

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Stingray Pipeline Company, L.L.C.	§	Docket No. RP08-____-000
	§	
	§	

**PREPARED DIRECT TESTIMONY OF  
ANDREW L. SCHROEDER  
ON BEHALF OF  
STINGRAY PIPELINE COMPANY, L.L.C.**

**JUNE 30, 2008**

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**SUMMARY OF THE  
PREPARED DIRECT TESTIMONY OF  
ANDREW L. SCHROEDER  
ON BEHALF OF  
STINGRAY PIPELINE COMPANY, L.L.C.**

Stingray Pipeline Company, L.L.C. is owned fifty percent by MarkWest Energy Partners, L.P., and fifty percent by a subsidiary of Enbridge, Inc. In his Prepared Direct Testimony, Exhibit No. SPC-46, Mr. Schroeder explains the flow of income earned by Stingray to MarkWest Energy Partners, L.P. (“MarkWest Energy”), a master limited partnership, and how federal and state income taxes are ultimately paid on that Stingray income by the unitholders of MarkWest Energy.

In addition to his testimony, Mr. Schroeder sponsors Exhibit Nos. SPC-47 through SPC-60.

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**PREPARED DIRECT TESTIMONY OF  
ANDREW L. SCHROEDER  
ON BEHALF OF  
STINGRAY PIPELINE COMPANY, L.L.C.**

1    **Q.1    Please state your full name, title, and current place of employment.**

2     A.     My name is Andrew L. Schroeder. I am the Vice President of Finance, Treasurer  
3           and Assistant Secretary for MarkWest Hydrocarbon, Inc. (“MarkWest  
4           Hydrocarbon”) and MarkWest Energy Partners, L.P. (“MarkWest Energy”)  
5           (MarkWest Hydrocarbon and MarkWest Energy collectively, “MarkWest”).  
6           MarkWest’s primary offices are located at 1515 Arapahoe Street, Tower 2, Suite  
7           700, Denver, Colorado 80202, which is where my office is located.

**8 Q.2 Please briefly summarize your educational and professional background.**

9 A. I graduated from the University of Colorado *magna cum laude* with a Bachelor of  
10 Science in Business Administration in 1980. I obtained a Masters in Taxation  
11 degree from the University of Denver in 1981. I became a licensed Certified  
12 Public Accountant in 1982. From 1981 through 1989, I worked with Touche  
13 Ross & Co. and Shenkin, Kurtz Baker & Co., P.C., initially as a tax associate and  
14 ending that period as a tax manager. My duties included partnership tax return  
15 preparation and preparation of forecasts associated with partnership investment  
16 opportunities. From 1989 through 1996, I worked for several energy companies

1 with a broad range of responsibilities including strategic planning and analysis  
2 and treasury operations. In 1996, I became the controller of MetroGolf  
3 Incorporated, a small publicly traded company which developed and operated golf  
4 courses and driving ranges. From 1998 through 2002, I served as a director of  
5 finance for Xcel Energy, Inc. and for Crestone Energy Ventures, a subsidiary of  
6 Northern Border Partners, with responsibilities that included managing the  
7 property and casualty insurance program for Xcel and the partnership  
8 relationships for the joint venture interests owned by Crestone Energy Ventures. I  
9 joined MarkWest Energy in December 2002. I became the Treasurer for  
10 MarkWest Energy in July 2003 and Vice President of Finance in October 2003,  
11 and I continue to hold those positions today. My responsibilities at MarkWest  
12 Energy include management of the company's tax department and oversight of  
13 the insurance risk management program for the partnership and its subsidiaries.

14 **Q.3 On whose behalf are you testifying in this proceeding?**

15 A. I am testifying on behalf of Stingray Pipeline Company, L.L.C. ("Stingray").

16 **Q.4 What interest does MarkWest Energy have in Stingray?**

17 A. MarkWest Energy owns a fifty percent interest in Starfish Pipeline Company,  
18 LLC ("Starfish"). Starfish owns Stingray. Enbridge Offshore (Gas Transmission)  
19 L.L.C. owns the other fifty percent of Starfish.

20 **Q.5 Have you previously testified before the Federal Energy Regulatory**  
21 **Commission?**

22 A. No.



1    **Q.6    What is the purpose of your testimony in this proceeding?**

2    A.    The purpose of my testimony is to address (1) the allocation of Stingray's taxable  
3           income to MarkWest Energy, (2) the allocation of MarkWest Energy's taxable  
4           income to its unitholders; (3) the federal income tax rates corresponding to the  
5           taxable income of Stingray that is allocated through MarkWest Energy to its  
6           unitholders; (4) the state apportionment factors to be used in calculating the  
7           weighted marginal state income tax rate for MarkWest Energy; (5) the 2007  
8           federal and blended state income tax rates applicable to MarkWest Hydrocarbon;  
9           and (6) the property damage and business interruption premiums paid by  
10          MarkWest Energy with respect to its interest in Stingray. My analysis of how  
11          Stingray income is allocated within the MarkWest organization and the  
12          corresponding MarkWest Energy marginal federal income tax rate and state  
13          income tax apportionment factors associated with such income are used by Mr.  
14          George R. Ganz in his Prepared Direct Testimony, Exhibit No. SPC-35, to  
15          calculate a federal and state income tax rate for Stingray.

16   **Q.7    What statements, schedules, or exhibits are you sponsoring in conjunction**  
17   **with your testimony?**

18   A.    I am sponsoring Exhibit Nos. SPC-47 to SPC-60.

19   **Q.8    Were these exhibits prepared by you or under your direction or supervision?**

20   A.    Yes, all of these exhibits were prepared under my direction and supervision.

1   **Q.9    Are you familiar with MarkWest Energy's normal business practices with**  
2       **regard to the determination of its taxable income and how that taxable**  
3       **income is allocated to MarkWest Energy's unitholders?**

4    A.    Yes, I am. In my position, I am responsible for the determination of MarkWest  
5       Energy's taxable income and the allocation to its unitholders.

6    **Flow of Stingray Taxable Income to MarkWest Energy**

7    **Q.10   Did MarkWest Energy receive any taxable income from Stingray in 2007?**

8    A.    Yes.

9    **Q.11   Are you familiar with the steps through which Stingray's federal and state**  
10       **taxable income is ultimately allocated to MarkWest Energy?**

11   A.    Yes.

12   **Q.12   How much of this Stingray income is attributable to MarkWest Energy?**

13   A.    Fifty percent.

14   **Q.13   Please explain why fifty percent of Stingray's income is attributable to**  
15       **MarkWest Energy.**

16   A.    Stingray is owned 100 percent by Starfish, and therefore all of Stingray's income  
17       flows through to Starfish. Each year, Starfish sends a Schedule K-1 to each of its  
18       owners identifying the amount of Starfish income for the prior year attributed to  
19       the owner for income tax purposes. As the Schedule K-1 in Exhibit No. SPC-47  
20       demonstrates, MarkWest Energy received fifty percent of Starfish's taxable  
21       income in 2007.

**Income Allocation Under MarkWest Energy's Partnership Agreement**

**Q.14 What type of entity is MarkWest Energy?**

A. MarkWest Energy is a master limited partnership.

**Q.15 Please identify who held partnership interests in MarkWest Energy in 2007.**

A. In 2007, MarkWest Energy GP, L.L.C. ("MarkWest GP") was the general partner with a two percent interest in MarkWest Energy. MarkWest GP also owned the incentive distribution rights ("IDRs") in MarkWest Energy. MarkWest Hydrocarbon, directly and through its subsidiaries, held as of December 31, 2007 12.5 percent of the limited partner interests in MarkWest Energy. The remaining limited partner interests were owned by the public. MarkWest Hydrocarbon's total ownership interest in MarkWest Energy, including its approximately 90 percent ownership interest in MarkWest GP, was 14.1 percent.

