhibit C

New Indenture

Exhibit D

Transferee Acknowledgment

[TO BE INSERTED INTO LETTERHEAD OF TRANSFEROR]

_____, 200_

_____ (the "Transferee")

Re: Transferee Acknowledgment

Ladies and Gentlemen:

This letter (this "Letter") is in reference to Section 8 of that certain letter agreement (the "Lock-Up Agreement") entered into as of December 5, 2005, among Star Gas Partners, L.P., Star Gas Finance Company, and each of their subsidiaries (collectively, the "Company") and the Consenting Noteholders. All capitalized terms used but not defined herein have the meanings given to them in the Lock-Up Agreement.

Section 8 of the Lock-Up Agreement provides as follows:

The Consenting Noteholder hereby agrees, without the prior written consent of the Company, not to, directly or indirectly, prior to the closing of the Tender Offer, (i) sell, transfer, assign, pledge, grant an option on, or otherwise dispose of or encumber any of the Consenting Noteholder's Senior Notes, or (ii) grant any proxies, deposit any of the Consenting Noteholder's Senior Notes into a voting trust or enter into a voting agreement with respect to any of the Consenting Noteholder's Senior Notes (such actions set forth in sub-parts (i) and (ii) above are collectively referred to herein as a "Transfer"); *provided, however*, that the Consenting Noteholder may, at any time, Transfer Senior Notes to a person that has countersigned a transferee acknowledgment in the form attached hereto as Exhibit D (the "Transferee Acknowledgment"), thereby unconditionally agreeing in writing with the Company to be bound by all of the terms and provisions of this Agreement. Any Transfer not effected in accordance with the foregoing shall be deemed void *ab initio*. In the event of a Transfer, the Consenting Noteholder shall, within three (3) business days after such Transfer, provide notice of such transfer to the Company, together with a copy of the Transferee Acknowledgment and, if the Consenting Noteholder has transferred all of its claims subject to this Agreement, then the Consenting Noteholder shall automatically be released from any further obligations

hereunder. In addition, each Consenting Noteholder agrees that (a) during the term of this Agreement, it will not “short sell” any equity securities of the Company, and (b) it will not take any action to oppose or interfere with the transactions contemplated by the Kestrel Purchase Agreement, including, without limitation, the vote of Unitholders contemplated by the Kestrel Purchase Agreement.

As of _____, 2005, we, the undersigned have agreed to Transfer the following principal amount of Senior Notes to the countersigning party:

<u>Issuance</u>	<u>Issue Amount</u>	<u>Maturity</u>	<u>Principal Amount Transferred</u>
10.25% Senior Notes	\$265 million	2013	\$ _____

By your countersignature in the space provided below, you, as transferee, represent and warrant that you have received the Lock-Up Agreement and each of the exhibits attached thereto (attached hereto as Exhibit A).

Please indicate your agreement to be bound by (a) the Lock-Up Agreement as a Consenting Noteholder and (b) the terms and conditions of this Letter, in each case in their entirety without revisions (including with respect to any and all claims or interests you already may hold against or in the Company prior to the Transfer of the interests described above), by countersigning below and returning a copy of this Letter to the transferor. This Letter may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Letter. Delivery of an executed signature page of this Letter by facsimile shall be effective as delivery of a manually executed signature page of this Letter. Upon receipt of your countersignature to this Letter, which is a precondition to any Transfer of the interests described above, this Letter shall be provided to the Company pursuant to Section 8 of the Lock-Up Agreement.

Very truly yours,

[INSERT NAME OF TRANSFEROR]

ACCEPTED AND AGREED

[INSERT NAME OF TRANSFEREE]

Exhibit A to Transferee Acknowledgment

Lock-Up Agreement

Star Gas Partners, L.P.
2187 Atlantic Street
Stamford, Connecticut 06902

December 5, 2005

To the undersigned holder of Star Gas Partners, L.P. 10.25% Senior Notes due 2013 (the "Senior Notes"), issued pursuant to an indenture dated February 6, 2003, by and among Star Gas Partners, L.P., Star Gas Finance Company and Union Bank of California, N.A. as Trustee (the "Indenture") (the "Consenting Noteholder," the Consenting Noteholder together with each Senior Note holder that has entered into a Lock Up Agreement (defined below), the "Consenting Noteholders");

Star Gas Partners, L.P. (the "Partnership") is simultaneously with the counter-signing of this letter agreement (this "Agreement") entering into a Unit Purchase Agreement in the form attached hereto as Exhibit A (the "Kestrel Purchase Agreement") with Kestrel Energy Partners, LLC, Kestrel Heat, LLC ("Kestrel Heat") and KM2, LLC ("KM2") (collectively, "Kestrel") pursuant to which, among other things, Kestrel Heat will replace the General Partner of the Partnership, Kestrel Heat and KM2 will purchase an aggregate of 7,500,000 newly issued Partnership common units ("New Kestrel Units") from the Partnership at a price of \$2 per unit and Kestrel Heat and KM2 will agree to 'backstop' a \$35 million rights offering (the "Rights Offering") to be made to the outstanding common unitholders of the Partnership.

References to the "Company" as used herein shall refer collectively to the Partnership, Star Gas Finance Company, and each of their respective subsidiaries and affiliates.

The Partnership, Kestrel, and certain of the Consenting Noteholders engaged in good faith negotiations with the objective of reaching an agreement to restructure the Senior Notes pursuant to the Tender Offer (as defined below) which Tender Offer shall be completed simultaneously with the closing (the "Kestrel Closing") of the transactions contemplated by the Kestrel Purchase Agreement, (such transactions are collectively referred to herein as the "Restructuring").

The Company and the Consenting Noteholders desire that the Company implement the Restructuring pursuant to the terms of this Agreement.

In exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and each Consenting Noteholder, intending to be legally bound, hereby agree as follows:

1. Agreement to Complete the Restructuring: Subject to the terms and conditions of this Agreement, the parties to this Agreement agree to use commercially reasonable efforts to promptly and diligently commence and consummate the Restructuring through the Rights

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- Offering (as defined below), the Tender Offer, and the performance of the terms of this Agreement. The obligations of the parties hereunder are several and not joint, and no party hereto shall be responsible for the failure of any other party hereto to perform its obligations hereunder.
2. Appropriate Number and Amount of Consenting Noteholders: All obligations of the Company and the Consenting Noteholder under this Agreement are expressly conditioned upon the prior execution of agreements substantially similar to this Agreement (with certain agreed differences) between the Company and Consenting Noteholders (such agreements, including this Agreement, are collectively referred to herein as a “Lock Up Agreement”) holding in the aggregate at least 84% (the “Required Tender Amount”) of the principal amount of Senior Notes outstanding on the date hereof.
 3. Consenting Noteholder’s Conditions to Effectiveness: All obligations of the Consenting Noteholder under this Agreement are conditioned upon the following:
 - (a) the continued effectiveness of this Agreement;
 - (b) the Kestrel Purchase Agreement, and all documents relating thereto, including, but not limited to, the Second Amended and Restated Agreement of Limited Partnership of the Partnership, and all documents relating to the Tender Offer, including, but not limited to, the Amended Indenture (defined below), the New Indenture (defined below), the Equity Maintenance Agreement, and any amendments, revisions or other modifications to the organizational documents of the Company, each being in form, scope and substance reasonably satisfactory to three (3) or more Consenting Noteholders holding at least 66.7% in principal amount of the Senior Notes (the “Required Consenting Noteholders”), it being agreed that the Kestrel Purchase Agreement, the Amended Indenture and the New Indenture, each as attached hereto as Exhibits A-C respectively, are in form, scope and substance satisfactory to the Consenting Noteholder;
 - (c) the continued effectiveness of the Kestrel Purchase Agreement, unless the Kestrel Closing has already occurred or unless waived by the Required Consenting Noteholders; and
 - (d) the Kestrel Closing, unless the Kestrel Closing has already occurred or unless waived by the Required Consenting Noteholders.
 4. Substitution of Consenting Noteholders: In the event that the Kestrel Purchase Agreement is terminated for any reason, the Company shall provide the Consenting Noteholder with written notice thereof within three (3) business days of such termination (the “Kestrel Termination Notice”). The Company agrees that, notwithstanding any other provision set forth herein or in the Kestrel Purchase Agreement, in the event that the Kestrel Purchase Agreement is terminated for any reason other than termination resulting from the acceptance by the Company of a Superior Proposal (as defined in the Kestrel Purchase Agreement) or from the failure of the Partnership’s Unitholders to vote in favor of the transactions contemplated by the Kestrel Purchase Agreement, one or more

Consenting Noteholders may, within fourteen (14) business days from receipt of the Kestrel Termination Notice, deliver a written notice to the Company (the “Noteholder Rights Offering Notice”), informing the Company of such Consenting Noteholders’ desire to (a) replace the General Partner of the Partnership, (b) consummate the transactions contemplated by the Tender Offer and (c) purchase an aggregate of 7,500,000 newly issued Partnership units from the Partnership at a price of \$2 per unit and ‘backstop’ the Rights Offering, pursuant to the terms of a separate agreement with the Company to be negotiated in good faith and mutually agreed to by the parties following receipt by the Company of the Noteholder Rights Offering Notice.

5. Amended Indenture and New Indenture: The Company and the Consenting Noteholder each approves the scope, form and substance of (a) the amendments to the Indenture set forth in the blackline of the indenture attached hereto as Exhibit B (the “Amended Indenture”), and (b) the Indenture for the New Notes (as herein defined) to be used in connection with the Tender Offer attached hereto as Exhibit C (the “New Indenture”).
6. Consenting Noteholder’s Forbearance and Consent:
 - (a) The Consenting Noteholder agrees to forbear, so long as this Agreement is in effect, or indefinitely if the closing of the Restructuring has occurred, and subject to the limitations contained in Section 6.4 of the Indenture: (i) from taking any action to accelerate the indebtedness due under the Senior Notes, or directing the Trustee under the Indenture to pursue any right or remedy under the Indenture or otherwise arising out of, or relating to, any act or omission of the Company prior to the Kestrel Closing; and (ii) initiating, or having initiated on its behalf, any litigation or proceeding of any kind with respect to the Senior Notes against the Company, its subsidiaries, affiliates, directors, officers, and/or employees arising out of, or relating to, any act or omission of the Company prior to the Kestrel Closing, other than to enforce this Agreement.
 - (b) Notwithstanding the general forbearance provision set forth in Section 6(a) above, the Consenting Noteholder specifically agrees, so long as this Agreement is in effect, or indefinitely if the closing of the Restructuring has occurred: (i) to forbear from exercising any rights or remedies in respect of any default or breach or any claim of potential default or breach under the Indenture resulting from (A) the sale of the Partnership’s propane business effected on December 14, 2004, the Company’s use of such proceeds to purchase working capital inventory, and the Company’s determination that “Excess Proceeds” shall not include any amounts so invested in inventory, (B) the incurrence of additional indebtedness in connection with those certain \$230 million and \$265 million refinancings which closed on December 22, 2003, and December 17, 2004 respectively, and (C) the granting of liens or collateral to the lenders under that certain Credit Agreement, dated December 17, 2004, by and among Petroleum Heat and Power Co., Inc. and the Loan Parties and Lenders thereto and the amendment thereto dated November 3, 2005; (ii) to oppose, at the Company’s sole cost and expense, any request or attempt by any Noteholder(s) to assert, or request the Trustee under the Indenture to assert, a default under the Indenture as a result of the matters described in

clauses (i)(A), (i)(B) and (i)(C) above; (iii) not to tender the Senior Notes beneficially owned by the Consenting Noteholder in the Change of Control Offer (as defined in the Indenture) which will be required to be made following the Kestrel Closing, pursuant to Section 3.9 of the Indenture; and (iv) to forbear from exercising any rights or remedies with respect to any claims, rights or vote requirements under the Indenture arising from the transactions contemplated by the Kestrel Purchase Agreement.

- (c) The Consenting Noteholder agrees to consent to the amendments to the Amended Indenture set forth in the blackline of the Amended Indenture attached hereto as Exhibit B, which amendments will be effective upon the later of the Kestrel Closing or the closing of the Tender Offer.

7. Tender Offer:

- (a) As soon as practicable following the mailing of the proxy statement in connection with the vote of unitholders contemplated by the Kestrel Purchase Agreement, the Company shall make a tender offer (which shall be coupled with a consent solicitation relating to the waiver of potential defaults set forth in Section 6 hereof and the amendments to the Amended Indenture set forth in Exhibit B) (the "Tender Offer") to all holders of Senior Notes.
- (b) Pursuant to the Tender Offer, any holder of Senior Notes may tender its Senior Notes at par in exchange for:
- (i) a Pro Rata Portion (as defined below) of an amount of cash equal to at least \$60 million and not greater than \$73,132,075 million, which amount shall be determined by the Company, in its sole discretion (such discretion to be exercised at least ten (10) business days prior to the closing of the Tender Offer), (such amount to be reduced by any principal, interest and premium payments required to be offered to non-tendering holders of Senior Notes who will be entitled to receive payment from the Company that is required pursuant to the Change of Control Offer provisions set forth in Section 3.9 of the Indenture) (such net amount is referred to herein as the "Net Rights Offering Proceeds");
- (ii) at the option of a holder of Senior Notes, and pursuant to the Tender Offer, its New Unit Pro Rata Percentage (defined below) of 13,433,962 newly issued Partnership Units (the "New Units"), which New Units shall be exchanged for Senior Notes at a price of \$2.00 per New Unit (such exchange, the "New Unit Offering") (as used herein, the term "New Unit Pro Rata Percentage" means, with respect to each holder of Senior Notes who elects to participate in the New Unit Offering, a percentage determined by dividing the principal amount of all of such holder's Senior Notes by \$178,000,000); and

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- (iii) new notes (the “New Notes”) in exchange for any remaining Senior Notes, which New Notes shall be issued pursuant to the terms of the New Indenture.
 - (c) The Tender Offer will be subject to customary conditions as well as the following conditions:
 - (i) that valid tenders shall have been received prior to the expiration of the Tender Offer from the holders of at least 93% of the outstanding principal amount of the Senior Notes; and
 - (ii) the Kestrel Closing, unless otherwise waived by the Required Consenting Noteholders, shall have occurred or shall occur simultaneously with the closing of the Tender Offer.
 - (d) The Consenting Noteholder agrees with the Company and each other Consenting Noteholder, as a third party beneficiary to this Agreement:
 - (i) to tender all of the Senior Notes beneficially owned by the Consenting Noteholder (including any Senior Notes acquired after the date hereof) into the Tender Offer within ten (10) business days following the commencement of the Tender Offer in exchange for:
 - (1) its Pro Rata Portion of Net Rights Offering Proceeds (such pro rata portion shall be determined by dividing the principal amount of the Consenting Noteholder’s Senior Notes by the aggregate principal amount of all Senior Notes tendered in exchange for Net Rights Offering Proceeds (the “Pro Rata Portion”)); and
 - (2) New Notes in an amount equal to the remaining outstanding principal amount of the Consenting Noteholder’s Senior Notes after the aggregate reduction in such Senior Notes resulting from the completion of the transaction contemplated in subsection (d)(i)(1) of this Section 7 (provided that outstanding accrued interest on the Senior Notes shall be included as interest on the New Notes payable on the first interest payment date thereunder so that, effectively, interest on the New Notes shall accrue from the date of the last interest payment on the Senior Notes).
 - (ii) subject to the terms of this Agreement, not to withdraw or revoke such tender unless and until this Agreement is terminated in accordance with its terms; and
 - (iii) that it shall elect not to exchange any Senior Notes held as of the date of execution of this Agreement in connection with the New Unit Offering.

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- (e) Each Consenting Noteholder acknowledges that by tendering its Senior Notes in the Tender Offer it will be deemed to have delivered the consent required for the amendments to the Indenture set forth in the Amended Indenture.
- (f) The Company agrees that it will (i) cause the offer and issuance of the New Notes pursuant to the Tender Offer to be exempt from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”), pursuant to Section 3(a)(9) of the Securities Act, or (ii) offer and issue the New Notes pursuant to an effective registration statement filed with the Securities and Exchange Commission (the “SEC”) pursuant to the requirements of the Securities Act.
8. No Transfer: Except for the grant of a security interest to lenders of leveraged funds in accordance with the Consenting Noteholder’s customary business practices, the Consenting Noteholder hereby agrees, without the prior written consent of the Company, not to, directly or indirectly, prior to the closing of the Tender Offer, (i) sell, transfer, assign, pledge, grant an option on, or otherwise dispose of or encumber any of the Consenting Noteholder’s Senior Notes, or (ii) grant any proxies, deposit any of the Consenting Noteholder’s Senior Notes into a voting trust or enter into a voting agreement with respect to any of the Consenting Noteholder’s Senior Notes (such actions set forth in sub-parts (i) and (ii) above are collectively referred to herein as a “Transfer”); *provided, however*, that the Consenting Noteholder may, at any time, Transfer Senior Notes to a person that has countersigned a transferee acknowledgment in the form attached hereto as Exhibit D (the “Transferee Acknowledgment”), thereby unconditionally agreeing in writing with the Company to be bound by all of the terms and provisions of this Agreement. Any Transfer not effected in accordance with the foregoing shall be deemed void *ab initio*. In the event of a Transfer, the Consenting Noteholder shall, within three (3) business days after such Transfer, provide notice of such transfer to the Company, together with a copy of the Transferee Acknowledgment and, if the Consenting Noteholder has transferred all of its claims subject to this Agreement, then the Consenting Noteholder shall automatically be released from any further obligations hereunder. In addition, each Consenting Noteholder agrees that (a) during the term of this Agreement, it will not “short sell” any equity securities of the Company, and (b) it will not take any action to oppose or interfere with the transactions contemplated by the Kestrel Purchase Agreement, including, without limitation, the vote of Unitholders contemplated by the Kestrel Purchase Agreement.
9. Additional Senior Notes Subject: Notwithstanding Section 8 hereof, nothing in this Agreement shall be deemed to limit or restrict the ability or right of any Consenting Noteholder to acquire any additional Senior Notes (“Additional Senior Notes”), *provided, however*, that in the event any Consenting Noteholder acquires any such Additional Senior Notes after the date hereof (other than any such Senior Notes that are already subject to the provisions of a Lock Up Agreement, which Senior Notes shall remain subject to the provisions of such agreement), the Consenting Noteholder shall advise the Company of such acquisition within three (3) business days of such acquisition and such Additional Senior Notes shall immediately upon such acquisition become subject to the terms of this Agreement, including, without limitation, Section 8 of this Agreement. Notwithstanding the foregoing provisions of this Section 9, if the Consenting Noteholder

acquires any Senior Notes not subject to a Lock Up Agreement as of the date hereof, such newly acquired Senior Notes shall not be restricted by the terms set forth in Section 7(d)(iii).

10. Representations of Consenting Noteholder: The Consenting Noteholder hereby represents and warrants to the Company as follows:
- (a) The Consenting Noteholder is duly organized, validly existing and in good standing under the laws of the Consenting Noteholder's state of organization or formation;
 - (b) The Consenting Noteholder has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
 - (c) The execution and delivery of this Agreement and the performance by the Consenting Noteholder of its obligations hereunder have been duly authorized by all necessary action;
 - (d) This Agreement has been duly executed and delivered by the Consenting Noteholder and constitutes the valid and binding obligation of the Consenting Noteholder, enforceable against the Consenting Noteholder in accordance with its terms;
 - (e) As of the date hereof, the Consenting Noteholder is the beneficial owner of, and holder of investment and voting authority over:
 - (i) Senior Notes in the aggregate principal amount disclosed under to its name on the signature page hereof (the "Consenting Noteholder's Senior Notes"), and beneficially owns, and has no investment and voting authority over other Senior Notes, and the registered holder and custodial party for the Consenting Noteholder's Senior Notes are as set forth on the signature page hereof; and
 - (ii) outstanding Partnership units in the amount disclosed under its name on the signature page hereof;
 - (f) Except for the grant of a security interest to lenders of leveraged funds in accordance with the Consenting Noteholder's customary business practices, to the best of its knowledge, as of the date hereof, the Consenting Noteholder's Senior Notes are held free and clear of all claims, charges, leases, covenants, easements, encumbrances, pledges, security interests, liens, options, pledges, rights of others, mortgages, deeds of trust, hypothecations, conditional sales, or restrictions (whether on voting, sale, transfer, disposition, or otherwise), whether imposed by agreement, understanding, law, equity, or otherwise, except for any restrictions on transfer created by this Agreement or generally arising under any applicable federal or state securities law, and the Consenting Noteholder's Senior Notes have not been pledged or assigned to any person;

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- (g) The Consenting Noteholder has been furnished with all information that it has requested for the purpose of evaluating the transactions contemplated by this Agreement, and the Consenting Noteholder has had an opportunity to ask questions of and receive answers from the Company and its officers regarding the Company and its business, assets, results of operations, financial condition and prospects and the terms and conditions of the issuance of the New Units;
 - (h) The Consenting Noteholder (i) is an “accredited investor” as defined in Rule 501 of the rules promulgated pursuant to the Securities Act; and (ii) has such knowledge and experience in financial and business matters in general that it has the capacity to evaluate the merits and risks of the Restructuring and to protect its own interest in connection with the Restructuring;
 - (i) The Consenting Noteholder has relied upon its own independent investigations of the business of the Company and the advice of its own advisors, if any, in evaluating the Restructuring; and
 - (j) The tender of the Senior Notes and closing of the Tender Offer shall constitute the Consenting Noteholder’s confirmation of the foregoing representations.
11. Representations of the Company: The Company hereby represents and warrants to the Consenting Noteholder as follows:
- (a) the Partnership is a limited partnership duly organized, validly existing and in good standing under the laws of Delaware;
 - (b) the Company has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
 - (c) the execution and delivery of this Agreement and the performance by the Company of its obligations hereunder have been duly authorized by all necessary action; and
 - (d) this Agreement has been duly executed and delivered by the Company and constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms. The Company agrees that it will not enter into a material amendment of the Kestrel Purchase Agreement without the approval of the Required Consenting Noteholders.
12. Plan Provisions. Subject to the terms and conditions of this Agreement (including, without limitation Section 13 hereof):
- (a) In the event that the Company files a petition for protection pursuant to Title 11 of the United States Code, 11 U.S.C. §§101, et seq., as amended (“Chapter 11”), and within five (5) days of such filing files a disclosure statement (the “Disclosure Statement”) and plan (the “Plan”) that both comply in all material respects with the terms of this Agreement, each Consenting Noteholder agrees and expressly waives its right to (i) object to confirmation of the Plan or otherwise commence

any action or proceeding to alter, oppose or add any other provision to the Plan or any other documents or agreements inconsistent with the Restructuring; (ii) object to the approval of the Disclosure Statement provided that it accurately describes the Restructuring; (iii) vote for, consent to, support, intentionally induce or participate directly or indirectly in the formation of any other plan of reorganization or liquidation proposed or filed, or to be proposed or filed, in any Chapter 11 case for the Company; (iv) commence or support any action or proceeding to shorten or terminate the period during which only the Company may propose and/or seek confirmation of the Plan; (v) directly or indirectly seek, solicit, support or encourage any other plan, sale, proposal or offer of winding up, liquidation, reorganization, merger, consolidation, dissolution or restructuring of the Company; or (vi) commence or support any action filed by the Company or any other party in interest to appoint a trustee, conservator, receiver or examiner for the Company, or to dismiss any Chapter 11 case, or to convert such Chapter 11 case to one under Chapter 7; and

- (b) During the period commencing on the date of this Agreement and continuing until the termination of this Agreement as provided in Section 13 of this Agreement, each Consenting Noteholder agrees to timely vote its respective claim under the Indenture, or authorize and direct the Trustee thereunder to vote its respective claim in accordance with the Indenture, to accept the Plan and not revoke or withdraw such votes. The Consenting Noteholder agrees that this Agreement may be disclosed in solicitation materials prepared in connection with the Plan.
 - (c) The Company agrees to use its reasonable best efforts, if requested by any Consenting Noteholder, to support such Consenting Noteholder's appointment to any official unsecured creditors' committee ("Creditors' Committee") formed pursuant to 11 U.S.C. § 1102 in any Chapter 11 case. Notwithstanding anything herein to the contrary, if any Consenting Noteholder is appointed to and serves on the Creditors' Committee in a Chapter 11 case, the terms of this Agreement shall not be construed so as to limit any actions taken in furtherance of such Consenting Noteholder's fiduciary duties to any person arising from its service on such Creditors' Committee, and any such exercise (in the sole discretion of such Consenting Noteholder) of such fiduciary duties shall not be deemed to constitute a breach of the terms of this Agreement.
13. Termination: Upon the occurrence of any of the following events or conditions:
- (a) the termination of the Kestrel Purchase Agreement by either the Company or Kestrel;
 - (b) the Kestrel Purchase Agreement shall not have been finally closed as of April 30, 2006;
 - (c) an Insolvency Action (as defined below), is taken by or against the Company in any jurisdiction without the prior written consent of the Required Consenting Noteholders. As used herein, an "Insolvency Action" means: (i) an administrator

or liquidator (or other officer with similar powers) of the Company or the whole or part of the undertaking, assets and revenues of the Company is appointed (or petition is presented or application made for any such appointment); (ii) the Company takes any action for a readjustment or deferment of any of its obligations or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or declares a moratorium in respect of any of its debts given by it, other than for arrangements under this Agreement or related hereto; (iii) the Company ceases or threatens to cease to carry on all or any substantial part of its business other than pursuant to its current business plan; (iv) a petition is presented, or application is made, or an effective resolution is passed or notice is issued convening a meeting of creditors or shareholders for the purpose of passing any resolution, or other steps are taken for the bankruptcy, winding up, liquidation, dissolution, administration, reorganization (including a voluntary or involuntary Chapter 11 proceeding in the U.S.) or reconstruction of the Company; (v) any event occurs which has an analogous effect to any of the events referred to in paragraph (i) or (iv) above; (vi) an encumbrancer takes possession of any asset or property with a book value in excess of \$100,000 of the Company or any execution or attachment or other legal process is enforced against any asset or property with a book value in excess of \$100,000 of the Company;

- (d) there shall have occurred any material breach of this Agreement by the Company, or any representation or warranty made by the Company in this Agreement shall be incorrect in any material respect;
- (e) a court in any jurisdiction shall declare, in a final, non-appealable order, this Agreement to be unenforceable; or
- (f) notwithstanding the terms set forth in Section 6 above, a default of any principal or interest payment obligation under the Indenture that arises after the date of this Agreement;

then:

all obligations of the Company and the Consenting Noteholders under this Agreement, except Section 4 hereof, which shall survive for a period of one hundred twenty (120) days from the date of any such termination, shall, except as provided below, automatically terminate and be of no further force or effect; *provided, however*, that no party shall have the right to terminate this Agreement upon the occurrence of any of the events and conditions described in sub-parts (a) through (d) of this Section 13 unless such party has given written notice thereof to the Company and each of the Consenting Noteholders specifically identifying the basis upon which such party is exercising its right to terminate, and the event or condition giving rise to such right is not cured or otherwise waived by the Required Consenting Noteholders within five (5) business days following receipt by the Company of such written notice; and, *provided, further*, that such event or condition shall be deemed cured if the relevant requirement is satisfied within such five (5) business day period. Termination in accordance with this paragraph

shall not affect any party's remedies as a result of any breach by any other party. Notwithstanding anything to the contrary set forth in this Agreement, this Agreement shall terminate on April 30, 2006, unless the Required Consenting Noteholders have consented to the commencement of a Chapter 11 in accordance with Section 12(a), and in which case this Agreement will terminate one hundred twenty (120) days after the filing of such Chapter 11 or such other date as the Required Consenting Noteholders agree.

14. No Solicitation. Notwithstanding any other provision of this Agreement, nothing in this Agreement is intended to be or constitute, and nothing in this Agreement shall be deemed to be or constitute, a solicitation of any vote or any agreement to vote for any plan of reorganization.
15. Entire Agreement: This Agreement (together with the Exhibits) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. This Agreement shall not be amended, altered or modified in any manner whatsoever, except by a written instrument executed by the Company and the Consenting Noteholder. Except as set forth in this Agreement, neither party makes, nor has made any representation or warranty to the other party.
16. Governing Law: WAIVER OF JURY TRIAL: This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to the provisions thereof relating to conflicts of laws). **EACH PARTY HERETO HEREBY AGREES TO WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT.**
17. Specific Performance: The parties hereto acknowledge and agree that any breach of the terms of this Agreement would give rise to irreparable harm for which money damages would not be an adequate remedy and accordingly the parties hereto agree that each party shall be entitled to the sole and exclusive remedy of specific performance and injunctive or other equitable relief without the necessity of proving the inadequacy of money damages as a remedy or posting a bond or other security in connection with such remedy.
18. Jurisdiction: The Company and the Consenting Noteholder each hereby irrevocably and unconditionally submit to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
19. Counterparts: This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts and by facsimile, with the same effect as

if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

20. Severability: Any term or provision of this Agreement, which is invalid or unenforceable in any jurisdiction, shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.
21. Headings: The headings of the paragraphs of this Agreement are inserted for convenience only and shall not affect the interpretation hereof.
22. Notices. All notices, requests, elections, and demands under or in connection with this Agreement shall be in writing and shall be delivered by hand, sent by recognized overnight courier, or sent by facsimile or similar electronic means to the party as set forth under its signature hereto, or to such other address or facsimile number as such party shall provide to all other parties hereto in writing, and shall be deemed sent or given hereunder, in the case of personal delivery or delivery by recognized overnight courier, on the date of actual delivery, and in the case of transmission by facsimile or similar electronic means, on the date of actual transmission.
23. Public Disclosures. Prior to the issuance of any public disclosures regarding the Restructuring, the Company shall consult with the Consenting Noteholders (or so many of the Consenting Noteholders that are willing to receive restricted information at such time), as to the form and substance of such public disclosures, provided that at all times the Company shall be solely responsible for each public disclosure made by it. Without limiting the generality of the foregoing, unless required by lawful subpoena issued by a court of competent jurisdiction, the Company shall not, and shall cause each of its direct and indirect subsidiaries not to, disclose (i) any Consenting Noteholder's identity or (ii) the amount of such Consenting Noteholder's holdings of Senior Notes or Partnership units, without the prior written consent of such Consenting Noteholder in each case; and, if such announcement or disclosure is so required, the Company shall afford the Consenting Noteholders a reasonable opportunity to review and comment upon any such announcement or disclosure prior to the applicable announcement or disclosure. Pursuant to the terms set forth in this Section 23, the Company agrees that within one (1) business day following the execution of this Agreement by at least the Required Tender Amount of the holders of the Senior Notes, the Company will file with the SEC on Form 8-K or other periodic report required or permitted to be filed under the Securities Exchange Act of 1934, as amended, an appropriate summary of any material nonpublic information (other than certain fiscal 2006 projections provided to Third Point LLC which need not be disclosed) previously provided in writing to any holder of Senior Notes pursuant to a Non-Disclosure Agreement between the Company and such holder and the Restructuring, so as to release each such holder from any restrictions on trading in the Company's securities resulting from its possession of such material nonpublic information.

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24. Expenses. The Company shall continue to be bound by the terms of the Fee Agreement, dated as of August 26, 2005, by and among Bingham McCutchen LLP (as counsel to the Consenting Noteholders), Star Gas Partners, L.P. and Star Gas Finance Company and the Agreement, dated August 26, 2005, by and among Petrie Parkman (as financial advisor to the Consenting Noteholders), Bingham McCutchen LLP, Star Gas Partners, L.P. and Star Gas Financial Company.

[Signature Pages Follow]

Please sign in the space provided below to indicate your agreement and consent to the terms of this Agreement.

Star Gas Partners, L.P. [on its own behalf and on behalf of each of its subsidiaries and affiliates]

By: _____
Name:
Title:
Date:

Star Gas Finance Company [on its own behalf and on behalf of each of its subsidiaries and affiliates]

By: _____
Name:
Title:
Date:

Accepted and Agreed to:
Name of Consenting Noteholder:

By:
Name:
Title:
Date:

\$ _____

Principal Amount of Senior Notes
Beneficially Owned

Number of Outstanding Partnership
Units Currently Held

Notice Address of Consenting Noteholder:

Tel: _____
Fax: _____
Attn: _____

Exhibit A

Kestrel Purchase Agreement

Exhibit B

Amended Indenture

Exhibit C

New Indenture

Exhibit D

Transferee Acknowledgment

[TO BE INSERTED INTO LETTERHEAD OF TRANSFEROR]

_____, 200_

_____ (the “Transferee”)

Re: Transferee Acknowledgment

Ladies and Gentlemen:

This letter (this “Letter”) is in reference to Section 8 of that certain letter agreement (the “Lock-Up Agreement”) entered into as of December 5, 2005, among Star Gas Partners, L.P., Star Gas Finance Company, and each of their subsidiaries (collectively, the “Company”) and the Consenting Noteholders. All capitalized terms used but not defined herein have the meanings given to them in the Lock-Up Agreement.

Section 8 of the Lock-Up Agreement provides as follows:

The Consenting Noteholder hereby agrees, without the prior written consent of the Company, not to, directly or indirectly, prior to the closing of the Tender Offer, (i) sell, transfer, assign, pledge, grant an option on, or otherwise dispose of or encumber any of the Consenting Noteholder’s Senior Notes, or (ii) grant any proxies, deposit any of the Consenting Noteholder’s Senior Notes into a voting trust or enter into a voting agreement with respect to any of the Consenting Noteholder’s Senior Notes (such actions set forth in sub-parts (i) and (ii) above are collectively referred to herein as a “Transfer”); *provided, however*, that the Consenting Noteholder may, at any time, Transfer Senior Notes to a person that has countersigned a transferee acknowledgment in the form attached hereto as Exhibit D (the “Transferee Acknowledgment”), thereby unconditionally agreeing in writing with the Company to be bound by all of the terms and provisions of this Agreement. Any Transfer not effected in accordance with the foregoing shall be deemed void *ab initio*. In the event of a Transfer, the Consenting Noteholder shall, within three (3) business days after such Transfer, provide notice of such transfer to the Company, together with a copy of the Transferee Acknowledgment and, if the Consenting Noteholder has transferred all of its claims subject to this Agreement, then the Consenting Noteholder shall automatically be released from any further obligations

hereunder. In addition, each Consenting Noteholder agrees that (a) during the term of this Agreement, it will not “short sell” any equity securities of the Company, and (b) it will not take any action to oppose or interfere with the transactions contemplated by the Kestrel Purchase Agreement, including, without limitation, the vote of Unitholders contemplated by the Kestrel Purchase Agreement.

As of _____, 2005, we, the undersigned have agreed to Transfer the following principal amount of Senior Notes to the countersigning party:

<u>Issuance</u>	<u>Issue Amount</u>	<u>Maturity</u>	<u>Principal Amount Transferred</u>
10.25% Senior Notes	\$265 million	2013	\$ _____

By your countersignature in the space provided below, you, as transferee, represent and warrant that you have received the Lock-Up Agreement and each of the exhibits attached thereto (attached hereto as Exhibit A).

Please indicate your agreement to be bound by (a) the Lock-Up Agreement as a Consenting Noteholder and (b) the terms and conditions of this Letter, in each case in their entirety without revisions (including with respect to any and all claims or interests you already may hold against or in the Company prior to the Transfer of the interests described above), by countersigning below and returning a copy of this Letter to the transferor. This Letter may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Letter. Delivery of an executed signature page of this Letter by facsimile shall be effective as delivery of a manually executed signature page of this Letter. Upon receipt of your countersignature to this Letter, which is a precondition to any Transfer of the interests described above, this Letter shall be provided to the Company pursuant to Section 8 of the Lock-Up Agreement.

Very truly yours,

[INSERT NAME OF TRANSFEROR]

ACCEPTED AND AGREED

[INSERT NAME OF TRANSFEREE]

Exhibit A to Transferee Acknowledgment

Lock-Up Agreement

BACKSTOP AGREEMENT

This BACKSTOP AGREEMENT (this "Agreement"), dated December 5, 2005, is by and among Star Gas Partners, L.P., a Delaware limited partnership (the "Partnership") and its general partner, Star Gas LLC, a Delaware limited liability company (the "Partnership GP" and, together with the Partnership and their Subsidiaries, collectively referred to as the "Company"), and those certain holders of Star Gas Partners, L.P. 10.25% Senior Notes due 2013 (the "Senior Notes"), issued pursuant to an indenture dated February 6, 2003, by and among Star Gas Partners, L.P., Star Gas Finance Company and Union Bank of California, N.A. as Trustee (the "Indenture"), and identified on the signature pages hereof (each a "Backstopping Noteholder" and collectively, the "Backstopping Noteholders").

WHEREAS, simultaneously with the execution of this Agreement each Backstopping Noteholder and the Company are entering into an agreement in the form attached hereto as Exhibit A (each, a "Lock Up Agreement"); all capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Lock Up Agreement;

WHEREAS, pursuant to the Tender Offer, the Company has agreed to permit the holders of Senior Notes to exchange such notes for its New Unit Pro Rata Percentage of New Units, which New Units shall be exchanged for Senior Notes at a price of \$2.00 per New Unit;

WHEREAS, during the negotiation of the Restructuring, the Investor and the Company requested that a portion of such New Unit offering to holders of Senior Notes be backstopped by the Consenting Noteholders;

WHEREAS, the Backstopping Noteholders agreed to severally "backstop" such New Unit offering to holders of Senior Notes as set forth herein;

NOW THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and each Backstopping Noteholder, intending to be legally bound, hereby agree as follows:

1. Backstop. In the event that any holder of Senior Notes entitled to exchange its Senior Notes for New Equity in connection with the New Unit Offering does not subscribe to its full New Unit Pro Rata Percentage, each Backstopping Noteholder severally agrees to exchange Senior Notes in an amount sufficient to take up 50% of such unsubscribed portion.
2. Termination. With respect to each Backstopping Noteholder, this Agreement shall automatically terminate upon the termination of the Lock Up Agreement of such Backstopping Noteholder.

-
3. **Entire Agreement:** This Agreement (together with the Exhibit hereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. This Agreement shall not be amended, altered or modified in any manner whatsoever, except by a written instrument executed by the Company and the Required Consenting Noteholders. Except as set forth in this Agreement, neither party makes, nor has made any representation or warranty to the other party.
 4. **Governing Law; WAIVER OF JURY TRIAL:** This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to the provisions thereof relating to conflicts of laws). **EACH PARTY HERETO HEREBY AGREES TO WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT.**
 5. **Specific Performance:** The parties hereto acknowledge and agree that any breach of the terms of this Agreement would give rise to irreparable harm for which money damages would not be an adequate remedy and accordingly the parties hereto agree that each party shall be entitled to the sole and exclusive remedy of specific performance and injunctive or other equitable relief without the necessity of proving the inadequacy of money damages as a remedy or posting a bond or other security in connection with such remedy.
 6. **Jurisdiction:** The Company and the Consenting Noteholder each hereby irrevocably and unconditionally submit to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
 7. **Counterparts:** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts and by facsimile, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.
 8. **Severability:** Any term or provision of this Agreement, which is invalid or unenforceable in any jurisdiction, shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.
 9. **Headings:** The headings of the paragraphs of this Agreement are inserted for convenience only and shall not affect the interpretation hereof.

10. Notices. All notices, requests, elections, and demands under or in connection with this Agreement shall be made pursuant to the Lock Up Agreement.

[Signature Pages Follow]

Please sign in the space provided below to indicate your agreement and consent to the terms of this Agreement.

Star Gas Partners, L.P. [on its own behalf and on behalf of each of its subsidiaries and affiliates]

By: _____
Name:
Title:

Star Gas Finance Company [on its own behalf and on behalf of each of its subsidiaries and affiliates]

By: _____
Name:
Title:

Accepted and Agreed to:

Name of Backstopping Noteholder:

By: _____
Name:
Title:

Exhibit A

Lock Up Agreement

STAR GAS PARTNERS, L.P.,
STAR GAS FINANCE COMPANY,
AND
UNION BANK OF CALIFORNIA, N.A.
AS TRUSTEE

10 1/4% Senior Notes due 2013

INDENTURE

Dated as of [], 2006

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Exhibit A Form of Face of Security

Exhibit B Form of Face of Exchange Security

CROSS-REFERENCE TABLE

Trust Indenture Act Section	Indenture Section
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.8; 7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.5
(b)	10.3
(c)	10.3
313(a)	7.6
(b)(1)	N.A.
(b)(2)	7.6
(c)	7.6
(d)	N.A.
314(a)	3.2, 10.2, 10.5
(b)	N.A.
(c)(1)	10.4
(c)(2)	10.4
(c)(3)	N.A.
(d)	N.A.
(e)	10.5
315(a)	7.1
(b)	7.5, 10.2
(c)	7.1
(d)	7.1
(e)	6.11
316(a)(last sentence)	2.10
(a)(1)(A)	6.5
(a)(1)(B)	6.4
(a)(2)	N.A.
(b)	6.7
(c)	2.13
317(a)(1)	6.8
(a)(2)	6.9
(b)	2.4
318(a)	10.1
(b)	N.A.
(c)	10.1

N.A. means Not Applicable.