**Q.16 Has the ownership of MarkWest Energy partnership interests changed in 2008?**

A. Yes. On February 21, 2008, MarkWest Energy consummated the transactions contemplated by its redemption and merger agreement with MarkWest Hydrocarbon and MWEF, L.L.C., a wholly-owned subsidiary of MarkWest Energy. A true and accurate copy of the redemption and merger agreement is attached as Exhibit No. SPC-48. Pursuant to this agreement, MarkWest Hydrocarbon redeemed for cash approximately 3.9 million shares of its common stock (the "redemption"). Following the redemption, all remaining shares of MarkWest Hydrocarbon's common stock were converted to MarkWest Energy common units (the "merger"). As a result of the merger, MarkWest Hydrocarbon

1 is now a wholly-owned subsidiary of MarkWest Energy. In connection with the  
2 redemption and merger agreement, the IDRs and the two percent interest in  
3 MarkWest Energy owned by MarkWest GP and the MarkWest Energy common  
4 units owned by MarkWest Hydrocarbon were exchanged for Class A limited  
5 partner interests in MarkWest Energy. As a result, MarkWest Hydrocarbon now  
6 owns, either directly or through MarkWest GP, approximately 28.5 percent of the  
7 limited partner interests of MarkWest Energy, with the remaining limited partner  
8 interests held by the public. MarkWest Hydrocarbon now has a 99 percent  
9 ownership interest in MarkWest GP. Exhibit No. SPC-49 contains pre- and post-  
10 merger organizational charts depicting the change in ownership of MarkWest  
11 Energy.

12 **Q.17 Did MarkWest Energy have a partnership agreement that was in effect in**  
13 **2007?**

14 A. Yes, the Second Amended and Restated Agreement of Limited Partnership of  
15 MarkWest Energy Partners, L.P. ("Second Amended Agreement"). I have  
16 attached a true and accurate copy of the Second Amended Agreement in Exhibit  
17 No. SPC-50.

18 **Q.18 Does that partnership agreement remain in effect today?**

19 A. Yes, an amended version of that agreement is in effect today. The Second  
20 Amended Agreement was amended to reflect the 2008 redemption and merger I  
21 previously described. I have attached as Exhibit No. SPC-51 a true and correct  
22 copy of the Third Amended and Restated Agreement of Limited Partnership of

1 MarkWest Energy Partners, L.P. (“Third Amended Agreement”), which is the  
2 version of the partnership agreement in effect today.

3 **Q.19 Please describe the allocation of income under the Second Amended**  
4 **Agreement that was in effect in 2007.**

5 A. For 2007, taxable income was allocated to each partner pursuant to Sections 6.1  
6 and 6.2 of the Second Amended Agreement. For federal income tax purposes,  
7 each item of MarkWest Energy’s 2007 income, gain, loss, and deduction was  
8 determined on a monthly basis, as prescribed by the general partner, MarkWest  
9 GP. Each of these items was then allocated among the partnership interests in a  
10 manner consistent with the remedial (Section 704(c)) and basis adjustment  
11 (Sections 734 and 743) principles of the Internal Revenue Code (“IRC”). Such  
12 allocations also took into consideration the priority given to the Incentive  
13 Distribution Rights of the partnership interests. The Second Amended Agreement  
14 contains the details regarding all of these 2007 partnership allocations.

15 **Q.20 Has the allocation of income, gains, losses, and deductions changed under the**  
16 **MarkWest Energy partnership agreement in effect today?**

17 A. Yes. Under the Third Amended Agreement, the allocation of income, gains,  
18 losses, and deductions no longer takes into account the priority given to the IDRs  
19 of the partnership interests as the IDRs no longer exist. All allocations are based  
20 on Sections 6.1 and 6.2 of the Third Amended Agreement, subject to the remedial  
21 and basis adjustment principles of the IRC.

1   **Q.21   Is there any other documentation of MarkWest Energy's allocation of**  
2   **taxable income?**

3   A.    Yes. Each year, MarkWest Energy completes a Form 1065 that is filed with the  
4        Internal Revenue Service ("IRS"). Schedule K of the Form 1065 shows  
5        MarkWest Energy's distribution of income to its partners. The relevant portions  
6        of MarkWest Energy's Form 1065 for 2006, including Schedule K, are contained  
7        in Exhibit No. SPC-52. In conjunction with its Form 1065, MarkWest Energy  
8        also produces Schedule K-1's that it sends to each of its unitholders.

9   **Q.22   Why have you not included MarkWest Energy's 2007 Form 1065 and related**  
10   **2007 Schedule K-1's as part of this filing?**

11   A.    MarkWest Energy's actual Form 1065 for 2007 is not due to be filed until  
12        October 15, 2008, and as of the date of this testimony has not been finalized.  
13        Consequently, the 2007 Schedule K-1's have likewise not yet been finalized.  
14        However, at this time I do have available to me preliminary unitholder data  
15        compiled by PricewaterhouseCoopers ("PWC"), which, subject to revisions  
16        between now and October 15, 2008, will be used by MarkWest Energy to prepare  
17        its 2007 Form 1065 and related Schedule K-1's. I have conducted an analysis of  
18        this 2007 MarkWest Energy unitholder data, a copy of which is contained in  
19        Exhibit No. SPC-53.

20   **Classification of MarkWest Energy's 2007/2008 Unitholders**

21   **Q.23   Who were MarkWest Energy's unitholders in 2007?**

22   A.    Based on my analysis of the 2007 MarkWest Energy unitholder data compiled by  
23        PWC, the entity that assists MarkWest Energy in compiling unitholder

1 information for purposes of preparing its Form 1065 and related Schedule K-1's  
2 each year, the partnership units of MarkWest Energy for 2007 were owned as  
3 follows:

4	Individuals	37.7%
5	Corporations / LLCs taxed as Corporations	31.7%
6	Mutual Funds	27.2%
7	Pension Funds, IRAs, Keogh, etc.	3.2%
8	Entities where Stingray income is UBTI	0.2%
9	Tax exempt entities	0%

10 These results are reflected in my summary of the 2007 unitholder data, which is  
11 attached in Exhibit No. SPC-53. In 2007, MarkWest Energy's corporate  
12 unitholders included the following affiliated MarkWest entities: MarkWest GP  
13 and MarkWest Hydrocarbon.

14 **Q.24 Where does PWC get its information regarding MarkWest Energy's**  
15 **unitholders?**

16 A. MarkWest Energy's Common Units are publicly traded on the New York Stock  
17 Exchange in a manner similar to corporate stock. Those wishing to become  
18 partners in MarkWest Energy purchase Common Units through a brokerage firm,  
19 bank, or other nominee dealing in these securities.

20 Specific information must be gathered and maintained by MarkWest  
21 Energy regarding its partners to file a complete and accurate partnership return (or  
22 Form 1065) with the IRS. To that end, IRC Section 6031(c) requires nominees to  
23 collect information from investors purchasing publicly traded partnership interests

1       and supply this information to the partnership. IRC Section 6031(c) states, in  
2       part, “Any person who holds an interest in a partnership as a nominee for another  
3       person shall furnish to the partnership, in the manner prescribed by the Secretary,  
4       the name and address of such other person, and any other information for such  
5       taxable year as the Secretary may by form and regulations prescribe.” In  
6       accordance with IRC 6031(c), the nominee identifies the type of entity that  
7       purchases a partnership unit through the nominee (such as a corporation or an  
8       individual). The nominee creates a business record of the transaction specifying  
9       the type of entity that purchased the unit and supplies that information to the  
10      partnership or its agent.