Note: This Cross-Reference Table shall not, for any purpose, be deemed to be part of this Indenture.

INDENTURE dated as of [], 2006, among 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.

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’ 10 1/4% Senior Notes due 2013, issued on the date hereof (the “Initial Securities”), (ii) if and when issued, an unlimited principal amount of additional 10 1/4% 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”) and (iii) if and when issued, the Issuers’ 10 1/4% Senior Notes due 2013 that may be issued from time to time in exchange for any Additional Securities in an offer registered under the Securities Act (as hereinafter defined, the “Exchange Securities”, and, together with the Initial Securities and the Additional Securities, the “Securities”).

WITNESSETH

WHEREAS, the Company executed and delivered to the Trustee an indenture (the “Original Indenture”) dated as of February 6, 2003, providing for the issuance from time to time of Securities (as defined in the Original Indenture) to be issued in one or more series;

WHEREAS, on February 6, 2003, the Issuers issued an aggregate principal amount of \$200,000,000 of its 10 1/4% Senior Notes due 2013 in (the “Original Notes”) pursuant to the Original Indenture;

WHEREAS, as of the date hereof, for its lawful corporate purposes, the Issuers have created and authorized the Securities to be authenticated and delivered pursuant to this Indenture;

WHEREAS, pursuant to the terms of the tender and exchange offer (the “Exchange Offer”), certain of the holders of the Original Notes have agreed to tender their Original Notes and consent to certain amendments of the Original Indenture and to participate in the Exchange Offer and to exchange all of their outstanding Original Notes for their pro rata share of the Securities to be issued to the holders of the Original Notes under this Indenture and certain cash payments;

NOW, THEREFORE, for and in consideration of the mutual entry into this 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 Holders as follows:

ARTICLE I

Definitions and Incorporation by Reference

SECTION 1.1. Definitions.

“2005 Recapitalization Transactions” means the entering into and performance of the transactions contemplated by the Kestrel Purchase Agreement, the Rights Offering, the Tender Offer and this Indenture.

“Acquired Indebtedness” means Indebtedness (i) of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case whether or not Incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary of the Company or such acquisition. Acquired Indebtedness shall be deemed to have been Incurred, with respect to clause (i) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (ii) of the preceding sentence, on the date of consummation of such acquisition of assets.

“Additional Securities” shall have the meaning assigned to such term in the second introductory paragraph to this Indenture.

“Affiliate” of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing; *provided* that beneficial ownership of 10% or more of the Voting Stock of a Person shall be deemed to be control.

“Asset Acquisition” means the following (in all cases, including assets acquired through a Flow-Through Acquisition):

(1) an Investment by the Company or any Restricted Subsidiary in any other Person pursuant to which the Person shall become a Restricted Subsidiary, or shall be merged with or into the Company or any Restricted Subsidiary;

(2) the acquisition by the Company or any Restricted Subsidiary of the Company of the assets of any Person, other than a Restricted Subsidiary, which constitute all or substantially all of the assets of such Person; or

(3) the acquisition by the Company or any Restricted Subsidiary of any division or line of business of any Person, other than a Restricted Subsidiary.

“Asset Sale” means either of the following, whether in a single transaction or a series of related transactions:

(1) the sale, lease, conveyance or other disposition of any assets other than sales, leases or transfers of assets in the ordinary course of business (including but not limited to the sales of inventory in the ordinary course of business and the sale of receivables and accounts pursuant to a Credit Facility); or

(2) the issuance or sale of Capital Stock of any direct Subsidiary.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) any sale, lease or transfer of assets or Capital Stock by the Company or any of its Restricted Subsidiaries to the Company or a Restricted Subsidiary;

(2) any sale or transfer of assets or Capital Stock by the Company or any of its Restricted Subsidiaries to any entity in exchange for other assets used in a related business and/or cash (*provided* that such cash portion is at least 80% of the difference between the value of the assets being transferred and the value of the assets being received) and having a fair market value, as determined in good faith by the Board of Directors, reasonably equivalent to the fair market value of the assets so transferred;

(3) any sale, lease or transfer of assets in accordance with Permitted Investments;

(4) the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company;

(5) the transfer or disposition of assets that are permitted Restricted Payments; and

(6) any sale, lease or transfer of assets pursuant to a Sale and Leaseback Transaction otherwise permitted by this Indenture.

“Asset Sale Offer” shall have the meaning assigned to such term in Section 3.7(e).

“Attributable Debt” means, with respect to any Sale and Leaseback Transactions not involving a Capital Lease, as of any date of determination, the total obligation, discounted to present value at the rate of interest implicit in the lease included in the transaction, of the lessee for rental payments during the remaining portion of the term of the lease, including extensions which are at the sole option of the lessor, of the lease included in the transaction. For purposes of this definition, the rental payments shall not include amounts required to be paid on account of property taxes, maintenance, repairs, insurance, assessments, utilities, operating and labor costs and other items which do not constitute payments for property rights. In the case of any lease which is terminable by the lessee upon the payment of a penalty, the rental obligation shall also include the amount of the penalty, but no rent shall be considered as required to be paid under such lease subsequent to the first date upon which it may be so terminated.

“Available Cash” as to any quarter means the amount resulting from:

(1) the sum of:

(a) all cash receipts of the Company during such quarter from all sources (including, without limitation, distributions of cash received from Subsidiaries and cash proceeds from Interim Capital Transactions, but excluding cash proceeds from Termination Capital Transactions); and

(b) any reduction with respect to such quarter in a cash reserve previously established pursuant to clause (2)(b) below (either by reversal or utilization) from the level of such reserve at the end of the prior quarter;

(2) less the sum of:

(a) all cash disbursements of the Company during such quarter, including, without limitation, disbursements for operating expenses, taxes, if any, debt service (including, without limitation, the payment of principal, premium and interest), redemption of Capital Stock of the Company, capital expenditures, contributions, if any, to any Subsidiaries and cash distributions to partners of the Company (but only to the extent that such cash distributions to partners exceed Available Cash for the immediately preceding quarter); and

(b) any cash reserves established with respect to such quarter, and any increase with respect to such quarter in a cash reserve previously established pursuant to this clause (2)(b) from the level of such reserve at the end of the prior quarter, in such amounts as the Board of Directors determines in its reasonable discretion to be necessary or appropriate (i) to provide for the proper conduct of the business of the Company (including, without limitation, reserves for future capital expenditures), (ii) to provide funds for distributions with respect to Capital Stock of the Company in respect of any one or more of the next four quarters or (iii) because the distribution of such amounts would be prohibited by applicable law or by any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which the Company is a party or by which it is bound or its assets are subject;

(3) plus the lesser of (a) an amount as calculated in accordance with clauses (1) and (2) above for the Company or its Restricted Subsidiaries for the first 45 days of the quarter during which such Restricted Payment is made (rather than the quarter for which clauses (1) and (2) were calculated) and (b) an amount of working capital Indebtedness that the Company or its Restricted Subsidiaries could have Incurred on or before the 45th day after the last day of the quarter used to calculate clauses (1) and (2) above; *provided, however*, that Available Cash attributable to any Restricted Subsidiary will be excluded to the extent dividends or distributions of Available Cash by the Restricted Subsidiary are not at the date of determination permitted by the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or other regulation.

Notwithstanding the foregoing, “Available Cash” shall not include any cash receipts or reductions in reserves or take into account any disbursements made or reserves established in each case after the date of liquidation of the Company. Taxes paid by the Company on behalf of, or amounts withheld with respect to, all or less than all of the partners shall not be considered cash disbursements of the Company that reduce Available Cash, but the payment or withholding thereof shall be deemed to be a distribution of Available Cash to the partners other than the limited partners holding Senior Units. Alternatively, in the discretion of the Board of Directors, such taxes (if pertaining to all partners) may be considered to be cash disbursements of the Company which reduce Available Cash, but the payment or withholding thereof shall not be deemed to be a distribution of Available Cash to such partners.

“Average Life” means, as of the date of determination, with respect to any Indebtedness or Preferred Stock, the quotient obtained by dividing (1) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Preferred Stock multiplied by the amount of such payment by (2) the sum of all such payments.

“Bankruptcy Law” means Title 11, United States Code or any similar Federal or state law for the relief of debtors.

“Board of Directors” means, as to any Person, the board of directors of such Person or any duly authorized committee thereof; *provided* that so long as the Company is a limited partnership, “Board of Directors” means the board of directors of Star Gas LLC, its general partner, or any duly authorized committee thereof.

“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.

“Borrowing Base” means, as of any date of determination, an amount equal to the sum, without duplication, of (1) 85% of the net book value of all of the Company’s and its Restricted Subsidiaries’ accounts receivable at such date and (2) 60% of the net book value of the Company’s and its Restricted Subsidiaries’ inventories at such date. Net book value shall be determined in accordance with GAAP and shall be reflected on the most recent available consolidated balance sheet of the Company (it being understood that the accounts receivable and inventories of an acquired business may be included if such acquisition has been completed on or prior to the date of the determination).

“Business Day” means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York are authorized or required by law to close.

“Capital Lease” means any lease of property, real or personal, that, in accordance with GAAP, would be required to be capitalized on the balance sheet of the lessee.

“Capital Stock” of any Person means any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

“Change of Control” means:

(1) any transaction or series of related transactions pursuant to which any “person” or “group” or “groups” of related persons (as defined in the Exchange Act) other than the Permitted Holders, becoming beneficial owners, in the aggregate, directly or indirectly, of 50% or more of the Voting Stock of the general partner of the Company (or the successor by merger, consolidation or purchase of substantially all of the assets of the general partner) and the Permitted Holders beneficially owning at any time, in the aggregate, a lesser percentage of the Voting Stock of the general partner of the Company (or the successor by merger, consolidation or purchase of substantially all of the assets of the general partner) then such other person or group;

(2) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole to any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) other than a Permitted Holder;

(3) the adoption of a plan or proposal for the liquidation or dissolution of the Company or the general partner of the Company; or

(4) Kestrel Energy Partners LLC or an affiliated entity shall fail to own beneficially 100% of the general partnership interest in the Company.

“Code” means the Internal Revenue Code of 1986, as amended.

“Co-Issuer” shall have the meaning assigned to such term in the preamble to this Indenture.

“Common Stock” means with respect to any Person, any and all shares, units, interests or other participations in, and other equivalents (however designated and whether voting or nonvoting) of such Person’s securities whether or not outstanding on the Issue Date, and includes, without limitation, all series and classes of such common stock, and, in the case of the Company, means the units representing limited partner interests of the Company whether or not outstanding on the Issue Date.

“Company” shall have the meaning assigned to such term in the first introductory paragraph to this Indenture.

“Consolidated Cash Flow Available for Fixed Charges” means, with respect to the Company and its Restricted Subsidiaries, for any period, the sum of, without duplication, the amounts for the period, taken as single accounting, of:

(1) Consolidated Net Income;

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- (2) Consolidated Non-Cash Charges;
 - (3) Consolidated Interest Expense; and
 - (4) Consolidated Income Tax Expense.

“Consolidated Fixed Charge Coverage Ratio” means, with respect to the Company and its Restricted Subsidiaries, the ratio of (x) the aggregate amount of Consolidated Cash Flow Available for Fixed Charges of the Person for the four full fiscal quarters immediately preceding the date of the transaction (the “Transaction Date”) giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio (the “Four Quarter Period”), to (y) the aggregate amount of Consolidated Fixed Charges of the Person for the Four Quarter Period. In addition to and without limitation of the foregoing, for purposes of this definition, “Consolidated Cash Flow Available for Fixed Charges” and “Consolidated Fixed Charges” shall be calculated after giving effect on a pro forma basis for the period of the calculation to, without duplication:

(1) the Incurrence or repayment, repurchase, defeasance, redemption or other acquisition or retirement for value (collectively, “repayment”) of any Indebtedness, excluding revolving credit borrowings and repayments of revolving credit borrowings (other than any revolving credit borrowings the proceeds of which are used for Asset Acquisitions or Growth Related Capital Expenditures of the Company or any of its Restricted Subsidiaries and in the case of any Incurrence, the application of the net proceeds thereof) during the period commencing on the first day of the Four Quarter Period to and including the Transaction Date (the “Reference Period”), including, without limitation, the Incurrence of the Indebtedness giving rise to the need to make the calculation (and the application of the net proceeds thereof), as if the Incurrence (and application) or repayment occurred on the first day of the Reference Period; and

(2) any Asset Sales or Asset Acquisitions (including, without limitation, any Asset Acquisition giving rise to the need to make the calculation as a result of the Company or one of its Restricted Subsidiaries, including any Person who becomes a Restricted Subsidiary as a result of the Asset Acquisition, Incurring, assuming or otherwise being liable for Acquired Indebtedness) occurring during the Reference Period, as if the Asset Sale or Asset Acquisition occurred on the first day of the Reference Period; *provided, however*, that:

(a) Consolidated Fixed Charges will be reduced by amounts attributable to businesses or assets that are so disposed of or discontinued only to the extent that the obligations giving rise to such Consolidated Fixed Charges would no longer be obligations contributing to the Consolidated Fixed Charges subsequent to the date of determination of the Consolidated Fixed Charge Coverage Ratio;

(b) Consolidated Cash Flow Available for Fixed Charges generated by an acquired business or asset shall be determined by the actual gross profit, which

is equal to revenues minus cost of goods sold, of the acquired business or asset during the immediately available preceding four full fiscal quarters occurring in the Reference Period, minus the pro forma expenses that would have been Incurred by the Company and its Restricted Subsidiaries in the operation of the acquired business or asset during the period computed on the basis of personnel expenses for employees retained or to be retained by the Company and its Restricted Subsidiaries in the operation of the acquired business or asset and non-personnel costs and expenses Incurred by or to be Incurred by the Company and its Restricted Subsidiaries based upon the operation of the Company's business, all as determined in good faith by the Board of Directors; and

(c) Consolidated Cash Flow Available for Fixed Charges shall not include the impact of any non-recurring cash charges Incurred in connection with a restructuring, reorganization or other similar transaction, as determined in good faith by the Board of Directors, including, without limitation, the impact of non-recurring cash charges, transaction expenses, fees (including, without limitation, legal fees) and all other costs incurred in connection with the 2005 Recapitalization Transactions.

In calculating "Consolidated Fixed Charges" for purposes of determining the "Consolidated Fixed Charge Coverage Ratio":

(1) interest on outstanding Indebtedness, other than Indebtedness referred to in sub-paragraph (2) below, determined on a fluctuating basis as of the last day of the Four Quarter Period and which will continue to be so determined thereafter shall be deemed to have accrued at a fixed rate per annum equal to the rate of interest on such Indebtedness in effect on that date;

(2) only actual interest payments associated with Indebtedness Incurred in accordance with clause (4) of the definition of Permitted Indebtedness and all Permitted Refinancing Indebtedness in respect thereof, during the Four Quarter Period shall be included in the calculation; and

(3) if interest on any Indebtedness actually Incurred on the date may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rates, then the interest rate in effect on the last day of the Four Quarter Period will be deemed to have been in effect during the period.

"Consolidated Fixed Charges" means, with respect to the Company and its Restricted Subsidiaries for any period, the sum of, without duplication:

(1) the amounts for such period of Consolidated Interest Expense; and

(2) the product of:

(a) the aggregate amount of dividends and other distributions paid or accrued during the period in respect of Preferred Stock and Redeemable Capital Stock of the Company and its Restricted Subsidiaries on a consolidated basis; and

(b) a fraction, the numerator of which is one and the denominator of which is one less the then applicable current combined federal, state and local statutory tax rate, expressed as a percentage.

“Consolidated Income Tax Expense” means, with respect to the Company and its Restricted Subsidiaries for any period, the provision for federal, state, local and foreign income taxes of the Company and its Restricted Subsidiaries for the period as determined on a consolidated basis in accordance with GAAP.

“Consolidated Interest Expense” means, with respect to the Company and its Restricted Subsidiaries, for any period, without duplication, the sum of:

(1) the interest expense of the Company and its Restricted Subsidiaries for the period as determined on a consolidated basis in accordance with GAAP, net of interest income in an amount not to exceed \$3 million;

(2) any amortization of debt discount;

(3) the net cost under Interest Rate Agreements;

(4) the interest portion of any deferred payment obligation;

(5) all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing;

(6) all accrued interest for all instruments evidencing Indebtedness; and

(7) the interest component of Capital Leases paid or accrued or scheduled to be paid or accrued by the Company and its Restricted Subsidiaries during the period as determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Income” means the net income (loss) of the Company and its Restricted Subsidiaries, as determined on a consolidated basis in accordance with GAAP and as adjusted to exclude:

(1) net after-tax extraordinary gains or losses;

(2) net after-tax gains or losses attributable to Asset Sales;

(3) the net income or loss of any Person which is not a Restricted Subsidiary and which is accounted for by the equity method of accounting; *provided that*

Consolidated Net Income shall include the amount of dividends or distributions actually paid to the Company or any Restricted Subsidiary;

(4) the net income or loss prior to the date of acquisition of any Person combined with the Company or any Restricted Subsidiary in a pooling of interest;

(5) the net income of any Restricted Subsidiary to the extent that dividends or distributions of that net income are not at the date of determination permitted by the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or other regulation; and

(6) the cumulative effect of any changes in accounting principles.

“Consolidated Non-Cash Charges” means, with respect to the Company and its Restricted Subsidiaries for any period, the aggregate (1) depreciation, (2) amortization, (3) non-cash employee compensation expenses of the Company or its Restricted Subsidiaries for such period, and (4) any non-cash charges, in each case which reduces the Consolidated Net Income of the Company and its Restricted Subsidiaries for the period, as determined on a consolidated basis in accordance with GAAP and excluding any such non-cash charge or expense to the extent it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period, and also excluding the non-cash impact of Statement of Financial Accounting Standards No. 133.

“Credit Facilities” means, one or more debt facilities or commercial paper facilities, in each case with banks or other institutional lenders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time.

“Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

“Default” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“Definitive Securities” means certificated Securities.

“DTC” means The Depository Trust Company, its nominees and their respective successors and assigns, or such other depository institution hereinafter appointed by the Company.

“Event of Default” means any of the events specified in [Section 6.1](#).

“Excess Proceeds” shall have the meaning assigned to such term in [Section 3.7\(d\)](#).

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exchange Offer” shall have the meaning assigned to such term in the sixth introductory paragraph to this Indenture.

“Exchange Securities” shall have the meaning assigned to such term in the second introductory paragraph to this Indenture.

“Fiscal Year” shall mean the fiscal year of the Company as set forth in the audited financial statements of the Company, which as of the Issue Date was the period from October 1 through September 30 of each year.

“Flow-Through Acquisition” means an acquisition by the general partner from a Person that is not an Affiliate of the general partner or the Company, of property (real or personal), assets or equipment (whether through the direct purchase of assets or the Capital Stock of the Person owning such assets) in a Related Business, which is promptly sold, transferred or contributed by the general partner to the Company or one of its Restricted Subsidiaries.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession. All ratios and computations based on GAAP contained in this Indenture will be computed in conformity with GAAP.

“Growth Related Capital Expenditures” means, with respect to any Person, all capital expenditures by such Person made to improve or enhance the existing capital assets or to increase the customer base of such Person or to acquire or construct new capital assets (but excluding capital expenditures made to maintain, up to the level thereof that existed at the time of such expenditure, the operating capacity of the capital assets of such Person as such assets existed at the time of such expenditure).

“Guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); *provided, however*, that the term “Guarantee” will not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“Incur” means issue, create, assume, Guarantee, incur or otherwise become liable for; *provided, however*, that any Indebtedness or Capital Stock of a Person existing at the time such person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary; and the terms “Incurred” and “Incurrence” have meanings correlative to the foregoing.

“Indebtedness” means, as applied to any Person, without duplication:

(1) (a) any indebtedness for borrowed money and (b) all obligations evidenced by any (i) bond, note, debenture or other similar instrument or (ii) reimbursement obligations in respect of letters of credit, but only for any drawings that are not reimbursed within five Business Days after the date of such drawings, which in each case the Person has, directly or indirectly, created or Incurred;

(2) any indebtedness for borrowed money and all obligations evidenced by any bond, note, debenture or other similar instrument secured by any Lien in respect of property owned by the Person, whether or not the Person has assumed or become liable for the payment of the indebtedness; *provided* that the amount of the indebtedness, if the Person has not assumed the same or become liable therefor, shall in no event be deemed to be greater than the fair market value from time to time, as determined in good faith by the Person, of the property subject to the Lien;

(3) any indebtedness, whether or not for borrowed money (excluding trade payables and accrued expenses arising in the ordinary course of business) with respect to which the 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 business acquired by, or service performed on behalf of, the Person, whether by purchase, consolidation, merger or otherwise;

(4) the principal component of any obligations under Capital Leases to the extent the obligations would, in accordance with GAAP, appear on the balance sheet of the Person;

(5) all Attributable Debt of the Person in respect of Sale and Leaseback Transactions not involving a Capital Lease;

(6) any indebtedness of any other Person of the character referred to in the foregoing clauses (1) through (5) of this definition with respect to which the Person whose indebtedness is being determined has become liable by way of a Guarantee; and

(7) all Redeemable Capital Stock of the Person valued at the greater of its voluntary or involuntary maximum fixed repurchase price plus accrued dividends.

For purposes hereof, the “maximum fixed repurchase price” of any Redeemable Capital Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of the Redeemable Capital Stock as if it were purchased on any date on which

Indebtedness shall be required to be determined pursuant to this Indenture and if the price is based upon, or measured by, the fair market value of the Redeemable Capital Stock, the fair market value shall be determined in good faith by the board of directors of the issuer of the Redeemable Capital Stock. Furthermore, for purposes hereof, the term “Indebtedness” shall not include (x) accrual of interest, the accretion of accreted value and the payment of interest or any other similar Incurrence by the Company or its Restricted Subsidiaries related to Indebtedness otherwise permitted in this Indenture or (y) indebtedness under any hedging arrangement which provides for the right or obligation to purchase, sell or deliver any currency, commodity or security at a future date for a specified price entered into to protect such Person from fluctuations in prices or rates, including currencies, interest rates, commodity prices, and securities prices, including without limitation indebtedness under any interest rate or commodity price swap agreement, interest rate cap agreement, interest rate collar agreement or any forward sales arrangements, calls, options, swaps, or other similar transactions or any combination thereof.

“Indenture” means this Indenture as amended or supplemented from time to time.

“Initial Securities” shall have the meaning assigned to such term in the second introductory paragraph of this Indenture.

“Interest Rate Agreement” means, with respect to any Person, any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement as to which such Person is party or a beneficiary.

“Interim Capital Transactions” means (1) borrowings, refinancings or refundings of Indebtedness and sales of debt securities (other than for working capital purposes and other than for items purchased on open account in the ordinary course of business) by the Company, (2) sales of Capital Stock of the Company by the Company and (3) sales or other voluntary or involuntary dispositions of any assets of the Company (other than (x) sales or other dispositions of inventory in the ordinary course of business, (y) sales or other dispositions of other current assets excluding receivables and accounts and (z) sales or other dispositions of assets as a part of normal retirements or replacements), in each case prior to the commencement of the dissolution and liquidation of the Company.

“Investment” means as applied to any Person:

- (1) any direct or indirect purchase or other acquisition by the Person of stock or other securities of any other Person; or
- (2) any direct or indirect loan, advance or capital contribution by the Person to any other Person and any other item which would be classified as an “investment” on a balance sheet of the Person prepared in accordance with GAAP, including without limitation any direct or indirect contribution by the Person of property or assets to a joint venture, partnership or other business entity in which the Person retains an interest, it

being understood that a direct or indirect purchase or other acquisition by the Person of assets of any other Person, other than stock or other securities, shall not constitute an “Investment” for purposes of this Indenture.

The amount classified as Investments made during any period shall be the aggregate cost to the Company and its Restricted Subsidiaries of all the Investments made during the period, determined in accordance with GAAP, but without regard to unrealized increases or decreases in value, or write-ups, write-downs or write-offs, of the Investments and without regard to the existence of any undistributed earnings or accrued interest with respect thereto accrued after the respective dates on which the Investments were made, less any net return of capital realized during the period upon the sale, repayment or other liquidation of the Investments, determined in accordance with GAAP, but without regard to any amounts received during the period as earnings (in the form of dividends not constituting a return of capital, interest or otherwise) on the Investments or as loans from any Person in whom the Investments have been made.

“Issue Date” means the date on which the Notes are originally issued.

“Issuers” shall have the meaning assigned to such term in the preamble to this Indenture.

“Issuers’ Order” shall have the meaning assigned to such term in Section 2.2.

“Kestrel Purchase Agreement” means the Unit Purchase Agreement dated , among Kestrel Energy Partners, LLC, Kestrel Heat, LLC and M2, Inc.

“Lien” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

“Net Proceeds” means, with respect to any Asset Sale or sale of Capital Stock, the proceeds therefrom in the form of cash or cash equivalents including payments in respect of deferred payment obligations when received in the form of cash or cash equivalents, except to the extent that the deferred payment obligations are financed or sold with recourse to the Company or any of its Restricted Subsidiaries, net of:

- (1) brokerage commissions and other fees and expenses related to the Asset Sale, including, without limitation, fees and expenses of legal counsel and accountants and fees, expenses, discounts or commissions of underwriters, placement agents and investment bankers;
- (2) provisions for all taxes payable as a result of the Asset Sale;
- (3) amounts required to be paid to any Person, other than the Company or any Restricted Subsidiary, owning a beneficial interest in the assets subject to the Asset Sale;
- (4) appropriate amounts established by the Company or any Restricted Subsidiary, as the case may be, as a reserve required in accordance with GAAP against

any liabilities associated with the Asset Sale and retained by the Company or any Restricted Subsidiary, as the case may be, after the Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with the Asset Sale; and

(5) amounts applied to the repayment of Indebtedness in connection with the asset or assets sold in the Asset Sale, including any transaction costs and expenses associated therewith and any make-whole or other premium owed in connection with such repayment.

“Non-U.S. Person” means a person who is not a U.S. person, as defined in Regulation S.

“Note Register” means the register of Securities, maintained by the Trustee, pursuant to Section 2.3.

“Officer” means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer or the Secretary of the Issuers or, so long as the Company is a limited partnership, of the Company’s general partner.

“Officers’ Certificate” means (i) in the case of the Company, a certificate signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of the Company or, so long as the Company is a limited partnership, of the Company’s general partner or (ii) in the case of Star Gas Finance Company, a certificate signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of Star Gas Finance Company.

“Opinion of Counsel” means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company or the Trustee.

“Original Notes Issue Date” means the date on which the Original Notes were originally issued.

“Permitted Holders” means Kestrel Energy Partners LLC or any Person controlled by it.

“Permitted Indebtedness” shall mean any of the following:

(1) Indebtedness evidenced by the Original Notes and the Notes (but not Additional Notes);

(2) Indebtedness that (x) was outstanding as of the Original Notes Issue Date to the extent such Indebtedness remains outstanding and (y) set forth in a Schedule to this Indenture that is outstanding as of the Issue Date only to the extent that such Indebtedness is not otherwise permitted pursuant to one of the other clauses in this definition of “Permitted Indebtedness”;

(3) Indebtedness of the Company or a Restricted Subsidiary Incurred for (i) the making of capital expenditures by the Company or its Restricted Subsidiaries, or (ii) for the purpose of funding acquisitions of Related Businesses, in an aggregate amount of Indebtedness pursuant to this paragraph (3) not to exceed \$60 million at any one time outstanding.

(4) Indebtedness of the Company owed to the general partner or an Affiliate of the general partner that is unsecured and that is subordinated in right of payment to the Notes; *provided* that the aggregate principal amount of this Indebtedness outstanding at any time under this clause may not exceed \$10 million and this Indebtedness has a final maturity date later than the final maturity date of the Notes;

(5) Indebtedness (a) owed by the Company or any Restricted Subsidiary to any Restricted Subsidiary or (b) owed by any Restricted Subsidiary to the Company or to any other Restricted Subsidiary;

(6) Permitted Refinancing Indebtedness (including, for the avoidance of doubt, Indebtedness Incurred as permitted under the Consolidated Fixed Charge Coverage Ratio);

(7) the Incurrence by the Company or a Restricted Subsidiary of Indebtedness owing directly to its insurance carriers, without duplication, in connection with the Company's, its Subsidiaries' or its Affiliates' self-insurance programs or other similar forms of retained insurable risks for their respective businesses, consisting of reinsurance agreements and indemnification agreements, and Guarantees of the foregoing;

(8) Indebtedness of the Company and its Restricted Subsidiaries in respect of Capital Leases; *provided* that the aggregate amount of this Indebtedness outstanding at any time may not exceed \$7.5 million;

(9) Indebtedness of the Company and its Restricted Subsidiaries for (a) obligations under workers' compensation laws, (b) obligations to suppliers of distillate and non-distillate petroleum products or energy commodity derivative providers in the ordinary course of business consistent with past practices, not to exceed \$10 million at any one time outstanding, and (c) the repayment of Indebtedness permitted to be Incurred under this Indenture;

(10) surety bonds and appeal bonds required in the ordinary course of business or in connection with the enforcement of rights or claims of the Company or any of its Subsidiaries or in connection with judgments that do not result in a Default or Event of Default;

(11) any Guarantee by any Restricted Subsidiary in respect of Indebtedness of any other Restricted Subsidiary;

(12) any Guarantee by the Company of Indebtedness in respect of (x) senior indebtedness of its Restricted Subsidiaries, or (y) trade credit of Restricted Subsidiaries; and

(13) Indebtedness Incurred by any Restricted Subsidiary pursuant to any Credit Facility Incurred solely for working capital purposes not to exceed in the aggregate at any one time outstanding the Borrowing Base.

“Permitted Investments” means any of the following:

(1) Investments made or owned by the Company or any Restricted Subsidiary in:

(a) marketable obligations issued or unconditionally guaranteed by the United States, or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing one year or less from the date of acquisition thereof;

(b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and having as at such date the highest rating obtainable from either Standard & Poor’s Ratings Group (“S&P”) and its successors or Moody’s Investors Service, Inc. (“Moody’s”) and its successors;

(c) commercial paper maturing no more than 270 days from the date of creation thereof and having as at the date of acquisition thereof one of the two highest ratings obtainable from either S&P or Moody’s;

(d) certificates of deposit maturing one year or less from the date of acquisition thereof issued by commercial banks incorporated under the laws of the United States or any state thereof or the District of Columbia or Canada; the commercial paper or other short term unsecured debt obligations of which are as at such date rated either “A-2” or better (or comparably if the rating system is changed) by S&P or “Prime-2” or better (or comparably if the rating system is changed) by Moody’s; the long-term debt obligations of which are, as at such date, rated either “A” or better (or comparably if the rating system is changed) by either S&P or Moody’s (“Permitted Banks”);

(e) eurodollar time deposits having a maturity of less than 270 days from the date of acquisition thereof purchased directly from any Permitted Bank;

(f) bankers’ acceptances eligible for rediscount under requirements of the Board of Governors of the Federal Reserve System and accepted by Permitted Banks;

(g) obligations of the type described in clauses (a) through (e) above purchased from a securities dealer designated as a “primary dealer” by the Federal Reserve Bank of New York or from a Permitted Bank as counterparty to a written repurchase agreement obligating such counterparty to repurchase such obligations not later than 14 days after the purchase thereof and which provides that the obligations which are the subject thereof are held for the benefit of the Company or a Restricted Subsidiary by a custodian which is a Permitted Bank and which is not a counterparty to the repurchase agreement in question; and

(h) securities issued by money market mutual funds which (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated “AAA” by S&P and “Aaa” by Moody’s and (iii) have portfolio assets in excess of \$500 million.

(2) the acquisition by the Company or any Restricted Subsidiary of Capital Stock or other ownership interests, whether in a single transaction or in a series of related transactions, of a Person located in the United States and engaged in a Related Business such that, upon the completion of such transaction or series of transactions, the Person becomes a Restricted Subsidiary;

(3) the making or ownership by the Company or any Restricted Subsidiary of Investments (in addition to any other Permitted Investments) in any Person incorporated or otherwise formed pursuant to the laws of the United States or any state thereof; provided that the aggregate amount of all such Investments made by the Company and its Restricted Subsidiaries following the Original Notes Issue Date and outstanding pursuant to this third clause shall not at any date of determination exceed \$20 million;

(4) the making or ownership by the Company or any Restricted Subsidiary of Investments:

(a) arising out of loans and advances to employees Incurred in the ordinary course of business;

(b) arising out of extensions of trade credit or advances to third parties in the ordinary course of business; or

(c) acquired by reason of the exercise of customary creditors’ rights upon default or pursuant to the bankruptcy, insolvency or reorganization of a debtor;

(5) the creation or Incurrence of liability by the Company or any Restricted Subsidiary, with respect to any Guarantee constituting an obligation, warranty or indemnity, not guaranteeing Indebtedness of any Person, which is undertaken or made in the ordinary course of business;

(6) the creation or Incurrence of liability by the Company or any Restricted Subsidiary with respect to any hedging agreements or arrangements;

(7) the making by any Restricted Subsidiary of Investments in the Company or another Restricted Subsidiary and the making by the Company of Investments in any Restricted Subsidiary; and

(8) Investments in any Person pursuant to joint venture arrangements, in an aggregate amount not to exceed \$10 million outstanding at any one time; provided that such Person is engaged in a Related Business.

“Permitted Liens” means any of the following:

(1) Liens for taxes, assessments or other governmental charges, the payment of which is not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and as to which reserves or other appropriate provision, if any, as shall be required by GAAP, shall have been made therefor and be adequate in the good faith judgment of the obligor;

(2) Liens of lessors, landlords and carriers, vendors, warehousemen, mechanics, materialmen, repairmen and other like Liens Incurred in the ordinary course of business for sums not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and as to which reserves or other appropriate provisions, if any, as shall be required by GAAP, shall have been made therefor and be adequate in the good faith judgment of the obligor, in each case:

(a) not Incurred or made in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of property; or

(b) Incurred in the ordinary course of business securing the unpaid purchase price of property or services constituting current accounts payable;

(3) Liens, other than any Lien imposed by the Employee Retirement Income Security Act of 1974, as may be amended from time to time, Incurred or deposits made in the ordinary course of business:

(a) in connection with workers’ compensation, unemployment insurance and other types of social security, including liens in favor of issuers of letters of credit supporting any of the foregoing; or

(b) to secure or to obtain letters of credit that secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, performance bonds, purchase, construction or sales contracts and other similar obligations, in each case not Incurred or made in connection with the borrowing of money;

(4) other deposits made to secure liability to insurance carriers under insurance or self-insurance arrangements;

(5) Liens securing reimbursement obligations under letters of credit, *provided* in each case that such Liens cover only the title documents and related goods and any proceeds thereof covered by the related letter of credit;

(6) any attachment or judgment Lien, unless the judgment it secures shall not, within 60 days after notice of the entry thereof, have been discharged or execution thereof stayed pending appeal or review, or shall not have been discharged within 60 days after expiration of any such stay;

(7) leases or subleases granted to others, easements, rights-of-way, restrictions and other similar charges or encumbrances, which, in each case either are granted, entered into or created in the ordinary course of the business of the Company or any Restricted Subsidiary or do not materially impair the value or intended use of the property covered thereby;

(8) Liens on property or assets of any Restricted Subsidiary securing Indebtedness of the Restricted Subsidiary owing to the Company or a Restricted Subsidiary;

(9) Liens on assets of the Company or any Restricted Subsidiary existing on the Original Notes Issue Date;

(10) Liens on personal property leased under leases entered into by the Company or its Restricted Subsidiaries which are accounted for as operating leases in accordance with GAAP;

(11) Liens securing Indebtedness Incurred in accordance with:

(a) clauses (5), (6), (8) and (13) of the definition of Permitted Indebtedness; and

(b) Indebtedness otherwise permitted to be Incurred under Section 3.3, to the extent Incurred:

(i) to finance the making of capital expenditures for the improvement or repair (to the extent the improvements and repairs may be capitalized on the books of the Company and the Restricted Subsidiaries in accordance with GAAP) of, or additions including additions by way of acquisitions of businesses and related assets to, the assets and property of the Company and its Restricted Subsidiaries; or

(ii) by assumption in connection with additions including additions by way of acquisition or capital contributions of businesses and related assets to the property and assets of the Company and its Restricted Subsidiaries; *provided* that, in the case of Indebtedness Incurred in accordance with clauses (b) and (c) above, the principal amount of the Indebtedness does not exceed the lesser of the cost to the Company and its Restricted Subsidiaries of the additional

property or assets and the fair market value of the additional property or assets at the time of the acquisition thereof, as determined in good faith by the Board of Directors;

(12) Liens existing on any property of any Person at the time it becomes a Subsidiary of the Company, or existing at the time of acquisition upon any property acquired by the Company or any Subsidiary through purchase, merger or consolidation or otherwise, whether or not assumed by the Company or the Subsidiary, or created to secure Indebtedness Incurred to pay all or any part of the purchase price (a "Purchase Money Lien") of property including, without limitation, Capital Stock and other securities acquired by the Company or a Restricted Subsidiary; *provided* that:

(a) the Lien shall be confined solely to the item or items of property and, if required by the terms of the instrument originally creating the Lien, other property which is an improvement to or is acquired for use specifically in connection with the acquired property;

(b) in the case of a Purchase Money Lien, the principal amount of the Indebtedness secured by the Purchase Money Lien shall at no time exceed an amount equal to the lesser of:

(i) the cost to the Company and the Restricted Subsidiaries of the property; and

(ii) the fair market value of the property at the time of the acquisition thereof as determined in good faith by the Board of Directors;

(c) the Purchase Money Lien shall be created not later than 360 days after the acquisition of the property; and

(d) the Lien, other than a Purchase Money Lien, shall not have been created or assumed in contemplation of the Person's becoming a Subsidiary of the Company or the acquisition of property by the Company or any Subsidiary;

(13) easements, exceptions or reservations in any property of the Company or any Restricted Subsidiary granted or reserved for the purpose of pipelines, roads, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which are incidental to, and do not materially interfere with, the ordinary conduct of the business of the Company or any Restricted Subsidiary; and

(14) any Lien renewing, extending or replacing any Lien permitted by clauses (9) through (12) above; *provided* that, the principal amount of the Indebtedness secured by any such Lien shall not exceed the principal amount of the Indebtedness outstanding immediately prior to the renewal or extension of the Lien, and no assets encumbered by the Lien other than the assets encumbered immediately prior to the renewal or extension shall be encumbered thereby. The foregoing provisions of this clause (14) shall not be

interpreted to limit the ability of the Company or any Restricted Subsidiary to Incur additional Indebtedness or grant Liens in respect thereof as contemplated in clause (13) of the definition of Permitted Indebtedness.

“Permitted Refinancing Indebtedness” means Indebtedness Incurred by the Company or any Restricted Subsidiary to substantially concurrently (excluding any notice period on redemptions) repay, refund, renew, replace, extend or refinance, in whole or in part, any Permitted Indebtedness of the Company or any Restricted Subsidiary or any other Indebtedness Incurred by the Company or any Restricted Subsidiary pursuant to Section 3.3, to the extent:

(1) the principal amount of the Permitted Refinancing Indebtedness does not exceed the principal or accreted amount plus the amount of accrued and unpaid interest of the Indebtedness so repaid, refunded, renewed, replaced, extended or refinanced (plus the amount of all expenses and premiums Incurred in connection therewith);

(2) with respect to any repayment, refunding, renewal, replacement, extension or refinancing of the Company’s and its Restricted Subsidiaries’ Indebtedness, the Permitted Refinancing Indebtedness ranks no more favorably in right of payment with respect to the Notes than the Indebtedness so repaid, refunded, renewed, replaced, extended or refinanced; and

(3) with respect to the repayment, refunding, renewal, replacement, extension or refinancing of the Company’s and its Restricted Subsidiaries’ Indebtedness, the Permitted Refinancing Indebtedness has a Weighted Average Life to Stated Maturity and Stated Maturity equal to, or greater than, and has no fixed mandatory redemption or sinking fund requirement in an amount greater than or at a time prior to the amounts set forth in, the Indebtedness so repaid, refunded, renewed, replaced, extended or refinanced; *provided, however*, that Permitted Refinancing Indebtedness shall not include Indebtedness Incurred by a Restricted Subsidiary to repay, refund, renew, replace, extend or refinance Indebtedness of the Company.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision hereof or any other entity.