11             MarkWest Energy employs PWC which, in turn, employs the firms Wall  
12      Street Concepts (“WSC”) and Automated Data Processing (“ADP”) to  
13      accumulate and provide to PWC the MarkWest Energy partnership unit  
14      information gathered from the business records that various brokerage firms and  
15      other nominees keep in accordance with IRC Section 6031(c). The information  
16      that WSC and ADP accumulated from these nominees includes information  
17      regarding the entity type of the MarkWest Energy partners. In addition to the  
18      information WSC and ADP provide to PWC, unitholder information is also  
19      provided directly to PWC by firms that do not provide data to WSC or ADP.  
20      These include small banks and other small entities, as well as MarkWest Energy’s  
21      transfer agent for registered unitholders. Finally, the unitholders themselves may  
22      provide information. PWC uses the information from WSC, ADP, and these



1 other sources to compile the information needed to prepare the final MarkWest  
2 Energy Schedule K-1's that are filed with the IRS.

3 **Q.25 You have explained that the MarkWest Energy unitholders have changed as**  
4 **of February 21, 2008. How do you expect this change to impact the**  
5 **ownership of MarkWest Energy during the test period?**

6 A. The merger transaction will both affect the percentage of MarkWest Energy  
7 unitholders in each classification and simplify MarkWest Energy's allocation of  
8 income amongst its partnership interests. After the merger, MarkWest Energy  
9 now allocates its income amongst its partnership interests on an ownership  
10 interest basis, subject to the remedial and basis adjustment principles of the IRC.  
11 Based on the changes in unitholder ownership interests that occurred as a result of  
12 the merger, the partnership units of MarkWest Energy are owned, to the best of  
13 my knowledge, as follows:

14	Individuals	28.8%
15	Corporations / LLCs taxed as Corporations	49.0 %
16	Mutual Funds	17.3%
17	Pension Funds, IRAs, Keogh, etc.	3.5%
18	Entities where Stingray income is UBTI	1.3%
19	Tax exempt entities	0%

20 These results are reflected in my summary of the unitholder data for the test  
21 period, which is attached in Exhibit No. SPC-54. MarkWest GP and MarkWest  
22 Hydrocarbon are likely to continue to be the only affiliated corporate unitholders  
23 of MarkWest Energy in 2008.

1   **Q.26   What data did you use as the basis for your test period analysis?**

2   A.   My analysis of the post-redemption/merger classification of MarkWest Energy  
3       unitholders was based on a combination of identified registered unitholders and  
4       an estimated allocation for a small portion of not yet identified unitholders. The  
5       identified registered unitholders, which represent approximately 80 percent of the  
6       post-redemption/merger issued units, are comprised of MarkWest unitholders and  
7       the unitholders identified from MarkWest Hydrocarbon's non-objecting beneficial  
8       owners schedule ("NOBO List") that was received by our transfer agent as part of  
9       the redemption and merger transaction. For the remaining 20 percent of post-  
10      redemption/merger unitholders, I estimated the allocation of those unitholders  
11      using two base case sources. First, I used the NOBO List received by our transfer  
12      agent as part of the redemption and merger transaction as the basis for estimating  
13      the allocation of the remaining non-identified 20 percent. My test year analysis  
14      reflecting use of the NOBO List is contained in Exhibit No. SPC-54. Second, I  
15      used the total known universe of pre-redemption/merger unitholders as the basis  
16      for estimating the allocation of the remaining post-redemption/merger non-  
17      identified 20 percent. My test year analysis reflecting use of the total known  
18      universe of pre-redemption/merger unitholders is contained in Exhibit No.  
19      SPC-55. As shown in a comparison of Exhibit No. SPC-54 to Exhibit No.  
20      SPC-55, the estimated unitholder allocation based on the NOBO List ultimately  
21      resulted in a slightly lower effective federal income tax rate for MarkWest Energy  
22      than use of the pre-redemption/merger unitholder percentages. In order to remain

1 conservative in my analysis of the test period changes, I adopted the analysis in  
2 Exhibit No. SPC-54 as my recommended test period unitholder analysis.

3 **Federal Income Tax Liability of MarkWest Hydrocarbon**

4 **Q.27 At what level are taxes paid on the Stingray income within the MarkWest**  
5 **organization?**

6 A. After MarkWest Energy's taxable income is allocated to MarkWest GP and  
7 MarkWest Hydrocarbon in accordance with the partnership agreement, the  
8 taxable income allocated to each of these entities is included in MarkWest  
9 Hydrocarbon's Consolidated Return filed with the IRS.

10 **Q.28 What was MarkWest Hydrocarbon's total 2007 income for federal income**  
11 **tax purposes?**

12 A. As shown in Exhibit No. SPC-56, MarkWest Hydrocarbon is estimating a total  
13 2007 taxable income of approximately \$48.2 million.

14 **Q.29 What federal income tax rate will MarkWest Hydrocarbon pay on that 2007**  
15 **income?**

16 A. 35 percent.

17 **Q.30 Please explain how you know that the federal income tax rate for MarkWest**  
18 **Hydrocarbon is 35 percent.**

19 A. MarkWest Hydrocarbon is a sub-chapter C corporation, with federal taxable  
20 income for calendar year 2007 well in excess of \$10 million. As shown in Exhibit  
21 No. SPC-57, \$10 million is the threshold in 2007 at which the marginal federal  
22 income tax rate for corporations switched from 34 to 35 percent. Accordingly,  
23 MarkWest Hydrocarbon's 2007 federal income tax rate is 35 percent.

1   **Q.31**   Do you have any reason to believe that MarkWest Hydrocarbon's taxable  
2           income will be subject to a different federal income tax rate during the test  
3           period?

4   A.     No, not at this time.

5   **State Income Tax Liability of MarkWest Hydrocarbon**

6   **Q.32**   What was MarkWest Hydrocarbon's total taxable income for state income  
7           tax purposes in 2007?

8   A.     MarkWest Hydrocarbon's total taxable income for state income tax purposes was  
9           the same as that for federal income tax purposes – \$48.2 million.

10  **Q.33**   What is the 2007 state income tax rate for MarkWest Hydrocarbon?

11  A.     3.91 percent.

12  **Q.34**   Please explain the basis for this state income tax rate.

13  A.     This state income tax rate for MarkWest Hydrocarbon is a blended rate based on  
14           MarkWest Hydrocarbon's apportionment factors for each of the states in which  
15           MarkWest Hydrocarbon is required to file a state income tax return in a given  
16           year. My calculation of this 2007 blended state income tax rate using the  
17           MarkWest Hydrocarbon apportionment factors is shown in Exhibit No. SPC-58.  
18           As reflected in that exhibit, MarkWest Hydrocarbon filed state income tax returns  
19           in Alabama, Colorado, Iowa, Indiana, Kentucky, Kansas, Louisiana, Michigan,  
20           Mississippi, Missouri, New Mexico, North Dakota, Ohio, Oklahoma,  
21           Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and West Virginia for  
22           2007.

1   **Q.35   Do you have any reason to believe that MarkWest Hydrocarbon’s taxable**  
2       **income will be subject to different state income tax rates during the test**  
3       **period?**

4   A.     No, not at this time.

5   **Calculation of MarkWest Energy’s Blended Federal Income Tax Rate**

6   **Q.36   Did you calculate a 2007 federal income rate for MarkWest Energy?**

7   A.     Yes. As shown in Exhibit No. SPC-53, I calculated a 2007 base period federal  
8       income tax rate of 31.630 percent for MarkWest Energy.

9   **Q.37   Please explain how you calculated this 2007 base period federal income tax**  
10       **rate for MarkWest Energy.**

11   A.     As shown in Exhibit No. SPC-53, I calculated a 2007 federal income tax rate for  
12       MarkWest Energy by weighting the federal income tax rates for the six categories  
13       of unitholders Mr. Ganz directed me to use by the unit ownership classification  
14       percentages I obtained by analyzing the unitholder data from PWC. Per Mr.  
15       Ganz’s instruction, I assumed a federal income tax rate of 34 percent for all  
16       corporate unitholders other than MarkWest Hydrocarbon, a 28 percent federal  
17       income tax rate for individuals, mutual funds, and taxpaying beneficiary entities, a  
18       34 percent federal income tax rate for those for whom income from Stingray is  
19       unrelated business taxable income (“UBTI”), and a zero percent federal income  
20       tax rate for tax exempt unitholders (there were no tax exempt unitholders of  
21       MarkWest Energy in 2007). For MarkWest Hydrocarbon’s 14.1 percent  
22       partnership interest in MarkWest Energy in 2007, I applied a federal income tax  
23       rate of 35 percent because, as I previously explained, that is the federal income  
24       tax rate that applies to MarkWest Hydrocarbon’s taxable income for 2007.

1   **Q.38   Are there any adjustments to this blended 2007 base period federal income**  
2       **tax rate for MarkWest Energy that need to be made for the test period?**

3   A.    Yes.   As I previously explained, the February 2008 redemption and merger  
4        changed the percentages of MarkWest Energy unitholders in each classification  
5        category.   These new unitholder classification percentages need to be applied,  
6        using the same methodology I used for 2007, to calculate a federal income tax  
7        rate for MarkWest Energy for the 2008 test period.

8   **Q.39   Have you calculated the impact these changes have on MarkWest Energy's**  
9       **blended federal income tax rate?**

10   A.    Yes.   As shown in Exhibit No. SPC-54, the blended test period federal income tax  
11        rate for MarkWest Energy, as adjusted for the changes in unit ownership that I  
12        know have occurred since the 2008 redemption and merger, is 31.307 percent.

13   **MarkWest Energy's State Apportionment Factors**

14   **Q.40   Did any of MarkWest Energy's unitholders pay state income taxes on the**  
15       **income they received from MarkWest Energy in 2007?**

16   A.    Yes.

17   **Q.41   In which states did those unitholders of MarkWest Energy pay state income**  
18       **taxes?**

19   A.    Colorado, Kentucky, Louisiana, Mississippi, Michigan, Oklahoma, New Mexico,  
20        and West Virginia.

21   **Q.42   How do you know that MarkWest Energy income was subject to income**  
22       **taxes in those states?**

23   A.    The Schedule K-1 data compiled by PWC identifies the state where each of the  
24        MarkWest unitholders receives its Schedule K-1.   Unitholders were identified for

1           each of the states I listed, and each of these states assesses a state income tax on  
2           individuals and corporate entities.

3   **Q.43   How did MarkWest Energy determine the amount of income to be**  
4   **apportioned to each state for state income tax purposes?**

5   A.   MarkWest Energy used each of the identified state's prescribed methods for  
6       income apportionment to determine an apportionment factor for each state. I have  
7       attached in Exhibit No. SPC-59 a chart identifying the apportionment methods  
8       prescribed by each of the identified states for assessing the portion of an entity's  
9       income subject to state income taxes in the state.

10   **Q.44   Have you provided an exhibit showing the calculation of the 2007 state**  
11   **apportionment factors for MarkWest Energy?**

12   A.   Yes. Exhibit No. SPC-60 shows my calculation of the 2007 state apportionment  
13       factors for MarkWest Energy.

14   **Q.45   Do any adjustments to MarkWest Energy's 2007 state apportionment factors**  
15   **need to be made for the test period?**

16   A.   No. Even though I know that ownership of the MarkWest Energy units changed  
17       as of February 13, 2008, and I could assess that change in ownership with respect  
18       to federal income taxes, I have no information at this time regarding the states in  
19       which each of the unitholders will be residing for purposes of the 2008 tax year.  
20       Since the states of residence for a fair portion of the new unitholders is not known  
21       and measurable at this time, I recommend that no test year adjustment be made to  
22       the 2007 state apportionment factors for MarkWest Energy.

1    **Property Damage Insurance Premiums**

2    **Q.46 Did MarkWest Energy maintain an insurance policy in 2007 with respect to**  
3       **its interest in Stingray protecting against property damage to Stingray's**  
4       **facilities?**

5    A.    Yes.

6    **Q.47 What were the annual premiums for that coverage for the policy years ended**  
7       **April 30, 2007 and April 30, 2008?**

8    A.    For the policy period ended April 30, 2007, the property damage premium was  
9       \$1,463,109, which included an allocated loss load of \$708,618, and the business  
10       interruption premium was \$71,471. For the policy year ended April 30, 2008, the  
11       property damage premium was \$714,410 and the business interruption premium  
12       was \$130,645.

13   **Q.48 What was the total amount MarkWest Energy spent on premiums during the**  
14       **base period for property damage and business interruption coverage?**

15   A.    Based upon a pro-ration of the annual premiums for the policy years ended  
16       April 30, 2007 and April 30, 2008, MarkWest Energy spent \$873,921 for its  
17       property damage premium and \$122,435 for its business interruption premium  
18       during the base period.

19   **Q.49 Have there been any lapses in those insurance policies?**

20   A.    No.



1   **Q.50 Does MarkWest Energy have property damage and business interruption**  
2   **insurance policies for Stingray in effect today?**

3   A.   Yes. MarkWest Energy currently maintains property damage and business  
4       interruption insurance for Stingray for a policy period of May 1, 2008 to April 30,  
5       2009.

6   **Q.51 Has there been any change in MarkWest Energy's premiums for that**  
7   **property damage and business interruption insurance during the test period?**

8   A.   Yes, MarkWest Energy's property damage premiums for Stingray for the policy  
9       year ending April 30, 2009 decreased from the prior policy year by approximately  
10       \$122,000 to \$751,524 and its business interruption premiums for the policy year  
11       ending April 30, 2009 decreased from the prior policy year by approximately  
12       \$20,000 to \$102,645. Because of the substantial level of claims incurred in the  
13       summer of 2005, and the associated ongoing impact on insurance costs, despite  
14       this minor decrease in premium costs for the policy year ending April 30, 2009,  
15       MarkWest Energy's property damage and business interruption premiums for  
16       Stingray are still one and a half times higher than the pre-hurricane premiums for  
17       the same types of coverage, and MarkWest's current level of coverage is far less  
18       than the level of coverage it had for the policy year ended March 31, 2006. In  
19       short we continue to pay substantially greater premiums for far less coverage than  
20       when we initially acquired our interest in Stingray in 2005.

21   **Q.52 Does this conclude your prepared direct testimony?**

22   A.   Yes, it does.

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

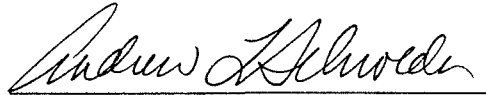
Stingray Pipeline Company, L.L.C.

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Docket No. RP08-\_\_\_\_-000

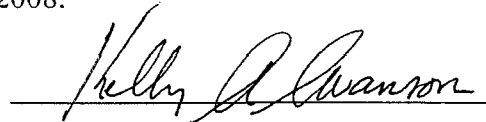
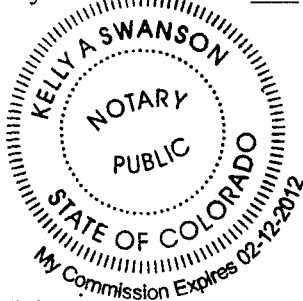
**AFFIDAVIT OF ANDREW L. SCHROEDER**

Andrew L. Schroeder, being first duly sworn, hereby states that he is the witness whose Prepared Direct Testimony is attached hereto; that, if asked the questions which appear in the text of aforesaid Prepared Direct Testimony, affiant would give the answers that are therein set forth; and that affiant adopts the aforesaid Prepared Direct Testimony as his sworn, direct testimony in this proceeding.



Andrew L. Schroeder

**SUBSCRIBED AND SWORN TO** before me, a Notary Public in and for the State of Colorado, County of Denver, this 23<sup>rd</sup> day of June, 2008.