“Preferred Stock” as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of distributions or dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

“Public Equity Offering” means a public offering or private placement of partnership interests (other than interests that are mandatorily redeemable) of:

(a) any entity that directly or indirectly owns equity interests in the Company, to the extent the net proceeds are contributed to the Company;

(b) any Subsidiary of the Company to the extent the net proceeds are distributed, paid, lent or otherwise transferred to the Company that results in the net proceeds to the Company of at least \$10 million; or

(c) the Company;

provided that a private placement of partnership interests will not be deemed a Public Equity Offering unless net proceeds of at least \$10 million are received.

A “Public Market” exists at any time with respect to the Common Stock of the Company if:

(1) the Common Stock of the Company is then registered with the SEC pursuant to Section 12(b) or 12(g) of the Exchange Act and traded either on a national securities exchange or in the National Association of Securities Dealers Automated Quotation System; and

(2) at least 15% of the total issued and outstanding Common Stock of the Company has been and remains distributed prior to such time by means of an effective registration statement under the Securities Act of 1933, as amended.

“Redeemable Capital Stock” means any shares of any class or series of Capital Stock (excluding, but not limited to, the Senior Units and Common Stock issued by the Company), that, either by the terms thereof, by the terms of any security into which it is convertible or exchangeable or by contract or otherwise, is or upon the happening of an event or passage of time would be, required to be redeemed prior to the Stated Maturity of the principal of the Notes or is redeemable at the option of the holder thereof at any time prior to the Stated Maturity of the principal of the Notes, or is convertible into or exchangeable for debt securities at any time prior to the Stated Maturity of the principal of the Notes.

“Redemption Date” means the date selected by the Issuers for the redemption of Securities consistent with the provisions of Exhibits A and B to this Indenture.

“Refinancing Indebtedness” means Indebtedness that is Incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) (collectively, “refinance,” “refinances,” and “refinanced” shall have a correlative meaning) any Indebtedness existing on the date of this Indenture or Incurred in compliance with this Indenture (including Indebtedness of the Issuers that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of another Restricted Subsidiary) including Indebtedness that refinances Refinancing Indebtedness, *provided, however*, that:

(1) (a) if the Stated Maturity of the Indebtedness being refinanced is earlier than the Stated Maturity of the Securities, the Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being refinanced or (b) if the Stated Maturity of the Indebtedness being refinanced is later than the Stated Maturity

of the Securities, the Refinancing Indebtedness has a Stated Maturity at least 91 days later than the Stated Maturity of the Securities;

(2) the Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being refinanced;

(3) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of (x) the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of Indebtedness being refinanced plus (y) without duplication, any additional Indebtedness Incurred to pay interest or premiums required by the instruments governing such existing Indebtedness and fees, underwriting discounts, commissions and other expenses incurred in connection the issuance of the Refinancing Indebtedness and the repayment of the Indebtedness being refinanced); and

(4) if the Indebtedness being refinanced is subordinated in right of payment to the Securities, such Refinancing Indebtedness is subordinated in right of payment to the Securities on terms at least as favorable to the Securityholders of Securities as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded.

“Related Business” means any business which is the same as or related, ancillary or complementary to any of the businesses of the Company on the Issue Date.

“Restricted Subsidiary” means any Subsidiary of the Company other than an Unrestricted Subsidiary.

“Restricted Payment” shall have the meaning assigned to such term in Section 3.4(a).

“Rights Offering” means the \$35 million rights offering to be made to the outstanding unitholders of Star Gas Partners, L.P.

“Sale and Leaseback Transaction” means any arrangement (other than between the Company and a Restricted Subsidiary or between Restricted Subsidiaries) whereby property has been or will be disposed of by a transferor to another entity with the intent of taking back a lease on the property pursuant to which the rental payments are calculated to amortize the purchase price of the property over its life.

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

“Secured Indebtedness” means Indebtedness that is secured by a Lien on the property or assets of the relevant obligor.

“Securities” shall have the meaning assigned to such term in the second introductory paragraph to this Indenture.

“Securityholders” means any holder from time to time of the Securities issued pursuant to this Indenture.

“Securities Act” means the Securities Act of 1933, as amended.

“Securities Custodian” means the custodian with respect to the Global Security (as appointed by DTC), or any successor Person thereto and shall initially be the Trustee.

“Senior Units” means the units representing limited partner interests of the Company, having the rights and obligations specified with respect to Senior Subordinated Units of the Company.

“Significant Subsidiary” means any Restricted Subsidiary that would be a “Significant Subsidiary” of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

“Stated Maturity” means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

“Subsidiary” of any Person means any corporation, association, partnership, joint venture, limited liability company or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership and joint venture interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person or (3) one or more Subsidiaries of such Person. Unless otherwise specified herein, each reference to a Subsidiary will refer to a Subsidiary of the Company.

“Tender Offer” means the tender offer and consent solicitation by the Company of certain amendments to the Original Indenture.

“Termination Capital Transactions” means any sale, transfer or other disposition of property of the Company occurring upon or incident to the liquidation and winding up of the Company.

“TIA” or “Trust Indenture Act” means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb), as in effect on the date of this Indenture.

“Trustee” means the party named as such in this Indenture until a successor replaces it and, thereafter, means the successor.

“Trust Officer” shall mean, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who

customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"Unrestricted Subsidiary" means any Person that is designated as such by the Board of Directors; *provided* that no portion of the Indebtedness of such Person:

- (1) is Guaranteed by the Company or any Restricted Subsidiary;
- (2) is recourse to or obligates the Company or any Restricted Subsidiary in any way; or
- (3) subjects any property or assets of the partnership or any Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof.

Notwithstanding the foregoing, the Company or a Restricted Subsidiary may Guarantee or agree to provide funds for the payment or maintenance of, or otherwise become liable with respect to Indebtedness of an Unrestricted Subsidiary, but only to the extent that the Company or a Restricted Subsidiary would be permitted to:

- (1) make an Investment in the Unrestricted Subsidiary pursuant to the third clause of the definition of Permitted Investments; and
- (2) Incur the Indebtedness represented by the Guarantee or agreement pursuant to Section 3.3. The Board of Directors may designate an Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that immediately after giving effect to the designation there exists no Default or Event of Default, and if the Unrestricted Subsidiary has, as of the date of the designation, outstanding Indebtedness other than Permitted Indebtedness, the Company could Incur at least \$1.00 of Indebtedness other than Permitted Indebtedness.

Notwithstanding the foregoing, no Subsidiary may be designated an Unrestricted Subsidiary if the Subsidiary, directly or indirectly, holds Capital Stock of a Restricted Subsidiary.

"U.S. Government Obligations" means securities that are (a) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged or (b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depositary receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary

receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depositary receipt.

“Voting Stock” of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors.

“Weighted Average Life to Stated Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

- (1) The sum of the products obtained by multiplying:
 - (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by
 - (b) the number of years, calculated to the nearest one-twelfth, that will elapse between the date and the making of the payment, by
- (2) The then outstanding principal amount of the Indebtedness;

provided, however, that with respect to any revolving Indebtedness, the foregoing calculation of Weighted Average Life to Stated Maturity shall be determined based upon the total available commitments and the required reductions of commitments in lieu of the outstanding principal amount and the required payments of principal, respectively.

SECTION 1.2. Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
“Additional Global Securities”	2.1(b)
“Agent Members”	2.1(e)
“Authenticating Agent”	2.2
“Change of Control Offer”	3.9
“Change of Control Payment”	3.9
“Change of Control Payment Date”	3.9
“Corporate Trust Office”	3.14
“covenant defeasance option”	8.1(b)
“cross acceleration provision”	6.1(6)(b)
“Defaulted Interest”	2.13
“Excess Proceeds”	3.7(c)
“Exchange Global Security”	2.1(b)
“Global Securities”	2.1(b)
“IAIs”	2.1(b)
“Institutional Accredited Investor Security”	2.1(b)
“Institutional Accredited Investor Global Securities”	2.1(b)

“judgment default provision”	6.1(8)
“legal defeasance option”	8.1(b)
“payment default”	6.1(6)
“Paying Agent”	2.3
“Private Placement Legend”	2.1(d)
“QIB”	2.1(b)
“Registrar”	2.3
“Regulation S”	2.1(d)
“Regulation S Global Security”	2.1(b)
“Regulation S Legend”	2.1(d)
“Regulation S Securities”	2.1(b)
“Resale Restriction Termination Date”	2.6(a)
“Restricted Payment”	3.4
“Rule 144A”	2.1(b)
“Rule 144A Global Security”	2.1(b)
“Rule 144A Securities”	2.1(b)
“Special Interest Payment Date”	2.13(a)
“Special Record Date”	2.13(a)

SECTION 1.3. Incorporation by Reference of Trust Indenture Act. This Indenture is subject to the mandatory provisions of the TIA which are incorporated by reference in and made a part of this Indenture. The following TIA terms have the following meanings:

“Commission” means the Securities and Exchange Commission.

“indenture securities” means the Securities.

“indenture security holder” means a Securityholder.

“indenture to be qualified” means this Indenture.

“indenture trustee” or “institutional trustee” means the Trustee.

“obligor” on this Indenture securities means the Company and any other obligor on this Indenture securities.

All other TIA terms used in this Indenture that are defined by the TIA, defined in the TIA by reference to another statute or defined by SEC rule have the meanings assigned to them by such definitions.

SECTION 1.4. Rules of Construction. Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) “or” is not exclusive;

(4) “including” means including without limitation;

(5) words in the singular include the plural and words in the plural include the singular;

(6) unsecured Indebtedness shall not be deemed to be subordinate or junior to Secured Indebtedness merely by virtue of its nature as unsecured Indebtedness;

(7) the principal amount of any noninterest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP; and

(8) the principal amount of any Preferred Stock shall be (i) the maximum liquidation value of such Preferred Stock or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater.

ARTICLE II

The Securities

SECTION 2.1. Form, Dating and Terms.

(a) The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Initial Securities issued on the date hereof will be limited in an aggregate principal amount to \$[165,000,000]. In addition, the Company may issue, from time to time in accordance with the provisions of this Indenture (including, without limitation, Section 3.3 hereof, Additional Securities and Exchange Securities Furthermore, Securities may be authenticated and delivered upon registration or transfer, or in lieu of, other Securities pursuant to Sections 2.6, 2.9, 2.11 or 9.5 or in connection with a Change of Control Offer pursuant to Section 3.9.

With respect to any Additional Securities, the Issuers shall set forth in Board Resolutions and Officers’ Certificates, the following information:

(1) the aggregate principal amount of such Additional Securities to be authenticated and delivered pursuant to this Indenture;

(2) the issue price and the issue date of such Additional Securities, including the date from which interest shall accrue; and

(3) whether such Additional Securities shall be Global Securities issued in the form of Exhibit A hereto and/or shall be issued in the form of Exhibit B hereto.

The Initial Securities, the Additional Securities and the Exchange Securities shall be considered collectively as a single class for all purposes of this Indenture. Securityholders of the Initial Securities, the Additional Securities and the Exchange Securities will vote and consent

together on all matters to which such Securityholders are entitled to vote or consent as one class, and none of the Securityholders of the Initial Securities, the Additional Securities or the Exchange Securities shall have the right to vote or consent as a separate class on any matter to which such Securityholders are entitled to vote or consent.

(b) The Initial Securities issued in exchange for Original Notes in reliance on the exemption from registration provided by Section 3(a)(9) of the Securities Act will be issued in the form of a Global Security (the “Initial Global Security”), without interest coupons, in the aggregate principal amount of the Securities, which Security shall be in substantially the form of Exhibit A, which is hereby incorporated by reference and made a part of this Indenture, including appropriate legends deposited with the Trustee, as custodian for DTC, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The Initial Global Security may be represented by more than one certificate, if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Initial Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

(c) Any Additional Securities (if issued as restricted Global Securities) (the “Additional Global Securities”) will be resold initially only to (A) qualified institutional buyers (as defined in Rule 144A under the Securities Act (“Rule 144A”)) in reliance on Rule 144A (“QIBs”) and (B) Persons other than U.S. Persons (as defined in Regulation S under the Securities Act (“Regulation S”)) in reliance on Regulation S. Such Additional Global Securities may thereafter be transferred to, among others, QIBs, purchasers in reliance on Regulation S and institutional “accredited investors” (as defined in Rules 501(a)(1), (2), (3) and (7) under the Securities Act) who are not QIBs (“IAs”) in accordance with Rule 501 of the Securities Act in accordance with the procedure described herein.

Additional Global Securities offered and sold to qualified institutional buyers in the United States of America in reliance on Rule 144A (the “Rule 144A Securities”) shall be issued in the form of a permanent global Security, without interest coupons, substantially in the form of Exhibit A, which is hereby incorporated by reference and made a part of this Indenture, including appropriate legends as set forth in Section 2.1(d) (the “Rule 144A Global Security”), deposited with the Trustee, as custodian for DTC, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The Rule 144A Global Security may be represented by more than one certificate, if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Rule 144A Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Additional Securities offered and sold outside the United States of America (the “Regulation S Securities”) in reliance on Regulation S shall be issued in the form of a permanent global Security, without interest coupons, substantially in the form of Exhibit A (the “Regulation S Global Security”) deposited with the Trustee, as custodian for DTC, duly executed by the Issuers and authenticated by the Trustee as hereinafter provided. The Regulation S Global Security may be represented by more than one certificate, if so required by DTC’s rules

regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Regulation S Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Additional Securities resold to IAs (the “Institutional Accredited Investor Securities”) in the United States of America shall be issued in the form of a permanent global Security, without interest coupons, substantially in the form of Exhibit A (the “Institutional Accredited Investor Global Security”) deposited with the Trustee, as custodian for DTC, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The Institutional Accredited Investor Global Security may be represented by more than one certificate, if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Institutional Accredited Investor Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Exchange Securities exchanged for interests in the Rule 144A Securities, the Regulation S Securities and the Institutional Accredited Investor Securities will be issued in the form of a permanent global Security, without interest coupons, substantially in the form of Exhibit B, which is hereby incorporated by reference and made a part of this Indenture, deposited with the Trustee as hereinafter provided, including the appropriate legend set forth in Section 2.1(d) (the “Exchange Global Security”). The Exchange Global Security may be represented by more than one certificate, if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate.

The Initial Global Security, the Rule 144A Global Security, the Regulation S Global Security, the Institutional Accredited Investor Global Security and the Exchange Global Security are sometimes collectively herein referred to as the “Global Securities.”

The principal of (and premium, if any) and interest on the Securities shall be payable at the office or agency of the Issuers maintained for such purpose in The City of New York, or at such other office or agency of the Issuers as may be maintained for such purpose pursuant to Section 2.3; *provided, however*, that, at the option of the Issuers, each installment of interest may be paid by (i) check mailed to addresses of the Persons entitled thereto as such addresses shall appear on the Note Register or (ii) wire transfer to an account located in the United States maintained by the payee. Payments in respect of Securities represented by a Global Security (including principal, premium and interest) will be made by wire transfer of immediately available funds to the accounts specified by DTC.

The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage, in addition to those set forth on Exhibit A and Exhibit B and in Section 2.1(d). The Issuers and the Trustee shall approve the forms of the Securities and any notation, endorsement or legend on them. Each Security shall be dated the date of its authentication. The terms of the Securities set forth in Exhibit A and Exhibit B are part of the terms of this Indenture and, to the extent applicable, the Issuers and the Trustee, by their execution and delivery of this Indenture, expressly agree to be bound by such terms.

(d) Denominations. The Securities shall be issueable only in fully registered form, without coupons, and only in denominations of \$1,000 and any integral multiple thereof.

(e) Restrictive Legends. Unless and until (i) the Rule 144A Securities, the Regulation S Securities and the Institutional Accredited Investor Securities are sold under an effective registration statement or (ii) the Rule 144A Securities, the Regulation S Securities and the Institutional Accredited Investor Securities are exchanged for an Exchange Security in connection with an effective registration statement,

(A) the Rule 144A Global Security and the Institutional Accredited Investor Global Security shall bear the following legend (the "Private Placement Legend") on the face thereof:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION.

THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUERS OR ANY AFFILIATE OF THE ISSUERS WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), ONLY (A) TO THE ISSUERS, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (E) TO AN INSTITUTIONAL ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS AN INSTITUTIONAL ACCREDITED INVESTOR ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF THE SECURITIES OF \$250,000,

FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR OFFER OR SALE IN CONNECTION WITH ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (F) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUERS' AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) AND (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

BY ITS ACQUISITION OF THIS SECURITY THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (I) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE AND HOLD THIS SECURITY CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OF PLANS, INDIVIDUAL RETIREMENT ACCOUNTS OR OTHER ARRANGEMENTS THAT ARE SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") OR PROVISIONS UNDER ANY FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE ("SIMILAR LAWS"), OR OF AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF SUCH PLANS, ACCOUNTS OR ARRANGEMENTS, OR (II) THE PURCHASE AND HOLDING OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAWS."

(B) the Regulation S Global Security shall bear the following legend (the "Regulation S Legend") on the face thereof:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT ("REGULATION S"), (2) BY ITS ACCEPTANCE HEREOF AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUERS OR ANY AFFILIATE OF THE ISSUERS WAS THE OWNER OF THIS

SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), ONLY (A) TO THE ISSUERS, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S, (E) TO AN INSTITUTIONAL ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS AN INSTITUTIONAL ACCREDITED INVESTOR ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF THE SECURITIES OF \$250,000, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR OFFER OR SALE IN CONNECTION WITH ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (F) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUERS' AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM AND IN THE CASE OF THE FOREGOING CLAUSE (E), A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE ISSUERS AND THE TRUSTEE. THIS LEGEND WILL BE REMOVED AFTER 40 CONSECUTIVE DAYS BEGINNING ON AND INCLUDING THE LATER OF (A) THE DAY ON WHICH THE SECURITIES ARE OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN REGULATION S) AND (B) THE DATE OF THE CLOSING OF THE ORIGINAL OFFERING. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."

(C) The Initial Global Securities shall bear the following legend on the face thereof:

"UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR

TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THIS INDENTURE REFERRED TO ON THE REVERSE HEREOF."

(f) Book-Entry Provisions.

(i) This Section 2.1(e) shall apply only to Global Securities deposited with the Trustee, as custodian for DTC.

(ii) Each Global Security initially shall (x) be registered in the name of DTC for such Global Security or the nominee of DTC, (y) be delivered to the Trustee as custodian for DTC and (z) bear legends as set forth in Section 2.1(d).

(iii) Members of, or participants in, DTC ("Agent Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by DTC or by the Trustee as the custodian of DTC or under such Global Security, and DTC may be treated by the Issuers, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuers, the Trustee or any agent of the Issuers or the Trustee from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of a Securityholder of a beneficial interest in any Global Security.

(iv) In connection with any transfer of a portion of the beneficial interest in a Global Security pursuant to subsection (f) of this Section 2.1 to beneficial owners who are required to hold Definitive Securities, the Securities Custodian shall reflect on its books and records the date and a decrease in the principal amount of such Global Security in an amount equal to the principal amount of the beneficial interest in the Global Security to be transferred, and the Issuers shall execute, and the Trustee shall authenticate and deliver, one or more Definitive Securities of like tenor and amount.

(v) In connection with the transfer of an entire Global Security to beneficial owners pursuant to subsection (f) of this Section 2.1, such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Issuers shall execute, and the Trustee shall authenticate and deliver, to each

beneficial owner identified by DTC in exchange for its beneficial interest in such Global Security, an equal aggregate principal amount of Definitive Securities of authorized denominations.

(vi) The registered Securityholder of a Global Security may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Securityholder is entitled to take under this Indenture or the Securities.

(g) Definitive Securities. (i) Except as provided below, owners of beneficial interests in Global Securities will not be entitled to receive Definitive Securities. If required to do so pursuant to any applicable law or regulation, beneficial owners may obtain Definitive Securities in exchange for their beneficial interests in a Global Security upon written request in accordance with DTC's and the Registrar's procedures. In addition, Definitive Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Security if (a) DTC notifies the Issuers that it is unwilling or unable to continue as depository for such Global Security or DTC ceases to be a clearing agency registered under the Exchange Act, at a time when DTC is required to be so registered in order to act as depository, and in each case a successor depository is not appointed by the Issuers within 90 days of such notice or, (b) the Company executes and delivers to the Trustee and Registrar an Officers' Certificate stating that such Global Security shall be so exchangeable or (c) an Event of Default has occurred and is continuing and the Registrar has received a request from DTC.

(i) Any Definitive Security delivered in exchange for an interest in a Global Security pursuant to Section 2.1(e)(iv) or (v) shall, except as otherwise provided by Section 2.6(c), bear the applicable legend regarding transfer restrictions applicable to the Definitive Security set forth in Section 2.1(d).

(ii) In connection with the exchange of a portion of a Definitive Security for a beneficial interest in a Global Security, the Trustee shall cancel such Definitive Security, and the Issuers shall execute, and the Trustee shall authenticate and deliver, to the transferring Securityholder a new Definitive Security representing the principal amount not so transferred.

SECTION 2.2. Execution and Authentication. One Officer of each of the Issuers shall sign the Securities for the Issuers by manual or facsimile signature. If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

A Security shall not be valid until an authorized signatory of the Trustee manually authenticates the Security. The signature of the Trustee on a Security shall be conclusive evidence that such Security has been duly and validly authenticated and issued under this Indenture. A Security shall be dated the date of its authentication.

At any time and from time to time after the execution and delivery of this Indenture, the Trustee shall authenticate and make available for delivery:

(1) Initial Securities for original issue on the Issue Date in an aggregate principal amount of \$[165,000,000], (2)

Additional Securities for original issue and (3) Exchange Securities for issue only in an Exchange Offer, and only in exchange for Additional Securities of an equal principal amount, in each case upon a written order of the Issuers signed by two Officers of each of the Issuers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of each of the Issuers (the “Issuers’ Order”). Such Issuers’ Order shall specify the amount of the Securities to be authenticated and the date on which the original issue of Securities is to be authenticated and whether the Securities are to be Additional Securities or Exchange Securities.

The Trustee may appoint an agent (the “Authenticating Agent”) reasonably acceptable to the Issuers to authenticate the Securities. Unless limited by the terms of such appointment, any such Authenticating Agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by the Authenticating Agent.

In case any Issuer, pursuant to Article IV, shall be consolidated or merged with or into any other Person or shall convey, transfer, lease or otherwise dispose of its properties and assets substantially as an entirety to any Person, and the successor Person resulting from such consolidation, or surviving such merger, or into which any Issuer shall have been merged, or the Person which shall have received a conveyance, transfer, lease or other disposition as aforesaid, shall have executed an indenture supplemental hereto with the Trustee pursuant to Article IV, any of the Securities authenticated or delivered prior to such consolidation, merger, conveyance, transfer, lease or other disposition may, from time to time, at the request of the successor Person, be exchanged for other Securities executed in the name of the successor Person with such changes in phraseology and form as may be appropriate, but otherwise in substance of like tenor as the Securities surrendered for such exchange and of like principal amount; and the Trustee, upon Issuers’ Order of the successor Person, shall authenticate and deliver Securities as specified in such order for the purpose of such exchange. If Securities shall at any time be authenticated and delivered in any new name of a successor Person pursuant to this Section 2.2 in exchange or substitution for or upon registration of transfer of any Securities, such successor Person, at the option of the Securityholders but without expense to them, shall provide for the exchange of all Securities at the time outstanding for Securities authenticated and delivered in such new name.

SECTION 2.3. Registrar and Paying Agent. The Issuers shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange (the “Registrar”) and an office or agency where Securities may be presented for payment (the “Paying Agent”). The Registrar shall keep a register of the Securities and of their transfer and exchange (the “Note Register”). The Issuers may have one or more co-registrars and one or more additional paying agents. The term “Paying Agent” includes any additional paying agent.

The Issuers shall enter into an appropriate agency agreement with any Registrar, Paying Agent or co-registrar not a party to this Indenture, which shall incorporate the terms of the TIA. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuers shall notify the Trustee of the name and address of each such agent. If the Issuers fail to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.7. The Issuers or any of their Restricted Subsidiaries may act as Paying Agent, Registrar, co-registrar or transfer agent.

The Issuers initially appoint the Trustee as Registrar and Paying Agent for the Securities.

SECTION 2.4. Paying Agent to Hold Money in Trust. By no later than 10:00 a.m. (New York City time) on the date on which any principal of or interest on any Security is due and payable, the Issuers shall deposit with the Paying Agent a sum sufficient in immediately available funds to pay such principal or interest when due. The Issuers shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit the Securityholders or the Trustee all money held by such Paying Agent for the payment of principal of or interest on the Securities and shall notify the Trustee in writing of any default by any of the Issuers in making any such payment. If either Issuer or a Subsidiary acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Issuers at any time may require a Paying Agent (other than the Trustee) to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section, the Paying Agent (if other than any Issuer or a Subsidiary) shall have no further liability for the money delivered to the Trustee. Upon any bankruptcy, reorganization or similar proceeding with respect to each Issuer, the Trustee shall serve as Paying Agent for the Securities.

SECTION 2.5. Securityholder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Registrar, or to the extent otherwise required under the TIA, the Issuers shall furnish to the Trustee, in writing at least five Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders.

SECTION 2.6. Transfer and Exchange.

(a) The following provisions shall apply with respect to any proposed transfer of a Rule 144A Security or an Institutional Accredited Investor Security prior to the date which is two years after the later of the date of its original issue and the last date on which the Issuers or any affiliate of the Company was the owner of such Securities (or any predecessor thereto) (the "Resale Restriction Termination Date"):

(i) a transfer of a Rule 144A Security or an Institutional Accredited Investor Security or a beneficial interest therein to a QIB shall be made upon the representation of the transferee in the form as set forth on the reverse of the Security that it is purchasing for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuers as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A;

(ii) a transfer of a Rule 144A Security or an Institutional Accredited Investor Security or a beneficial interest therein to an IAI shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in Section 2.7 from the proposed transferee and, if requested by the Issuers or the Trustee, the delivery of an opinion of counsel, certification and/or other information satisfactory to each of them; and

(iii) a transfer of a Rule 144A Security or an Institutional Accredited Investor Security or a beneficial interest therein to a Non-U.S. Person shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in Section 2.8 from the proposed transferee and, if requested by the Issuers or the Trustee, the delivery of an opinion of counsel, certification and/or other information satisfactory to each of them.

(b) The following provisions shall apply with respect to any proposed transfer of a Regulation S Security prior to the expiration of the Restricted Period:

(i) a transfer of a Regulation S Security or a beneficial interest therein to a QIB shall be made upon the representation of the transferee, in the form of assignment on the reverse of the certificate, that it is purchasing the Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuers as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A;

(ii) a transfer of a Regulation S Security or a beneficial interest therein to an IAI shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in Section 2.7 from the proposed transferee and, if requested by the Issuers or the Trustee, the delivery of an opinion of counsel, certification and/or other information satisfactory to each of them; and

(iii) a transfer of a Regulation S Security or a beneficial interest therein to a Non-U.S. Person shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in Section 2.8 hereof from the proposed transferee and, if requested by the Issuers or the Trustee, receipt by the Trustee or its agent of an opinion of counsel, certification and/or other information satisfactory to each of them.

After the expiration of the Restricted Period, interests in the Regulation S Security may be transferred without requiring the certification set forth in Section 2.7, Section 2.8 or any additional certification.

(c) Restricted Global Securities Legend. Upon the transfer, exchange or replacement of Securities not bearing a restricted Global Securities Legend, the Registrar shall deliver Securities that do not bear a restricted Global Securities Legend. Upon the transfer, exchange or replacement of Securities bearing a restricted Global Securities Legend, the Registrar shall deliver only Securities that bear a restricted Global Securities Legend unless there is delivered to the Registrar an Opinion of Counsel to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act.

(d) The Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 2.1 or this Section 2.6. The Issuers shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable prior written notice to the Registrar.

(e) Obligations with Respect to Transfers and Exchanges of Securities.

(i) To permit registrations of transfers and exchanges, the Issuers shall, subject to the other terms and conditions of this Article II, execute and the Trustee shall authenticate Definitive Securities and Global Securities at the Registrar's or co-registrar's request.

(ii) No service charge shall be made to a Securityholder for any registration of transfer or exchange, but the Issuers may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charges payable upon exchange or transfer pursuant to Sections 3.7, 3.9 or 9.5).

(iii) The Registrar or co-registrar shall not be required to register the transfer of or exchange of any Security for a period beginning (1) 15 days before the mailing of a notice of an offer to repurchase or redeem Securities and ending at the close of business on the day of such mailing or (2) 15 days before an interest payment date and ending on such interest payment date.

(iv) Prior to the due presentation for registration of transfer of any Security, the Issuers, the Trustee, the Paying Agent, the Registrar or any co-registrar may deem and treat the person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Issuers, the Trustee, the Paying Agent, the Registrar or any co-registrar shall be affected by notice to the contrary.

(v) Any Definitive Security delivered in exchange for an interest in a Global Security pursuant to Section 2.1(e) shall, except as otherwise provided by Section 2.6(c), bear the applicable legend regarding transfer restrictions applicable to the Definitive Security set forth in Section 2.1(d).

(vi) All Securities issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Securities surrendered upon such transfer or exchange.

(f) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in, DTC or other Person with respect to the accuracy of the records of DTC or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than DTC) of any notice (including any notice of redemption) or the payment of any amount or delivery of any Securities (or other security or property) under or with respect to such Securities. All notices and communications to be given to the Securityholders and all payments to be made to Securityholders in respect of the Securities shall be given or made only to or upon the order of the registered Securityholders (which shall be DTC or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through DTC subject to the applicable rules and procedures of DTC. The Trustee may rely and shall be fully protected in relying upon information furnished by DTC with respect to its members, participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among DTC participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

SECTION 2.7. Form of Certificate to be Delivered in Connection with Transfers to IAs.

[Date]

Star Gas Partners, L.P.
Star Gas Finance Company
c/o Union Bank of California, N.A.
[Address]
[Address]
[Address]

Ladies and Gentlemen:

This certificate is delivered to request a transfer of \$_____ principal amount of the 10¹/₄% Senior Notes due 2013 (the "Securities") of Star Gas Partners, L.P. and Star Gas Finance Company (together, the "Issuers").

Upon transfer, the Securities would be registered in the name of the new beneficial owner as follows:

Name: _____

Address: _____

Taxpayer ID Number: _____

The undersigned represents and warrants to you that:

1. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the "Securities Act")) purchasing for our own account or for the account of such an institutional "accredited investor" at least \$250,000 principal amount of the Securities, and we are acquiring the Securities not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. We have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risk of our investment in the Securities and we invest in or purchase securities similar to the Securities in the normal course of our business. We and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

2. We understand that the Securities have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing Securities to offer, sell or otherwise transfer such Securities prior to the date that is two years after the later of the date of original issue and the last date on which the Issuers or any affiliate of the Issuers was the owner of such Securities (or any predecessor thereto) (the "Resale Restriction Termination Date") only (a) to the Issuers, (b) pursuant to a registration statement which has been declared effective under the Securities Act, (c) in a transaction complying with the requirements of Rule 144A under the Securities Act, to a person we reasonably believe is a qualified institutional buyer under Rule 144A (a "QIB") that purchases for its own account or for the account of a QIB and to whom notice is given that the transfer is being made in reliance on Rule 144A, (d) pursuant to offers and sales that occur outside the United States within the meaning of Regulation S under the Securities Act, (e) to an institutional "accredited investor"

within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act that is purchasing for its own account or for the account of such an institutional “accredited investor,” in each case in a minimum principal amount of Securities of \$250,000 or (f) pursuant to any other available exemption from the registration requirements of the Securities Act, subject in each of the foregoing cases to any requirement of law that the disposition of our property or the property of such investor account or accounts be at all times within our or their control and in compliance with any applicable state securities laws. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. If any resale or other transfer of the Securities is proposed to be made pursuant to clause (e) above prior to the Resale Restriction Termination Date, the transferor shall deliver a letter from the transferee substantially in the form of this letter to the Issuers and the Trustee, which shall provide, among other things, that the transferee is an institutional “accredited investor” (within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act) and that it is acquiring such Securities for investment purposes and not for distribution in violation of the Securities Act. Each purchaser acknowledges that the Issuers and the Trustee reserve the right prior to any offer, sale or other transfer prior to the Resale Termination Date of the Securities pursuant to clauses (d), (e) or (f) above to require the delivery of an opinion of counsel, certifications and/or other information satisfactory to the Issuers and the Trustee.

TRANSFeree:

BY: _____

SECTION 2.8. Form of Certificate to be Delivered in Connection with Transfers Pursuant to Regulation S.

[Date]

Star Gas Partners, L.P.
Star Gas Finance Company
c/o Union Bank of California, N.A.
[Address]
[Address]
[Address]

Re: Star Gas Partners, L.P.
Star Gas Finance Company
10-1/4% Senior Notes due 2013 (the “Securities”)

Ladies and Gentlemen:

In connection with our proposed sale of \$_____ aggregate principal amount of the Securities, we confirm that such sale has been effected pursuant to and in accordance with

Regulation S under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, we represent that:

(a) the offer of the Securities was not made to a person in the United States;

(b) either (i) at the time the buy order was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States or (ii) the transaction was executed in, on or through the facilities of a designated off-shore securities market and neither we nor any person acting on our behalf knows that the transaction has been pre-arranged with a buyer in the United States;

(c) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable; and

(d) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act.

In addition, if the sale is made during a restricted period and the provisions of Rule 903(c)(3) or Rule 904(c)(1) of Regulation S are applicable thereto, we confirm that such sale has been made in accordance with the applicable provisions of Rule 903(c)(3) or Rule 904(c)(1), as the case may be.

You and the Issuers are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby. Terms used in this certificate have the meanings set forth in Regulation S.

Very truly yours,

[Name of Transferor]

By: _____

Authorized Signature

SECTION 2.9. Mutilated, Destroyed, Lost or Stolen Securities. If a mutilated Security is surrendered to the Registrar or if the Securityholder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Issuers shall issue and the Trustee shall authenticate a replacement Security if the requirements of Section 8-405 of the Uniform Commercial Code are met, such that the Securityholder (a) satisfies the Issuers or the Trustee within a reasonable time after such Securityholder has notice of such loss, destruction or wrongful taking and the Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the Issuers or the Trustee prior to the Security being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code (a "protected

purchaser”) and (c) satisfies any other reasonable requirements of the Trustee. If required by the Trustee or the Company, such Securityholder shall furnish an indemnity bond sufficient in the judgment of the Company and the Trustee to protect the Issuers, the Trustee, the Paying Agent, the Registrar and any co-registrar from any loss which any of them may suffer if a Security is replaced, and, in the absence of notice to the Issuers or the Trustee that such Security has been acquired by a bona fide purchaser, the Issuers shall execute and upon Issuers’ Order the Trustee shall authenticate and make available for delivery, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Issuers in their discretion may, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section, the Issuers may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) in connection therewith.

Every new Security issued pursuant to this Section in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Issuers (if applicable) and any other obligor upon the Securities, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 2.10. Outstanding Securities. Securities outstanding at any time are all Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section as not outstanding. A Security ceases to be outstanding in the event the Issuers or a Subsidiary of the Issuers holds the Security, *provided, however*, that (i) for purposes of determining which are outstanding for consent or voting purposes hereunder, the provisions of Section 10.6 shall apply and (ii) in determining whether the Trustee shall be protected in making a determination whether the Securityholders of the requisite principal amount of outstanding Securities are present at a meeting of Securityholders of Securities for quorum purposes or have consented to or voted in favor of any request, demand, authorization, direction, notice, consent, waiver, amendment or modification hereunder, or relying upon any such quorum, consent or vote, only Securities which a Trust Officer of the Trustee actually knows to be held by the Issuers or an Affiliate of the Issuers shall not be considered outstanding.

If a Security is replaced pursuant to Section 2.9, it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Security is held by a bona fide purchaser.

If the Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or maturity date money sufficient to pay all principal and interest payable on that date with respect to the Securities (or portions thereof) to be redeemed or maturing, as the case may be, and the Paying Agent is not prohibited from paying such money to the Securityholders on that date pursuant to the terms of this Indenture, then on and after that date such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.11. Temporary Securities. In the event that Definitive Securities are to be issued under the terms of this Indenture, until such Definitive Securities are ready for delivery, the Issuers may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of Definitive Securities but may have variations that the Issuers consider appropriate for temporary Securities. Without unreasonable delay, the Issuers shall prepare and the Trustee shall authenticate Definitive Securities. After the preparation of Definitive Securities, the temporary Securities shall be exchangeable for Definitive Securities upon surrender of the temporary Securities at any office or agency maintained by the Issuers for that purpose and such exchange shall be without charge to the Securityholder. Upon surrender for cancellation of any one or more temporary Securities, the Issuers shall execute, and the Trustee shall authenticate and make available for delivery in exchange therefor, one or more Definitive Securities representing an equal principal amount of Securities. Until so exchanged, the Securityholder of temporary Securities shall in all respects be entitled to the same benefits under this Indenture as a Securityholder of Definitive Securities.

SECTION 2.12. Cancellation. The Issuers at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Securities surrendered for registration of transfer, exchange, payment or cancellation and destroy such Securities in accordance with its internal policies including delivery of a certificate (a "Certificate of Destruction") describing such Securities disposed (subject to the record retention requirements of the Exchange Act). The Issuers may not issue new Securities to replace Securities it has paid or delivered to the Trustee for cancellation for any reason other than in connection with a transfer or exchange.

SECTION 2.13. Payment of Interest; Defaulted Interest. Interest on any Security which is payable, and is punctually paid or duly provided for, on any interest payment date shall be paid to the Person in whose name such Security (or one or more predecessor Securities) is registered at the close of business on the regular record date for such interest at the office or agency of the Issuers maintained for such purpose pursuant to Section 2.3.

Any interest on any Security which is payable, but is not paid when the same becomes due and payable and such nonpayment continues for a period of 30 days shall forthwith cease to be payable to the Securityholder on the regular record date by virtue of having been such Securityholder, and such defaulted interest and (to the extent lawful) interest on such defaulted interest at the rate borne by the Securities (such defaulted interest and interest thereon herein collectively called "Defaulted Interest") shall be paid by the Issuers, at its election in each case, as provided in clause (a) or (b) below:

(a) The Issuers may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective predecessor Securities) are registered at the close of business on a Special Record Date (as defined below) for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuers shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date (not less than 30 days after such notice) of the proposed payment (the "Special Interest Payment Date"), and at the same time the Issuers shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a record date (the "Special Record Date") for the payment of such Defaulted Interest, which date shall be not more than 15 days and not less than 10 days prior to the Special Interest Payment Date and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Issuers of such Special Record Date, and in the name and at the expense of the Issuers, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor to be given in the manner provided for in Section 10.2, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor having been so given, such Defaulted Interest shall be paid on the Special Interest Payment Date to the Persons in whose names the Securities (or their respective predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

(b) The Issuers may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Issuers to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of, transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

SECTION 2.14. Computation of Interest. Interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 2.15. CUSIP Numbers. The Issuers in issuing the Securities may use "CUSIP" numbers (if then generally in use) and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Securityholders; *provided, however*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such CUSIP numbers. The Issuers shall promptly notify the Trustee in writing of any change in the CUSIP numbers.

ARTICLE III

Covenants

SECTION 3.1. Payment of Securities. The Issuers shall promptly pay the principal of and interest on the Securities on the dates and in the manner provided in the Securities and in this Indenture. Principal and interest shall be considered paid on the date due to the extent on such date the Trustee or the Paying Agent holds in accordance with this Indenture immediately available funds sufficient to pay all principal and interest then due.

The Issuers shall pay interest on overdue principal at the rate specified therefor in the Securities, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

Notwithstanding anything to the contrary contained in this Indenture, the Issuers may, to the extent it is required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America from principal or interest payments hereunder.

SECTION 3.2. SEC Reports. Notwithstanding that the Issuers may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, to the extent permitted by the Exchange Act, the Company shall file with the Commission, and make available to the Trustee and the registered Securityholders of the Securities, all quarterly and annual financial information that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K, and any successor or substitute forms thereto, if the Issuers were required to file reports on such forms, including a Management's Discussion and Analysis of Financial Condition and Results of Operations, and all current reports that are required to be filed with the Commission on Form 8-K, and any successor or substitute form thereto, if the Issuers were required to file such reports on such form, and proxy statements if the Issuers were required to file proxy statements, and any other reports required to be filed pursuant to Sections 13 and 15(d) of the Exchange Act, in each case, within the time periods specified therein. In the event that the Issuers are not permitted to file such reports, documents and information with the Commission pursuant to the Exchange Act, the Issuers will nevertheless provide such Exchange Act information to the Trustee and, upon request, to the Securityholders of the Securities as if the Issuers were subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act within the time periods specified therein.

SECTION 3.3. Incurrence of Indebtedness and Issuance of Preferred Stock. The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or in any manner become directly or indirectly liable, contingently or otherwise, for the payment, in each case, to incur, any Indebtedness, unless at the time of the Incurrence and after giving pro forma effect to the receipt and application of the proceeds of the Indebtedness, the Consolidated Fixed Charge Coverage Ratio of the Company is greater than 2.00 to 1.00; provided that the foregoing restrictions will not prohibit the Incurrence by the Company and its Restricted Subsidiaries of Permitted Indebtedness.

SECTION 3.4. Limitation on Restricted Payments.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries, directly or indirectly, to (all such payments and other actions set forth in the following clauses (1) through (4) are collectively the "Restricted Payments"):

(1) declare or pay any dividend or any other distribution or payment on or with respect to Capital Stock of the Company or any of its Restricted Subsidiaries or any payment made to the direct or indirect holders, in their capacities as such, of Capital Stock of the Company or any of its Restricted Subsidiaries, other than (a) dividends or distributions payable solely in Capital Stock of the Company (including Common Stock or Senior Units, but excluding Redeemable Capital Stock), or in options, warrants or other rights to purchase Capital Stock of the Company (including Common Stock or Senior Units, but excluding Redeemable Capital Stock); (b) dividends or other distributions to the extent declared or paid to the Company or any Restricted Subsidiary of the Company; or (c) dividends or other distributions by any Restricted Subsidiary of the Company to all holders of Capital Stock of that Restricted Subsidiary on a pro rata basis;

(2) purchase, redeem, defease or otherwise acquire or retire for value any Capital Stock of the Company or any of its Restricted Subsidiaries, other than any Capital Stock owned by a Restricted Subsidiary;

(3) 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 by the Company or a Restricted Subsidiary; or

(4) make any investment, other than a Permitted Investment, in any entity,

unless, at the time of and after giving effect to the proposed Restricted Payment,

(i) no Default or Event of Default shall have occurred and be continuing, and

(ii) the Restricted Payment, together with the aggregate of all other Restricted Payments made by the Company and its Restricted Subsidiaries during the fiscal quarter during which the Restricted Payment is made, will not exceed:

(A) if the Consolidated Fixed Charge Coverage Ratio of the Company is greater than 1.75 to 1.00, an amount equal to Available Cash for the immediately preceding fiscal quarter; or

(B) if the Consolidated Fixed Charge Coverage Ratio of the Company is equal to or less than 1.75 to 1.00, an amount equal to the sum of \$ 22 million, less the aggregate amount of all Restricted Payments

made by the Company and its Restricted Subsidiaries in accordance with this clause during the period ending on the last day of the fiscal quarter of the Company immediately preceding the date of the Restricted Payment and beginning on the Issue Date plus the aggregate net cash proceeds of capital contributions to the Company from any Person other than a Restricted Subsidiary of the Company, or issuance and sale of shares of Capital Stock, other than Redeemable Capital Stock, of the Company to any entity other than to a Restricted Subsidiary of the Company, in any case made during the period ending on the last day of the fiscal quarter of the Company immediately preceding the date of the Restricted Payment and beginning on the Issue Date.

(b) The foregoing provisions of this Section 3.4 will not prohibit:

(1) the payment of any dividend or distribution within 60 days after the date of its declaration if, at the date of declaration, the payment would be permitted as summarized above;

(2) the redemption, repurchase or other acquisition or retirement of any shares of any class of Capital Stock of the Company or any Restricted Subsidiary of the Company in exchange for, or out of the net cash proceeds of, a substantially concurrent capital contribution to the Company from any entity other than a Restricted Subsidiary of the Company; or issuance and sale of other Capital Stock, other than Redeemable Capital Stock, of the Company to any entity other than to a Restricted Subsidiary of the Company; *provided, however*, that the amount of any net cash proceeds that are utilized for any redemption, repurchase or other acquisition or retirement will be excluded from the calculation of Available Cash;

(3) the repurchase of any Common Stock or the payment of any dividend or distribution under any employment agreement, stock or unit option agreement, or restricted stock agreement not to exceed \$1 million in any calendar year and not to exceed \$5 million in the aggregate amount since the Original Notes Issue Date; or

(4) any redemption, repurchase or other acquisition or retirement of subordinated Indebtedness of the Company in exchange for, or out of the net cash proceeds of, a substantially concurrent capital contribution to the Company from any entity other than a Restricted Subsidiary of the Company; or issuance and sale of Indebtedness of the Company issued to any entity other than a Restricted Subsidiary or the Company, so long as the Indebtedness is Permitted Refinancing Indebtedness; *provided, however*, that the amount of any net cash proceeds that are utilized for any redemption, repurchase or other acquisition or retirement will be excluded from the calculation of Available Cash;

provided that, in each case set forth above, in computing the amount of Restricted Payments previously made for purposes of the Restricted Payments test above, Restricted Payments made under clauses (1) and (3) above will be included and Restricted Payments made under clauses (2) and (4) above shall not be so included. The amount of all

Restricted Payments (other than cash) will be the fair market value on the date of the Restricted Payment of the assets proposed to be transferred by the Company or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

SECTION 3.5. Limitation on Liens. The Company will not, and will not permit any of its Restricted Subsidiaries to, Incur any Liens, unless the Lien is a Permitted Lien or the Notes are directly secured equally and ratably with the obligation or liability secured by such Lien.

SECTION 3.6. Limitation on Distributions from Restricted Subsidiaries. (a) The Company will not, and will not permit any of its Restricted Subsidiaries to, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Restricted Subsidiary to (all such restrictions and other actions set forth in the following clauses (1) through (5) being collectively referred to as the "Payment Restrictions"):

(1) pay dividends, in cash or otherwise, or make any other distributions on or with respect to its Capital Stock or any other interest or participation in, or measured by, its profits;

(2) pay any Indebtedness owed to the Company or any other Restricted Subsidiary;

(3) make loans or advances to, or any investment in, the Company or any other Restricted Subsidiary;

(4) transfer any of its properties or assets to the Company or any other Restricted Subsidiary; or

(5) Guarantee any Indebtedness of the Company or any other Restricted Subsidiary.

(b) The provisions of Section 3.6(a) will not apply to encumbrances or restrictions existing under or by reason of:

(1) applicable law;

(2) any agreement in effect at the Issue Date or any agreement relating to any Indebtedness permitted to be Incurred under this Indenture (including agreements or instruments evidencing Indebtedness Incurred after the Issue Date);

(3) customary non-assignment provisions of any contract or any lease governing a leasehold interest of the Company or any Restricted Subsidiary;

(4) specific purchase money obligations or Capital Leases for property subject to such obligations;

(5) any agreement of an entity (or any of its Restricted Subsidiaries) acquired by the Company or any Restricted Subsidiary, in existence at the time of the acquisition

but not created in contemplation of the acquisition, which encumbrance or restriction is not applicable to any third party other than the entity; or

(6) provisions contained in instruments relating to Indebtedness which prohibit the transfer of all or substantially all of the assets of the obligor of the Indebtedness unless the transferee shall assume the obligations of the obligor under the agreement or instrument.

SECTION 3.7. Limitation on Asset Sales. (a) The Company will not, and will not permit any of its Restricted Subsidiaries to, undertake an Asset Sale unless:

(1) the Company or its Restricted Subsidiary, as the case may be, receives consideration at the time of the Asset Sale at least equal to the fair market value, as determined in good faith by the Board of Directors, of the assets sold or otherwise disposed of; and

(2) at least 80% of the consideration received by the Company or the Restricted Subsidiary is in the form of cash.

(b) For purposes of determining the amount of cash received in an Asset Sale, the following will be deemed to be cash:

(1) the amount of any liabilities on the Company's or any Restricted Subsidiary's balance sheet that are assumed by the transferee of the assets; and

(2) the amount of any notes or other obligations received by the Company or the Restricted Subsidiary from the transferee that is converted within 180 days by the Company or the Restricted Subsidiary into cash, to the extent of the cash received.

(c) The 80% limitation set forth in Section 3.7(a)(2) will not apply to any Asset Sale in which the cash portion of the consideration received is equal to or greater than the after-tax proceeds would have been had the Asset Sale complied with such limitation.

(d) If the Company or any of its Restricted Subsidiaries receives Net Proceeds exceeding \$10 million from one or more Asset Sales in any fiscal year, then within 360 days after the date the aggregate amount of Net Proceeds exceeds \$10 million, the Company must apply the amount of such Net Proceeds, to the extent not already so applied, either (i) to reduce Indebtedness of the Company or any Restricted Subsidiary, with a permanent reduction of availability, in the case of revolving Indebtedness, or (ii) to make an investment in assets (except any assets that are classified as current assets under GAAP) or capital expenditures useful to the Company's or any of its Subsidiaries' business as in effect on the Issue Date or any Related Business. Any Net Proceeds that are not applied or invested as set forth above, will be considered "Excess Proceeds".

(e) On the 361st day after an Asset Sale, if the aggregate amount of Excess Proceeds exceeds \$10 million, the Company will be required to make an offer ("Asset Sale Offer") within ten (10) days to all Securityholders to purchase for cash that number of Notes that

may be purchased out of the Excess Proceeds at a purchase price equal to 100% of the principal amount of the Notes plus accrued and unpaid interest to the date of purchase pursuant to the procedures set forth in the terms of this Indenture and in compliance with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws, notwithstanding any provision of this Indenture to the contrary. To the extent that the aggregate amount of Notes tendered in response to any such purchase offer is less than the Excess Proceeds, the Company or any Restricted Subsidiary may use such deficiency for general business purposes, subject to other covenants contained in the Indenture. If the aggregate principal amount of the Notes surrendered by the Securityholders exceeds the amount of Excess Proceeds, the Trustee shall select the Notes to be purchased in accordance with the procedures for selection and notice of redemption set forth herein. Notwithstanding the foregoing, if the Issuers make this purchase offer at any time when the Issuers have securities outstanding ranking equally in right of payment with the Notes and the terms of those securities provide that a similar offer must be made with respect to those other securities, then the Issuers' offer to purchase the Notes will be made concurrently with the other offers, and securities of each issue will be accepted on a pro rata basis in proportion to the aggregate principal amount of securities of each issue which their holders elect to have purchased. Upon completion of the offer to the Securityholders, the amount of Excess Proceeds shall be reset at zero.

SECTION 3.8. Limitation on Affiliate Transactions. (a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or suffer to exist any transaction or series of related transactions, including the sale, transfer, disposition, purchase, exchange or lease of assets, property or services, other than as provided for in the Company's partnership agreement, with, or for the benefit of any Affiliates of the Company unless:

(1) the transaction or series of related transactions are between the Company and its Restricted Subsidiaries or between two Restricted Subsidiaries; or

(2) the transaction or series of related transactions are on terms that are no less favorable to the Company or the Restricted Subsidiary, as the case may be, than those which would have been obtained in a comparable transaction at such time from an entity that is not an Affiliate of the Company or Restricted Subsidiary, and, with respect to transaction(s) involving aggregate payments or value equal to or greater than \$5 million, the Company shall have delivered an Officers' Certificate to the Trustee certifying that the transaction(s) is on terms that are no less favorable to the Company or the Restricted Subsidiary than those which would have been obtained from an entity that is not an Affiliate of the Company or Restricted Subsidiary and has been approved by a majority of the Board of Directors, including a majority of the disinterested directors.

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of Section 3.8(a) or otherwise be restricted by this Indenture or the Notes:

(1) any employment agreement, stock option agreement, restricted stock agreement, employee stock ownership plan related agreements, or similar agreement and arrangements, or synthetic leases, in the ordinary course of business;

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- (2) transactions permitted by Section 4.07 hereof;
 - (3) transactions in the ordinary course of business in connection with reinsuring the self-insurance programs or other similar forms of retained insurance risks of the retail propane business operated by the Company, its Subsidiaries and Affiliates;
 - (4) any affiliate trading transactions done in the ordinary course of business; and
 - (5) any transaction that is a Flow-Through Acquisition.

SECTION 3.9. Offer to Repurchase Upon Change of Control.

(a) Upon the occurrence of a Change of Control, the Issuers will make an offer (a "Change of Control Offer") to each Securityholder to repurchase, in cash, all or any part (equal to \$1,000 or an integral multiple of \$1,000) of that Securityholder at a purchase price equal to 101% of the aggregate principal amount of the Notes or portion of Notes validly tendered for payment thereof plus accrued and unpaid interest on the Notes repurchased, if any, to the date of purchase (the "Change of Control Payment"). Within 30 days following any Change of Control, the Issuers will mail a notice to each Securityholder describing the transaction or transactions that constitute the Change of Control and stating:

- (1) that the Change of Control Offer is being made pursuant to this Section 3.9 and that all Notes tendered will be accepted for payment;
- (2) the purchase price and the purchase date, which shall be no later than 30 Business Days from the date such notice is mailed (the "Change of Control Payment Date");
- (3) that any Note not tendered will continue to accrue interest;
- (4) that, unless the Issuers default in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest after the Change of Control Payment Date;
- (5) that Securityholders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes, with the form entitled "Option of Securityholder to Elect Purchase" on the reverse of the Notes completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;
- (6) that Securityholders will be entitled to withdraw any election to have their Notes purchased if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Securityholder, the principal amount of Notes delivered for purchase, and a statement that such Securityholder is withdrawing his election to have the Notes purchased; and

(7) that Securityholders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to \$1,000 in principal amount or an integral multiple thereof.

The Issuers will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change in Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuers will comply with the applicable securities laws and regulations and will not be deemed to have breached their obligations under the applicable provisions of this Indenture by virtue of such conflict.

(b) On the Change of Control Payment Date, the Issuers will, to the extent lawful:

(1) accept for payment all Notes or portions thereof properly tendered in accordance with the Change of Control Offer;

(2) deposit an amount equal to the Change of Control Payment for the Notes with the Paying Agent in respect of all Notes or portion of Notes properly tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being tendered to the Issuers.

The Paying Agent will promptly mail to each Securityholder properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each Securityholder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; provided that each new Note will be in a principal amount of \$1,000 or an integral multiple thereof. The Issuers will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

If the Change of Control Payment Date is on or after an interest record date, and on or before the related interest payment date, any accrued and unpaid interest, if any, will be paid to the Person in whose a Security is registered at the close business on such record date, and no additional interest will be payable to Securityholders who tender pursuant to the Change of Control Offer.

Prior to mailing a Change of Control Offer, and as a condition to such mailing, (i) the requisite holders of each issue of Indebtedness issued under an indenture or other agreement that may be violated by such payment shall have consented to such Change of Control Offer being made and waived the event of default, if any, caused by the Change of Control or (ii) the Company will repay all outstanding Indebtedness issued under an indenture or other agreement that may be violated by a payment to the Securityholders under a Change of Control Offer or the Company must offer to repay all Indebtedness and make payment to the holders of such

Indebtedness that accepts such offer and obtain waivers of any event of default from the remaining holders of such Indebtedness. The Issuers covenant to effect such repayment or obtain such consent and waiver within 30 days following Change of Control.

(c) Notwithstanding anything to the contrary in this Section 3.9, the Issuers will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 3.9 and Section 3.7 hereof and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer.

SECTION 3.10. Limitation on Sale and Leaseback Transactions. The Company will not, and will not permit any of its Restricted Subsidiaries to, enter into any Sale and Leaseback Transaction with respect to their properties unless the Company or the Restricted Subsidiary would be permitted under this Indenture to Incur Indebtedness secured by a Lien on the property in an amount equal to the Attributable Debt with respect to the Sale and Leaseback Transaction.

SECTION 3.11. Limitation on Lines of Business. The Company will not, and will not permit any Restricted Subsidiary to, engage in any business other than a Related Business.

SECTION 3.12. Limitation on Co-Issuer. In addition to the other restrictions set forth in this Indenture, the Co-Issuer will not Incur any Indebtedness unless:

- (a) the Company is a co-obligor or guarantor of the Indebtedness; or
- (b) the net proceeds of the Indebtedness are either lent to the Company, used to acquire outstanding debt securities issued by the Company, or used, directly or indirectly, to refinance or discharge Indebtedness permitted under the limitation of this Section 3.12.

Co-Issuer will not engage in any business not related, directly or indirectly, to obtaining money or arranging financing for the Company.

SECTION 3.13. Maintenance of Office or Agency. The Issuers will maintain an office or agency where the Securities may be presented or surrendered for payment, where, if applicable, the Securities may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Issuers in respect of the Securities and this Indenture may be served. The principal corporate trust office of the Trustee, or if the Trustee's principal corporate trust office is not located in The City of New York, any other office or agency maintained by the Trustee in The City of New York (the "Corporate Trust Office"), shall be such office or agency of the Issuers, unless the Issuers shall designate and maintain some other office or agency for one or more of such purposes. The Issuers will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Issuers shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Issuers hereby appoint the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Issuers may also from time to time designate one or more other offices or agencies (in or outside of The City of New York) where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind any such designation. The Issuers will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency.

SECTION 3.14. Partnership and Corporate Existence. Subject to Article IV, the Company and the Co-Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its partnership or corporate existence and that of the Co-Issuer and each Restricted Subsidiary and the partnership or corporate rights (charter and statutory) licenses and franchises of the Company and each Restricted Subsidiary; *provided, however*, that the Company shall not be required to preserve any such existence (except the Company and the Co-Issuer), right, license or franchise if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and each of its Restricted Subsidiaries, taken as a whole, and that the loss thereof would not have a material adverse effect on the ability of the Company to perform its obligations under the Securities or this Indenture, provided, further, the Company may merge in accordance with Section 4.1.

SECTION 3.15. Payment of Taxes and Other Claims. The Issuers will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary and (ii) all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a material liability or Lien upon the property of the Company or any Restricted Subsidiary, except for any Lien permitted to be Incurred pursuant to the definition of "Permitted Liens"; *provided, however*, that the Issuers shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which appropriate reserves, if necessary (in the good faith judgment of management of the Company), are being maintained in accordance with GAAP or where the failure to pay or discharge the same would not have a material adverse effect on the ability of the Issuers to perform their obligations under the Securities or this Indenture.

SECTION 3.16. Payments for Consent. Neither the Company, the Co-Issuer, nor any of the Company's Restricted Subsidiaries will, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fees or otherwise, to any holder of any Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to be paid or is paid to all holders of the Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or amendment.

SECTION 3.17. Compliance Certificate. The Issuers shall deliver to the Trustee within 120 days after the end of each Fiscal Year of each of the Issuers an Officers' Certificate stating that in the course of the performance by the signers of their duties as Officers of the Company they would normally have knowledge of any Default or Event of Default and whether or not the signers know of any Default or Event of Default that occurred during such

period. If they do, the certificate shall describe the Default or Event of Default, its status and what action the Company is taking or proposes to take with respect thereto. The Company also shall comply with TIA § 314(a)(4).

SECTION 3.18. Further Instruments and Acts. Upon the reasonable request of the Trustee, the Issuers will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 3.19. Statement by Officers as to Default. The Issuers shall deliver to the Trustee, as soon as possible and in any event within fifteen days after the Issuers become aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default, Officers' Certificates setting forth the details of such Event of Default or default and the action which the Issuers propose to take with respect thereto.

SECTION 3.20. Stay, Extension and Usury Laws. The Issuers covenant (to the extent they may lawfully do so) that they will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, nor or any time hereafter in force, that may affect the covenant or performance of this Indenture; and the Issuers (to the extent they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that they will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE IV

Successor Company

SECTION 4.1. Merger, Consolidation or Sale of Assets. The Company may not consolidate or merge with or into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, another entity unless:

- (1) the Company is the surviving entity or the entity formed by or surviving the transaction, if other than the Company, or the entity to which the sale was made is a corporation or partnership organized or existing under the laws of the United States, any state thereof or the District of Columbia;
- (2) the entity formed by or surviving the transaction, if other than the Company, or the entity to which the sale was made assumes all the obligations of the Company in accordance with a supplemental indenture in a form reasonably satisfactory to the Trustee, under the Notes and this Indenture;
- (3) immediately after the transaction no Default or Event of Default exists; and

(4) at the time of the transaction and after giving pro forma effect to it as if the transaction had occurred at the beginning of the applicable four-quarter period, the Company or such other entity or survivor is permitted to incur at least \$1.00 of additional indebtedness in accordance with the Consolidated Fixed Charge Coverage Ratio as described in Section 3.3.

The Co-Issuer may not consolidate or merge with or into, whether or not it is the surviving entity, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, another entity except under conditions described in the paragraph above.

ARTICLE V

Redemption of Securities

SECTION 5.1. Optional Redemption. The Securities may be redeemed, as a whole or from time to time in part, subject to the conditions and at the redemption prices specified in the form of Securities set forth in Exhibits A and B hereto, which are hereby incorporated by reference and made a part of this Indenture, together with accrued and unpaid interest to the Redemption Date.

SECTION 5.2. Applicability of Article. Redemption of Securities at the election of the Issuers or otherwise, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article.

SECTION 5.3. Election to Redeem; Notice to Trustee. The election of the Issuers to redeem any Securities pursuant to Section 5.1 shall be evidenced by a Board Resolution. In case of any redemption at the election of the Issuers, the Issuers shall, upon not later than the earlier of the date that is 45 days prior to the Redemption Date fixed by the Issuers or the date on which notice is given to the Securityholders (except as provided in Section 5.5 or unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities to be redeemed and shall deliver to the Trustee such documentation and records as shall enable the Trustee to select the Securities to be redeemed pursuant to Section 5.4.

SECTION 5.4. Selection by Trustee of Securities to Be Redeemed. If less than all the Securities are to be redeemed at any time pursuant to an optional redemption, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the outstanding Securities not previously called for redemption, in compliance with the requirements of the principal securities exchange, if any, on which such Securities are listed, or, if such Securities are not so listed, on a pro rata basis, by lot or by such other method as the Trustee shall deem fair and appropriate (and in such manner as complies with applicable legal requirements) and which may provide for the selection for redemption of portions of the principal of the Securities; *provided, however*, that no such partial redemption shall reduce the portion of the principal amount of a Security not redeemed to less than \$1,000.

The Trustee shall promptly notify the Issuers in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed.

SECTION 5.5. Notice of Redemption. Notice of redemption shall be given in the manner provided for in Section 10.2 not less than 30 nor more than 60 days prior to the Redemption Date, to each Securityholder of Securities to be redeemed. The Trustee shall give notice of redemption in the Issuers' names and at the Issuers' expense; *provided, however*, that the Issuers shall deliver to the Trustee, at least 45 days prior to the Redemption Date, an Officers' Certificate requesting that the Trustee give such notice at the Issuers' expense and setting forth the information to be stated in such notice as provided in the following items.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the redemption price and the amount of accrued interest to the Redemption Date payable as provided in Section 5.7, if any,
- (3) if less than all outstanding Securities are to be redeemed, the identification of the particular Securities (or portion thereof) to be redeemed, as well as the aggregate principal amount of Securities to be redeemed and the aggregate principal amount of Securities to be outstanding after such partial redemption,
- (4) in case any Security is to be redeemed in part only, the notice which relates to such Security shall state that on and after the Redemption Date, upon surrender of such Security, the Securityholder will receive, without charge, a new Security or Securities of authorized denominations for the principal amount thereof remaining unredeemed,
- (5) that on the Redemption Date the redemption price (and accrued interest, if any, to the Redemption Date payable as provided in Section 5.7) will become due and payable upon each such Security, or the portion thereof, to be redeemed, and, unless the Issuers default in making the redemption payment, that interest on Securities called for redemption (or the portion thereof) will cease to accrue on and after said date,
- (6) the place or places where such Securities are to be surrendered for payment of the redemption price and accrued interest, if any,
- (7) the name and address of the Paying Agent,

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- (8) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price,
 - (9) the CUSIP number, and that no representation is made as to the accuracy or correctness of the CUSIP number, if any, listed in such notice or printed on the Securities, and
 - (10) the paragraph of the Securities pursuant to which the Securities are to be redeemed.

SECTION 5.6. Deposit of Redemption Price. Prior to any Redemption Date, the Issuers shall deposit with the Trustee or with a Paying Agent (or, if either of the Issuers is acting as its own Paying Agent, segregate and hold in trust as provided in Section 2.4) an amount of money sufficient to pay the redemption price of, and accrued interest on, all the Securities which are to be redeemed on that date.

SECTION 5.7. Securities Payable on Redemption Date. Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the redemption price therein specified (together with accrued interest, if any, to the Redemption Date), and from and after such date (unless the Issuers shall default in the payment of the redemption price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Issuers at the redemption price, together with accrued interest, if any, to the Redemption Date (subject to the rights of Securityholders of record on the relevant record date to receive interest due on the relevant interest payment date).

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate borne by the Securities.

SECTION 5.8. Securities Redeemed in Part. Any Security which is to be redeemed only in part (pursuant to the provisions of this Article) shall be surrendered at the office or agency of the Issuers maintained for such purpose pursuant to Section 3.13 (with, if the Issuers or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuers and the Trustee duly executed by, the Securityholder thereof or such Securityholder's attorney duly authorized in writing), and the Issuers shall execute, and the Trustee shall authenticate and make available for delivery to the Securityholder of such Security at the expense of the Issuers, a new Security or Securities, of any authorized denomination as requested by such Securityholder, in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered, provided, that each such new Security will be in a principal amount of \$1,000 or integral multiple thereof.

ARTICLE VI

Defaults and Remedies

SECTION 6.1. Events of Default. Each of the following is an Event of Default:

- (1) default in any payment of interest or additional interest on any Note when due, continued for 30 days;
- (2) default in the payment of principal of or premium, if any, on any Note when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;
- (3) failure by the Company to comply with its obligations under Article IV;
- (4) default in the performance of any of the obligations described under Section 3.9 or Section 3.7 above or under the covenants described under Article III above and such default shall have continued for a period of 30 days after the Issuers shall have been given notice (in each case, other than a failure to purchase Notes which will constitute an Event of Default under clause (2) above and other than a failure to comply with Section 4.1 which is covered by clause (3));
- (5) default in the performance of any of the other agreements contained in this Indenture and such default shall have continued for a period of 60 days after the Issuers shall have been given notice;
- (6) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is Guaranteed by the Company or any of its Restricted Subsidiaries), other than Indebtedness owed to the Company or a Restricted Subsidiary, whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, which default:
 - (A) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the applicable grace period provided (“payment default”) which payment default has not been waived; or
 - (B) results in the acceleration of such Indebtedness prior to its maturity (the “cross acceleration provision”);and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates \$5 million or more;

(7) the Company, the Co-Issuer or any Restricted Subsidiary (pursuant to or within the meaning of any Bankruptcy Law):

- (A) commences a voluntary insolvency proceeding;
- (B) consents to the entry of an order for relief against it in an involuntary insolvency proceeding;
- (C) consents to the appointment of a custodian of it or for any substantial part of its property; or
- (D) makes a general assignment for the benefit of its creditors;

or takes any comparable action under any foreign laws relating to insolvency; *provided* however, that the liquidation of any Restricted Subsidiary into another Restricted Subsidiary or the Company other than as part of a credit reorganization, shall not constitute an Event of Default under this clause (7);

(8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (A) is for relief against the Company, the Co-Issuer or any restricted Subsidiary in an involuntary insolvency proceeding;
- (B) appoints a Custodian of the Company, the Co-Issuer or any Restricted Subsidiary or for any substantial part of its property; or
- (C) orders the winding up or liquidation of the Company, the Co-Issuer or any Restricted Subsidiary; or
- (D) grants any similar relief under any foreign laws;

and in each case the order or decree remains unstayed and in effect for 60 days; or

(9) failure by the Company or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of \$5 million (net of any amounts that a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged or stayed for a period of 60 days (the “judgment default provision”).

However, a default under clauses (4) and (5) of this paragraph will not constitute an Event of Default until the Trustee or the holders of 25% in principal amount of the outstanding Notes notify the Company of the default and the Company does not cure such

default within the time specified in clauses (4) and (5) of this paragraph after receipt of such notice.

SECTION 6.2. Acceleration. If an Event of Default (other than an Event of Default described in clause (7) above) occurs and is continuing, the Trustee by notice to the Company, or the holders of at least 25% in principal amount of the outstanding Notes by notice to the Company and the Trustee, may, and the Trustee at the request of such holders shall, declare the principal of, premium, if any, and accrued and unpaid interest, if any, on all the Notes to be due and payable. Upon such a declaration, such principal, premium and accrued and unpaid interest will be due and payable immediately. In the event of a declaration of acceleration of the Notes because an Event of Default described in clause (6) under "Events of Default" has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the event of default or payment default triggering such Event of Default pursuant to clause (6) shall be remedied or cured by the Company or a Restricted Subsidiary of the Company or waived by the holders of the relevant Indebtedness within 20 days after the declaration of acceleration with respect thereto and if (1) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium or interest on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived. If an Event of Default described in clause (7) above occurs and is continuing, the principal of, premium, if any, and accrued and unpaid interest on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any holders. The holders of a majority in principal amount of the outstanding Notes may waive all past defaults (except with respect to nonpayment of principal, premium or interest) and rescind any such acceleration with respect to the Notes and its consequences if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, other than the nonpayment of the principal of, premium, if any, and interest on the Notes that have become due solely by such declaration of acceleration, have been cured or waived.

SECTION 6.3. Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of (or premium, if any) or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

SECTION 6.4. Waiver of Past Defaults. The Securityholders of a majority in principal amount of the outstanding Securities by notice to the Trustee may (a) waive, by their consent (including, without limitation consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities), an existing Default or Event of Default and its consequences except (i) a Default or Event of Default in the payment of the principal of, or

premium, if any, or interest on a Security or (ii) a Default or Event of Default in respect of a provision that under Section 9.2 cannot be amended without the consent of each Securityholder affected and (b) rescind any such acceleration with respect to the Securities and its consequences if such rescission would not conflict with any judgment or decree of a court of competent jurisdiction. When a Default or Event of Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any consequent right.

SECTION 6.5. Control by Majority. The Securityholders of a majority in principal amount of the outstanding Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Sections 7.1 and 7.2, that the Trustee determines is unduly prejudicial to the rights of other Securityholders or would involve the Trustee in personal liability; *provided, however*, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

SECTION 6.6. Limitation on Suits. Subject to Section 6.7, a Securityholder may not pursue any remedy with respect to this Indenture or the Securities unless:

- (1) such Securityholder has previously given to the Trustee written notice stating that an Event of Default is continuing;
- (2) Securityholders of at least 25% in principal amount of the outstanding Securities have requested in writing that the Trustee pursue the remedy;
- (3) such Securityholders have offered to the Trustee reasonable security or indemnity against any loss, liability or expense;
- (4) the Trustee has not complied with such request within 60 days after receipt of the request and the offer of security or indemnity; and
- (5) the Securityholders of a majority in principal amount of the outstanding Securities have not given the Trustee a direction that, in the opinion of the Trustee, is inconsistent with such request within such 60-day period.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder or to obtain a preference or priority over another Securityholder.

SECTION 6.7. Rights of Securityholders to Receive Payment. Notwithstanding any other provision of this Indenture (including, without limitation, Section 6.6), the right of any Securityholder to receive payment of principal of, premium (if any) or interest on the Securities held by such Securityholder, on or after the respective due dates expressed in the Securities, or to bring suit for the enforcement of any such payment on or after

such respective dates, shall not be impaired or affected without the consent of such Securityholder.

SECTION 6.8. Collection Suit by Trustee. If an Event of Default specified in clauses (1) or (2) of Section 6.1 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts *provided* for in Section 7.7.

SECTION 6.9. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Securityholders allowed in any judicial proceedings relative to the Issuers, the Company's Subsidiaries or its or their respective creditors or properties and, unless prohibited by law or applicable regulations, may vote on behalf of the Securityholders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Securityholder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.7.

SECTION 6.10. Priorities. If the Trustee collects any money or property pursuant to this Article VI, it shall pay out the money or property in the following order:

FIRST: to the Trustee for amounts due under Section 7.7;

SECOND: to Securityholders for amounts due and unpaid on the Securities for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and interest, respectively; and

THIRD: to the Issuers.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section. At least 15 days before such record date, the Issuers shall mail to each Securityholder and the Trustee a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by the Issuers, a suit by a Securityholder pursuant to Section 6.7 or a suit by Securityholders of more than 10% in outstanding principal amount of the Securities.

SECTION 6.12. Additional Payments. In the case of any Event of Default occurring by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Issuers with the intention of avoiding payment of the premium that the Issuers would have had to pay if the Issuers then had elected to redeem the Notes pursuant to the optional redemption provisions of this Indenture or was required to repurchase the Notes, an equivalent premium shall also become and be immediately due and payable to the extent permitted by law upon the acceleration of the Notes. If an Event of Default occurs prior to February 15, 2008 by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Issuers with the intention of avoiding the prohibition on redemption of the Notes prior to February 15, 2008, the premium specified in this Indenture shall also become immediately due and payable to the extent permitted by law upon the acceleration of the Notes.

ARTICLE VII

Trustee

SECTION 7.1. Duties of Trustee. (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs; provided that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise the rights or powers under this Indenture at the request or direction of any of the Securityholders unless such Securityholders have offered to the Trustee reasonable indemnity or security against loss, liability or expense.

(b) Except during the continuance of an Event of Default:

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, opinions or orders furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine such certificates and opinions to determine whether or not they conform on their face to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.5.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuers.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(h) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section and to the provisions of the TIA.

(i) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from each Issuer shall be sufficient if signed by an Officer of such Issuer.

(j) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Securityholders unless such Securityholders shall have offered to the Trustee reasonable security or indemnity satisfactory to it against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction.

(k) The Trustee shall not be deemed to have knowledge of any Default or Event of Default unless and until an officer at the Trustee's corporate trust office responsible for the administration of its duties hereunder shall have actual knowledge thereof or the Trustee shall have received written notice thereof at such office.

SECTION 7.2. Rights of Trustee. Subject to Section 7.1:

(a) The Trustee may conclusively rely on any document (whether in its original or facsimile form) reasonably believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate and/or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on an Officers' Certificate or Opinion of Counsel.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers, unless the Trustee's conduct constitutes willful misconduct or negligence.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Securities shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

SECTION 7.3. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with respect to such Securities with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11.

SECTION 7.4. Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Issuers' use of the proceeds from the Securities, and it shall not be responsible for any statement of the Issuers in this Indenture or in any document issued in connection with the sale of the Securities or in the Securities other than the Trustee's certificate of authentication.

SECTION 7.5. Notice of Defaults. If a Default or Event of Default occurs and is continuing and if a Trust Officer has actual knowledge thereof, the Trustee shall mail to each Securityholder notice of the Default or Event of Default within the earlier of 90 days after it occurs or 30 days after the Trustee has knowledge of such default. Except in the case of a Default or Event of Default in payment of principal of, premium (if any), or interest on any Security (including payments pursuant to the optional redemption or required repurchase provisions of such Security, if any), the Trustee may withhold the notice if and so long a committee of its Trust Officers in good faith determines that withholding the notice is in the interests of Securityholders.

SECTION 7.6. Reports by Trustee to Securityholders. If required, as promptly as practicable after each May 15 beginning with the May 15, following the date of this Indenture, and in any event prior to July 15 in each year, the Trustee shall mail to each Securityholder a brief report dated as of such May 15 that complies with TIA § 313(a). The Trustee also shall comply with TIA § 313(b). The Trustee shall also transmit by mail all reports required by TIA § 313(c).

A copy of each report at the time of its mailing to Securityholders shall be filed with the SEC and each stock exchange (if any) on which the Securities are listed. The Company agrees to notify promptly the Trustee whenever the Securities become listed on any stock exchange and of any delisting thereof.

SECTION 7.7. Compensation and Indemnity. The Issuers shall pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder as the Issuers and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuers shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, costs of preparing and reviewing reports, certificates and other documents, costs of preparation and mailing of notices to Securityholders, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Issuers shall indemnify the Trustee against any and all loss, liability, damages, claims or expense (including reasonable attorneys' fees and expenses) incurred by it without negligence or willful misconduct on its part in connection with the administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture (including this Section 7.7) and of defending itself against any claims (whether asserted by any Securityholder, the Issuers or otherwise). The Trustee shall notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuers shall not relieve the Issuers of their obligations hereunder. The Issuers shall defend the claim and the Trustee shall provide reasonable cooperation at the Issuers' expense in the defense. The Trustee may have separate counsel and the Issuers shall pay the fees and expenses of such counsel provided that the Issuers shall not be required to pay such fees and expenses if it assumes the Trustee's defense, and, in the reasonable judgment of outside counsel to the Trustee, there is no conflict of interest between the Issuers and the Trustee in connection with such defense. The Issuers shall not be under any obligation to pay for any written settlement without its consent, which consent shall not be unreasonably delayed, conditioned or withheld. The Issuers need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct or negligence.

To secure the Issuers' payment obligations in this Section, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Securities.

The Issuers' payment obligations pursuant to this Section shall survive the discharge of this Indenture. When the Trustee incurs expenses after the occurrence of a Default specified in clause (7) of Section 6.1 with respect to the Company, the expenses are intended to constitute expenses of administration under any Bankruptcy Law.

SECTION 7.8. Replacement of Trustee. The Trustee may resign at any time by so notifying the Issuers. The Securityholders of a majority in principal amount of the Securities may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee. The Issuers shall remove the Trustee if:

- (1) the Trustee fails to comply with Section 7.10;

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- (2) the Trustee is adjudged bankrupt or insolvent;
 - (3) a receiver or other public officer takes charge of the Trustee or its property; or
 - (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed by the Issuers or by the Securityholders of a majority in principal amount of the Securities and such Securityholders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of the Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuers shall promptly appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Securityholders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.7.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Securityholders of at least 10% in principal amount of the Securities may petition, at the Issuers' expense, any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.10, unless the Trustee's duty to resign is stayed as provided in Section 310(b) of the TIA, any Securityholder who has been a bona fide Securityholder of a Security for at least six months may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section, the Company's obligations under Section 7.7 shall continue for the benefit of the retiring Trustee.

SECTION 7.9. Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture, any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

SECTION 7.10. Eligibility; Disqualification. The Trustee shall at all times satisfy the requirements of TIA § 310(a). The Trustee shall have a combined capital and surplus of at least \$100 million as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA § 310(b); *provided, however*, that there shall be excluded from the operation of TIA § 310(b)(1) any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Issuers are outstanding if the requirements for such exclusion set forth in TIA § 310(b)(1) are met. This Indenture will always have a Trustee that satisfies the requirements of TIA § 310(a)(1), (2) and (5).

SECTION 7.11. Preferential Collection of Claims Against Company. The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

ARTICLE VIII

Discharge of Indenture; Defeasance

SECTION 8.1. Discharge of Liability on Securities; Defeasance. (a) Subject to Section 8.1(c), when (i)(x) the Issuers deliver to the Trustee all outstanding Securities (other than Securities replaced pursuant to Section 2.9) for cancellation or (y) all outstanding Securities not theretofore delivered for cancellation have become due and payable, whether at maturity or upon redemption or will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption pursuant to Article V hereof and the Issuers irrevocably deposit or cause to be deposited with the Trustee as trust funds in trust solely for the benefit of the Securityholders money in U.S. dollars, non-callable U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption; (ii) no Default or Event of Default shall have occurred and be continuing on the date of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which each of the Issuers is a party or by which each of the Issuers is bound; (iii) the Issuers have paid or caused to be paid all sums payable under this Indenture and the Securities; and (iv) the Issuers have delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of such Securities at maturity or the Redemption Date, as the case may be, then the Trustee shall acknowledge satisfaction and discharge of this Indenture on demand of the Issuers (accompanied by an Officers' Certificate and an Opinion of Counsel stating that all conditions precedent specified herein relating to the satisfaction and discharge of this Indenture have been complied with) and at the cost and expense of the Issuers.

(b) Subject to Sections 8.1(c) and 8.2, the Issuers at any time may terminate (i) all its obligations under the Securities and this Indenture ("legal defeasance option"), and after giving effect to such legal defeasance, any omission to comply with such obligations shall no longer constitute a Default or Event of Default or (ii) its obligations under Sections 3.2, 3.3, 3.4.

3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.15, 3.17 and 4.1 and the Issuers may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply with such covenants shall no longer constitute a Default or an Event of Default under Section 6.1(3), 6.1(4) and 6.1(5) and the operation of Sections 6.1(6), 6.1(7), 6.1(8) (but only with respect to a Significant Subsidiary or group of Restricted Subsidiaries that would constitute a Significant Subsidiary), or 6.1(9), and the events specified in such Sections shall no longer constitute an Event of Default (clause (ii) being referred to as the “covenant defeasance option”), but except as specified above, the remainder of this Indenture and the Securities shall be unaffected thereby. The Issuers may exercise their legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If the Issuers exercise their legal defeasance option, payment of the Securities may not be accelerated because of an Event of Default. If the Issuers exercise their covenant defeasance option, payment of the Securities may not be accelerated because of an Event of Default specified in Section 6.1(3), 6.1(4) (as such Section relates to Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11 and 3.16), 6.1(5), 6.1(6), 6.1(7), 6.1(8) (but only with respect to a Significant Subsidiary or group of Restricted Subsidiaries that would constitute a Significant Subsidiary), 6.1(9) or because of the failure of the Issuers to comply with Section 4.1.