Notary Public

My commission expires:

2/12/2012

Schedule K-1  
(Form 1065)

Department of the Treasury  
Internal Revenue Service

Partner's Share of Income, Deductions,  
Credits, etc.

See back of form and separate instructions.

For calendar year 2007, or tax  
year beginning \_\_\_\_\_, 2007  
ending \_\_\_\_\_, 20\_\_

2007

Final K-1 Amended K-1 L51107 OMB No. 1545-0099

Part III Partner's Share of Current Year Income,  
Deductions, Credits, and Other Items

1	Ordinary business income (loss)	15	Credits
	3,578,737.		
2	Net rental real estate income (loss)		
3	Other net rental income (loss)	16	Foreign transactions
4	Guaranteed payments		
5	Interest income		
*	91,383.		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
		A	1,387,583.
9b	Collectibles (28%) gain (loss)		
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss)	C*	3,313.
12	Section 179 deduction	A	10,839,070.
13	Other deductions		
		20	Other information
		A	91,383.
		W*	STMT
14	Self-employment earnings (loss)		

\*See attached statement for additional information.

Part I Information About the Partnership

A Partnership's employer identification number  
76-0663813

B Partnership's name, address, city, state, and ZIP code

Starfish Pipeline Company, LLC  
1100 Louisiana, Suite 3300  
Houston, TX 77002

C IRS Center where partnership filed return  
Ogden

D ☐ Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number 2

F Partner's name, address, city, state, and ZIP code

MarkWest Energy Partners, L.P.  
155 Inverness Drive West, Suite 200  
Denver, CO 80112

G ☐ General partner or LLC member-manager ☒ Limited partner or other LLC member

H ☒ Domestic partner ☐ Foreign partner

I What type of entity is this partner? Partnership

J Partner's share of profit, loss, and capital:

	Beginning		Ending	
Profit	50.000000	%	50.000000	%
Loss	50.000000	%	50.000000	%
Capital	50.000000	%	50.000000	%

K Partner's share of liabilities at year end:

Nonrecourse	\$	11,919,904.
Qualified nonrecourse financing	\$	
Recourse	\$	

L Partner's capital account analysis:

Beginning capital account	\$	59,719,439.
Capital contributed during the year	\$	
Current year increase (decrease)	\$	6,058,916.
Withdrawals & distributions	\$	(10,839,070.)
Ending capital account	\$	54,939,285.

☐ Tax basis ☒ GAAP ☐ Section 704(b) book  
Other (explain)

For IRS Use Only

For Paperwork Reduction Act Notice, see Instructions for Form 1065.

Schedule K-1 (Form 1065) 2007

Starfish Pipeline Company, LLC 76-0663813  
Sch K-1 Supporting Schedules Partner # 2 MarkWest Energy Partners, L.P.

Item L - Reconciliation of Income

Total Income per Schedule K-1	3,670,120.
Less: Expenses recorded on books, not included on Sch. K-1:	
Depreciation	4,098,545.
Travel and entertainment	3,313.
Amortization	172,027.
Asset Retirement Obligations	252,595.
Plus: Deductions on Sch. K-1, not charged against books:	
Depreciation	7,352,572.
Amortization	26,494.
Other Tax Deductions Not on Books	-463,789.
Less: Other decreases to partner's capital	
Rounding	1.
Total Income per Item L, Current year incr(decr)	6,058,916.

Item L - Withdrawals and Distributions

Cash distributions	10,839,070.
Total Withdrawals and Distributions	10,839,070.

Line 5 - Interest Income

Other Interest Income

Sch K: Other Interest Income	91,383.
Total Interest Income	91,383.

Line 18c - Nondeductible Expenses

Travel and entertainment expense nondeductible	3,313.
Total Nondeductible Expenses	3,313.

Line 20 - Other Information

W Other Information:

Other Items Not Included in Item L, Current Yr Incr (Decr):	
Depr Allocated Pursuant IRC 743(b)	-4,124,190.

Statement #1

PTR # 2 MarkWest Energy Partners, L.P.		Starfish Pipeline Company, LLC		76-0663813		
<b>Schedule of Activities</b>						
A: Starfish Pipeline Company, LLC		Type of Activity	Disposed	QUH	PTP	
B: Starfish Pipeline Company, LLC		Portfolio	No	No	No	
C:		Gen. T/B	No	No	No	
D:						
		A	B	C	D	
Income (Loss)	1	Ordinary business income (loss)		3,578,737.		
	2	Net rental real estate income (loss)				
	3	Other net rental income (loss)				
	4	Guaranteed payments				
	5	Interest income	91,383.			
	6a	Ordinary dividends				
	6b	Qualified dividends				
	7	Royalties				
	8	Net short-term capital gain (loss)				
	9a	Net long-term capital gain (loss)				
	9b	Collectibles (28%) gain (loss)				
Deductions	9c	Unrecaptured section 1250 gain				
	10	Net section 1231 gain (loss)				
	11	Other income (loss)				
	12	Section 179 deduction				
	13a-f	Contributions				
	13h,j,k	Deductions related to portfolio income				
	13g	Interest expense on investment debts				
	13i	Section 59(e)(2) expenditures				
	13l-v	Other deductions				
	Credits	15a	Low-income housing credit (section 42(j)(5))			
		15b	Low-income housing credit (other)			
15c		Qualified rehabilitation expenditures (rental real estate)				
15d		Other rental real estate credits				
15e		Other rental credits				
15f-p		Other credits				
Foreign Transactions	16b	Gross income from all sources				
	16c	Gross income sourced at partner level				
	16d	Foreign gross income (partnership level): Passive				
	16e	Foreign gross income (partnership level): General categories				
	16f	Foreign gross income (partnership level): Other				
	16g	Deductions allocated and apportioned (partner level): Interest expense				
	16h	Deductions allocated and apportioned (partner level): Other				
	16i	Deductions allocated and apportioned (partnership level): Passive				
	16j	Deductions allocated and apportioned (partnership level): General categories				
	16k	Deductions allocated and apportioned (partnership level): Other				
	16l	Total foreign taxes paid				
	16m	Total foreign taxes accrued				
	16n	Reduction in taxes available for credit				
	16o	Foreign trading gross receipts				
Alternative Minimum Tax	16p	Extraterritorial income exclusion				
	16q	Other foreign transactions				
	17a	Post-1986 depreciation adjustment		1,387,583.		
	17b	Adjusted gain or loss				
	17c	Depletion (other than oil and gas)				
	17d	Gross income from oil, gas, and geothermal				
Tax-exempt Inc. & Exp.	17e	Deductions from oil, gas, and geothermal				
	17f	Other AMT items				
	18a	Tax-exempt interest income				
Other	18b	Other tax-exempt income				
	18c	Nondeductible expenses		3,313.		
	20a	Investment income	91,383.			
20b	Investment expenses					
20c-w	Other information					

Starfish Pipeline Company, LLC 76-0663813  
Partner Activities Detail Partner # 2 MarkWest Energy Partners, L.P.

=====  
Activity: Starfish Pipeline Company, LLC  
=====

Line 20 - Other Information  
=====

Other items not carrying to Item L, current yr incr(decr) -4,124,190.

Statement #1

7P9000 1.000

0000Q2

06/04/2008 11:42:00 V2007.055

34

**AGREEMENT AND PLAN OF REDEMPTION AND MERGER**

**by and among**

**MarkWest Hydrocarbon, Inc.**

**MarkWest Energy Partners, L.P.**

**and**

**MWEP, L.L.C.**

**Dated as of September 5, 2007**

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## AGREEMENT AND PLAN OF REDEMPTION AND MERGER

This AGREEMENT AND PLAN OF REDEMPTION AND MERGER, dated as of September 5, 2007 (this "Agreement"), is entered into by and among MARKWEST HYDROCARBON, INC., a Delaware corporation ("Hydrocarbon"), MARKWEST ENERGY PARTNERS, L.P., a Delaware limited partnership ("Energy Partners"), and MWEPC, L.L.C., a Delaware limited liability company ("MergerCo") and a wholly-owned subsidiary of Energy Partners.