Upon satisfaction of the conditions set forth herein and upon request of the Issuers, the Trustee shall acknowledge in writing the discharge of those obligations that the Issuers terminate.

(c) Notwithstanding the provisions of Sections 8.1(a) and (b), the Issuers’ obligations in Sections 2.2, 2.3, 2.4, 2.5, 2.6, 2.9, 2.10, 2.11, 3.1, 3.13, 3.13, 3.14, 3.15, 3.17, 3.18, 3.19, 6.7, 7.7, 7.8 and in this Article 8 shall survive until the Securities have been paid in full. Thereafter, the Issuers’ obligations in Sections 7.7, 8.4 and 8.5 shall survive.

SECTION 8.2. Conditions to Defeasance. The Issuers may exercise their legal defeasance option or their covenant defeasance option only if:

(1) the Issuers irrevocably deposit in trust with the Trustee for the benefit of the Securityholders money in U.S. dollars or U.S. Government Obligations or a combination thereof for the payment of principal, premium, if any, and interest on the Securities to maturity or redemption, as the case may be;

(2) the Issuers deliver to the Trustee a certificate from a nationally recognized firm of independent accountants expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal and interest when due on all the Securities to maturity;

(3) no Default or Event of Default shall have occurred and be continuing on the date of such deposit or, with respect to certain bankruptcy or insolvency Events of Default, on the 91st day after such date of deposit;

(4) such legal defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a Default under, this Indenture or any other material agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;

(5) the Issuers shall have delivered to the Trustee an Opinion of Counsel (subject to customary assumptions and exclusions) to the effect that (A) the Securities and (B) assuming no intervening bankruptcy of the Issuers between the date of deposit and the 91st day following the deposit and that no Securityholder of the Securities is an insider of the Issuers, after the 91st day following the deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' right generally;

(6) the Issuers deliver to the Trustee an Opinion of Counsel (subject to customary assumptions and exclusions) to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(7) in the case of the legal defeasance option, the Issuers shall have delivered to the Trustee an Opinion of Counsel (subject to customary assumptions and exclusions) in the United States stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of this Indenture there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Securityholders will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such legal defeasance had not occurred;

(8) in the case of the covenant defeasance option, the Issuers shall have delivered to the Trustee an Opinion of Counsel (subject to customary assumptions and exclusions) in the United States to the effect that the Securityholders will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and covenant defeasance and will be subject to federal income tax on the same amount, in the same manner and at the same times as would have been the case if such deposit and covenant defeasance had not occurred; and

(9) the Issuers deliver to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities and this Indenture as contemplated by this Article VIII have been complied with.

SECTION 8.3. Application of Trust Money. The Trustee shall hold in trust money or U.S. Government Obligations deposited with it pursuant to this Article VIII. It shall apply the deposited money and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Securities.

SECTION 8.4. Repayment to Company. The Trustee and the Paying Agent shall promptly turn over to the Issuers upon request any excess money, U.S. Government Obligations or securities held by them upon payment of all the obligations under this Indenture.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Issuers upon request any money held by them for the payment of principal of or interest on the Securities that remains unclaimed for two years, and, thereafter, Securityholders entitled to the money must look to the Issuers for payment as general creditors.

SECTION 8.5. Indemnity for U.S. Government Obligations. The Issuers shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 8.6. Reinstatement. If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article VIII by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Issuers under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article VIII until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article VIII; *provided, however*, that, if the Issuers have made any payment of interest on or principal of any Securities because of the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Securityholders of such Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE IX

Amendments

SECTION 9.1. Without Consent of Securityholders. The Issuers and the Trustee may amend this Indenture or the Securities without notice to or consent of any Securityholder:

- (1) cure any ambiguity, omission, defect or inconsistency;
- (2) provide for the assumption by a successor corporation, partnership, trust or limited liability company of the obligations of the Issuers under this Indenture;
- (3) provide for uncertificated Notes in addition to or in place of certificated Notes (*provided* that the uncertificated Notes are issued in registered form for purposes of

Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code);

(4) add Guarantees with respect to the Notes;

(5) secure the Notes;

(6) add to the covenants of the Issuers for the benefit of the holders or surrender any right or power conferred upon the Issuers;

(7) make any change that does not adversely affect the rights of any holder;

(8) comply with any requirement of the SEC in connection with the qualification of this Indenture under the Trust Indenture Act; or

(9) provide for the issuance of exchange securities which shall have terms substantially identical in all respects to the Notes (except that the transfer restrictions contained in the Notes shall be modified or eliminated as appropriate) and which shall be treated, together with any outstanding Notes, as a single class of securities.

After an amendment under this Section becomes effective, the Issuers shall mail to Securityholders a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

SECTION 9.2. With Consent of Securityholders. The Issuers may amend this Indenture or the Securities without notice to any Securityholder but with the written consent of the Securityholders of at least a majority in principal amount of the Securities then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities). However, without the consent of each Securityholder affected, an amendment may not:

(1) reduce the principal amount of Securities whose Securityholders must consent to an amendment;

(2) reduce the rate of or extend the time for payment of interest on any Security;

(3) reduce the principal of or extend the Stated Maturity of any Security;

(4) reduce the premium payable upon the redemption or repurchase of any Security or change the time at which any Security may or shall be redeemed or repurchased as described under Section 3.7, Section 3.9 and Article V;

(5) make any Security payable in currency other than that stated in the Security;

(6) impair the right of any Securityholder to receive payment of principal of, premium, if any, and interest on such Securityholder's Securities on or after the due dates therefor (other than a repurchase required under Section 3.7 or Section 3.9) or to institute suit for the enforcement of any payment on or with respect to such Securityholder's Securities; or

(7) make any change to the amendment provisions which require each Securityholder's consent or to the waiver provisions.

It shall not be necessary for the consent of the Securityholders under this Section to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof. A consent to any amendment or waiver under this Indenture by any Securityholder of the Securities given in connection with a tender of such Securityholder's Securities will not be rendered invalid by such tender.

After an amendment under this Section becomes effective, the Issuers shall mail to Securityholders a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

SECTION 9.3. Compliance with Trust Indenture Act. Every amendment to this Indenture or the Securities shall comply with the TIA as then in effect.

SECTION 9.4. Revocation and Effect of Consents and Waivers. A consent to an amendment or a waiver by a Securityholder of a Security shall bind the Securityholder and every subsequent Securityholder of that Security or portion of the Security that evidences the same debt as the consenting Securityholder's Security, even if notation of the consent or waiver is not made on the Security. However, any such Securityholder or subsequent Securityholder may revoke the consent or waiver as to such Securityholder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective. After an amendment or waiver becomes effective, it shall bind every Securityholder. An amendment or waiver shall become effective upon receipt by the Trustee of the requisite number of written consents under Section 9.1 or Section 9.2 as applicable.

The Issuers may, but shall not be obligated to, fix a record date for the purpose of determining the Securityholders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Securityholders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Securityholders after such record date. No such consent shall become valid or effective more than 120 days after such record date.

SECTION 9.5. Notation on or Exchange of Securities. If an amendment changes the terms of a Security, the Trustee may require the Securityholder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security regarding the changed terms and return it to the Securityholder. Alternatively, if the Issuers or

the Trustee so determines, the Issuers in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment.

SECTION 9.6. Trustee to Sign Amendments. The Trustee shall sign any amendment authorized pursuant to this Article IX if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing such amendment the Trustee shall be entitled to receive indemnity reasonably satisfactory to it and to receive, and (subject to Sections 7.1 and 7.2) shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

ARTICLE X

Miscellaneous

SECTION 10.1. Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the provision required by the TIA shall control.

SECTION 10.2. Notices. Any notice or communication shall be in writing and delivered in person or mailed by first-class mail addressed as follows:

if to the Issuers:

Star Gas Partners, L.P.
2187 Atlantic Street
Stamford, Connecticut 06902
Attention: Erik Sevin, Chief Executive Officer
FAX: (203) 325-7470

with a copy to:

Phillips Nizer LLP
666 Fifth Avenue
New York, NY 10103
Attention: Alan Shapiro, Esq.
FAX: (212) 262-5152

if to the Trustee:

Union Bank of California, N.A.
Attention: Corporate Trust
120 South San Pedro, 4th Floor
Los Angeles, CA 90012
FAX:

with a copy to:

Jensen Law Office
Attention: Philip K. Jensen
Suite 120
3708 Mount Diablo Boulevard
Lafayette, CA 94549-3630
FAX: (925) 284-7079

The Issuers or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a registered Securityholder shall be mailed to the Securityholder at the Securityholder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

SECTION 10.3. Communication by Securityholders with other Securityholders. Securityholders may communicate pursuant to TIA § 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Issuers, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

SECTION 10.4. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuers to the Trustee to take or refrain from taking any action under this Indenture, the Issuers shall furnish to the Trustee:

(1) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 10.5. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(1) a statement that the individual making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In giving an Opinion of Counsel, counsel may rely as to factual matters on an Officers' Certificate or on certificates of public officials.

SECTION 10.6. When Securities Disregarded. In determining whether the Securityholders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Issuers or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuers shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which the Trustee knows are so owned shall be so disregarded. Also, subject to the foregoing, only Securities outstanding at the time shall be considered in any such determination.

SECTION 10.7. Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by, or a meeting of, Securityholders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 10.8. Legal Holidays. A "Legal Holiday" is a Saturday, a Sunday or other day on which commercial banking institutions are authorized or required to be closed in New York City. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

SECTION 10.9. GOVERNING LAW. THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 10.10. No Recourse Against Others. An incorporator, director, officer, employee, stockholder, limited partner or controlling person, as such, of the Issuers or of Star Gas LLC shall not have any liability for any obligations of the Issuers under the Securities, this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Securities.

SECTION 10.11. Successors. All agreements of the Issuers in this Indenture and the Securities shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 10.12. Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

SECTION 10.13. Qualification of Indenture. The Issuers shall qualify this Indenture under the TIA and shall pay all reasonable costs and expenses (including attorneys' fees and expenses for the Company, the Trustee and the Securityholders) incurred in connection therewith, including, but not limited to, costs and expenses of qualification of this Indenture and the Securities and printing this Indenture and the Securities. The Trustee shall be entitled to receive from the Company any such Officers' Certificates or other documentation as it may reasonably request in connection with any such qualification of this Indenture under the TIA.

SECTION 10.14. Table of Contents; Headings. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

[The remainder of this page is intentionally blank]

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

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:

[FORM OF FACE OF SECURITY]

[Applicable Restricted Global Securities Legend]
[Depository Legend, if applicable]

No. []

Principal Amount \$[]
CUSIP NO. []STAR GAS PARTNERS, L.P.
STAR GAS FINANCE COMPANY

10 1/4% Senior Note due 2013

Star Gas Partners, L.P., a Delaware limited partnership (such partnership herein called the "Company"), and Star Gas Finance Company, a Delaware corporation, (such corporation, together with the Company, herein called the "Issuers"), promise to pay to [], or registered assigns, the principal sum of [] Dollars or such greater or lesser amount as shall be reflected on the books and records of the custodian with respect to the Global Security (as appointed by DTC) (the "Securities Custodian"),¹ on February 15, 2013 pursuant to the Indenture (as defined below).

Interest Payment Dates: February 15 and August 15

Record Dates: February 1 and August 1

Additional provisions of this Security are set forth on the other side of this Security.

¹ Global Security only

Ex. A-1

STAR GAS PARTNERS, L.P.

By: STAR GAS LLC, its General Partner

By: _____

STAR GAS FINANCE COMPANY

By: _____

TRUSTEE'S CERTIFICATE OF
AUTHENTICATION

UNION BANK OF CALIFORNIA, N.A.
as Trustee, certifies
that this is one of
the Securities referred
to in the Indenture.

By _____
Authorized Signatory

Date:

[FORM OF REVERSE SIDE OF SECURITY]

10 1/4% Senior Note due 2013

1. Interest

Star Gas Partners, L.P., a Delaware limited partnership (such partnership being herein called the "Company"), and Star Gas Finance Company, a Delaware corporation, (such corporation, together with the Company, under the Indenture hereinafter referred to, being herein called the "Issuers"), promise to pay interest on the principal amount of this Security at the rate per annum shown above.

The Issuers will pay interest semiannually on February 15 and August 15 of each year commencing August 15, 2006. Interest on the Securities will accrue from the most recent date to which interest has been paid on the Securities or, if no interest has been paid, from August 15, 2005. The Issuers shall pay interest on overdue principal or premium, if any (plus interest on such interest to the extent lawful), at the rate borne by the Securities to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. Method of Payment

By no later than 11:00 a.m. (New York City time) on the date on which any principal of or interest on any Security is due and payable, the Issuers shall deposit with the Trustee or the Paying Agent money sufficient to pay such principal, premium, if any, and/or interest. The Issuers will pay interest (except Defaulted Interest) to the Persons who are registered Securityholders of Securities at the close of business on the February 1 or August 1 next preceding the interest payment date even if Securities are cancelled, repurchased or redeemed after the record date and on or before the interest payment date. Securityholders must surrender Securities to a Paying Agent to collect principal payments. The Issuers will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Securities represented by a Global Security (including principal, premium, if any, and interest) will be made by the transfer of immediately available funds to the accounts specified by The Depository Trust Company. The Issuers will make all payments in respect of a Definitive Security (including principal, premium, if any, and interest) by mailing a check to the registered address of each Securityholder thereof.

3. Paying Agent and Registrar

Initially, Union Bank of California, N.A. (the "Trustee"), will act as Trustee, Paying Agent and Registrar. The Issuers may appoint and change any Paying Agent, Registrar or co-registrar without notice to any Securityholder. The Issuers or any of the Restricted Subsidiaries may act as Paying Agent, Registrar or co-registrar.

4. Indenture

The Issuers issued the Securities under an Indenture dated as of _____, 2006 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the

“Indenture”), among the Issuers and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb) as in effect on the date of the Indenture (the “Act”). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the Act for a statement of those terms.

The Securities are general unsecured senior obligations of the Issuers. The aggregate principal amount of securities that may be authenticated and delivered under the Indenture is unlimited.

The Indenture imposes certain limitations, among other things, on the ability of the Issuers and the Restricted Subsidiaries, to incur additional debt; pay dividends on stock; redeem stock or redeem subordinated debt; make investments; create Liens in favor of other senior subordinated debt and subordinated debt; enter into agreements that restrict dividends from Restricted Subsidiaries; sell assets; enter into transactions with Affiliates; sell Capital Stock of Restricted Subsidiaries; merge or consolidate; enter into different lines of business and pay consent fees.

5. Redemption

Except as described below, the Notes are not redeemable until February 15, 2008. On and after February 15, 2008, the Issuers may redeem all or, from time to time, a part of the Notes upon not less than 30 nor more than 60 days’ notice, at the following redemption prices (expressed as a percentage of principal amount) plus accrued and unpaid interest on the Notes, if any, to the applicable redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period beginning on February 15 of the years indicated below:

<u>Year</u>	<u>Percentage</u>
2008	105.125%
2009	103.417%
2010	101.708%
2011 and thereafter	100.000%

Prior to February 15, 2006, the Issuers may on any one or more occasions redeem up to 35% of the original principal amount of the Notes with the Net Cash Proceeds of one or more Public Equity Offerings at a redemption price of 110.25% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date); provided that

- (1) there is a Public Market at the time of such redemption;

-
- (2) at least 65% of the original principal amount of the Notes remains outstanding after each such redemption; and
 - (3) the redemption occurs within 60 days after the closing of such Public Equity Offering.

If the optional redemption date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest, if any, will be paid to the Person in whose name the Note is registered at the close of business on such record date, and no additional interest will be payable to Securityholders whose Notes will be subject to redemption by the Issuers.

In the case of any partial redemption, the Trustee will select the Notes for redemption in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not listed, then on a pro rata basis, by lot or by such other method as the Trustee in its sole discretion will deem to be fair and appropriate, although no Note of \$1,000 in original principal amount or less will be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption relating to that Note will state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original Note.

6. Repurchase Provisions

- (a) Upon a Change of Control any Securityholder will have the right to cause the Issuers to repurchase all or any part of the Securities of such Securityholder at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to the date of repurchase (subject to the right of Securityholders of record on the relevant record date to receive interest due on the relevant interest payment date) as provided in, and subject to the terms of, the Indenture.
- (b) In the event of an Asset Sale that requires the purchase of Securities pursuant to Section 3.7(f) of the Indenture, the Company will be required to apply such Excess Proceeds to the repayment of the Securities and any pari passu notes in accordance with the procedures set forth in Section 3.7 of the Indenture.

7. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in denominations of principal amount of \$1,000 and whole multiples of \$1,000. A Securityholder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Securityholder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange (i) any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of this Security not to be redeemed) or (ii)

any Securities for a period beginning 15 days before an interest payment date and ending on such interest payment date.

8. Persons Deemed Owners

The registered Securityholder of this Security may be treated as the owner of it for all purposes.

9. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Issuers at their request unless an abandoned property law designates another Person. After any such payment, Securityholders entitled to the money must look only to the Issuers and not to the Trustee for payment.

10. Defeasance

Subject to certain conditions set forth in the Indenture, the Issuers at any time may terminate some or all of their obligations under the Securities and the Indenture if the Issuers deposit with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

11. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended without notice to any Securityholder but with the written consent of the Securityholders of at least a majority in principal amount of the then outstanding Securities and (ii) any default (other than with respect to nonpayment or in respect of a provision that cannot be amended without the written consent of each Securityholder affected) or noncompliance with any provision may be waived with the written consent of the Securityholders of a majority in principal amount of the then outstanding Securities. Subject to certain exceptions set forth in the Indenture, without the consent of any Securityholder, the Issuers and the Trustee may amend the Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article IV of the Indenture, or to provide for uncertificated Securities in addition to or in place of certificated Securities, or to add guarantees with respect to the Securities, to secure the Securities, or to add additional covenants of the Issuers, or surrender rights and powers conferred on the Issuers, or to comply with any request of the SEC in connection with qualifying the Indenture under the Act, or to make any change that does not materially adversely affect the rights of any Securityholder, or to provide for the issuance of Exchange Securities.

12. Defaults and Remedies

Under the Indenture, Events of Default include in summary form: (i) default for 30 days in payment of interest or additional interest when due on the Securities; (ii) default in payment of principal or premium, if any, on the Securities at Stated Maturity, upon required repurchase or upon optional redemption pursuant to paragraphs 5 and 6 of the Securities, upon

declaration or otherwise; (iii) the failure by the Issuers to comply with its obligations under Article IV of the Indenture; (iv) default in the performance of any of the obligations described under Section 3.9 or Section 3.7 inclusive or under the covenants described under Article III inclusive of the Indenture and such default shall have continued for a period of 30 days after the Issuers shall have been given notice (in each case, other than a failure to purchase Notes which will constitute an Event of Default under clause (ii) above and other than a failure to comply with Section 4.1 which is covered by clause (iii)); (v) default in the performance of any of the agreements contained in the Indenture and such default shall have continued for a period of 60 days after the Issuers shall have been given notice; (vi) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Issuers or any of their Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries), other than Indebtedness owed to each of the Issuers or a Restricted Subsidiary of such Issuer, whether such Indebtedness or guarantee now exists, or is created after the date of the Indenture, which default (a) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the applicable grace period provided ("Payment Default") which payment default has not been waived or (b) results in the acceleration of such Indebtedness prior to its maturity (the "cross acceleration provision") and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$5.0 million or more; (vii) the Company, the Co-Issuer or any Restricted Subsidiary (pursuant to or within the meaning of any Bankruptcy Law): (a) commences a voluntary insolvency proceeding; (b) consents to the entry of an order for relief against it in an involuntary insolvency proceeding; (c) consents to the appointment of a custodian of it or for any substantial part of its property; or (d) makes a general assignment for the benefit of its creditors; or takes any comparable action under any foreign laws relating to insolvency; *provided* however, that the liquidation of any Restricted Subsidiary into another Restricted Subsidiary or the Company other than as part of a credit reorganization, shall not constitute an Event of Default under this clause (vii); (viii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that: (a) is for relief against the Company, the Co-Issuer or any restricted Subsidiary in an involuntary insolvency proceeding; (b) appoints a Custodian of the Company, the Co-Issuer or any Restricted Subsidiary or for any substantial part of its property; or (c) orders the winding up or liquidation of the Company, the Co-Issuer or any Restricted Subsidiary; or (d) grants any similar relief under any foreign laws; and in each case the order or decree remains unstayed and in effect for 60 days; or (ix) failure by the Company or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of \$5.0 million (net of any amounts with respect to which a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged or stayed for a period of 60 days (the "judgment default provision"). However, a default under clauses (iv) and (v) will not constitute an Event of Default until the Trustee or the Securityholders of at least 25% in principal amount of the outstanding Securities notify the Issuers and the Trustee, in the case of a notice given by the Securityholders, of the default and the Issuers does not cure such default within the time specified in clauses (iv) and (v) hereof after receipt of such notice.

Ex. A-7

If an Event of Default occurs and is continuing (other than an Event of Default described in clause (vii) above), the Trustee or the Securityholders of at least 25% in principal amount of the Securities may declare all the Securities to be due and payable. Certain events of bankruptcy or insolvency are Events of Default which will result in the Securities being due and payable immediately upon the occurrence of such Events of Default.

Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives reasonable indemnity or security. Subject to certain limitations, Securityholders of a majority in principal amount of the Securities may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment of principal or interest) if it determines that withholding notice is in their interest.

13. Trustee Dealings with the Issuers

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Issuers or their Affiliates and may otherwise deal with the Issuers or their Affiliates with the same rights it would have if it were not Trustee.

14. No Recourse Against Others

No director, officer, employee, incorporator, partner, stockholder, limited partner or controlling person of the Issuers, or of Star Gas Partners LLC as such, shall have any liability for any obligations of the Issuers under the Securities, the Indenture, or for any claim based on, in respect of, or by reason of, such obligations of their creation. Each Securityholder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities.

15. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an authenticating agent acting on its behalf) manually signs the certificate of authentication on the other side of this Security.

16. Abbreviations

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with rights of survivorship and not as tenants in common), CUST (= custodian) and U/G/M/A (= Uniform Gift to Minors Act).

17. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Securityholders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

18. Governing Law

This Security shall be governed by, and construed in accordance with, the laws of the State of New York.

The Issuers will furnish to any Securityholder upon written request and without charge to the Securityholder a copy of the Indenture, which has in it the text of this Security in larger type. Requests may be made to:

Star Gas Partners, L.P.
Star Gas Finance Company
1287 Atlantic Street
Stamford, Connecticut 06902

Attention: Chief Financial Officer

Ex. A-9

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

_____ (Print or type assignee's name, address and zip code)

_____ (Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint _____ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: _____

Your Signature: _____

Signature Guarantee: _____
(Signature must be guaranteed)

Sign exactly as your name appears on the other side of this Security.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.

In connection with any transfer or exchange of any of the Securities evidenced by this certificate occurring prior to the date that is two years after the later of the date of original issuance of such Securities and the last date, if any, on which such Securities were owned by the Company or any Affiliate of the Company, the undersigned confirms that such Securities are being:

CHECK ONE BOX BELOW:

- 1 acquired for the undersigned's own account, without transfer; or
- 2 transferred to the Issuers; or
- 3 transferred pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"); or
- 4 transferred pursuant to an effective registration statement under the Securities Act; or

-
- 5 transferred pursuant to and in compliance with Regulation S under the Securities Act; or
 - 6 transferred to an institutional “accredited investor” (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act), that has furnished to the Trustee a signed letter containing certain representations and agreements (the form of which letter appears as Section 2.7 of the Indenture); or
 - 7 transferred pursuant to another available exemption from the registration requirements of the Securities Act of 1933.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any person other than the registered Securityholder thereof; *provided*, however, that if box (5), (6) or (7) is checked, the Trustee or the Issuers may require, prior to registering any such transfer of the Securities, in their sole discretion, such legal opinions, certifications and other information as the Trustee or the Issuers may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, such as the exemption provided by Rule 144 under such Act.

Signature Guarantee:

Signature

(Signature must be guaranteed)

Signature

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.

TO BE COMPLETED BY PURCHASER IF (1) OR (3) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuers as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated:

Ex. A-12

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security purchased by the Issuers pursuant to Section 3.8 or 3.10 of the Indenture, check either box:

3.8 3.10

If you want to elect to have only part of this Security purchased by the Company pursuant to Section 3.8 or 3.10 of the Indenture, state the amount in principal amount (must be integral multiple of \$1,000): \$ _____

Date: _____ Your Signature _____
(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee: _____
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.

[FORM OF FACE OF EXCHANGE SECURITY]

[Depository Legend, if applicable]

No. [_____]

Principal Amount \$[_____]

CUSIP NO. [_____]

STAR GAS PARTNERS, L.P.
STAR GAS FINANCE COMPANY10 ¹/₄% Senior Note due 2013

Star Gas Partners, L.P., a Delaware limited partnership (such partnership herein called the "Company"), and Star Gas Finance Company, a Delaware corporation, (such corporation, together with the Company, herein called the "Issuers"), promise to pay to [_____], or registered assigns, the principal sum of [_____] Dollars or such greater or lesser amount as shall be reflected on the books and records of the of the custodian with respect to the Global Security (as appointed by DTC) (the "Securities Custodian"),² on February 15, 2013 pursuant to the Indenture (as defined below).

Interest Payment Dates: February 15 and August 15

Record Dates: February 1 and August 1

Additional provisions of this Security are set forth on the other side of this Security.

² Global Security only

STAR GAS PARTNERS, L.P.

By: STAR GAS LLC, its General Partner

By: _____

STAR GAS FINANCE COMPANY

By: _____

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

UNION BANK OF CALIFORNIA, N.A.
as Trustee, certifies
that this is one of
the Securities referred
to in the Indenture.

By _____
Authorized Signatory

Date:

Ex. B-2

[FORM OF REVERSE SIDE OF EXCHANGE SECURITY]

10 1/4% Senior Subordinated Note due 2013

1. Interest

Star Gas Partners, L.P., a Delaware limited partnership (such partnership being herein called the "Company"), and Star Gas Finance Company, a Delaware corporation, (such corporation, together with the Company, under the Indenture hereinafter referred to, being herein called the "Issuers"), promise to pay interest on the principal amount of this Security at the rate per annum shown above.

The Issuers will pay interest semiannually on February 15 and August 15 of each year commencing [August 15, 2006]. Interest on the Securities will accrue from the most recent date to which interest has been paid on the Securities or, if no interest has been paid, from August 15, 2005. The Issuers shall pay interest on overdue principal or premium, if any (plus interest on such interest to the extent lawful), at the rate borne by the Securities to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. Method of Payment

By no later than 11:00 a.m. (New York City time) on the date on which any principal of or interest on any Security is due and payable, the Issuers shall deposit with the Trustee or the Paying Agent money sufficient to pay such principal, premium, if any, and/or interest. The Issuers will pay interest (except Defaulted Interest) to the Persons who are registered Securityholders of Securities at the close of business on the February 1 or August 1 next preceding the interest payment date even if Securities are cancelled, repurchased or redeemed after the record date and on or before the interest payment date. Securityholders must surrender Securities to a Paying Agent to collect principal payments. The Issuers will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Securities represented by a Global Security (including principal, premium, if any, and interest) will be made by the transfer of immediately available funds to the accounts specified by The Depository Trust Company. The Issuers will make all payments in respect of a Definitive Security (including principal, premium, if any, and interest) by mailing a check to the registered address of each Securityholder thereof.

3. Paying Agent and Registrar

Initially, Union Bank of California, N.A. (the "Trustee"), will act as Trustee, Paying Agent and Registrar. The Issuers may appoint and change any Paying Agent, Registrar or co-registrar without notice to any Securityholder. The Issuers or any of the Restricted Subsidiaries may act as Paying Agent, Registrar or co-registrar.

4. Indenture

The Issuers issued the Securities under an Indenture dated as of _____, 2006 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the

Ex. B-3

“Indenture”), among the Issuers and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb) as in effect on the date of the Indenture (the “Act”). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the Act for a statement of those terms.

The Securities are general unsecured senior obligations of the Issuers. The aggregate principal amount of securities that may be authenticated and delivered under the Indenture is unlimited. The Indenture imposes certain limitations, among other things, on the ability of the Issuers and the Restricted Subsidiaries, to incur additional debt; pay dividends on stock; redeem stock or redeem subordinated debt; make investments; create Liens in favor of other senior subordinated debt and subordinated debt; enter into agreements that restrict dividends from Restricted Subsidiaries; sell assets; enter into transactions with Affiliates; sell Capital Stock of Restricted Subsidiaries; merge or consolidate; enter into different lines of business and pay consent fees.

5. Redemption

Except as described below, the Notes are not redeemable until February 15, 2008. On and after February 15, 2008, the Issuers may redeem all or, from time to time, a part of the Notes upon not less than 30 nor more than 60 days’ notice, at the following redemption prices (expressed as a percentage of principal amount) plus accrued and unpaid interest on the Notes, if any, to the applicable redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period beginning on February 15 of the years indicated below:

<u>Year</u>	<u>Percentage</u>
2008	105.125%
2009	103.417%
2010	101.708%
2011 and thereafter	100.000%

Prior to February 15, 2006, the Issuers may on any one or more occasions redeem up to 35% of the original principal amount of the Notes with the Net Cash Proceeds of one or more Public Equity Offerings at a redemption price of 110.25% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date); provided that

- (1) there is a Public Market at the time of such redemption;
- (2) at least 65% of the original principal amount of the Notes remains outstanding after each such redemption; and

(3) the redemption occurs within 60 days after the closing of such Public Equity Offering.

If the optional redemption date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest, if any, will be paid to the Person in whose name the Note is registered at the close of business on such record date, and no additional interest will be payable to holders whose Notes will be subject to redemption by the Issuers.

In the case of any partial redemption, the Trustee will select the Notes for redemption in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not listed, then on a pro rata basis, by lot or by such other method as the Trustee in its sole discretion will deem to be fair and appropriate, although no Note of \$1,000 in original principal amount or less will be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption relating to that Note will state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original Note.

6. Repurchase Provisions

(a) Upon a Change of Control any Securityholder of Securities will have the right to cause the Issuers to repurchase all or any part of the Securities of such Securityholder at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to the date of repurchase (subject to the right of Securityholders of record on the relevant record date to receive interest due on the relevant interest payment date) as provided in, and subject to the terms of, the Indenture.

(b) In the event of an Asset Disposition that requires the purchase of Securities pursuant to Section 3.7 (f) of the Indenture, the Company will be required to apply such Excess Proceeds to the repayment of the Securities and any pari passu notes in accordance with the procedures set forth in Section 3.7 of the Indenture.

7. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in denominations of principal amount of \$1,000 and whole multiples of \$1,000. A Securityholder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Securityholder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange (i) any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of this Security not to be redeemed) or (ii) any Securities for a period beginning 15 days before an interest payment date and ending on such interest payment date.

8. Persons Deemed Owners

The registered Securityholder of this Security may be treated as the owner of it for all purposes.

9. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Issuers at their request unless an abandoned property law designates another Person. After any such payment, Securityholders entitled to the money must look only to the Issuers and not to the Trustee for payment.

10. Defeasance

Subject to certain conditions set forth in the Indenture, the Issuers at any time may terminate some or all of their obligations under the Securities and this Indenture if the Issuers deposit with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

11. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended without notice to any Securityholder but with the written consent of the Securityholders of at least a majority in principal amount of the then outstanding Securities and (ii) any default (other than with respect to nonpayment or in respect of a provision that cannot be amended without the written consent of each Securityholder affected) or noncompliance with any provision may be waived with the written consent of the Securityholders of a majority in principal amount of the then outstanding Securities. Subject to certain exceptions set forth in this Indenture, without the consent of any Securityholder, the Issuers and the Trustee may amend this Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article IV of the Indenture, or to provide for uncertificated Securities in addition to or in place of certificated Securities, or to add guarantees with respect to the Securities, to secure the Securities, or to add additional covenants of the Issuers, or surrender rights and powers conferred on the Issuers, or to comply with any request of the SEC in connection with qualifying the Indenture under the Act, or to make any change that does not materially adversely affect the rights of any Securityholder, or to provide for the issuance of Exchange Securities.

12. Defaults and Remedies

Under the Indenture, Events of Default include in summary form: (i) default for 30 days in payment of interest or additional interest when due on the Securities; (ii) default in payment of principal or premium, if any, on the Securities at Stated Maturity, upon required repurchase or upon optional redemption pursuant to paragraphs 5 and 6 of the Securities, upon declaration or otherwise; (iii) the failure by the Issuers to comply with its obligations under Article IV of the Indenture; (iv) default in the performance of any of the obligations described under Section 3.9 or Section 3.7 inclusive or under the covenants described under Article III

inclusive of the Indenture and such default shall have continued for a period of 30 days after the Issuers shall have been given notice (in each case, other than a failure to purchase Notes which will constitute an Event of Default under clause (ii) above and other than a failure to comply with Section 4.1 which is covered by clause (iii); (v) default in the performance of any of the agreements contained in the Indenture and such default shall have continued for a period of 60 days after the Issuers shall have been given notice; (vi) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Issuers or any of their Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries), other than Indebtedness owed to each of the Issuers or a Restricted Subsidiary of such Issuer, whether such Indebtedness or guarantee now exists, or is created after the date of the Indenture, which default (a) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the applicable grace period provided ("Payment Default") which payment default has not been waived or (b) results in the acceleration of such Indebtedness prior to its maturity (the "cross acceleration provision") and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$5.0 million or more; (vii) the Company, the Co-Issuer or any Restricted Subsidiary (pursuant to or within the meaning of any Bankruptcy Law): (a) commences a voluntary insolvency proceeding; (b) consents to the entry of an order for relief against it in an involuntary insolvency proceeding; (c) consents to the appointment of a custodian of it or for any substantial part of its property; or (d) makes a general assignment for the benefit of its creditors; or takes any comparable action under any foreign laws relating to insolvency; *provided* however, that the liquidation of any Restricted Subsidiary into another Restricted Subsidiary or the Company other than as part of a credit reorganization, shall not constitute an Event of Default under this clause (vii); (viii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that: (a) is for relief against the Company, the Co-Issuer or any restricted Subsidiary in an involuntary insolvency proceeding; (b) appoints a Custodian of the Company, the Co-Issuer or any Restricted Subsidiary or for any substantial part of its property; or (c) orders the winding up or liquidation of the Company, the Co-Issuer or any Restricted Subsidiary; or (d) grants any similar relief under any foreign laws; and in each case the order or decree remains unstayed and in effect for 60 days; or (ix) failure by the Company or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Company and its Restricted Subsidiaries), would constitute a Significant Subsidiary to pay final judgments aggregating in excess of \$5.0 million (net of any amounts with respect to which a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged or stayed for a period of 60 days (the "judgment default provision"). However, a default under clauses (iv) and (v) will not constitute an Event of Default until the Trustee or the Securityholders of at least 25% in principal amount of the outstanding Securities notify the Issuers and the Trustee, in the case of a notice given by the Securityholders, of the default and the Issuers does not cure such default within the time specified in clauses (iv) and (v) hereof after receipt of such notice.

If an Event of Default occurs and is continuing (other than an Event of Default described in clause (vii) above), the Trustee or the Securityholders of at least 25% in principal amount of the Securities may declare all the Securities to be due and payable. Certain events of

bankruptcy or insolvency are Events of Default which will result in the Securities being due and payable immediately upon the occurrence of such Events of Default.

Securityholders may not enforce the Indenture or the Securities except as provided in this Indenture. The Trustee may refuse to enforce this Indenture or the Securities unless it receives reasonable indemnity or security. Subject to certain limitations, Securityholders of a majority in principal amount of the Securities may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment of principal or interest) if it determines that withholding notice is in their interest.

13. Trustee Dealings with the Issuers

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Issuers or their Affiliates and may otherwise deal with the Issuers or their Affiliates with the same rights it would have if it were not Trustee.

14. No Recourse Against Others

No director, officer, employee, incorporator, partner, stockholder, limited partner or controlling person of the Issuers or Star Gas LLC, as such, shall have any liability for any obligations of the Issuers under the Securities, the Indenture, the Subsidiary Guarantees or for any claim based on, in respect of, or by reason of, such obligations of their creation. Each Securityholder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities.

15. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an authenticating agent acting on its behalf) manually signs the certificate of authentication on the other side of this Security.

16. Abbreviations

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with rights of survivorship and not as tenants in common), CUST (= custodian) and U/G/M/A (= Uniform Gift to Minors Act).

17. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Securityholders. No representation is made as to the accuracy of such numbers

either as printed on the Securities or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

18. Governing Law

This Security shall be governed by, and construed in accordance with, the laws of the State of New York.

The Issuers will furnish to any Securityholder upon written request and without charge to the Securityholder a copy of the Indenture, which has in it the text of this Security in larger type. Requests may be made to:

Star Gas Partners, L.P.
Star Gas Finance Company
1287 Atlantic Street
Stamford, Connecticut 06902

Attention: Chief Financial Officer

Ex. B-9

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

_____ (Print or type assignee's name, address and zip code)

_____ (Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint _____ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: _____

Your Signature: _____

Signature Guarantee: _____ (Signature must be guaranteed)

Sign exactly as your name appears on the other side of this Security.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security purchased by the Issuers pursuant to Section 3.8 or 3.10 of the Indenture, check either box:

3.8 3.10

If you want to elect to have only part of this Security purchased by the Company pursuant to Section 3.8 or 3.10 of the Indenture, state the amount in principal amount (must be integral multiple of \$1,000): \$ _____

Date: _____ Your Signature _____
(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee: _____
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.

Existing Indebtedness
 Star Gas Partners, L.P.
 Total Debt
 as of November 30, 2005

(In thousands)

<u>Description</u>	<u>Amount</u>	
10.25 Senior Notes	267,279	Inurred according to the 2.0x provision
Working Capital Borrowings	—	
Acquisitions and Other Debt	219	In existence at the time of 2003 offering
Subordinated Debentures	666	In existence at the time of 2003 offering
Capital Leases	970	October 2005- Inurred under the \$ 7.5 million capital lease basket
Total	<u>269,134</u>	

Ex. B-12

STAR GAS PARTNERS, L.P.,
STAR GAS FINANCE COMPANY,
AND
UNION BANK OF CALIFORNIA, N.A.
AS TRUSTEE

10 ¹/₄% Senior Notes due 2013

AMENDED AND RESTATED INDENTURE

Dated as of November [], 2005

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CROSS-REFERENCE TABLE

Trust Indenture Act Section	Indenture Section
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.8; 7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.5
(b)	10.3
(c)	10.3
313(a)	7.6
(b)(1)	N.A.
(b)(2)	7.6
(c)	7.6
(d)	N.A.
314(a)	3.2, 10.2, 10.5
(b)	N.A.
(c)(1)	10.4
(c)(2)	10.4
(c)(3)	N.A.
(d)	N.A.
(e)	10.5
315(a)	7.1
(b)	7.5, 10.2
(c)	7.1
(d)	7.1
(e)	6.11
316(a)(last sentence)	2.10
(a)(1)(A)	6.5
(a)(1)(B)	6.4
(a)(2)	N.A.
(b)	6.7
(c)	2.13
317(a)(1)	6.8
(a)(2)	6.9
(b)	2.4
318(a)	10.1
(b)	N.A.
(c)	10.1

N.A. means Not Applicable.

Note: This Cross-Reference Table shall not, for any purpose, be deemed to be part of this Indenture.

AMENDED AND RESTATED INDENTURE dated as of November [], 2005, among 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.

WHEREAS, the Issuers and the Trustee are parties to the Indenture, dated as of February 6, 2003 (the "Indenture"), as supplemented by the supplemental Indenture dated as of January __, 2004 (the "Supplemental Indenture" and, together with the Indenture, the "Original Indenture");

WHEREAS, the parties to the Original Indenture and the Supplemental Indenture desire to amend and restate the Original Indenture in its entirety as set forth in this Amended and Restated Indenture;

IN WITNESS WHEREOF, each party hereto agrees as follows:

ARTICLE I

Definitions and Incorporation by Reference

SECTION 1.1. Definitions.

"Affiliate" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing; *provided* that beneficial ownership of 10% or more of the Voting Stock of a Person shall be deemed to be control.

"Asset Sale" means either of the following, whether in a single transaction or a series of related transactions:

(1) the sale, lease, conveyance or other disposition of any assets other than sales, leases or transfers of assets in the ordinary course of business (including but not limited to the sales of inventory in the ordinary course of business and the sale of receivables and accounts pursuant to a Credit Facility); or

(2) the issuance or sale of Capital Stock of any direct Subsidiary.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) any sale, lease or transfer of assets or Capital Stock by the Company or any of its Restricted Subsidiaries to the Company or a Restricted Subsidiary;

(2) any sale or transfer of assets or Capital Stock by the Company or any of its Restricted Subsidiaries to any entity in exchange for other assets used in a related business and/or cash (*provided* that such cash portion is at least 80% of the difference between the value of the assets being transferred and the value of the assets being received) and having a fair market value, as determined in good faith by the Board of Directors, reasonably equivalent to the fair market value of the assets so transferred;

(3) any sale, lease or transfer of assets in accordance with Permitted Investments;

(4) the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company;

(5) the transfer or disposition of assets that are permitted Restricted Payments; and

(6) any sale, lease or transfer of assets pursuant to a Sale and Leaseback Transaction otherwise permitted by this Indenture.

“Attributable Debt” means, with respect to any Sale and Leaseback Transactions not involving a Capital Lease, as of any date of determination, the total obligation, discounted to present value at the rate of interest implicit in the lease included in the transaction, of the lessee for rental payments during the remaining portion of the term of the lease, including extensions which are at the sole option of the lessor, of the lease included in the transaction. For purposes of this definition, the rental payments shall not include amounts required to be paid on account of property taxes, maintenance, repairs, insurance, assessments, utilities, operating and labor costs and other items which do not constitute payments for property rights. In the case of any lease which is terminable by the lessee upon the payment of a penalty, the rental obligation shall also include the amount of the penalty, but no rent shall be considered as required to be paid under such lease subsequent to the first date upon which it may be so terminated.

“Bankruptcy Law” means Title 11, United States Code or any similar Federal or state law for the relief of debtors.

“Board of Directors” means, as to any Person, the board of directors of such Person or any duly authorized committee thereof; *provided* that so long as the Company is a limited partnership, “Board of Directors” means the board of directors of Star Gas LLC, its general partner, or any duly authorized committee thereof.

“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.

“Business Day” means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York are authorized or required by law to close.

“Capital Lease” means any lease of property, real or personal, that, in accordance with GAAP, would be required to be capitalized on the balance sheet of the lessee.

“Capital Stock” of any Person means any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

“Change of Control” means:

- (1) any transaction or series of related transactions pursuant to which any “person” or “group” or “groups” of related persons (as defined in the Exchange Act) other than the Permitted Holders, becoming beneficial owners, in the aggregate, directly or indirectly, of 50% or more of the Voting Stock of the general partner of the Company (or the successor by merger, consolidation or purchase of substantially all of the assets of the general partner) and the Permitted Holders beneficially owning at any time, in the aggregate, a lesser percentage of the Voting Stock of the general partner of the Company (or the successor by merger, consolidation or purchase of substantially all of the assets of the general partner) then such other person or group;
- (2) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole to any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) other than a Permitted Holder;
- (3) the adoption of a plan or proposal for the liquidation or dissolution of the Company or the general partner of the Company; or
- (4) Kestrel Heat LLC or an affiliated entity shall fail to own beneficially 100% of the general partnership interest in the Company.

“Code” means the Internal Revenue Code of 1986, as amended.

“Co-Issuer” shall have the meaning assigned to such term in the preamble to this Indenture.

“Common Stock” means with respect to any Person, any and all shares, units, interests or other participations in, and other equivalents (however designated and whether voting or nonvoting) of such Person’s securities whether or not outstanding on the Issue Date, and includes, without limitation, all series and classes of such common stock, and, in the case of the Company, means the units representing limited partner interests of the Company whether or not outstanding on the Issue Date.

“Company” shall have the meaning assigned to such term in the first introductory paragraph to this Indenture.

“Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

“Default” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“Definitive Securities” means certificated Securities.

“DTC” means The Depository Trust Company, its nominees and their respective successors and assigns, or such other depository institution hereinafter appointed by the Company.

“Event of Default” means any of the events specified in Section 6.1.

“Excess Proceeds” shall have the meaning assigned to such term in Section 3.7(d).

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exchange Offer” shall have the meaning assigned to such term in the Registration Rights Agreement.

“Exchange Securities” shall mean securities issued in exchange for Initial Securities in an offer registered under the Securities Act as provided in the Registration Rights Agreement.

“Fiscal Year” shall mean the fiscal year of the Company as set forth in the audited financial statements of the Company, which as of the Issue Date was the period from October 1 through September 30 of each year.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession. All ratios and computations based on GAAP contained in this Indenture will be computed in conformity with GAAP.

“Guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

- (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or
- (2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); *provided, however*, that the term “Guarantee” will not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“Incur” means issue, create, assume, Guarantee, incur or otherwise become liable for; *provided, however*, that any Indebtedness or Capital Stock of a Person existing at the time such person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary; and the terms “Incurred” and “Incurrence” have meanings correlative to the foregoing.

“Indebtedness” means, as applied to any Person, without duplication:

(1) (a) any indebtedness for borrowed money and (b) all obligations evidenced by any (i) bond, note, debenture or other similar instrument or (ii) reimbursement obligations in respect of letters of credit, but only for any drawings that are not reimbursed within five Business Days after the date of such drawings, which in each case the Person has, directly or indirectly, created or Incurred;

(2) any indebtedness for borrowed money and all obligations evidenced by any bond, note, debenture or other similar instrument secured by any Lien in respect of property owned by the Person, whether or not the Person has assumed or become liable for the payment of the indebtedness; *provided* that the amount of the indebtedness, if the Person has not assumed the same or become liable therefor, shall in no event be deemed to be greater than the fair market value from time to time, as determined in good faith by the Person, of the property subject to the Lien;

(3) any indebtedness, whether or not for borrowed money (excluding trade payables and accrued expenses arising in the ordinary course of business) with respect to which the 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 business acquired by, or service performed on behalf of, the Person, whether by purchase, consolidation, merger or otherwise;

(4) the principal component of any obligations under Capital Leases to the extent the obligations would, in accordance with GAAP, appear on the balance sheet of the Person;

(5) all Attributable Debt of the Person in respect of Sale and Leaseback Transactions not involving a Capital Lease;

(6) any indebtedness of any other Person of the character referred to in the foregoing clauses (1) through (5) of this definition with respect to which the Person whose indebtedness is being determined has become liable by way of a Guarantee; and

(7) all Redeemable Capital Stock of the Person valued at the greater of its voluntary or involuntary maximum fixed repurchase price plus accrued dividends.

For purposes hereof, the “maximum fixed repurchase price” of any Redeemable Capital Stock which does not have a fixed repurchase price shall be calculated in accordance with

the terms of the Redeemable Capital Stock as if it were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Indenture and if the price is based upon, or measured by, the fair market value of the Redeemable Capital Stock, the fair market value shall be determined in good faith by the board of directors of the issuer of the Redeemable Capital Stock. Furthermore, for purposes hereof, the term “Indebtedness” shall not include (x) accrual of interest, the accretion of accreted value and the payment of interest or any other similar Incurrence by the Company or its Restricted Subsidiaries related to Indebtedness otherwise permitted in this Indenture or (y) indebtedness under any hedging arrangement which provides for the right or obligation to purchase, sell or deliver any currency, commodity or security at a future date for a specified price entered into to protect such Person from fluctuations in prices or rates, including currencies, interest rates, commodity prices, and securities prices, including without limitation indebtedness under any interest rate or commodity price swap agreement, interest rate cap agreement, interest rate collar agreement or any forward sales arrangements, calls, options, swaps, or other similar transactions or any combination thereof.

“Indenture” means this Indenture as amended or supplemented from time to time.

“Initial Securities” shall have the meaning assigned to such term in the second introductory paragraph of this Indenture.

“Investment” means as applied to any Person:

(1) any direct or indirect purchase or other acquisition by the Person of stock or other securities of any other Person; or

(2) any direct or indirect loan, advance or capital contribution by the Person to any other Person and any other item which would be classified as an “investment” on a balance sheet of the Person prepared in accordance with GAAP, including without limitation any direct or indirect contribution by the Person of property or assets to a joint venture, partnership or other business entity in which the Person retains an interest, it being understood that a direct or indirect purchase or other acquisition by the Person of assets of any other Person, other than stock or other securities, shall not constitute an “Investment” for purposes of this Indenture.

The amount classified as Investments made during any period shall be the aggregate cost to the Company and its Restricted Subsidiaries of all the Investments made during the period, determined in accordance with GAAP, but without regard to unrealized increases or decreases in value, or write-ups, write-downs or write-offs, of the Investments and without regard to the existence of any undistributed earnings or accrued interest with respect thereto accrued after the respective dates on which the Investments were made, less any net return of capital realized during the period upon the sale, repayment or other liquidation of the Investments, determined in accordance with GAAP, but without regard to any amounts received during the period as earnings (in the form of dividends not constituting a return of capital, interest or otherwise) on the Investments or as loans from any Person in whom the Investments have been made.

“Issue Date” means the date on which the Notes are originally issued.

“Issuers” shall have the meaning assigned to such term in the preamble to this Indenture.

“Issuers’ Order” shall have the meaning assigned to such term in Section 2.2.

“Lien” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

“Net Proceeds” means, with respect to any Asset Sale or sale of Capital Stock, the proceeds therefrom in the form of cash or cash equivalents including payments in respect of deferred payment obligations when received in the form of cash or cash equivalents, except to the extent that the deferred payment obligations are financed or sold with recourse to the Company or any of its Restricted Subsidiaries, net of:

(1) brokerage commissions and other fees and expenses related to the Asset Sale, including, without limitation, fees and expenses of legal counsel and accountants and fees, expenses, discounts or commissions of underwriters, placement agents and investment bankers;

(2) provisions for all taxes payable as a result of the Asset Sale;

(3) amounts required to be paid to any Person, other than the Company or any Restricted Subsidiary, owning a beneficial interest in the assets subject to the Asset Sale;

(4) appropriate amounts established by the Company or any Restricted Subsidiary, as the case may be, as a reserve required in accordance with GAAP against any liabilities associated with the Asset Sale and retained by the Company or any Restricted Subsidiary, as the case may be, after the Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with the Asset Sale; and

(5) amounts applied to the repayment of Indebtedness in connection with the asset or assets sold in the Asset Sale, including any transaction costs and expenses associated therewith and any make-whole or other premium owed in connection with such repayment.

“Non-U.S. Person” means a person who is not a U.S. person, as defined in Regulation S.

“Note Register” means the register of Securities, maintained by the Trustee, pursuant to Section 2.3.

“Officer” means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer or the Secretary of the Issuers or, so long as the Company is a limited partnership, of the Company’s general partner.

“Officers’ Certificate” means (i) in the case of the Company, a certificate signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of the Company or, so long as the Company is a limited partnership, of the Company’s general partner or (ii) in the case of Star Gas Finance Company, a certificate signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of Star Gas Finance Company.

“Opinion of Counsel” means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company or the Trustee.

“Permitted Holders” means Kestrel Energy Partners LLC or any Person controlled by it.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision hereof or any other entity.

“Preferred Stock” as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of distributions or dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

“Public Equity Offering” means a public offering or private placement of partnership interests (other than interests that are mandatorily redeemable) of:

- (a) any entity that directly or indirectly owns equity interests in the Company, to the extent the net proceeds are contributed to the Company;
- (b) any Subsidiary of the Company to the extent the net proceeds are distributed, paid, lent or otherwise transferred to the Company that results in the net proceeds to the Company of at least \$10 million; or
- (c) the Company;

provided that a private placement of partnership interests will not be deemed a Public Equity Offering unless net proceeds of at least \$10 million are received.

A “Public Market” exists at any time with respect to the Common Stock of the Company if:

- (1) the Common Stock of the Company is then registered with the SEC pursuant to Section 12(b) or 12(g) of the Exchange Act and traded either on a national securities exchange or in the National Association of Securities Dealers Automated Quotation System; and
- (2) at least 15% of the total issued and outstanding Common Stock of the Company has been and remains distributed prior to such time by means of an effective registration statement under the Securities Act of 1933, as amended.

“Redeemable Capital Stock” means any shares of any class or series of Capital Stock (excluding, but not limited to, the Senior Units and Common Stock issued by the Company), that, either by the terms thereof, by the terms of any security into which it is convertible or exchangeable or by contract or otherwise, is or upon the happening of an event or passage of time would be, required to be redeemed prior to the Stated Maturity of the principal of the Notes or is redeemable at the option of the holder thereof at any time prior to the Stated Maturity of the principal of the Notes, or is convertible into or exchangeable for debt securities at any time prior to the Stated Maturity of the principal of the Notes.

“Redemption Date” means the date selected by the Issuers for the redemption of Securities consistent with the provisions of Exhibits A and B to this Indenture.

“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 and (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.

“Related Business” means any business which is the same as or related, ancillary or complementary to any of the businesses of the Company on the Issue Date.

“Related Person” with respect to any Permitted Holder means:

- (1) any controlling stockholder or a majority (or more) owned Subsidiary of such Permitted Holder or, in the case of an individual, any spouse or immediate family member of such Permitted Holder, any trust created for the benefit of such individual or such individual’s estate, executor, administrator, committee or beneficiaries; or
- (2) any trust, corporation, partnership or other entity, the beneficiaries, stockholders, partners, owners or Persons beneficially holding a majority (or more) controlling interest of which consist of such Permitted Holder and/or such other Persons referred to in the immediately preceding clause (1).

“Restricted Subsidiary” means any Subsidiary of the Company other than an Unrestricted Subsidiary.

“Sale and Leaseback Transaction” means any arrangement (other than between the Company and a Restricted Subsidiary or between Restricted Subsidiaries) whereby property has been or will be disposed of by a transferor to another entity with the intent of taking back a lease on the property pursuant to which the rental payments are calculated to amortize the purchase price of the property over its life.

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

“Secured Indebtedness” means Indebtedness that is secured by a Lien on the property or assets of the relevant obligor.

“Securities” shall have the meaning assigned to such term in the second introductory paragraph to this Indenture.

“Securityholders” means any holder from time to time of the Securities issued pursuant to this Indenture.

“Securities Act” means the Securities Act of 1933, as amended.

“Securities Custodian” means the custodian with respect to the Global Security (as appointed by DTC), or any successor Person thereto and shall initially be the Trustee.

“Senior Units” means the units representing limited partner interests of the Company, having the rights and obligations specified with respect to Senior Subordinated Units of the Company.

“Significant Subsidiary” means any Restricted Subsidiary that would be a “Significant Subsidiary” of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

“Stated Maturity” means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

“Subsidiary” of any Person means any corporation, association, partnership, joint venture, limited liability company or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership and joint venture interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person or (3) one or more Subsidiaries of such Person. Unless otherwise specified herein, each reference to a Subsidiary will refer to a Subsidiary of the Company.

“TIA” or “Trust Indenture Act” means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb), as in effect on the date of this Indenture.

“Trustee” means the party named as such in this Indenture until a successor replaces it and, thereafter, means the successor.

“Trust Officer” shall mean, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“Unrestricted Subsidiary” means any Person that is designated as such by the Board of Directors at any time.

“U.S. Government Obligations” means securities that are (a) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged or (b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depositary receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depositary receipt.

“Voting Stock” of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors.

SECTION 1.2. Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
“Additional Global Securities”	2.1(b)
“Agent Members”	2.1(e)
“Authenticating Agent”	2.2
“Change of Control Offer”	3.9
“Change of Control Payment”	3.9
“Change of Control Payment Date”	3.9
“Corporate Trust Office”	3.14
“Covenant defeasance option”	8.1(b)
“Defaulted Interest”	2.13
“Excess Proceeds”	3.7(d)
“Exchange Global Security”	2.1(b)
“Global Securities”	2.1(b)
“IAIs”	2.1(b)
“Institutional Accredited Investor Security”	2.1(b)
“Legal defeasance option”	8.1(b)
“Paying Agent”	2.3
“Private Placement Legend”	2.1(d)
“QIB”	2.1(b)
“Registrar”	2.3
“Regulation S”	2.1(b)
“Regulation S Global Security”	2.1(b)

“Regulation S Legend”	2.1(d)
“Regulation S Securities”	2.1(b)
“Resale Restriction Termination Date”	2.1(d)
“Rule 144A”	2.1(b)
“Rule 144A Global Security”	2.1(b)
“Rule 144A Securities”	2.1(b)
“Special Interest Payment Date”	2.13(a)
“Special Record Date”	2.13(a)

SECTION 1.3. Incorporation by Reference of Trust Indenture Act. This Indenture is subject to the mandatory provisions of the TIA which are incorporated by reference in and made a part of this Indenture. The following TIA terms have the following meanings:

“Commission” means the Securities and Exchange Commission.

“indenture securities” means the Securities.

“indenture security holder” means a Securityholder.

“indenture to be qualified” means this Indenture.

“indenture trustee” or “institutional trustee” means the Trustee.

“obligor” on this Indenture securities means the Company and any other obligor on this Indenture securities.

All other TIA terms used in this Indenture that are defined by the TIA, defined in the TIA by reference to another statute or defined by SEC rule have the meanings assigned to them by such definitions.

SECTION 1.4. Rules of Construction. Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) “or” is not exclusive;
- (4) “including” means including without limitation;
- (5) words in the singular include the plural and words in the plural include the singular;
- (6) unsecured Indebtedness shall not be deemed to be subordinate or junior to Secured Indebtedness merely by virtue of its nature as unsecured Indebtedness;

(7) the principal amount of any noninterest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP; and

(8) the principal amount of any Preferred Stock shall be (i) the maximum liquidation value of such Preferred Stock or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater.

ARTICLE II

The Securities

SECTION 2.1. Form, Dating and Terms.

(a) The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Initial Securities issued on the date hereof will be in an aggregate principal amount of \$200,000,000. In addition, the Company may issue, from time to time in accordance with the provisions of this Indenture (including, without limitation, Section 3.3 hereof), Additional Securities and Exchange Securities. Furthermore, Securities may be authenticated and delivered upon registration or transfer, or in lieu of, other Securities pursuant to Sections 2.6, 2.9, 2.11 or 9.5 or in connection with a Change of Control Offer pursuant to Section 3.9.

With respect to any Additional Securities, the Issuers shall set forth in Board Resolutions and Officers' Certificates, the following information:

- (1) the aggregate principal amount of such Additional Securities to be authenticated and delivered pursuant to this Indenture;
- (2) the issue price and the issue date of such Additional Securities, including the date from which interest shall accrue; and
- (3) whether such Additional Securities shall be Global Securities issued in the form of Exhibit A hereto and/or shall be issued in the form of Exhibit B hereto.

The Initial Securities, the Additional Securities and the Exchange Securities shall be considered collectively as a single class for all purposes of this Indenture. Securityholders of the Initial Securities, the Additional Securities and the Exchange Securities will vote and consent together on all matters to which such Securityholders are entitled to vote or consent as one class, and none of the Securityholders of the Initial Securities, the Additional Securities or the Exchange Securities shall have the right to vote or consent as a separate class on any matter to which such Securityholders are entitled to vote or consent.

(b) The Initial Securities are being offered and sold by the Company pursuant to a Purchase Agreement, dated February 3, 2003, among the Issuers, J.P. Morgan Securities Inc. and the other initial purchasers named therein. The Initial Securities and any Additional Securities (if issued as restricted Global Securities) (the "Additional Global Securities") will be

resold initially only to (A) qualified institutional buyers (as defined in Rule 144A under the Securities Act (“Rule 144A”)) in reliance on Rule 144A (“QIBs”) and (B) Persons other than U.S. Persons (as defined in Regulation S under the Securities Act (“Regulation S”)) in reliance on Regulation S. Such Initial Securities and Additional Global Securities may thereafter be transferred to, among others, QIBs, purchasers in reliance on Regulation S and institutional “accredited investors” (as defined in Rules 501(a)(1), (2), (3) and (7) under the Securities Act) who are not QIBs (“IAs”) in accordance with Rule 501 of the Securities Act in accordance with the procedure described herein.

Initial Securities and Additional Global Securities offered and sold to qualified institutional buyers in the United States of America in reliance on Rule 144A (the “Rule 144A Securities”) shall be issued in the form of a permanent global Security, without interest coupons, substantially in the form of Exhibit A, which is hereby incorporated by reference and made a part of this Indenture, including appropriate legends as set forth in Section 2.1(d) (the “Rule 144A Global Security”), deposited with the Trustee, as custodian for DTC, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The Rule 144A Global Security may be represented by more than one certificate, if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Rule 144A Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Initial Securities and Additional Securities offered and sold outside the United States of America (the “Regulation S Securities”) in reliance on Regulation S shall be issued in the form of a permanent global Security, without interest coupons, substantially in the form of Exhibit A (the “Regulation S Global Security”) deposited with the Trustee, as custodian for DTC, duly executed by the Issuers and authenticated by the Trustee as hereinafter provided. The Regulation S Global Security may be represented by more than one certificate, if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Regulation S Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Initial Securities and Additional Securities resold to IAs (the “Institutional Accredited Investor Securities”) in the United States of America shall be issued in the form of a permanent global Security, without interest coupons, substantially in the form of Exhibit A (the “Institutional Accredited Investor Global Security”) deposited with the Trustee, as custodian for DTC, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The Institutional Accredited Investor Global Security may be represented by more than one certificate, if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Institutional Accredited Investor Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Exchange Securities exchanged for interests in the Rule 144A Securities, the Regulation S Securities and the Institutional Accredited Investor Securities will be issued in the

form of a permanent global Security, without interest coupons, substantially in the form of Exhibit B, which is hereby incorporated by reference and made a part of this Indenture, deposited with the Trustee as hereinafter provided, including the appropriate legend set forth in Section 2.1(d) (the “Exchange Global Security”). The Exchange Global Security may be represented by more than one certificate, if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate.

The Rule 144A Global Security, the Regulation S Global Security, the Institutional Accredited Investor Global Security and the Exchange Global Security are sometimes collectively herein referred to as the “Global Securities.”

The principal of (and premium, if any) and interest on the Securities shall be payable at the office or agency of the Issuers maintained for such purpose in The City of New York, or at such other office or agency of the Issuers as may be maintained for such purpose pursuant to Section 2.3; *provided, however*, that, at the option of the Issuers, each installment of interest may be paid by (i) check mailed to addresses of the Persons entitled thereto as such addresses shall appear on the Note Register or (ii) wire transfer to an account located in the United States maintained by the payee. Payments in respect of Securities represented by a Global Security (including principal, premium and interest) will be made by wire transfer of immediately available funds to the accounts specified by DTC.

The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage, in addition to those set forth on Exhibit A and Exhibit B and in Section 2.1(d). The Issuers and the Trustee shall approve the forms of the Securities and any notation, endorsement or legend on them. Each Security shall be dated the date of its authentication. The terms of the Securities set forth in Exhibit A and Exhibit B are part of the terms of this Indenture and, to the extent applicable, the Issuers and the Trustee, by their execution and delivery of this Indenture, expressly agree to be bound by such terms.

(c) Denominations. The Securities shall be issueable only in fully registered form, without coupons, and only in denominations of \$1,000 and any integral multiple thereof.

(d) Restrictive Legends. Unless and until (i) the Rule 144A Securities, the Regulation S Securities and the Institutional Accredited Investor Securities are sold under an effective registration statement or (ii) the Rule 144A Securities, the Regulation S Securities and the Institutional Accredited Investor Securities are exchanged for an Exchange Security in connection with an effective registration statement, in each case pursuant to the Registration Rights Agreement or a similar agreement,

(A) the Rule 144A Global Security and the Institutional Accredited Investor Global Security shall bear the following legend (the “Private Placement Legend”) on the face thereof:

“THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD,

ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION.

THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUERS OR ANY AFFILIATE OF THE ISSUERS WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), ONLY (A) TO THE ISSUERS, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (E) TO AN INSTITUTIONAL ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS AN INSTITUTIONAL ACCREDITED INVESTOR ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF THE SECURITIES OF \$250,000, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR OFFER OR SALE IN CONNECTION WITH ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (F) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUERS' AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) AND (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

BY ITS ACQUISITION OF THIS SECURITY THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (I) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE AND HOLD THIS SECURITY CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OF PLANS, INDIVIDUAL RETIREMENT ACCOUNTS OR OTHER ARRANGEMENTS THAT

ARE SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”) OR PROVISIONS UNDER ANY FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (“SIMILAR LAWS”), OR OF AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE “PLAN ASSETS” OF SUCH PLANS, ACCOUNTS OR ARRANGEMENTS, OR (II) THE PURCHASE AND HOLDING OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAWS.”

(B) the Regulation S Global Security shall bear the following legend (the “Regulation S Legend”) on the face thereof:

“THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT (“REGULATION S”), (2) BY ITS ACCEPTANCE HEREOF AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE “RESALE RESTRICTION TERMINATION DATE”) THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUERS OR ANY AFFILIATE OF THE ISSUERS WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), ONLY (A) TO THE ISSUERS, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S, (E) TO AN INSTITUTIONAL ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS AN INSTITUTIONAL ACCREDITED INVESTOR ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF THE SECURITIES OF \$250,000, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR OFFER OR SALE IN CONNECTION WITH ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, OR (F)

PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUERS' AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM AND IN THE CASE OF THE FOREGOING CLAUSE (E), A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE ISSUERS AND THE TRUSTEE. THIS LEGEND WILL BE REMOVED AFTER 40 CONSECUTIVE DAYS BEGINNING ON AND INCLUDING THE LATER OF (A) THE DAY ON WHICH THE SECURITIES ARE OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN REGULATION S) AND (B) THE DATE OF THE CLOSING OF THE ORIGINAL OFFERING. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."

(C) The Global Securities, whether or not an Initial Security, shall bear the following legend on the face thereof:

"UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THIS INDENTURE REFERRED TO ON THE REVERSE HEREOF."

(e) Book-Entry Provisions.

(i) This Section 2.1(e) shall apply only to Global Securities deposited with the Trustee, as custodian for DTC.

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- (ii) Each Global Security initially shall (x) be registered in the name of DTC for such Global Security or the nominee of DTC, (y) be delivered to the Trustee as custodian for DTC and (z) bear legends as set forth in Section 2.1(d).
 - (iii) Members of, or participants in, DTC (“Agent Members”) shall have no rights under this Indenture with respect to any Global Security held on their behalf by DTC or by the Trustee as the custodian of DTC or under such Global Security, and DTC may be treated by the Issuers, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuers, the Trustee or any agent of the Issuers or the Trustee from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of a Securityholder of a beneficial interest in any Global Security.
 - (iv) In connection with any transfer of a portion of the beneficial interest in a Global Security pursuant to subsection (f) of this Section 2.1 to beneficial owners who are required to hold Definitive Securities, the Securities Custodian shall reflect on its books and records the date and a decrease in the principal amount of such Global Security in an amount equal to the principal amount of the beneficial interest in the Global Security to be transferred, and the Issuers shall execute, and the Trustee shall authenticate and deliver, one or more Definitive Securities of like tenor and amount.
 - (v) In connection with the transfer of an entire Global Security to beneficial owners pursuant to subsection (f) of this Section 2.1, such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Issuers shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by DTC in exchange for its beneficial interest in such Global Security, an equal aggregate principal amount of Definitive Securities of authorized denominations.
 - (vi) The registered Securityholder of a Global Security may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Securityholder is entitled to take under this Indenture or the Securities.

(f) Definitive Securities. (i) Except as provided below, owners of beneficial interests in Global Securities will not be entitled to receive Definitive Securities. If required to do so pursuant to any applicable law or regulation, beneficial owners may obtain Definitive Securities in exchange for their beneficial interests in a Global Security upon written request in

accordance with DTC's and the Registrar's procedures. In addition, Definitive Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Security if (a) DTC notifies the Issuers that it is unwilling or unable to continue as depository for such Global Security or DTC ceases to be a clearing agency registered under the Exchange Act, at a time when DTC is required to be so registered in order to act as depository, and in each case a successor depository is not appointed by the Issuers within 90 days of such notice or, (b) the Company executes and delivers to the Trustee and Registrar an Officers' Certificate stating that such Global Security shall be so exchangeable or (c) an Event of Default has occurred and is continuing and the Registrar has received a request from DTC.

- (ii) Any Definitive Security delivered in exchange for an interest in a Global Security pursuant to Section 2.1(e)(iv) or (v) shall, except as otherwise provided by Section 2.6(c), bear the applicable legend regarding transfer restrictions applicable to the Definitive Security set forth in Section 2.1(d).
- (iii) In connection with the exchange of a portion of a Definitive Security for a beneficial interest in a Global Security, the Trustee shall cancel such Definitive Security, and the Issuers shall execute, and the Trustee shall authenticate and deliver, to the transferring Securityholder a new Definitive Security representing the principal amount not so transferred.

SECTION 2.2. Execution and Authentication. One Officer of each of the Issuers shall sign the Securities for the Issuers by manual or facsimile signature. If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless, after giving effect to any exchange of Initial Securities for Exchange Securities.

A Security shall not be valid until an authorized signatory of the Trustee manually authenticates the Security. The signature of the Trustee on a Security shall be conclusive evidence that such Security has been duly and validly authenticated and issued under this Indenture. A Security shall be dated the date of its authentication.

At any time and from time to time after the execution and delivery of this Indenture, the Trustee shall authenticate and make available for delivery: (1) Initial Securities for original issue on the Issue Date in an aggregate principal amount of \$235,000,000, and (2) Exchange Securities for issue only in an Exchange Offer pursuant to the Registration Rights Agreement, and only in exchange for Initial Securities of an equal principal amount, in each case upon a written order of the Issuers signed by two Officers of each of the Issuers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of each of the Issuers (the "Issuers' Order"). Such Issuers' Order shall specify the amount of the Securities to be authenticated and the date on which the original issue of Securities is to be authenticated and whether the Securities are to be Initial Securities or Exchange Securities.

The Trustee may appoint an agent (the "Authenticating Agent") reasonably acceptable to the Issuers to authenticate the Securities. Unless limited by the terms of such appointment, any such Authenticating Agent may authenticate Securities whenever the Trustee

may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by the Authenticating Agent.

In case any Issuer, pursuant to Article IV, shall be consolidated or merged with or into any other Person or shall convey, transfer, lease or otherwise dispose of its properties and assets substantially as an entirety to any Person, and the successor Person resulting from such consolidation, or surviving such merger, or into which any Issuer shall have been merged, or the Person which shall have received a conveyance, transfer, lease or other disposition as aforesaid, shall have executed an indenture supplemental hereto with the Trustee pursuant to Article IV, any of the Securities authenticated or delivered prior to such consolidation, merger, conveyance, transfer, lease or other disposition may, from time to time, at the request of the successor Person, be exchanged for other Securities executed in the name of the successor Person with such changes in phraseology and form as may be appropriate, but otherwise in substance of like tenor as the Securities surrendered for such exchange and of like principal amount; and the Trustee, upon Issuers' Order of the successor Person, shall authenticate and deliver Securities as specified in such order for the purpose of such exchange. If Securities shall at any time be authenticated and delivered in any new name of a successor Person pursuant to this Section 2.2 in exchange or substitution for or upon registration of transfer of any Securities, such successor Person, at the option of the Securityholders but without expense to them, shall provide for the exchange of all Securities at the time outstanding for Securities authenticated and delivered in such new name.

SECTION 2.3. Registrar and Paying Agent. The Issuers shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange (the "Registrar") and an office or agency where Securities may be presented for payment (the "Paying Agent"). The Registrar shall keep a register of the Securities and of their transfer and exchange (the "Note Register"). The Issuers may have one or more co-registrars and one or more additional paying agents. The term "Paying Agent" includes any additional paying agent.

The Issuers shall enter into an appropriate agency agreement with any Registrar, Paying Agent or co-registrar not a party to this Indenture, which shall incorporate the terms of the TIA. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuers shall notify the Trustee of the name and address of each such agent. If the Issuers fail to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.7. The Issuers or any of their Restricted Subsidiaries may act as Paying Agent, Registrar, co-registrar or transfer agent.

The Issuers initially appoint the Trustee as Registrar and Paying Agent for the Securities.

SECTION 2.4. Paying Agent to Hold Money in Trust. By no later than 10:00 a.m. (New York City time) on the date on which any principal of or interest on any Security is due and payable, the Issuers shall deposit with the Paying Agent a sum sufficient in immediately available funds to pay such principal or interest when due. The Issuers shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit the Securityholders or the Trustee all money held by such Paying Agent for the payment of principal of or interest on the Securities and shall notify the Trustee in writing of any default by any of the Issuers in making any such payment. If either Issuer or a Subsidiary acts as

Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Issuers at any time may require a Paying Agent (other than the Trustee) to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section, the Paying Agent (if other than any Issuer or a Subsidiary) shall have no further liability for the money delivered to the Trustee. Upon any bankruptcy, reorganization or similar proceeding with respect to each Issuer, the Trustee shall serve as Paying Agent for the Securities.

SECTION 2.5. Securityholder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Registrar, or to the extent otherwise required under the TIA, the Issuers shall furnish to the Trustee, in writing at least five Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders.

SECTION 2.6. Transfer and Exchange.

(a) The following provisions shall apply with respect to any proposed transfer of a Rule 144A Security or an Institutional Accredited Investor Security prior to the date which is two years after the later of the date of its original issue and the last date on which the Issuers or any affiliate of the Company was the owner of such Securities (or any predecessor thereto) (the "Resale Restriction Termination Date"):

(i) a transfer of a Rule 144A Security or an Institutional Accredited Investor Security or a beneficial interest therein to a QIB shall be made upon the representation of the transferee in the form as set forth on the reverse of the Security that it is purchasing for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuers as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A;

(ii) a transfer of a Rule 144A Security or an Institutional Accredited Investor Security or a beneficial interest therein to an IAI shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in Section 2.7 from the proposed transferee and, if requested by the Issuers or the Trustee, the delivery of an opinion of counsel, certification and/or other information satisfactory to each of them; and

(iii) a transfer of a Rule 144A Security or an Institutional Accredited Investor Security or a beneficial interest therein to a Non-U.S. Person shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in Section 2.8 from the proposed transferee and, if requested by the Issuers or the Trustee, the delivery

of an opinion of counsel, certification and/or other information satisfactory to each of them.

(b) The following provisions shall apply with respect to any proposed transfer of a Regulation S Security prior to the expiration of the Restricted Period:

(i) a transfer of a Regulation S Security or a beneficial interest therein to a QIB shall be made upon the representation of the transferee, in the form of assignment on the reverse of the certificate, that it is purchasing the Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuers as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A;

(ii) a transfer of a Regulation S Security or a beneficial interest therein to an IAI shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in Section 2.7 from the proposed transferee and, if requested by the Issuers or the Trustee, the delivery of an opinion of counsel, certification and/or other information satisfactory to each of them; and

(iii) a transfer of a Regulation S Security or a beneficial interest therein to a Non-U.S. Person shall be made upon receipt by the Trustee or its agent of a certificate substantially in the form set forth in Section 2.8 hereof from the proposed transferee and, if requested by the Issuers or the Trustee, receipt by the Trustee or its agent of an opinion of counsel, certification and/or other information satisfactory to each of them.

After the expiration of the Restricted Period, interests in the Regulation S Security may be transferred without requiring the certification set forth in Section 2.7, Section 2.8 or any additional certification.

(c) Restricted Global Securities Legend. Upon the transfer, exchange or replacement of Securities not bearing a restricted Global Securities Legend, the Registrar shall deliver Securities that do not bear a restricted Global Securities Legend. Upon the transfer, exchange or replacement of Securities bearing a restricted Global Securities Legend, the Registrar shall deliver only Securities that bear a restricted Global Securities Legend unless there is delivered to the Registrar an Opinion of Counsel to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act.

(d) The Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 2.1 or this Section 2.6. The Issuers shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable prior written notice to the Registrar.

(e) Obligations with Respect to Transfers and Exchanges of Securities.

(i) To permit registrations of transfers and exchanges, the Issuers shall, subject to the other terms and conditions of this Article II, execute and the Trustee shall authenticate Definitive Securities and Global Securities at the Registrar's or co-registrar's request.

(ii) No service charge shall be made to a Securityholder for any registration of transfer or exchange, but the Issuers may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charges payable upon exchange or transfer pursuant to Sections 3.7, 3.9 or 9.5).

(iii) The Registrar or co-registrar shall not be required to register the transfer of or exchange of any Security for a period beginning (1) 15 days before the mailing of a notice of an offer to repurchase or redeem Securities and ending at the close of business on the day of such mailing or (2) 15 days before an interest payment date and ending on such interest payment date.

(iv) Prior to the due presentation for registration of transfer of any Security, the Issuers, the Trustee, the Paying Agent, the Registrar or any co-registrar may deem and treat the person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Issuers, the Trustee, the Paying Agent, the Registrar or any co-registrar shall be affected by notice to the contrary.

(v) Any Definitive Security delivered in exchange for an interest in a Global Security pursuant to Section 2.1(e) shall, except as otherwise provided by Section 2.6(c), bear the applicable legend regarding transfer restrictions applicable to the Definitive Security set forth in Section 2.1(d).

(vi) All Securities issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Securities surrendered upon such transfer or exchange.

(f) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in, DTC or other Person with respect to the accuracy of the records of DTC or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than DTC) of any notice (including any notice of redemption) or the payment of any amount or delivery of any Securities (or other security or property) under or with respect to such Securities. All notices and communications to be given to the Securityholders and all payments to be made to Securityholders in respect of the Securities shall be given or

made only to or upon the order of the registered Securityholders (which shall be DTC or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through DTC subject to the applicable rules and procedures of DTC. The Trustee may rely and shall be fully protected in relying upon information furnished by DTC with respect to its members, participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among DTC participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

SECTION 2.7. Form of Certificate to be Delivered in Connection with Transfers to IAIs. [Date]

Star Gas Partners, L.P.
Star Gas Finance Company
c/o Union Bank of California, N.A.
[Address]
[Address]
[Address]

Ladies and Gentlemen:

This certificate is delivered to request a transfer of \$_____ principal amount of the 10 1/4% Senior Notes due 2013 (the "Securities") of Star Gas Partners, L.P. and Star Gas Finance Company (together, the "Issuers").

Upon transfer, the Securities would be registered in the name of the new beneficial owner as follows:

Name: _____

Address: _____

Taxpayer ID Number: _____

The undersigned represents and warrants to you that:

1. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the "Securities Act")) purchasing for our own account or for the account of such an institutional "accredited investor" at least \$250,000 principal amount of the Securities, and we are acquiring the Securities not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. We

have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risk of our investment in the Securities and we invest in or purchase securities similar to the Securities in the normal course of our business. We and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

2. We understand that the Securities have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing Securities to offer, sell or otherwise transfer such Securities prior to the date that is two years after the later of the date of original issue and the last date on which the Issuers or any affiliate of the Issuers was the owner of such Securities (or any predecessor thereto) (the "Resale Restriction Termination Date") only (a) to the Issuers, (b) pursuant to a registration statement which has been declared effective under the Securities Act, (c) in a transaction complying with the requirements of Rule 144A under the Securities Act, to a person we reasonably believe is a qualified institutional buyer under Rule 144A (a "QIB") that purchases for its own account or for the account of a QIB and to whom notice is given that the transfer is being made in reliance on Rule 144A, (d) pursuant to offers and sales that occur outside the United States within the meaning of Regulation S under the Securities Act, (e) to an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act that is purchasing for its own account or for the account of such an institutional "accredited investor," in each case in a minimum principal amount of Securities of \$250,000 or (f) pursuant to any other available exemption from the registration requirements of the Securities Act, subject in each of the foregoing cases to any requirement of law that the disposition of our property or the property of such investor account or accounts be at all times within our or their control and in compliance with any applicable state securities laws. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. If any resale or other transfer of the Securities is proposed to be made pursuant to clause (e) above prior to the Resale Restriction Termination Date, the transferor shall deliver a letter from the transferee substantially in the form of this letter to the Issuers and the Trustee, which shall provide, among other things, that the transferee is an institutional "accredited investor" (within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act) and that it is acquiring such Securities for investment purposes and not for distribution in violation of the Securities Act. Each purchaser acknowledges that the Issuers and the Trustee reserve the right prior to any offer, sale or other transfer prior to the Resale Termination Date of the Securities pursuant to clauses (d), (e) or (f) above to require the delivery of an opinion of counsel, certifications and/or other information satisfactory to the Issuers and the Trustee.