### WITNESSETH:

WHEREAS, the Board of Directors of Hydrocarbon (the "Hydrocarbon Board"), upon the recommendation of the Deal Committee (as defined herein), and the Board of Directors of MarkWest Energy GP, L.L.C., the general partner (the "General Partner") of Energy Partners, upon the recommendation of the Conflicts Committee (as defined herein), have determined that it is in the best interests of Hydrocarbon and its stockholders, and Energy Partners and its limited partners, respectively, to consummate the business combination provided for herein pursuant to which (i) Hydrocarbon will, subject to the terms and conditions set forth herein, redeem in the Redemption (as defined herein) a portion of its outstanding shares of Hydrocarbon Common Stock (as defined herein) and then (ii) MergerCo will, subject to the terms and conditions set forth herein, merge (the "Merger") with and into Hydrocarbon, with Hydrocarbon surviving, such that following the Redemption and Merger, Hydrocarbon will be a direct, wholly owned subsidiary of Energy Partners;

WHEREAS, the Fox Support Agreement (as defined herein), the Exchange Agreement (as defined herein) and the Class B Membership Interest Contribution Agreement (as defined herein) have been entered into simultaneously with the execution of this Agreement; and

WHEREAS, the parties desire to make certain representations, warranties and agreements in connection with the Redemption and Merger and also to prescribe certain conditions to the Redemption and Merger.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

## ARTICLE I

### CERTAIN DEFINITIONS

Section 1.1 *Certain Definitions.* As used in this Agreement, the following terms shall have the meanings set forth below:

"Acquisition Proposal" means: any proposal or offer from or by any Person other than Energy Partners and MergerCo relating to (i) any direct or indirect acquisition of (A) all or substantially all of the assets of Hydrocarbon and its Subsidiaries, taken as a whole, (B) more

than 20% of the outstanding equity securities of Hydrocarbon or (C) a business or businesses that constitute more than 20% of the cash flow, net revenues, net income or assets of Hydrocarbon and its Subsidiaries, taken as a whole; (ii) any tender offer or exchange offer, as defined pursuant to the Exchange Act, that, if consummated, would result in any Person beneficially owning more than 20% of the outstanding equity securities of Hydrocarbon; or (iii) any merger, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving Hydrocarbon, other than the Redemption and Merger, pursuant to which the stockholders of Hydrocarbon prior to consummation of such transaction would hold less than 80% of the outstanding shares or equity interests of the surviving or resulting Person or parent thereof.

"Affiliate" has the meaning set forth in Rule 405 of the rules and regulations of the Securities Act, unless otherwise expressly stated herein.

"Aggregate Consideration" shall mean the sum of (x) the Total Stock Consideration and (y) the Total Cash Amount.

"Agreement" shall have the meaning set forth in the introductory paragraph to this Agreement.

"Amended and Restated Partnership Agreement" shall mean the Third Amended and Restated Agreement of Limited Partnership substantially in the form attached hereto as Annex A.

"Appraisal Shares" shall have the meaning set forth in Section 3.3.

"Business Day" shall mean any day which is not a Saturday, Sunday or other day on which banks are authorized or required to be closed in the City of New York.

"Cash Designated Shares" shall have the meaning set forth in Section 3.2(e)(ii)(B).

"Cash Election Shares" shall have the meaning set forth in Section 3.2(b).

"Certificate" shall have the meaning set forth in Section 3.1(f).

"Certificate of Merger" shall have the meaning set forth in Section 2.2(b).

"Change in U.S. Federal Tax Law" shall have the meaning set forth in Section 7.15(b).

"Claim" shall have the meaning set forth in Section 6.12(a).

"Class A Units" shall mean the Class A units representing limited partner interests of Energy Partners having the rights and obligations specified with respect to such Class A Units in the Amended and Restated Partnership Agreement.

"Class B Membership Interest Contribution Agreement" shall mean the Class B Membership Interest Contribution Agreement, dated the date hereof, entered into among Energy Partners and the holders of Class B membership interests in the General Partner named therein.

"Closing" shall have the meaning set forth in Section 2.3.

"Closing Date" shall have the meaning set forth in Section 2.3.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Common Units" shall mean the common units representing limited partner interests of Energy Partners having the rights and obligations specified with respect to Common Units in the Partnership Agreement and Amended and Restated Partnership Agreement.

"Compensation and Benefit Plans" shall have the meaning set forth in Section 5.3(l)(i).

"Confidentiality Agreement" shall mean a confidentiality agreement substantially in the form attached hereto as Annex E (the "Confidentiality Agreement").

"Conflicts Committee" shall mean the Conflicts Committee of the Board of Directors of the General Partner, consisting (as of the date hereof) of William P. Nicoletti, Keith E. Bailey and Charles K. Dempster.

"Deal Committee" shall mean the Deal Committee of the Hydrocarbon Board, consisting (as of the date hereof) of Michael L. Beatty, Karen L. Rogers, Donald D. Wolf and William F. Wallace.

"Delaware LP Act" shall mean the Delaware Revised Uniform Limited Partnership Act, as amended.

"Deemed Stock Amount" shall mean the Total Common Stock Amount; *provided, however,* that regardless of the actual number of shares of Hydrocarbon Common Stock outstanding immediately prior to the Redemption, which shall take place immediately prior to the Effective Time, in no event shall the Deemed Stock Amount exceed the sum of (i) 11,954,334 and (ii) the aggregate number of shares of Hydrocarbon Common Stock, if any, issued by Hydrocarbon after the date of this Agreement in accordance with Section 4.2.

"DGCL" shall mean the Delaware General Corporation Law.

"Disclosure Schedule" shall have the meaning set forth in Section 5.1.

"Dissenting Holders" shall mean Hydrocarbon stockholders who have demanded appraisal in accordance with the provisions of Section 262 of the DGCL with regard to the Redemption Charter Amendment or the Merger concerning their right to object to and dissent from the Redemption Charter Amendment or the Merger.

"Effective Time" shall have the meaning set forth in Section 2.2(b).

"Election Deadline" shall have the meaning set forth in Section 3.2(b).

"Election Form" shall have the meaning set forth in Section 3.2(a).

"Election Form Record Date" shall have the meaning set forth in Section 3.2(a).

"Energy Partners" shall have the meaning set forth in the introductory paragraph to this Agreement.

"Energy Partners Change in Recommendation" shall have the meaning set forth in Section 6.2.

"Energy Partners' Disclosure Schedule" shall mean the Disclosure Schedule delivered by Energy Partners pursuant to Section 5.1.

"Energy Partners Meeting" shall have the meaning set forth in Section 6.2.

"Energy Partners Phantom Units" shall mean the phantom (notional) Common Units granted under the MarkWest Energy Partners, L.P. Long-Term Incentive Plan.

"Energy Partners Termination Fee" shall mean an amount equal to \$15 million in cash.

"Energy Partners Recommendation" shall have the meaning set forth in Section 6.2.

"Energy Partners Unitholder Approval" shall have the meaning set forth in Section 7.1.

"Environmental Laws" shall mean all applicable local, state and federal environmental, health and safety laws and regulations, including, without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Clean Water Act, the Federal Clean Air Act, and the Occupational Safety and Health Act, each as amended, regulations promulgated thereunder, and state counterparts.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" shall have the meaning set forth in Section 5.3(l)(iv).

"Escrow Agent" shall mean Wells Fargo Bank, N.A. as escrow agent for the benefit of Energy Partners for certain payments under Article IX.