TRANSFeree: _____

BY: _____

[Date]

Star Gas Partners, L.P.
Star Gas Finance Company
c/o Union Bank of California, N.A.
[Address]
[Address]
[Address]

Re: Star Gas Partners, L.P.
Star Gas Finance Company
10¹/₄% Senior Notes due 2013 (the "Securities")

Ladies and Gentlemen:

In connection with our proposed sale of \$_____ aggregate principal amount of the Securities, we confirm that such sale has been effected pursuant to and in accordance with Regulation S under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, we represent that:

(a) the offer of the Securities was not made to a person in the United States;

(b) either (i) at the time the buy order was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States or (ii) the transaction was executed in, on or through the facilities of a designated off-shore securities market and neither we nor any person acting on our behalf knows that the transaction has been pre-arranged with a buyer in the United States;

(c) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable; and

(d) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act.

In addition, if the sale is made during a restricted period and the provisions of Rule 903(c)(3) or Rule 904(c)(1) of Regulation S are applicable thereto, we confirm that such sale has been made in accordance with the applicable provisions of Rule 903(c)(3) or Rule 904(c)(1), as the case may be.

You and the Issuers are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby. Terms used in this certificate have the meanings set forth in Regulation S.

Very truly yours,

[Name of Transferor]

By: _____

Authorized Signature

SECTION 2.9. Mutilated, Destroyed, Lost or Stolen Securities. If a mutilated Security is surrendered to the Registrar or if the Securityholder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Issuers shall issue and the Trustee shall authenticate a replacement Security if the requirements of Section 8-405 of the Uniform Commercial Code are met, such that the Securityholder (a) satisfies the Issuers or the Trustee within a reasonable time after such Securityholder has notice of such loss, destruction or wrongful taking and the Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the Issuers or the Trustee prior to the Security being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code (a "protected purchaser") and (c) satisfies any other reasonable requirements of the Trustee. If required by the Trustee or the Company, such Securityholder shall furnish an indemnity bond sufficient in the judgment of the Company and the Trustee to protect the Issuers, the Trustee, the Paying Agent, the Registrar and any co-registrar from any loss which any of them may suffer if a Security is replaced, and, in the absence of notice to the Issuers or the Trustee that such Security has been acquired by a bona fide purchaser, the Issuers shall execute and upon Issuers' Order the Trustee shall authenticate and make available for delivery, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Issuers in their discretion may, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section, the Issuers may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) in connection therewith.

Every new Security issued pursuant to this Section in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Issuers (if applicable) and any other obligor upon the Securities, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 2.10. Outstanding Securities. Securities outstanding at any time are all Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section as not outstanding. A Security ceases to be outstanding in the event the Issuers or a Subsidiary of the Issuers holds the Security, *provided, however*, that (i) for purposes of determining which are outstanding for consent or voting purposes hereunder, the provisions of Section 10.6 shall apply and (ii) in determining whether the Trustee shall be protected in making a determination whether the Securityholders of the requisite principal amount of outstanding Securities are present at a meeting of Securityholders of Securities for quorum purposes or have consented to or voted in favor of any request, demand, authorization, direction, notice, consent, waiver, amendment or modification hereunder, or relying upon any such quorum, consent or vote, only Securities which a Trust Officer of the Trustee actually knows to be held by the Issuers or an Affiliate of the Issuers shall not be considered outstanding.

If a Security is replaced pursuant to Section 2.9, it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Security is held by a bona fide purchaser.

If the Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or maturity date money sufficient to pay all principal and interest payable on that date with respect to the Securities (or portions thereof) to be redeemed or maturing, as the case may be, and the Paying Agent is not prohibited from paying such money to the Securityholders on that date pursuant to the terms of this Indenture, then on and after that date such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.11. Temporary Securities. In the event that Definitive Securities are to be issued under the terms of this Indenture, until such Definitive Securities are ready for delivery, the Issuers may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of Definitive Securities but may have variations that the Issuers consider appropriate for temporary Securities. Without unreasonable delay, the Issuers shall prepare and the Trustee shall authenticate Definitive Securities. After the preparation of Definitive Securities, the temporary Securities shall be exchangeable for Definitive Securities upon surrender of the temporary Securities at any office or agency maintained by the Issuers for that purpose and such exchange shall be without charge to the Securityholder. Upon surrender for cancellation of any one or more temporary Securities, the Issuers shall execute, and the Trustee shall authenticate and make available for delivery in exchange therefor, one or more Definitive Securities representing an equal principal amount of Securities. Until so exchanged, the Securityholder of temporary Securities shall in all respects be entitled to the same benefits under this Indenture as a Securityholder of Definitive Securities.

SECTION 2.12. Cancellation. The Issuers at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee

any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Securities surrendered for registration of transfer, exchange, payment or cancellation and destroy such Securities in accordance with its internal policies including delivery of a certificate (a "Certificate of Destruction") describing such Securities disposed (subject to the record retention requirements of the Exchange Act). The Issuers may not issue new Securities to replace Securities it has paid or delivered to the Trustee for cancellation for any reason other than in connection with a transfer or exchange.

SECTION 2.13. Payment of Interest; Defaulted Interest. Interest on any Security which is payable, and is punctually paid or duly provided for, on any interest payment date shall be paid to the Person in whose name such Security (or one or more predecessor Securities) is registered at the close of business on the regular record date for such interest at the office or agency of the Issuers maintained for such purpose pursuant to Section 2.3.

Any interest on any Security which is payable, but is not paid when the same becomes due and payable and such nonpayment continues for a period of 30 days shall forthwith cease to be payable to the Securityholder on the regular record date by virtue of having been such Securityholder, and such defaulted interest and (to the extent lawful) interest on such defaulted interest at the rate borne by the Securities (such defaulted interest and interest thereon herein collectively called "Defaulted Interest") shall be paid by the Issuers, at its election in each case, as provided in clause (a) or (b) below:

(a) The Issuers may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective predecessor Securities) are registered at the close of business on a Special Record Date (as defined below) for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuers shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date (not less than 30 days after such notice) of the proposed payment (the "Special Interest Payment Date"), and at the same time the Issuers shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a record date (the "Special Record Date") for the payment of such Defaulted Interest, which date shall be not more than 15 days and not less than 10 days prior to the Special Interest Payment Date and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Issuers of such Special Record Date, and in the name and at the expense of the Issuers, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor to be given in the manner provided for in Section 10.2, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor having been so given, such Defaulted Interest shall be paid on the Special Interest Payment Date to the Persons in whose names the Securities (or their respective predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

(b) The Issuers may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Issuers to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of, transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

SECTION 2.14. Computation of Interest. Interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 2.15. CUSIP Numbers. The Issuers in issuing the Securities may use “CUSIP” numbers (if then generally in use) and, if so, the Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to Securityholders; *provided, however*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such CUSIP numbers. The Issuers shall promptly notify the Trustee in writing of any change in the CUSIP numbers.

ARTICLE III

Covenants

SECTION 3.1. Payment of Securities. The Issuers shall promptly pay the principal of and interest on the Securities on the dates and in the manner provided in the Securities and in this Indenture. Principal and interest shall be considered paid on the date due to the extent on such date the Trustee or the Paying Agent holds in accordance with this Indenture immediately available funds sufficient to pay all principal and interest then due.

The Issuers shall pay interest on overdue principal at the rate specified therefor in the Securities, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

Notwithstanding anything to the contrary contained in this Indenture, the Issuers may, to the extent it is required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America from principal or interest payments hereunder.

SECTION 3.2. Intentionally Omitted

SECTION 3.3. Intentionally Omitted

SECTION 3.4. Intentionally Omitted

SECTION 3.5. Intentionally Omitted

SECTION 3.6. Intentionally Omitted.

SECTION 3.7. Limitation on Asset Sales. (a) The Company will not, and will not permit any of its Restricted Subsidiaries to, undertake an Asset Sale unless:

(1) the Company or its Restricted Subsidiary, as the case may be, receives consideration at the time of the Asset Sale at least equal to the fair market value, as determined in good faith by the Board of Directors, of the assets sold or otherwise disposed of; and

(2) at least 80% of the consideration received by the Company or the Restricted Subsidiary is in the form of cash.

(b) For purposes of determining the amount of cash received in an Asset Sale, the following will be deemed to be cash:

(1) the amount of any liabilities on the Company's or any Restricted Subsidiary's balance sheet that are assumed by the transferee of the assets; and

(2) the amount of any notes or other obligations received by the Company or the Restricted Subsidiary from the transferee that is converted within 180 days by the Company or the Restricted Subsidiary into cash, to the extent of the cash received.

(c) The 80% limitation set forth in Section 3.7(a)(2) will not apply to any Asset Sale in which the cash portion of the consideration received is equal to or greater than the after-tax proceeds would have been had the Asset Sale complied with such limitation.

(d) If the Company or any of its Restricted Subsidiaries receives Net Proceeds exceeding \$10 million from one or more Asset Sales in any fiscal year, then within 360 days after the date the aggregate amount of Net Proceeds exceeds \$10 million, the Company must apply the amount of such Net Proceeds, to the extent not already so applied, either (i) to reduce Indebtedness of the Company or any Restricted Subsidiary, with a permanent reduction of availability, in the case of revolving Indebtedness, or (ii) to make an investment in assets or capital expenditures useful to the Company's or any of its Subsidiaries' business as in effect on the Issue Date or any Related Business. Any Net Proceeds that are not applied or invested as set forth above, will be considered "Excess Proceeds".

(e) If the aggregate amount of Excess Proceeds exceeds \$10 million, within 360 days the Issuers will make an offer to all Securityholders to purchase for cash that number of Notes that may be purchased out of the Excess Proceeds at a purchase price equal to 100% of the principal amount of the Notes plus accrued and unpaid interest to the date of purchase pursuant to the procedures set forth in the terms of this Indenture and in compliance with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws notwithstanding any provision of this Indenture to the contrary.

(f) To the extent that the aggregate amount of Notes tendered in response to any such purchase offer is less than the Excess Proceeds, the Company or any Restricted Subsidiary may use such deficiency for general business purposes. If the aggregate principal amount of Notes surrendered by the Securityholders exceeds the amount of Excess Proceeds, the Trustee shall select the Notes to be purchased in accordance with the procedures for selection and notice of redemption set forth herein. Notwithstanding the foregoing, if the Issuers make this purchase offer at any time when the Issuers have securities outstanding ranking equally in right of

payment with the Notes and the terms of those securities provide that a similar offer must be made with respect to those other securities, then the Issuers' offer to purchase the Notes will be made concurrently with the other offers, and securities of each issue will be accepted on a pro rata basis in proportion to the aggregate principal amount of securities of each issue which their holders elect to have purchased. Upon completion of the offer to the Securityholders, the amount of Excess Proceeds will be reset at zero.

SECTION 3.8. Intentionally Omitted

SECTION 3.9. Offer to Repurchase Upon Change of Control. (a) Upon the occurrence of a Change of Control, the Issuers will make an offer (a "Change of Control Offer") to each Securityholder to repurchase, in cash, all or any part (equal to \$1,000 or an integral multiple of \$1,000) of that Securityholder at a purchase price equal to 101% of the aggregate principal amount of the Notes or portion of Notes validly tendered for payment thereof plus accrued and unpaid interest on the Notes repurchased, if any, to the date of purchase (the "Change of Control Payment"). Within 30 days following any Change of Control, the Issuers will mail a notice to each Securityholder describing the transaction or transactions that constitute the Change of Control and stating:

- (1) that the Change of Control Offer is being made pursuant to this Section 3.9 and that all Notes tendered will be accepted for payment;
- (2) the purchase price and the purchase date, which shall be no later than 30 Business Days from the date such notice is mailed (the "Change of Control Payment Date");
- (3) that any Note not tendered will continue to accrue interest;
- (4) that, unless the Issuers default in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest after the Change of Control Payment Date;
- (5) that Securityholders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes, with the form entitled "Option of Securityholder to Elect Purchase" on the reverse of the Notes completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;
- (6) that Securityholders will be entitled to withdraw any election to have their Notes purchased if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Securityholder, the principal amount of Notes delivered for purchase, and a statement that such Securityholder is withdrawing his election to have the Notes purchased; and
- (7) that Securityholders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to \$1,000 in principal amount or an integral multiple thereof.

The Issuers will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change in Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuers will comply with the applicable securities laws and regulations and will not be deemed to have breached their obligations under the applicable provisions of this Indenture by virtue of such conflict.

(b) On the Change of Control Payment Date, the Issuers will, to the extent lawful:

- (1) accept for payment all Notes or portions thereof properly tendered in accordance with the Change of Control Offer;
- (2) deposit an amount equal to the Change of Control Payment for the Notes with the Paying Agent in respect of all Notes or portion of Notes properly tendered; and
- (3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being tendered to the Issuers.

The Paying Agent will promptly mail to each Securityholder properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each Securityholder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each new Note will be in a principal amount of \$1,000 or an integral multiple thereof. The Issuers will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

If the Change of Control Payment Date is on or after an interest record date, and on or before the related interest payment date, any accrued and unpaid interest, if any, will be paid to the Person in whose a Security is registered at the close business on such record date, and no additional interest will be payable to Securityholders who tender pursuant to the Change of Control Offer.

Prior to mailing a Change of Control Offer, and as a condition to such mailing, (i) the requisite holders of each issue of Indebtedness issued under an indenture or other agreement that may be violated by such payment shall have consented to such Change of Control Offer being made and waived the event of default, if any, caused by the Change of Control or (ii) the Company will repay all outstanding Indebtedness issued under an indenture or other agreement that may be violated by a payment to the Securityholders under a Change of Control Offer or the Company must offer to repay all Indebtedness and make payment to the holders of such Indebtedness that accepts such offer and obtain waivers of any event of default from the remaining holders of such Indebtedness. The Issuers covenant to effect such repayment or obtain such consent and waiver within 30 days following Change of Control.

(c) Notwithstanding anything to the contrary in this Section 3.9, the Issuers will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 3.9 and Section 3.7 hereof and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer.

SECTION 3.10. Intentionally Omitted

SECTION 3.11. Intentionally Omitted

SECTION 3.12. Intentionally Omitted

SECTION 3.13. Maintenance of Office or Agency. The Issuers will maintain an office or agency where the Securities may be presented or surrendered for payment, where, if applicable, the Securities may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Issuers in respect of the Securities and this Indenture may be served. The principal corporate trust office of the Trustee, or if the Trustee's principal corporate trust office is not located in The City of New York, any other office or agency maintained by the Trustee in The City of New York (the "Corporate Trust Office"), shall be such office or agency of the Issuers, unless the Issuers shall designate and maintain some other office or agency for one or more of such purposes. The Issuers will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Issuers shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Issuers hereby appoint the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Issuers may also from time to time designate one or more other offices or agencies (in or outside of The City of New York) where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind any such designation. The Issuers will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency.

SECTION 3.14. Intentionally Omitted

SECTION 3.15. Intentionally Omitted

SECTION 3.16. Intentionally Omitted

SECTION 3.17. Compliance Certificate. The Issuers shall deliver to the Trustee within 120 days after the end of each Fiscal Year of each of the Issuers an Officers' Certificate stating that in the course of the performance by the signers of their duties as Officers of the Company they would normally have knowledge of any Default or Event of Default and whether or not the signers know of any Default or Event of Default that occurred during such period. If they do, the certificate shall describe the Default or Event of Default, its status and what action the Company is taking or proposes to take with respect thereto. The Company also shall comply with TIA § 314(a)(4).

SECTION 3.18. Intentionally Omitted

SECTION 3.19. Statement by Officers as to Default. The Issuers shall deliver to the Trustee, as soon as possible and in any event within fifteen days after the Issuers become aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default, Officers' Certificates setting forth the details of such Event of Default or default and the action which the Issuers propose to take with respect thereto.

SECTION 3.20. Intentionally Omitted

ARTICLE IV

Intentionally Omitted

SECTION 4.1. Intentionally Omitted

ARTICLE V

Redemption of Securities

SECTION 5.1. Optional Redemption. The Securities may be redeemed, as a whole or from time to time in part, subject to the conditions and at the redemption prices specified in the form of Securities set forth in Exhibits A and B hereto, which are hereby incorporated by reference and made a part of this Indenture, together with accrued and unpaid interest to the Redemption Date.

SECTION 5.2. Applicability of Article. Redemption of Securities at the election of the Issuers or otherwise, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article.

SECTION 5.3. Election to Redeem; Notice to Trustee. The election of the Issuers to redeem any Securities pursuant to Section 5.1 shall be evidenced by a Board Resolution. In case of any redemption at the election of the Issuers, the Issuers shall, upon not later than the earlier of the date that is 45 days prior to the Redemption Date fixed by the Issuers or the date on which notice is given to the Securityholders (except as provided in Section 5.5 or unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities to be redeemed and shall deliver to the Trustee such documentation and records as shall enable the Trustee to select the Securities to be redeemed pursuant to Section 5.4.

SECTION 5.4. Selection by Trustee of Securities to Be Redeemed. If less than all the Securities are to be redeemed at any time pursuant to an optional redemption, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the outstanding Securities not previously called for redemption, in compliance with the requirements of the principal securities exchange, if any, on which such Securities are listed, or, if such Securities are not so listed, on a *pro rata* basis, by lot or by such other method as the Trustee shall deem fair and appropriate (and in such manner as complies with applicable legal requirements) and which may provide for the selection for redemption of portions of the principal of the Securities; *provided, however*, that no such partial redemption shall reduce the portion of the principal amount of a Security not redeemed to less than \$1,000.

The Trustee shall promptly notify the Issuers in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed.

SECTION 5.5. Notice of Redemption. Notice of redemption shall be given in the manner provided for in Section 10.2 not less than 30 nor more than 60 days prior to the Redemption Date, to each Securityholder of Securities to be redeemed. The Trustee shall give notice of redemption in the Issuers' names and at the Issuers' expense; *provided, however*, that the Issuers shall deliver to the Trustee, at least 45 days prior to the Redemption Date, an Officers' Certificate requesting that the Trustee give such notice at the Issuers' expense and setting forth the information to be stated in such notice as provided in the following items.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the redemption price and the amount of accrued interest to the Redemption Date payable as provided in Section 5.7, if any,
- (3) if less than all outstanding Securities are to be redeemed, the identification of the particular Securities (or portion thereof) to be redeemed, as well as the aggregate principal amount of Securities to be redeemed and the aggregate principal amount of Securities to be outstanding after such partial redemption,
- (4) in case any Security is to be redeemed in part only, the notice which relates to such Security shall state that on and after the Redemption Date, upon surrender of such Security, the Securityholder will receive, without charge, a new Security or Securities of authorized denominations for the principal amount thereof remaining unredeemed,
- (5) that on the Redemption Date the redemption price (and accrued interest, if any, to the Redemption Date payable as provided in Section 5.7) will become due and payable upon each such Security, or the portion thereof, to be redeemed, and, unless the Issuers default in making the redemption payment, that interest on Securities called for redemption (or the portion thereof) will cease to accrue on and after said date,
- (6) the place or places where such Securities are to be surrendered for payment of the redemption price and accrued interest, if any,
- (7) the name and address of the Paying Agent,
- (8) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price,

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- (9) the CUSIP number, and that no representation is made as to the accuracy or correctness of the CUSIP number, if any, listed in such notice or printed on the Securities, and
 - (10) the paragraph of the Securities pursuant to which the Securities are to be redeemed.

SECTION 5.6. Deposit of Redemption Price. Prior to any Redemption Date, the Issuers shall deposit with the Trustee or with a Paying Agent (or, if either of the Issuers is acting as its own Paying Agent, segregate and hold in trust as provided in Section 2.4) an amount of money sufficient to pay the redemption price of, and accrued interest on, all the Securities which are to be redeemed on that date.

SECTION 5.7. Securities Payable on Redemption Date. Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the redemption price therein specified (together with accrued interest, if any, to the Redemption Date), and from and after such date (unless the Issuers shall default in the payment of the redemption price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Issuers at the redemption price, together with accrued interest, if any, to the Redemption Date (subject to the rights of Securityholders of record on the relevant record date to receive interest due on the relevant interest payment date).

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate borne by the Securities.

SECTION 5.8. Securities Redeemed in Part. Any Security which is to be redeemed only in part (pursuant to the provisions of this Article) shall be surrendered at the office or agency of the Issuers maintained for such purpose pursuant to Section 3.13 (with, if the Issuers or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuers and the Trustee duly executed by, the Securityholder thereof or such Securityholder's attorney duly authorized in writing), and the Issuers shall execute, and the Trustee shall authenticate and make available for delivery to the Securityholder of such Security at the expense of the Issuers, a new Security or Securities, of any authorized denomination as requested by such Securityholder, in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered, *provided*, that each such new Security will be in a principal amount of \$1,000 or integral multiple thereof.

ARTICLE VI

Defaults and Remedies

SECTION 6.1. Events of Default. Each of the following is an Event of Default:

- (1) default in any payment of interest or additional interest (including as required by the Registration Rights Agreement) on any Note when due, continued for 30 days;

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- (2) default in the payment of principal of or premium, if any, on any Note when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;
 - (3) intentionally omitted;
 - (4) default in the performance of any of the obligations described under Section 3.9 or Section 3.7 above or under the covenants described under Article III above and such default shall have continued for a period of 30 days after the Issuers shall have been given notice (in each case, other than a failure to purchase Notes which will constitute an Event of Default under clause (2) above and other than a failure to comply with Section 4.1 which is covered by clause (3));
 - (5) intentionally omitted;
 - (6) intentionally omitted;
 - (7) intentionally omitted;
 - (8) intentionally omitted; or
 - (9) intentionally omitted.

However, a default under clause (4) of this paragraph will not constitute an Event of Default until the Trustee or the holders of 25% in principal amount of the outstanding Notes notify the Company of the default and the Company does not cure such default within the time specified in clause (4) of this paragraph after receipt of such notice.

SECTION 6.2. Acceleration. If an Event of Default occurs and is continuing, the Trustee by notice to the Company, or the holders of at least 25% in principal amount of the outstanding Notes by notice to the Company and the Trustee, may, and the Trustee at the request of such holders shall, declare the principal of, premium, if any, and accrued and unpaid interest, if any, on all the Notes to be due and payable. Upon such a declaration, such principal, premium and accrued and unpaid interest will be due and payable immediately. The holders of a majority in principal amount of the outstanding Notes may waive all past defaults (except with respect to nonpayment of principal, premium or interest) and rescind any such acceleration with respect to the Notes and its consequences if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, other than the nonpayment of the principal of, premium, if any, and interest on the Notes that have become due solely by such declaration of acceleration, have been cured or waived.

SECTION 6.3. Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of (or premium, if any) or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

SECTION 6.4. Waiver of Past Defaults. The Securityholders of a majority in principal amount of the outstanding Securities by notice to the Trustee may (a) waive, by their consent (including, without limitation consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities), an existing Default or Event of Default and its consequences except (i) a Default or Event of Default in the payment of the principal of, or premium, if any, or interest on a Security or (ii) a Default or Event of Default in respect of a provision that under Section 9.2 cannot be amended without the consent of each Securityholder affected and (b) rescind any such acceleration with respect to the Securities and its consequences if such rescission would not conflict with any judgment or decree of a court of competent jurisdiction. When a Default or Event of Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any consequent right.

SECTION 6.5. Control by Majority. The Securityholders of a majority in principal amount of the outstanding Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Sections 7.1 and 7.2, that the Trustee determines is unduly prejudicial to the rights of other Securityholders or would involve the Trustee in personal liability; *provided, however*, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

SECTION 6.6. Limitation on Suits. Subject to Section 6.7, a Securityholder may not pursue any remedy with respect to this Indenture or the Securities unless:

- (1) such Securityholder has previously given to the Trustee written notice stating that an Event of Default is continuing;
- (2) Securityholders of at least 25% in principal amount of the outstanding Securities have requested in writing that the Trustee pursue the remedy;
- (3) such Securityholders have offered to the Trustee reasonable security or indemnity against any loss, liability or expense;

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- (4) the Trustee has not complied with such request within 60 days after receipt of the request and the offer of security or indemnity; and
 - (5) the Securityholders of a majority in principal amount of the outstanding Securities have not given the Trustee a direction that, in the opinion of the Trustee, is inconsistent with such request within such 60-day period.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder or to obtain a preference or priority over another Securityholder.

SECTION 6.7. Rights of Securityholders to Receive Payment. Notwithstanding any other provision of this Indenture (including, without limitation, Section 6.6), the right of any Securityholder to receive payment of principal of, premium (if any) or interest on the Securities held by such Securityholder, on or after the respective due dates expressed in the Securities, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Securityholder.

SECTION 6.8. Collection Suit by Trustee. If an Event of Default specified in clauses (1) or (2) of Section 6.1 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.7.

SECTION 6.9. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Securityholders allowed in any judicial proceedings relative to the Issuers, the Company's Subsidiaries or its or their respective creditors or properties and, unless prohibited by law or applicable regulations, may vote on behalf of the Securityholders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Securityholder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.7.

SECTION 6.10. Priorities. If the Trustee collects any money or property pursuant to this Article VI, it shall pay out the money or property in the following order:

FIRST: to the Trustee for amounts due under Section 7.7;

SECOND: to Securityholders for amounts due and unpaid on the Securities for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and interest, respectively; and

THIRD: to the Issuers.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section. At least 15 days before such record date, the Issuers shall mail to each Securityholder and the Trustee a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by the Issuers, a suit by a Securityholder pursuant to Section 6.7 or a suit by Securityholders of more than 10% in outstanding principal amount of the Securities.

SECTION 6.12. Additional Payments. In the case of any Event of Default occurring by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Issuers with the intention of avoiding payment of the premium that the Issuers would have had to pay if the Issuers then had elected to redeem the Notes pursuant to the optional redemption provisions of this Indenture or was required to repurchase the Notes, an equivalent premium shall also become and be immediately due and payable to the extent permitted by law upon the acceleration of the Notes. If an Event of Default occurs prior to February 15, 2008 by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Issuers with the intention of avoiding the prohibition on redemption of the Notes prior to February 15, 2008, the premium specified in this Indenture shall also become immediately due and payable to the extent permitted by law upon the acceleration of the Notes.

ARTICLE VII

Trustee

SECTION 7.1. Duties of Trustee. (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs; provided that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise the rights or powers under this Indenture at the request or direction of any of the Securityholders unless such Securityholders have offered to the Trustee reasonable indemnity or security against loss, liability or expense.

(b) Except during the continuance of an Event of Default:

- (1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

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- (2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, opinions or orders furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine such certificates and opinions to determine whether or not they conform on their face to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).
- (c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:
- (1) this paragraph does not limit the effect of paragraph (b) of this Section;
 - (2) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and
 - (3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.5.
- (d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section.
- (e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuers.
- (f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.
- (g) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.
- (h) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section and to the provisions of the TIA.
- (i) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from each Issuer shall be sufficient if signed by an Officer of such Issuer.
- (j) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Securityholders

unless such Securityholders shall have offered to the Trustee reasonable security or indemnity satisfactory to it against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction.

(k) The Trustee shall not be deemed to have knowledge of any Default or Event of Default unless and until an officer at the Trustee's corporate trust office responsible for the administration of its duties hereunder shall have actual knowledge thereof or the Trustee shall have received written notice thereof at such office.

SECTION 7.2. Rights of Trustee. Subject to Section 7.1:

(a) The Trustee may conclusively rely on any document (whether in its original or facsimile form) reasonably believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate and/or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on an Officers' Certificate or Opinion of Counsel.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers, unless the Trustee's conduct constitutes willful misconduct or negligence.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Securities shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

SECTION 7.3. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with respect to such Securities with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11.

SECTION 7.4. Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Issuers' use of the proceeds from the Securities, and it shall not be responsible for any statement of the Issuers in this Indenture or in any document issued in connection with the sale of the Securities or in the Securities other than the Trustee's certificate of authentication.

SECTION 7.5. Notice of Defaults. If a Default or Event of Default occurs and is continuing and if a Trust Officer has actual knowledge thereof, the Trustee shall mail to each Securityholder notice of the Default or Event of Default within the earlier of 90 days after it

occurs or 30 days after the Trustee has knowledge of such default. Except in the case of a Default or Event of Default in payment of principal of, premium (if any), or interest on any Security (including payments pursuant to the optional redemption or required repurchase provisions of such Security, if any), the Trustee may withhold the notice if and so long a committee of its Trust Officers in good faith determines that withholding the notice is in the interests of Securityholders.

SECTION 7.6. Reports by Trustee to Securityholders. If required, as promptly as practicable after each May 15 beginning with the May 15, following the date of this Indenture, and in any event prior to July 15 in each year, the Trustee shall mail to each Securityholder a brief report dated as of such May 15 that complies with TIA § 313(a). The Trustee also shall comply with TIA § 313(b). The Trustee shall also transmit by mail all reports required by TIA § 313(c).

A copy of each report at the time of its mailing to Securityholders shall be filed with the SEC and each stock exchange (if any) on which the Securities are listed. The Company agrees to notify promptly the Trustee whenever the Securities become listed on any stock exchange and of any delisting thereof.

SECTION 7.7. Compensation and Indemnity. The Issuers shall pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder as the Issuers and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuers shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, costs of preparing and reviewing reports, certificates and other documents, costs of preparation and mailing of notices to Securityholders, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Issuers shall indemnify the Trustee against any and all loss, liability, damages, claims or expense (including reasonable attorneys' fees and expenses) incurred by it without negligence or willful misconduct on its part in connection with the administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture (including this Section 7.7) and of defending itself against any claims (whether asserted by any Securityholder, the Issuers or otherwise). The Trustee shall notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuers shall not relieve the Issuers of their obligations hereunder. The Issuers shall defend the claim and the Trustee shall provide reasonable cooperation at the Issuers' expense in the defense. The Trustee may have separate counsel and the Issuers shall pay the fees and expenses of such counsel provided that the Issuers shall not be required to pay such fees and expenses if it assumes the Trustee's defense, and, in the reasonable judgment of outside counsel to the Trustee, there is no conflict of interest between the Issuers and the Trustee in connection with such defense. The Issuers shall not be under any obligation to pay for any written settlement without its consent, which consent shall not be unreasonably delayed, conditioned or withheld. The Issuers need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct or negligence.

To secure the Issuers' payment obligations in this Section, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Securities.

The Issuers' payment obligations pursuant to this Section shall survive the discharge of this Indenture. When the Trustee incurs expenses after the occurrence of a Default specified in clause (7) of Section 6.1 with respect to the Company, the expenses are intended to constitute expenses of administration under any Bankruptcy Law.

SECTION 7.8. Replacement of Trustee. The Trustee may resign at any time by so notifying the Issuers. The Securityholders of a majority in principal amount of the Securities may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee. The Issuers shall remove the Trustee if:

- (1) the Trustee fails to comply with Section 7.10;
- (2) the Trustee is adjudged bankrupt or insolvent;
- (3) a receiver or other public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed by the Issuers or by the Securityholders of a majority in principal amount of the Securities and such Securityholders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of the Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuers shall promptly appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Securityholders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.7.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Securityholders of at least 10% in principal amount of the Securities may petition, at the Issuers' expense, any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.10, unless the Trustee's duty to resign is stayed as provided in Section 310(b) of the TIA, any Securityholder who has been a bona fide Securityholder of a Security for at least six months may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section, the Company's obligations under Section 7.7 shall continue for the benefit of the retiring Trustee.

SECTION 7.9. Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture, any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

SECTION 7.10. Eligibility; Disqualification. The Trustee shall at all times satisfy the requirements of TIA § 310(a). The Trustee shall have a combined capital and surplus of at least \$100 million as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA § 310(b); *provided, however*, that there shall be excluded from the operation of TIA § 310(b)(1) any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Issuers are outstanding if the requirements for such exclusion set forth in TIA § 310(b)(1) are met. This Indenture will always have a Trustee that satisfies the requirements of TIA § 310(a)(1), (2) and (5).

SECTION 7.11. Preferential Collection of Claims Against Company. The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

ARTICLE VIII

Discharge of Indenture; Defeasance

SECTION 8.1. Discharge of Liability on Securities; Defeasance. (a) Subject to Section 8.1(c), when (i)(x) the Issuers deliver to the Trustee all outstanding Securities (other than Securities replaced pursuant to Section 2.9) for cancellation or (y) all outstanding Securities not theretofore delivered for cancellation have become due and payable, whether at maturity or upon redemption or will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption pursuant to Article V hereof and the Issuers irrevocably deposit or cause to be deposited with the Trustee as trust funds in trust solely for the benefit of the Securityholders money in U.S. dollars, non-callable U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption; (ii) no Default or Event of Default shall have occurred and be continuing on the date

of such deposit or shall occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which each of the Issuers is a party or by which each of the Issuers is bound; (iii) the Issuers have paid or caused to be paid all sums payable under this Indenture and the Securities; and (iv) the Issuers have delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of such Securities at maturity or the Redemption Date, as the case may be, then the Trustee shall acknowledge satisfaction and discharge of this Indenture on demand of the Issuers (accompanied by an Officers' Certificate and an Opinion of Counsel stating that all conditions precedent specified herein relating to the satisfaction and discharge of this Indenture have been complied with) and at the cost and expense of the Issuers.

(b) Subject to Sections 8.1(c) and 8.2, the Issuers at any time may terminate (i) all its obligations under the Securities and this Indenture ("legal defeasance option"), and after giving effect to such legal defeasance, any omission to comply with such obligations shall no longer constitute a Default or Event of Default or (ii) its obligations under Sections 3.7, 3.9, and 3.17 and the Issuers may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply with such covenants shall no longer constitute a Default or an Event of Default under Section 6.14 and the events specified in such Section shall no longer constitute an Event of Default (clause (ii) being referred to as the "covenant defeasance option"), but except as specified above, the remainder of this Indenture and the Securities shall be unaffected thereby. The Issuers may exercise their legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If the Issuers exercise their legal defeasance option, payment of the Securities may not be accelerated because of an Event of Default. If the Issuers exercise their covenant defeasance option, payment of the Securities may not be accelerated because of an Event of Default specified in Section 6.1 (4) (as such Section relates to Sections 3.7, and 3.9).

Upon satisfaction of the conditions set forth herein and upon request of the Issuers, the Trustee shall acknowledge in writing the discharge of those obligations that the Issuers terminate.

(c) Notwithstanding the provisions of Sections 8.1(a) and (b), the Issuers' obligations in Sections 2.2, 2.3, 2.4, 2.5, 2.6, 2.9, 2.10, 2.11, 3.1, 3.13, 3.17, 3.19, 6.7, 7.7, 7.8 and in this Article 8 shall survive until the Securities have been paid in full. Thereafter, the Issuers' obligations in Sections 7.7, 8.4 and 8.5 shall survive.

SECTION 8.2. Conditions to Defeasance. The Issuers may exercise their legal defeasance option or their covenant defeasance option only if:

(1) the Issuers irrevocably deposit in trust with the Trustee for the benefit of the Securityholders money in U.S. dollars or U.S. Government Obligations or a combination thereof for the payment of principal, premium, if any, and interest on the Securities to maturity or redemption, as the case may be;

(2) the Issuers deliver to the Trustee a certificate from a nationally recognized firm of independent accountants expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal and interest when due on all the Securities to maturity;

(3) no Default or Event of Default shall have occurred and be continuing on the date of such deposit or, with respect to certain bankruptcy or insolvency Events of Default, on the 91st day after such date of deposit;

(4) such legal defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a Default under, this Indenture or any other material agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;

(5) the Issuers shall have delivered to the Trustee an Opinion of Counsel (subject to customary assumptions and exclusions) to the effect that (A) the Securities and (B) assuming no intervening bankruptcy of the Issuers between the date of deposit and the 91st day following the deposit and that no Securityholder of the Securities is an insider of the Issuers, after the 91st day following the deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' right generally;

(6) the Issuers deliver to the Trustee an Opinion of Counsel (subject to customary assumptions and exclusions) to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(7) in the case of the legal defeasance option, the Issuers shall have delivered to the Trustee an Opinion of Counsel (subject to customary assumptions and exclusions) in the United States stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of this Indenture there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Securityholders will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such legal defeasance had not occurred;

(8) in the case of the covenant defeasance option, the Issuers shall have delivered to the Trustee an Opinion of Counsel (subject to customary assumptions and exclusions) in the United States to the effect that the Securityholders will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and covenant defeasance and will be subject to federal income tax on the same amount, in the same manner and at the same times as would have been the case if such deposit and covenant defeasance had not occurred; and

(9) the Issuers deliver to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities and this Indenture as contemplated by this Article VIII have been complied with.

SECTION 8.3. Application of Trust Money. The Trustee shall hold in trust money or U.S. Government Obligations deposited with it pursuant to this Article VIII. It shall apply the deposited money and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Securities.

SECTION 8.4. Repayment to Company. The Trustee and the Paying Agent shall promptly turn over to the Issuers upon request any excess money, U.S. Government Obligations or securities held by them upon payment of all the obligations under this Indenture.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Issuers upon request any money held by them for the payment of principal of or interest on the Securities that remains unclaimed for two years, and, thereafter, Securityholders entitled to the money must look to the Issuers for payment as general creditors.

SECTION 8.5. Indemnity for U.S. Government Obligations. The Issuers shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 8.6. Reinstatement. If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article VIII by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Issuers under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article VIII until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article VIII; *provided, however*, that, if the Issuers have made any payment of interest on or principal of any Securities because of the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Securityholders of such Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE IX

Amendments

SECTION 9.1. Without Consent of Securityholders. The Issuers and the Trustee may amend this Indenture or the Securities without notice to or consent of any Securityholder:

- (1) cure any ambiguity, omission, defect or inconsistency;

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- (2) provide for the assumption by a successor corporation, partnership, trust or limited liability company of the obligations of the Issuers under this Indenture;
 - (3) provide for uncertificated Notes in addition to or in place of certificated Notes (*provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f) (2) (B) of the Code);
 - (4) add Guarantees with respect to the Notes;
 - (5) secure the Notes;
 - (6) add to the covenants of the Issuers for the benefit of the holders or surrender any right or power conferred upon the Issuers;
 - (7) make any change that does not adversely affect the rights of any holder;
 - (8) comply with any requirement of the SEC in connection with the qualification of this Indenture under the Trust Indenture Act; or
 - (9) provide for the issuance of exchange securities which shall have terms substantially identical in all respects to the Notes (except that the transfer restrictions contained in the Notes shall be modified or eliminated as appropriate) and which shall be treated, together with any outstanding Notes, as a single class of securities.

After an amendment under this Section becomes effective, the Issuers shall mail to Securityholders a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

SECTION 9.2. With Consent of Securityholders. The Issuers may amend this Indenture or the Securities without notice to any Securityholder but with the written consent of the Securityholders of at least a majority in principal amount of the Securities then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities). However, without the consent of each Securityholder affected, an amendment may not:

- (1) reduce the principal amount of Securities whose Securityholders must consent to an amendment;
- (2) reduce the rate of or extend the time for payment of interest on any Security;
- (3) reduce the principal of or extend the Stated Maturity of any Security;

(4) reduce the premium payable upon the redemption or repurchase of any Security or change the time at which any Security may or shall be redeemed or repurchased as described under Section 3.7, Section 3.9 and Article V;

(5) make any Security payable in currency other than that stated in the Security;

(6) impair the right of any Securityholder to receive payment of principal of, premium, if any, and interest on such Securityholder's Securities on or after the due dates therefor (other than a repurchase required under Section 3.7 or Section 3.9) or to institute suit for the enforcement of any payment on or with respect to such Securityholder's Securities; or

(7) make any change to the amendment provisions which require each Securityholder's consent or to the waiver provisions.

It shall not be necessary for the consent of the Securityholders under this Section to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof. A consent to any amendment or waiver under this Indenture by any Securityholder of the Securities given in connection with a tender of such Securityholder's Securities will not be rendered invalid by such tender.

After an amendment under this Section becomes effective, the Issuers shall mail to Securityholders a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

SECTION 9.3. Compliance with Trust Indenture Act. Every amendment to this Indenture or the Securities shall comply with the TIA as then in effect.

SECTION 9.4. Revocation and Effect of Consents and Waivers. A consent to an amendment or a waiver by a Securityholder of a Security shall bind the Securityholder and every subsequent Securityholder of that Security or portion of the Security that evidences the same debt as the consenting Securityholder's Security, even if notation of the consent or waiver is not made on the Security. However, any such Securityholder or subsequent Securityholder may revoke the consent or waiver as to such Securityholder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective. After an amendment or waiver becomes effective, it shall bind every Securityholder. An amendment or waiver shall become effective upon receipt by the Trustee of the requisite number of written consents under Section 9.1 or Section 9.2 as applicable.

The Issuers may, but shall not be obligated to, fix a record date for the purpose of determining the Securityholders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Securityholders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any

such action, whether or not such Persons continue to be Securityholders after such record date. No such consent shall become valid or effective more than 120 days after such record date.

SECTION 9.5. Notation on or Exchange of Securities. If an amendment changes the terms of a Security, the Trustee may require the Securityholder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security regarding the changed terms and return it to the Securityholder. Alternatively, if the Issuers or the Trustee so determines, the Issuers in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment.

SECTION 9.6. Trustee to Sign Amendments. The Trustee shall sign any amendment authorized pursuant to this Article IX if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing such amendment the Trustee shall be entitled to receive indemnity reasonably satisfactory to it and to receive, and (subject to Sections 7.1 and 7.2) shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

ARTICLE X

Miscellaneous

SECTION 10.1. Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the provision required by the TIA shall control.

SECTION 10.2. Notices. Any notice or communication shall be in writing and delivered in person or mailed by first-class mail addressed as follows:

if to the Issuers:

Star Gas Partners, L.P.
2187 Atlantic Street
Stamford, Connecticut 06902
Attention: Irik Sevin, Chief Executive Officer
FAX: (203) 325-7470

with a copy to:

Phillips Nizer LLP
666 Fifth Avenue
New York, NY 10103
Attention: Alan Shapiro, Esq.
FAX: (212) 262-5152

if to the Trustee:

Union Bank of California, N.A.
Attention: Corporate Trust
120 South San Pedro, 4th Floor
Los Angeles, CA 90012
FAX:

with a copy to:

Jensen Law Office
Attention: Philip K. Jensen
Suite 120
3708 Mount Diablo Boulevard
Lafayette, CA 94549-3630
FAX: (925) 284-7079

The Issuers or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a registered Securityholder shall be mailed to the Securityholder at the Securityholder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

SECTION 10.3. Communication by Securityholders with other Securityholders. Securityholders may communicate pursuant to TIA § 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Issuers, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

SECTION 10.4. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuers to the Trustee to take or refrain from taking any action under this Indenture, the Issuers shall furnish to the Trustee:

(1) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 10.5. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture shall include:

- (1) a statement that the individual making such certificate or opinion has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In giving an Opinion of Counsel, counsel may rely as to factual matters on an Officers' Certificate or on certificates of public officials.

SECTION 10.6. When Securities Disregarded. In determining whether the Securityholders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Issuers or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuers shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which the Trustee knows are so owned shall be so disregarded. Also, subject to the foregoing, only Securities outstanding at the time shall be considered in any such determination.

SECTION 10.7. Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by, or a meeting of, Securityholders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 10.8. Legal Holidays. A "Legal Holiday" is a Saturday, a Sunday or other day on which commercial banking institutions are authorized or required to be closed in New York City. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

SECTION 10.9. GOVERNING LAW. THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 10.10. No Recourse Against Others. An incorporator, director, officer, employee, stockholder, limited partner or controlling person, as such, of the Issuers or of Star Gas LLC shall not have any liability for any obligations of the Issuers under the Securities, this Indenture or for any claim based on, in respect of or by reason of such obligations or their

creation. By accepting a Security, each Securityholder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Securities.

SECTION 10.11. Successors. All agreements of the Issuers in this Indenture and the Securities shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 10.12. Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

SECTION 10.13. Qualification of Indenture. The Issuers shall qualify this Indenture under the TIA in accordance with the terms and conditions of the Registration Rights Agreement and shall pay all reasonable costs and expenses (including attorneys' fees and expenses for the Company, the Trustee and the Securityholders) incurred in connection therewith, including, but not limited to, costs and expenses of qualification of this Indenture and the Securities and printing this Indenture and the Securities. The Trustee shall be entitled to receive from the Company any such Officers' Certificates or other documentation as it may reasonably request in connection with any such qualification of this Indenture under the TIA.

SECTION 10.14. Table of Contents; Headings. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

[The remainder of this page is intentionally blank]

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

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:

[FORM OF FACE OF SECURITY]

[Applicable Restricted Global Securities Legend]
[Depository Legend, if applicable]

No. [_____]

Principal Amount \$[_____]
CUSIP NO. [_____]

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

10 1/4% Senior Note due 2013

Star Gas Partners, L.P., a Delaware limited partnership (such partnership herein called the "Company"), and Star Gas Finance Company, a Delaware corporation, (such corporation, together with the Company, herein called the "Issuers"), promise to pay to [_____], or registered assigns, the principal sum of [_____] Dollars or such greater or lesser amount as shall be reflected on the books and records of the custodian with respect to the Global Security (as appointed by DTC) (the "Securities Custodian"),¹ on February 15, 2013 pursuant to the Indenture (as defined below).

Interest Payment Dates: February 15 and August 15

Record Dates: February 1 and August 1

Additional provisions of this Security are set forth on the other side of this Security.

¹ Global Security only

STAR GAS PARTNERS, L.P.

By: STAR GAS LLC, its General Partner

By: _____

STAR GAS FINANCE COMPANY

By: _____

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

UNION BANK OF CALIFORNIA, N.A.
as Trustee, certifies
that this is one of
the Securities referred
to in the Indenture.

By: _____
Authorized Signatory

Date:

[FORM OF REVERSE SIDE OF SECURITY]

10 1/4% Senior Note due 2013

1. Interest

Star Gas Partners, L.P., a Delaware limited partnership (such partnership being herein called the "Company"), and Star Gas Finance Company, a Delaware corporation, (such corporation, together with the Company, under the Indenture hereinafter referred to, being herein called the "Issuers"), promise to pay interest on the principal amount of this Security at the rate per annum shown above.

The Issuers will pay interest semiannually on February 15 and August 15 of each year commencing August 15, 2003. Interest on the Securities will accrue from the most recent date to which interest has been paid on the Securities or, if no interest has been paid, from February 6, 2003. The Issuers shall pay interest on overdue principal or premium, if any (plus interest on such interest to the extent lawful), at the rate borne by the Securities to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. Method of Payment

By no later than 11:00 a.m. (New York City time) on the date on which any principal or interest on any Security is due and payable, the Issuers shall deposit with the Trustee or the Paying Agent money sufficient to pay such principal, premium, if any, and/or interest. The Issuers will pay interest (except Defaulted Interest) to the Persons who are registered Securityholders of Securities at the close of business on the February 1 or August 1 next preceding the interest payment date even if Securities are cancelled, repurchased or redeemed after the record date and on or before the interest payment date. Securityholders must surrender Securities to a Paying Agent to collect principal payments. The Issuers will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Securities represented by a Global Security (including principal, premium, if any, and interest) will be made by the transfer of immediately available funds to the accounts specified by The Depository Trust Company. The Issuers will make all payments in respect of a Definitive Security (including principal, premium, if any, and interest) by mailing a check to the registered address of each Securityholder thereof.

3. Paying Agent and Registrar

Initially, Union Bank of California, N.A. (the "Trustee"), will act as Trustee, Paying Agent and Registrar. The Issuers may appoint and change any Paying Agent, Registrar or co-registrar without notice to any Securityholder. The Issuers or any of the Restricted Subsidiaries may act as Paying Agent, Registrar or co-registrar.

4. Indenture

The Issuers issued the Securities under an Amended and Restated Indenture dated as of November __, 2005 (as it may be amended or supplemented from time to time in

accordance with the terms thereof, the “Indenture”), among the Issuers and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb) as in effect on the date of the Indenture (the “Act”). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the Act for a statement of those terms.

The Securities are general unsecured senior obligations of the Issuers. The aggregate principal amount of securities that may be authenticated and delivered under the Indenture is unlimited.

The Indenture imposes certain limitations, among other things, on the ability of the Issuers and the Restricted Subsidiaries, to incur additional debt; pay dividends on stock; redeem stock or redeem subordinated debt; make investments; create Liens in favor of other senior subordinated debt and subordinated debt; enter into agreements that restrict dividends from Restricted Subsidiaries; sell assets; enter into transactions with Affiliates; sell Capital Stock of Restricted Subsidiaries; merge or consolidate; enter into different lines of business and pay consent fees.

5. Redemption

Except as described below, the Notes are not redeemable until February 15, 2008. On and after February 15, 2008, the Issuers may redeem all or, from time to time, a part of the Notes upon not less than 30 nor more than 60 days’ notice, at the following redemption prices (expressed as a percentage of principal amount) plus accrued and unpaid interest on the Notes, if any, to the applicable redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period beginning on February 15 of the years indicated below:

<u>Year</u>	<u>Percentage</u>
2008	105.125%
2009	103.417%
2010	101.708%
2011 and thereafter	100.000%

Prior to February 15, 2006, the Issuers may on any one or more occasions redeem up to 35% of the original principal amount of the Notes with the Net Cash Proceeds of one or more Public Equity Offerings at a redemption price of 110.25% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided that*

- (1) there is a Public Market at the time of such redemption;
- (2) at least 65% of the original principal amount of the Notes remains outstanding after each such redemption; and

(3) the redemption occurs within 60 days after the closing of such Public Equity Offering.

If the optional redemption date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest, if any, will be paid to the Person in whose name the Note is registered at the close of business on such record date, and no additional interest will be payable to Securityholders whose Notes will be subject to redemption by the Issuers.

In the case of any partial redemption, the Trustee will select the Notes for redemption in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not listed, then on a pro rata basis, by lot or by such other method as the Trustee in its sole discretion will deem to be fair and appropriate, although no Note of \$1,000 in original principal amount or less will be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption relating to that Note will state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original Note.

6. Repurchase Provisions

(a) Upon a Change of Control any Securityholder will have the right to cause the Issuers to repurchase all or any part of the Securities of such Securityholder at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to the date of repurchase (subject to the right of Securityholders of record on the relevant record date to receive interest due on the relevant interest payment date) as provided in, and subject to the terms of, the Indenture.

(b) In the event of an Asset Sale that requires the purchase of Securities pursuant to Section 3.7(f) of the Indenture, the Company will be required to apply such Excess Proceeds to the repayment of the Securities and any pari passu notes in accordance with the procedures set forth in Section 3.7 of the Indenture.

7. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in denominations of principal amount of \$1,000 and whole multiples of \$1,000. A Securityholder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Securityholder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange (i) any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of this Security not to be redeemed) or (ii) any Securities for a period beginning 15 days before an interest payment date and ending on such interest payment date.

8. Persons Deemed Owners

The registered Securityholder of this Security may be treated as the owner of it for all purposes.

9. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Issuers at their request unless an abandoned property law designates another Person. After any such payment, Securityholders entitled to the money must look only to the Issuers and not to the Trustee for payment.

10. Defeasance

Subject to certain conditions set forth in the Indenture, the Issuers at any time may terminate some or all of their obligations under the Securities and the Indenture if the Issuers deposit with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

11. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended without notice to any Securityholder but with the written consent of the Securityholders of at least a majority in principal amount of the then outstanding Securities and (ii) any default (other than with respect to nonpayment or in respect of a provision that cannot be amended without the written consent of each Securityholder affected) or noncompliance with any provision may be waived with the written consent of the Securityholders of a majority in principal amount of the then outstanding Securities. Subject to certain exceptions set forth in the Indenture, without the consent of any Securityholder, the Issuers and the Trustee may amend the Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article IV of the Indenture, or to provide for uncertificated Securities in addition to or in place of certificated Securities, or to add guarantees with respect to the Securities, to secure the Securities, or to add additional covenants of the Issuers, or surrender rights and powers conferred on the Issuers, or to comply with any request of the SEC in connection with qualifying the Indenture under the Act, or to make any change that does not materially adversely affect the rights of any Securityholder, or to provide for the issuance of Exchange Securities.

12. Defaults and Remedies

Under the Indenture, Events of Default include in summary form: (i) default for 30 days in payment of interest or additional interest when due on the Securities; (ii) default in payment of principal or premium, if any, on the Securities at Stated Maturity, upon required repurchase or upon optional redemption pursuant to paragraphs 5 and 6 of the Securities, upon declaration or otherwise; (iii) default in the performance of any of the obligations described under Section 3.9 or Section 3.7 inclusive and such default shall have continued for a period of 30 days after the Issuers shall have been given notice (in each case, other than a failure to purchase Notes which will constitute an Event of Default under clause (ii) above (iv) the

Company, the Co-Issuer or any Restricted Subsidiary (pursuant to or within the meaning of any Bankruptcy Law): (a) commences a voluntary insolvency proceeding; (b) consents to the entry of an order for relief against it in an involuntary insolvency proceeding; (c) consents to the appointment of a custodian of it or for any substantial part of its property; or (d) makes a general assignment for the benefit of its creditors; or takes any comparable action under any foreign laws relating to insolvency; provided however, that the liquidation of any Restricted Subsidiary into another Restricted Subsidiary or the Company other than as part of a credit reorganization, shall not constitute an Event of Default under this clause (iv); or (v) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that: (a) is for relief against the Company, the Co-Issuer or any restricted Subsidiary in an involuntary insolvency proceeding; (b) appoints a Custodian of the Company, the Co-Issuer or any Restricted Subsidiary or for any substantial part of its property; or (c) orders the winding up or liquidation of the Company, the Co-Issuer or any Restricted Subsidiary; or (d) grants any similar relief under any foreign laws; and in each case the order or decree remains unstayed and in effect for 60 days.

If an Event of Default occurs and is continuing (other than an Event of Default described in clause (vii) above), the Trustee or the Securityholders of at least 25% in principal amount of the Securities may declare all the Securities to be due and payable. Certain events of bankruptcy or insolvency are Events of Default which will result in the Securities being due and payable immediately upon the occurrence of such Events of Default.

Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives reasonable indemnity or security. Subject to certain limitations, Securityholders of a majority in principal amount of the Securities may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment of principal or interest) if it determines that withholding notice is in their interest.

13. Trustee Dealings with the Issuers

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Issuers or their Affiliates and may otherwise deal with the Issuers or their Affiliates with the same rights it would have if it were not Trustee.

14. Recourse Against Others

No director, officer, employee, incorporator, partner, stockholder, limited partner or controlling person of the Issuers, or of Star Gas Partners LLC as such, shall have any liability for any obligations of the Issuers under the Securities, the Indenture, or for any claim based on, in respect of, or by reason of, such obligations of their creation. Each Securityholder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities.

15. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an authenticating agent acting on its behalf) manually signs the certificate of authentication on the other side of this Security.

16. Abbreviations

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with rights of survivorship and not as tenants in common), CUST (= custodian) and U/G/M/A (= Uniform Gift to Minors Act).

17. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Securityholders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

18. Governing Law

This Security shall be governed by, and construed in accordance with, the laws of the State of New York.

The Issuers will furnish to any Securityholder upon written request and without charge to the Securityholder a copy of the Indenture, which has in it the text of this Security in larger type. Requests may be made to:

Star Gas Partners, L.P.
Star Gas Finance Company
1287 Atlantic Street
Stamford, Connecticut 06902

Attention: Chief Financial Officer

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

_____ (Print or type assignee's name, address and zip code)

_____ (Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint _____ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: _____

Your Signature: _____

Signature Guarantee: _____

(Signature must be guaranteed)

Sign exactly as your name appears on the other side of this Security.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.

In connection with any transfer or exchange of any of the Securities evidenced by this certificate occurring prior to the date that is two years after the later of the date of original issuance of such Securities and the last date, if any, on which such Securities were owned by the Company or any Affiliate of the Company, the undersigned confirms that such Securities are being:

CHECK ONE BOX BELOW:

- 1 acquired for the undersigned's own account, without transfer; or
- 2 transferred to the Issuers; or
- 3 transferred pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"); or
- 4 transferred pursuant to an effective registration statement under the Securities Act; or
- 5 transferred pursuant to and in compliance with Regulation S under the Securities Act; or

- transferred to an institutional “accredited investor” (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act), that has furnished to the Trustee a signed letter containing certain representations and agreements (the form of which letter appears as Section 2.7 of the Indenture); or
- transferred pursuant to another available exemption from the registration requirements of the Securities Act of 1933.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any person other than the registered Securityholder thereof; *provided, however*, that if box (5), (6) or (7) is checked, the Trustee or the Issuers may require, prior to registering any such transfer of the Securities, in their sole discretion, such legal opinions, certifications and other information as the Trustee or the Issuers may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, such as the exemption provided by Rule 144 under such Act.

Signature Guarantee:	Signature
(Signature must be guaranteed)	Signature

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.

TO BE COMPLETED BY PURCHASER IF (1) OR (3) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuers as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated:

[FORM OF FACE OF EXCHANGE SECURITY]

[Depository Legend, if applicable]

No. [_____]

Principal Amount \$[_____]
CUSIP NO. [_____]STAR GAS PARTNERS, L.P.
STAR GAS FINANCE COMPANY10 ¹/₄% Senior Note due 2013

Star Gas Partners, L.P., a Delaware limited partnership (such partnership herein called the "Company"), and Star Gas Finance Company, a Delaware corporation, (such corporation, together with the Company, herein called the "Issuers"), promise to pay to [_____], or registered assigns, the principal sum of [_____] Dollars or such greater or lesser amount as shall be reflected on the books and records of the of the custodian with respect to the Global Security (as appointed by DTC) (the "Securities Custodian"),¹ on February 15, 2013 pursuant to the Indenture (as defined below).

Interest Payment Dates: February 15 and August 15

Record Dates: February 1 and August 1

Additional provisions of this Security are set forth on the other side of this Security.

¹ Global Security only

STAR GAS PARTNERS, L.P.

By: STAR GAS LLC, its General Partner

By: _____

STAR GAS FINANCE COMPANY

By: _____

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

UNION BANK OF CALIFORNIA, N.A.

as Trustee, certifies that this is one of the Securities referred to in the Indenture.

By: _____
Authorized Signatory

Date:

[FORM OF REVERSE SIDE OF EXCHANGE SECURITY]

10 1/4% Senior Subordinated Note due 2013

1. Interest

Star Gas Partners, L.P., a Delaware limited partnership (such partnership being herein called the "Company"), and Star Gas Finance Company, a Delaware corporation, (such corporation, together with the Company, under the Indenture hereinafter referred to, being herein called the "Issuers"), promise to pay interest on the principal amount of this Security at the rate per annum shown above.

The Issuers will pay interest semiannually on February 15 and August 15 of each year commencing August 15, 2003. Interest on the Securities will accrue from the most recent date to which interest has been paid on the Securities or, if no interest has been paid, from February 6, 2003. The Issuers shall pay interest on overdue principal or premium, if any (plus interest on such interest to the extent lawful), at the rate borne by the Securities to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. Method of Payment

By no later than 11:00 a.m. (New York City time) on the date on which any principal or interest on any Security is due and payable, the Issuers shall deposit with the Trustee or the Paying Agent money sufficient to pay such principal, premium, if any, and/or interest. The Issuers will pay interest (except Defaulted Interest) to the Persons who are registered Securityholders of Securities at the close of business on the February 1 or August 1 next preceding the interest payment date even if Securities are cancelled, repurchased or redeemed after the record date and on or before the interest payment date. Securityholders must surrender Securities to a Paying Agent to collect principal payments. The Issuers will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Securities represented by a Global Security (including principal, premium, if any, and interest) will be made by the transfer of immediately available funds to the accounts specified by The Depository Trust Company. The Issuers will make all payments in respect of a Definitive Security (including principal, premium, if any, and interest) by mailing a check to the registered address of each Securityholder thereof.

3. Paying Agent and Registrar

Initially, Union Bank of California, N.A. (the "Trustee"), will act as Trustee, Paying Agent and Registrar. The Issuers may appoint and change any Paying Agent, Registrar or co-registrar without notice to any Securityholder. The Issuers or any of the Restricted Subsidiaries may act as Paying Agent, Registrar or co-registrar.

4. Indenture

The Issuers issued the Securities under an Amended and Restated Indenture dated as of November ____, 2005 (as it may be amended or supplemented from time to time in

accordance with the terms thereof, the "Indenture"), among the Issuers and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb) as in effect on the date of the Indenture (the "Act"). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the Act for a statement of those terms.

The Securities are general unsecured senior obligations of the Issuers. The aggregate principal amount of securities that may be authenticated and delivered under the Indenture is unlimited. The Indenture imposes certain limitations, among other things, on the ability of the Issuers and the Restricted Subsidiaries, to incur additional debt; pay dividends on stock; redeem stock or redeem subordinated debt; make investments; create Liens in favor of other senior subordinated debt and subordinated debt; enter into agreements that restrict dividends from Restricted Subsidiaries; sell assets; enter into transactions with Affiliates; sell Capital Stock of Restricted Subsidiaries; merge or consolidate; enter into different lines of business and pay consent fees.

5. Redemption

Except as described below, the Notes are not redeemable until February 15, 2008. On and after February 15, 2008, the Issuers may redeem all or, from time to time, a part of the Notes upon not less than 30 nor more than 60 days' notice, at the following redemption prices (expressed as a percentage of principal amount) plus accrued and unpaid interest on the Notes, if any, to the applicable redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period beginning on February 15 of the years indicated below:

<u>Year</u>	<u>Percentage</u>
2008	105.125%
2009	103.417%
2010	101.708%
2011 and thereafter	100.000%

Prior to February 15, 2006, the Issuers may on any one or more occasions redeem up to 35% of the original principal amount of the Notes with the Net Cash Proceeds of one or more Public Equity Offerings at a redemption price of 110.25% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided that*

- (1) there is a Public Market at the time of such redemption;
- (2) at least 65% of the original principal amount of the Notes remains outstanding after each such redemption; and

(3) the redemption occurs within 60 days after the closing of such Public Equity Offering.

If the optional redemption date is on or after an interest record date and on or before the related interest payment date, the accrued and unpaid interest, if any, will be paid to the Person in whose name the Note is registered at the close of business on such record date, and no additional interest will be payable to holders whose Notes will be subject to redemption by the Issuers.

In the case of any partial redemption, the Trustee will select the Notes for redemption in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not listed, then on a pro rata basis, by lot or by such other method as the Trustee in its sole discretion will deem to be fair and appropriate, although no Note of \$1,000 in original principal amount or less will be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption relating to that Note will state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original Note.

6. Repurchase Provisions

(a) Upon a Change of Control any Securityholder of Securities will have the right to cause the Issuers to repurchase all or any part of the Securities of such Securityholder at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to the date of repurchase (subject to the right of Securityholders of record on the relevant record date to receive interest due on the relevant interest payment date) as provided in, and subject to the terms of, the Indenture.

(b) In the event of an Asset Disposition that requires the purchase of Securities pursuant to Section 3.7 (f) of the Indenture, the Company will be required to apply such Excess Proceeds to the repayment of the Securities and any pari passu notes in accordance with the procedures set forth in Section 3.7 of the Indenture.

7. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in denominations of principal amount of \$1,000 and whole multiples of \$1,000. A Securityholder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Securityholder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange (i) any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of this Security not to be redeemed) or (ii) any Securities for a period beginning 15 days before an interest payment date and ending on such interest payment date.

8. Persons Deemed Owners

The registered Securityholder of this Security may be treated as the owner of it for all purposes.

9. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Issuers at their request unless an abandoned property law designates another Person. After any such payment, Securityholders entitled to the money must look only to the Issuers and not to the Trustee for payment.

10. Defeasance

Subject to certain conditions set forth in the Indenture, the Issuers at any time may terminate some or all of their obligations under the Securities and this Indenture if the Issuers deposit with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

11. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended without notice to any Securityholder but with the written consent of the Securityholders of at least a majority in principal amount of the then outstanding Securities and (ii) any default (other than with respect to nonpayment or in respect of a provision that cannot be amended without the written consent of each Securityholder affected) or noncompliance with any provision may be waived with the written consent of the Securityholders of a majority in principal amount of the then outstanding Securities. Subject to certain exceptions set forth in this Indenture, without the consent of any Securityholder, the Issuers and the Trustee may amend this Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article IV of the Indenture, or to provide for uncertificated Securities in addition to or in place of certificated Securities, or to add guarantees with respect to the Securities, to secure the Securities, or to add additional covenants of the Issuers, or surrender rights and powers conferred on the Issuers, or to comply with any request of the SEC in connection with qualifying the Indenture under the Act, or to make any change that does not materially adversely affect the rights of any Securityholder, or to provide for the issuance of Exchange Securities.

12. Defaults and Remedies

Under the Indenture, Events of Default include in summary form: (i) default for 30 days in payment of interest or additional interest when due on the Securities; (ii) default in payment of principal or premium, if any, on the Securities at Stated Maturity, upon required repurchase or upon optional redemption pursuant to paragraphs 5 and 6 of the Securities, upon declaration or otherwise; (iii) default in the performance of any of the obligations described under Section 3.9 or Section 3.7 inclusive and such default shall have continued for a period of 30 days after the Issuers shall have been given notice (in each case, other than a failure to purchase Notes which will constitute an Event of Default under clause (ii) above; (iv) the

Company, the Co-Issuer or any Restricted Subsidiary (pursuant to or within the meaning of any Bankruptcy Law): (a) commences a voluntary insolvency proceeding; (b) consents to the entry of an order for relief against it in an involuntary insolvency proceeding; (c) consents to the appointment of a custodian of it or for any substantial part of its property; or (d) makes a general assignment for the benefit of its creditors; or takes any comparable action under any foreign laws relating to insolvency; provided however, that the liquidation of any Restricted Subsidiary into another Restricted Subsidiary or the Company other than as part of a credit reorganization, shall not constitute an Event of Default under this clause (iv); or (v) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that: (a) is for relief against the Company, the Co-Issuer or any restricted Subsidiary in an involuntary insolvency proceeding; (b) appoints a Custodian of the Company, the Co-Issuer or any Restricted Subsidiary or for any substantial part of its property; or (c) orders the winding up or liquidation of the Company, the Co-Issuer or any Restricted Subsidiary; or (d) grants any similar relief under any foreign laws; and in each case the order or decree remains unstayed and in effect for 60 days.

If an Event of Default occurs and is continuing (other than an Event of Default described in clause (vii) above), the Trustee or the Securityholders of at least 25% in principal amount of the Securities may declare all the Securities to be due and payable. Certain events of bankruptcy or insolvency are Events of Default which will result in the Securities being due and payable immediately upon the occurrence of such Events of Default.

Securityholders may not enforce the Indenture or the Securities except as provided in this Indenture. The Trustee may refuse to enforce this Indenture or the Securities unless it receives reasonable indemnity or security. Subject to certain limitations, Securityholders of a majority in principal amount of the Securities may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment of principal or interest) if it determines that withholding notice is in their interest.

13. Trustee Dealings with the Issuers

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Issuers or their Affiliates and may otherwise deal with the Issuers or their Affiliates with the same rights it would have if it were not Trustee.

14. No Recourse Against Others

No director, officer, employee, incorporator, partner, stockholder, limited partner or controlling person of the Issuers or Star Gas LLC, as such, shall have any liability for any obligations of the Issuers under the Securities, the Indenture, the Subsidiary Guarantees or for any claim based on, in respect of, or by reason of, such obligations of their creation. Each Securityholder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities.

15. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an authenticating agent acting on its behalf) manually signs the certificate of authentication on the other side of this Security.

16. Abbreviations

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with rights of survivorship and not as tenants in common), CUST (= custodian) and U/G/M/A (= Uniform Gift to Minors Act).

17. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Securityholders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

18. Governing Law

This Security shall be governed by, and construed in accordance with, the laws of the State of New York.

The Issuers will furnish to any Securityholder upon written request and without charge to the Securityholder a copy of the Indenture, which has in it the text of this Security in larger type. Requests may be made to:

Star Gas Partners, L.P.
Star Gas Finance Company
1287 Atlantic Street
Stamford, Connecticut 06902

Attention: Chief Financial Officer

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

_____ (Print or type assignee's name, address and zip code)

_____ (Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint _____ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: _____

Your Signature: _____

Signature Guarantee: _____
(Signature must be guaranteed)

Sign exactly as your name appears on the other side of this Security.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.

FIRST AMENDMENT TO UNIT PURCHASE RIGHTS AGREEMENT

This First Amendment to Unit Purchase Rights Agreement dated as of December 2nd, 2005 (the "Amendment"), is between Star Gas Partners, L.P., a Delaware limited partnership (the "Partnership"), and American Stock Transfer & Trust Company, as rights agent (the "Rights Agent").

WITNESSETH:

WHEREAS, the Partnership and the Rights Agent are parties to a Unit Purchase Rights Agreement dated as of April 17, 2001 (the "Agreement");

WHEREAS, pursuant to Section 27 of the Agreement, the Partnership desires and directs the Rights Agent to amend the Agreement in the manner set forth below; and

WHEREAS, in accordance with Section 27 of the Agreement, the Partnership has delivered a certificate from an appropriate officer of the Partnership stating that this Amendment is in compliance with the terms of Section 27 of the Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

Section 1. *Defined Terms.* Except as amended hereby, terms defined in the Rights Agreement shall have the same meanings when used in this Amendment.

Section 2. *Amendments to Definitions.*

(a) The definition of "Acquiring Person" in Section 1 of the Agreement is amended to add the following as a new second paragraph:

"Notwithstanding anything contained in this Agreement to the contrary, Kestrel Energy Partners, LLC, a Delaware limited liability company ("Kestrel"), and Kestrel's subsidiaries Kestrel Heat LLC, a Delaware limited liability company ("Kestrel Heat"), and KM2, LLC, a Delaware limited liability company ("M2"), and their Affiliates or Associates shall not become or be an Acquiring Person solely by virtue of either:

(i) the execution, delivery and performance of either the Unit Purchase Agreement or the Ancillary Documents (as defined in the Unit Purchase Agreement); or

(ii) the consummation of the Transaction (as defined in the Unit Purchase Agreement);

unless and until such time as any such Person, together with its respective Affiliates and Associates, is then the Beneficial Owner of 15% or more of the Common Units then outstanding (including, without limitation, by virtue of Beneficial Ownership referenced in clause (i) or (ii) above) and either (1) such Person shall then purchase or otherwise become (as a result of actions taken by such Person or its Affiliates or Associates) the

Beneficial Owner of additional Common Units representing more than 1% of the Common Units then outstanding except as otherwise permitted by the Unit Purchase Agreement and Ancillary Documents or (2) any other Person who is the Beneficial Owner of more than 1% of the Common Units then outstanding shall become an Affiliate or Associate of Kestrel, Kestrel Heat or M2.”

(b) A new definition of “Unit Purchase Agreement” is hereby added to Section 1 of the Agreement as follows:

“Unit Purchase Agreement” means that certain Unit Purchase Agreement dated as of December, 2005 by and among the Partnership, the General Partner, Kestrel, Kestrel Heat and M2, as it may be amended from time to time hereafter.

(c) The term “Acquiring Person” wherever referred to in the Rights Agreement or in any Exhibit thereto shall be deemed not to include Kestrel, Kestrel Heat or M2 or any of their respective Affiliates or Associates except as provided in this Amendment.

Section 3. This amendment shall also be deemed to be an amendment to the comparable provisions in the Partnership’s Amended and Restated Agreement of Limited Partnership.

Section 4. If any term, provision, covenant or restriction of this Amendment is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Amendment shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 5. *Governing Law.* This Amendment shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts made and to be performed entirely within such State.

Section 6. *Counterparts.* This Amendment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 7. *Effect of Amendment.* Except as expressly modified herein, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment 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: _____

AMERICAN STOCK TRANSFER & TRUST COMPANY, as
Rights Agent

By: _____
Name: _____
Title: _____

News Announcement**CONTACT:**

Star Gas Partners
Investor Relations
203/328-7310

Robert Rinderman, Steven Hecht
Jaffoni & Collins Incorporated
212/835-8500 or SGU@jcir.com

FOR IMMEDIATE RELEASE**STAR GAS PARTNERS ANNOUNCES PROPOSED
STRATEGIC RECAPITALIZATION, AGREEMENT WITH SENIOR NOTEHOLDERS**

STAMFORD, CT (December 5, 2005) – Star Gas Partners, L.P. (the “Partnership” or “Star”) (NYSE: SGU, SGH), a home energy distributor and services provider specializing in heating oil, today announced that the board of directors of its general partner, Star Gas LLC, has approved a strategic recapitalization of the Partnership that, if approved by unitholders and completed, would result in a reduction in the outstanding amount of Star’s 10.25% Senior Notes of between approximately \$87 and \$100 million.

The recapitalization includes a commitment by Kestrel Energy Partners, LLC (“Kestrel”) and its affiliates to purchase \$15 million of new equity capital and provide a standby commitment in a \$35 million rights offering to Star’s common unitholders, at a price of \$2.00 per common unit. Star will utilize the \$50 million in new equity financing, together with additional funds from operations, to repurchase at least \$60 million in face amount of its senior notes and, at the Partnership’s option, up to approximately \$73.1 million of senior notes. In addition, certain noteholders have agreed to convert approximately \$26.9 million in face amount of such notes into common units at a conversion price of \$2.00 per unit.

Star has entered into agreements with the holders of approximately 94% in principal amount of its senior notes which provide that: the noteholders commit to, and will, tender their senior notes at par (i) for a pro rata portion of \$60 million or, at the Partnership’s option, up to approximately \$73.1 million in cash, (ii) in exchange for approximately 13,434,000 new common units at a conversion price of \$2.00 per unit (which new units would be acquired by exchanging approximately \$26.9 million senior notes) and, (iii) in exchange for new notes representing the remaining face amount of the tendered notes. The closing of the tender offer is conditioned upon the closing of the transactions under the Kestrel unit purchase agreement.

Subject to and until the transaction closing, the noteholders have agreed not to accelerate indebtedness due under the senior notes or initiate any litigation or proceeding with respect to the senior notes. The noteholders have further agreed to: waive any default under the indenture; not to tender the senior notes in the change of control offer which will be required to be made following the closing of the transactions under the unit purchase agreement with Kestrel; and to consent to certain amendments to the existing indenture. The agreement with the noteholders further provides for the termination of its provisions in the event that the Kestrel unit purchase agreement is no longer in effect. The understandings and

agreements contemplated by these transactions will terminate if the transaction does not close prior to April 30, 2006.

Joseph Cavanaugh, Chief Executive Officer of Star, stated, "We believe the proposed recapitalization will substantially strengthen the Partnership's balance sheet and thereby assist us in meeting our liquidity and capital requirements, which we believe will improve our future financial performance and enhance unitholder value. In addition to the obvious benefit to holders of all of the Partnership's securities, Star's employees and customers will also be positively impacted as the Partnership will be able to operate more efficiently, with less long-term debt, following the completion of this proposed transaction. We are also pleased to team up with Kestrel and Yorktown Energy Partners VI, L.P., its principal investor. They have a wealth of experience in the energy markets."

As part of the recapitalization transaction, the Partnership entered into a definitive agreement with Kestrel and its affiliates, which provides for, among other things: the receipt by the Partnership of \$50 million in new equity financing through the issuance to Kestrel of 7,500,000 common units at \$2.00 per unit for an aggregate of \$15 million and the issuance of an additional 17,500,000 common units in a rights offering to Star's common unitholders at an exercise price of \$2.00 per unit for an aggregate of \$35 million. The rights will be non-transferable, and Kestrel has agreed to buy any common units not subscribed for in the rights offering. Pursuant to the transaction, Kestrel Heat, LLC, a wholly owned subsidiary of Kestrel, will become the new general partner and Star Gas LLC, the current general partner, will receive no consideration for its removal as general partner.

In addition, the transaction will, among other matters:

- provide for the mandatory conversion of each outstanding senior subordinated unit and junior subordinated unit into one common unit;
- change the minimum quarterly distribution to the common units from \$0.575 per quarter, or \$2.30 per year, to \$0.0675 per unit, or \$0.27 per year, which shall commence accruing October 1, 2008; and, eliminate all previously accrued cumulative distribution arrearages; and,
- reallocate the incentive distribution rights so that, commencing October 1, 2008, the new general partner units in the aggregate will be entitled to receive 10% of the available cash distributed once \$0.0675 per quarter, or \$0.27 per year, has been distributed to common units and general partner units and 20% of the available cash distributed in excess of \$0.1125 per quarter, or \$0.45 per year, provided there are no arrearages in minimum quarterly distributions at the time of such distribution.

The recapitalization is subject to certain closing conditions including, the approval of Star's unitholders, approval of the lenders under its credit facility, and the successful completion of the tender offer for Star's senior notes. The Partnership intends to schedule a unitholder meeting to consider and vote upon the recapitalization proposal during the first calendar quarter of 2006.

As a result of the challenging financial and operating conditions that Star has experienced since fiscal 2004, Star has not been able to generate sufficient available cash from its operations to pay the minimum quarterly distribution of \$0.575 per unit on its Partnership securities. These conditions led to the suspension of distributions on Star's senior subordinated units, junior subordinated units and general partner units on July 29, 2004 and to the suspension of distributions on the common units on October 18, 2004.

The Partnership believes that the proposed amendments to the Partnership agreement simplify Star's capital structure, provide internally generated funds for future investment and align the minimum quarterly distribution more closely with the levels of available cash from operations that Star expects to generate in the future.

Kestrel is a private equity investment firm formed by Yorktown Energy Partners VI, L.P., Paul A. Vermeylen, Jr. and other investors. Yorktown Energy Partners VI, L.P. is a New York-based private equity investment partnership which makes investments in companies engaged in the energy industry. Yorktown affiliates and Vermeylen, were investors in Meenan Oil Co. L.P. from 1983 to 2001, during which time Vermeylen served as President of Meenan. Meenan was sold to Star in 2001 and Mr. Vermeylen has not been affiliated with Meenan since that time.

Paul Vermeylen, President of Kestrel, stated, "We believe that this recapitalization will give Star the financial flexibility to work through this period of high oil prices, to continue its programs to improve operating performance and to grow through the acquisition of heating oil distribution businesses on favorable terms. Our goal is to see Star function as a soundly capitalized business generating a stable cash flow and paying quarterly distributions commencing not later than its 2009 fiscal year. Our investment and this goal are evidence of our belief that Star has superb management and employees who are worthy of the challenge."

The Partnership expects to file the definitive unit purchase agreement and its agreement with the senior noteholders on a Current Report on Form 8-K.

Star Gas management will further discuss the proposed recapitalization in conjunction with its fiscal fourth quarter results conference call and webcast at 1:00 p.m. on Tuesday, December 13, 2005 at 888/391-0235 and www.vcall.com/IC/CEPage.asp?ID=98496.

Additional Information and Where to Find It

This communication is not a solicitation of a proxy from any security holder of the Partnership and does not constitute an offer of any securities for sale. Star expects to mail a Proxy Statement to its unitholders concerning the proposed recapitalization and to file with the Securities and Exchange Commission a Registration Statement relating to the rights offering. **WE URGE INVESTORS AND SECURITY HOLDERS TO READ THE PROXY STATEMENT AND PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS TO BE FILED WITH THE SEC, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION.** Investors and security holders will be able to obtain the documents free of charge at the SEC's website, www.sec.gov. In addition, documents filed with the SEC by Star will be available free of charge upon request from: Star's website at <http://www.star-gas.com/docreq.cfm> or by calling 877/422-5748.

Interest of Certain Persons in the Transaction.

Star and the directors and executive officers of its general partner and other members of its management and employees, may be deemed to be participants in the solicitation of proxies from the unitholders of Star in connection with the recapitalization. Certain directors and executive officers of Star have interests in the recapitalization, some of which may differ from, or may be in addition to, those of the unitholders of Star generally. Those interests will be described in greater detail in the Proxy Statement. Information about the directors and executive officers of Star and their ownership of Star's units will be set forth in the Proxy Statement. Investors may obtain additional information regarding the interests of the participants by reading the Proxy Statement when it becomes available.

Forward Looking Information

This news release 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 approval of the unit purchase agreement, the effect of weather conditions on our financial performance, the price and supply of home heating oil, the consumption patterns of our customers, our ability to obtain satisfactory gross profit margins, our ability to obtain new accounts and retain existing accounts, our ability to effect strategic acquisitions or redeploy assets, the ultimate disposition of Excess Proceeds from the sale of the propane segment, the impact of litigation, the impact of the business process redesign project at the heating oil segment and our ability to address issues related to that project, our ability to contract for our future supply needs, natural gas conversions, future union relations and outcome of current union negotiations, the impact of future environmental, health, and safety regulations, customer credit worthiness, and marketing plans. All statements other than statements of historical facts included in this news release 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 news release and in the Partnership's Annual Report on Form 10-K for the year ended September 30, 2004 including without limitation and in conjunction with the forward-looking statements included in this news release. 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. Unless otherwise required by law, the Partnership undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise after the date of this news release.

About Star Gas Partners

Star Gas Partners, L.P. is the nation's largest retail distributor of home heating oil. Additional information is available by obtaining the Partnership's SEC filings and by visiting Star's website at www.star-gas.com.

About Kestrel Energy

Kestrel Energy Partners, LLC is a private equity investment firm formed by Yorktown, Paul A. Vermeylen, Jr. and other investors. Kestrel investments include Downeast LNG, Inc., a company developing a liquefied natural gas receiving terminal in Robbinston, Maine.

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