"Escrow Fund" shall have the meaning set forth in Section 9.1(g).

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

"Exchange Agreement" shall mean the Exchange Agreement among Hydrocarbon, Energy Partners and the General Partner entered into simultaneously with the execution of this Agreement.

"Exchange Fund" shall have the meaning set forth in Section 3.5.

"Exchange Ratio" shall mean the quotient, rounded to the nearest ten-thousandth, obtained by dividing the Per Share Consideration by the Final Energy Partners Unit Price.

"Excluded Party" shall have the meaning set forth in Section 6.6(a).



"Expenses" shall have the meaning set forth in Section 9.1(f).

"Final Energy Partners Unit Price" shall mean the volume-weighted average of the trading sale prices per Common Unit as reported on the NYSE during the Valuation Period. The Final Energy Partner Unit Price shall be calculated to the nearest one-hundredth of one cent.

"Fox Support Agreement" shall mean the Voting Agreement among John M. Fox and MWHC Holdings Inc. and Energy Partners, entered into simultaneously with the execution of this Agreement.

"General Partner" shall have the meaning set forth in the recitals to this Agreement.

"General Partner Units" shall mean the general partner units representing a general partner interest in Energy Partners having the rights and obligations specified with respect to General Partner Units in the Partnership Agreement.

"Governmental Authority" means any national, state, local, county, parish or municipal government, domestic or foreign, any agency, board, bureau, commission, court, tribunal, subdivision, department or other governmental or regulatory authority or instrumentality, or any arbitrator in any case that has jurisdiction over Hydrocarbon or Energy Partners, as the case may be, or any of their respective properties or assets.

"Hydrocarbon" shall have the meaning set forth in the introductory paragraph of this Agreement.

"Hydrocarbon Board" shall have the meaning set forth in the recitals to this Agreement.

"Hydrocarbon Bylaws" means the bylaws of Hydrocarbon.

"Hydrocarbon Change in Recommendation" shall have the meaning set forth in Section 6.6(c).

"Hydrocarbon Charter" means the certificate of incorporation of Hydrocarbon.

"Hydrocarbon Common Stock" means the Common Stock, par value \$.01 per share, of Hydrocarbon.

"Hydrocarbon Meeting" shall have the meaning set forth in Section 6.2.

"Hydrocarbon Recommendation" shall have the meaning set forth in Section 6.2.

"Hydrocarbon Restricted Stock" shall mean shares of Hydrocarbon Common Stock that have been granted to employees, directors and consultants of Hydrocarbon or its Subsidiaries and as of the Redemption, which shall take place immediately prior to the Effective Time, are subject to a "substantial risk of forfeiture" within the meaning of Section 83 of the Code.

"Hydrocarbon Stockholder Approval" shall have the meaning set forth in Section 7.1.

“Hydrocarbon Stock Options” means all employee and director stock options to purchase shares of Hydrocarbon Common Stock pursuant to awards granted under any of the Hydrocarbon Stock Option Plans.

“Hydrocarbon Stock Option Plans” shall mean the Hydrocarbon 2006 Stock Incentive Plan, the Hydrocarbon 1996 Stock Incentive Plan, the Hydrocarbon 1996 Non-Employee Director Stock Option Plan and any other plan pursuant to which any Hydrocarbon Stock Option is granted.

“Hydrocarbon Termination Fee” shall mean an amount equal to \$15 million in cash; provided, however, if Hydrocarbon terminates in accordance with Section 8.1(d)(i) and enters into a definitive agreement with respect to a Superior Proposal prior to the No Solicitation Start Date or a definitive agreement with an Excluded Party, then “Hydrocarbon Termination Fee” shall mean an amount equal to \$7.5 million in cash.

“Hydrocarbon’s Disclosure Schedule” shall mean the Disclosure Schedule delivered by Hydrocarbon pursuant to Section 5.1.

“HSR” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

“IDRs” shall mean the Incentive Distribution Rights as defined in the Partnership Agreement.

“Indemnification Expenses” shall have the meaning set forth in Section 6.12(a).

“Indemnified Party” shall have the meaning set forth in Section 6.12(a).

“Joint Proxy Statement” shall have the meaning set forth in Section 6.3(a).

“Lien” shall mean any charge, mortgage, pledge, security interest, restriction, claim, lien, or encumbrance.

“LLC Act” shall have the meaning set forth in Section 2.2(b).

“Mailing Date” shall have the meaning set forth in Section 3.2(a).

“Material Adverse Effect” shall mean, with respect to either Hydrocarbon or Energy Partners, any effect that (i) is or could reasonably be expected to be material and adverse to the financial position, results of operations, business or assets of Hydrocarbon and its Subsidiaries taken as a whole, or Energy Partners and its Subsidiaries taken as a whole, respectively, or (ii) materially impairs or could reasonably be expected to materially impair the ability of Hydrocarbon or Energy Partners, respectively, to perform its obligations under this Agreement or otherwise materially threaten or materially impede the consummation of the Redemption and Merger and the other transactions contemplated by this Agreement; *provided, however*, that Material Adverse Effect shall not be deemed to include the impact of (a) circumstances affecting the gathering, processing or fractionation of natural gas companies generally, (b) the natural gas pipeline, treating and processing industry generally (including the price of natural gas and the

cost associated with the drilling and/or production of natural gas), (c) any general market, economic, financial or political conditions, or outbreak or hostilities or war, in the United States or (d) the effects of the Redemption and Merger and compliance by either party with the provisions of this Agreement on the financial position, results of operations, business or assets of such party and its Subsidiaries, or the other party and its Subsidiaries, as the case may be, so long as, in the case of clauses (a), (b) or (c), the impact on Hydrocarbon or Energy Partners is not disproportionately adverse as compared to others in the industry.

"Meeting" shall have the meaning set forth in Section 6.2.

"Merger" shall have the meaning set forth in the recitals to this Agreement.

"MergerCo" shall have the meaning set forth in the introductory paragraph in this Agreement.

"Multiemployer Plans" shall have the meaning set forth in Section 5.3(l)(iii).

"No-Solicitation Period Start Date" means 30 days immediately following the date of this Agreement.

"Non-Electing Shares" shall have the meaning set forth in Section 3.2(b).

"Non-Compliance Event" shall have the meaning set forth in Section 5.3(i)(i).

"Non-Compliance Notification" shall have the meaning set forth in Section 5.3(i)(iii).

"Non-Qualifying Income Cushion" shall have the meaning set forth in Section 9.1(g).

"NYSE" shall mean the New York Stock Exchange.

"Partnership Agreement" shall mean the Second Amended and Restated Agreement of Limited Partnership of Energy Partners, as in effect immediately prior to the Effective Time.

"Pension Plan" shall have the meaning set forth in Section 5.3(l)(iii).

"Per Share Cash Consideration" shall have the meaning set forth in Section 3.1(a).

"Per Share Consideration" shall mean the quotient, rounded to the nearest ten-thousandth, obtained by dividing the Aggregate Consideration by the Total Common Stock Amount.

"Per Share Stated Cash Consideration" shall mean the product, rounded to the nearest ten-thousandth, of (x) \$20 multiplied by (y) a fraction, the numerator of which is the Deemed Stock Amount and the denominator of which is the Total Common Stock Amount.

"Per Share Stated Unit Consideration" shall mean a number (which need not be a whole number) of Common Units equal to the product, rounded to the nearest ten-thousandth, of (x) 1.285 multiplied by (y) a fraction, the numerator of which is the Deemed Stock Amount and the denominator of which is the Total Common Stock Amount.

"Per Share Unit Consideration" shall mean a number (which need not be a whole number) of Common Units equal to the Exchange Ratio.

"Permitting Violation" shall have the meaning set forth in Section 5.3(i)(ii).

"Person" or "person" shall mean any individual, bank, corporation, partnership, limited liability company, association, joint-stock company, business trust or unincorporated organization.

"Plans" shall have the meaning set forth in Section 5.3(l)(iii).

"Previously Disclosed" by a party shall mean information set forth in its Disclosure Schedule.

"Redemption" shall mean redemption of shares of Hydrocarbon Common Stock pursuant to and in accordance with the Redemption Charter Amendment.

"Redemption Charter Amendment" shall mean the Certificate of Amendment to the Certificate of Incorporation of Hydrocarbon in the form attached hereto as Annex B.

"Redemption/Exchange Agent" shall mean Wells Fargo, N.A. or such other entity as may be selected by Energy Partners subject to the reasonable approval of Hydrocarbon.

"Redemption/Merger Consideration" shall have the meaning set forth in Section 3.1(b).

"Redemption Shares" shall mean all Stated Consideration Cash Shares and all Cash Election Shares unless (1) the aggregate cash amount that would be paid upon the redemption of the Cash Election Shares is greater than the Total Remaining Cash Amount, in which case only the Stated Consideration Cash Shares and those Cash Election Shares that are not Unit Designated Shares shall constitute Redemption Shares, or (2) the aggregate cash amount that would be paid upon the redemption of the Cash Election Shares is less than the Total Remaining Cash Amount, in which case all Stated Consideration Cash Shares, Cash Election Shares and Cash Designated Shares shall constitute Redemption Shares. Redemption Shares shall not include Treasury Shares, shares held by Energy Partners or its Subsidiaries and, to the fullest extent permitted by law, shares of Dissenting Holders and Hydrocarbon Restricted Stock.

"Registration Statement" shall have the meaning set forth in Section 6.3(a).

"Regulatory Authorities" shall have the meaning set forth in Section 5.3(h)(ii).

"Representatives" shall mean with respect to a Person, its directors, officers, employees, agents and representatives, including any investment banker, financial advisor, attorney, accountant or other advisor, agent or representative; *provided, however*, that John Fox shall not be considered a Representative for purposes of this Agreement.

"Restructuring Transactions" shall mean the following, collectively, as provided for in the Exchange Agreement: the exchange by Hydrocarbon of its 4,938,992 Common Units for

Class A Units and the exchange by the General Partner of its 2% economic interest in Energy Partners and the IDRs for Class A Units.

“Rights” shall mean, with respect to any person, securities or obligations convertible into or exchangeable for, or giving any person any right to subscribe for or acquire, or any options, calls or commitments relating to, equity securities of such person.

“Rule 145 Affiliate” shall have the meaning set forth in Section 6.7(a).

“SEC” shall mean the Securities and Exchange Commission.

“SEC Documents” shall have the meaning set forth in Section 5.3(g).

“Securities Act” shall mean the Securities Act of 1933, as amended, and the rules and regulations thereunder.

“Significant Subsidiaries” shall have the meaning ascribed to such term in Section 1-01(w) of Regulation S-X under the Securities Act.

“Stated Consideration” shall mean an amount equal to the Per Share Stated Cash Consideration plus the Per Share Stated Unit Consideration.

“Stated Consideration Cash Shares” shall have the meaning set forth in Section 3.2(b).

“Stated Consideration Shares” shall have the meaning set forth in Section 3.2(b).

“Stated Consideration Unit Shares” shall have the meaning set forth in Section 3.2(b).

“Subordinated Units” shall mean the subordinated units representing limited partner interests of Energy Partners having the rights and obligations specified with respect to Subordinated Units in the Partnership Agreement.

“Subsidiary” shall have the meaning ascribed to such term in Rule 1-02 of Regulation S-X under the Securities Act, except, in the case of Hydrocarbon, Energy Partners and its Subsidiaries shall not be deemed to be Subsidiaries of Hydrocarbon.

“Superior Proposal” means any Acquisition Proposal (except that references to 20% within the definition of “Acquisition Proposal” shall be replaced by “50%”) made by a third party on terms that the Hydrocarbon Board (acting through the Deal Committee) determines, in its good faith judgment, after consulting with its or the Deal Committee’s, as applicable, financial advisors and outside legal counsel, and taking into account all financial, legal, regulatory and other aspects of the Acquisition Proposal (i) to be more favorable to Hydrocarbon’s stockholders, including the Unaffiliated Stockholders, from a financial point of view than the Redemption and Merger, taken together, and (ii) that is reasonably capable of being consummated.

“Surviving Entity” shall have the meaning set forth in Section 2.2(a).

"Takeover Law" means any "fair price," "moratorium," "control share acquisition," "business combination" or any other anti-takeover statute or similar statute enacted under state or federal law.

"Taxes" shall mean all taxes, charges, fees, levies or other assessments, including, without limitation, all net income, gross income, gross receipts, sales, use, ad valorem, goods and services, capital, transfer, franchise, profits, license, withholding, payroll, employment, employer health, excise, estimated, severance, stamp, occupation, property or other taxes, custom duties, fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any taxing authority.

"Tax Returns" shall have the meaning set forth in Section 5.3(o).

"Termination Date" shall have the meaning set forth in Section 8.1(b)(i).

"Total Cash Amount" shall mean the product obtained by multiplying (x) \$20.00 by (y) the Deemed Stock Amount.

"Total Common Stock Amount" shall mean the total number of shares of Hydrocarbon Common Stock, less the number of shares of Hydrocarbon Restricted Stock, outstanding immediately prior to the Redemption, which shall take place immediately prior to the Effective Time.

"Total Remaining Cash Amount" shall mean the amount of cash equal to the (x) Total Cash Amount minus (y) the Total Stated Consideration Cash Amount.

"Total Stated Consideration Cash Amount" shall mean the product obtained by multiplying (x) the Per Share Cash Consideration by (y) the total number of Stated Consideration Cash Shares.

"Total Stock Amount" shall mean the product obtained by multiplying (x) 1.285 by (y) the Deemed Stock Amount.

"Total Stock Consideration" shall mean the product obtained by multiplying (x) the Total Stock Amount by (y) the Final Energy Partners Unit Price.

"Treasury Shares" shall mean shares of Hydrocarbon Common Stock owned by Hydrocarbon or any of its Subsidiaries at the Effective Time.

"Unaffiliated Stockholders" means the holders of Hydrocarbon Common Stock, other than John M. Fox and MWHC Holdings Inc., their respective affiliates, and the respective officers and directors of Hydrocarbon and the General Partner.

"Unit Designated Shares" shall have the meaning set forth in Section 3.2(e)(i)(B).

"Unit Election Shares" shall have the meaning set forth in Section 3.2(b).

"Unit Issuance" shall mean (i) the issuance of Common Units in the Merger pursuant to this Agreement and (ii) the issuance of Class A Units to Hydrocarbon and the General Partner in the Restructuring Transactions.

"Unit Majority" shall mean the Unit Majority as defined in the Partnership Agreement.

"Valuation Period" shall mean the ten consecutive trading days during which the Common Units are traded on the NYSE, ending on the third calendar day immediately prior to the Effective Time, or if such calendar day is not a trading day, then ending on the trading day immediately preceding such calendar day.

## ARTICLE II

### THE REDEMPTION AND MERGER; EFFECTS OF THE MERGER

#### Section 2.1 *The Redemption.*

(a) *Amendment to Hydrocarbon Charter.* The Hydrocarbon Board, in connection with the execution of this Agreement, has adopted the Redemption Charter Amendment.

(b) *The Redemption.* Upon the effectiveness of the Redemption Charter Amendment and immediately prior to the Effective Time of the Merger, as provided in the Redemption Charter Amendment, each Redemption Share shall be redeemed at a redemption price equal to the Per Share Cash Consideration. Such Per Share Cash Consideration shall be paid in accordance with the procedures for payment thereof to holders of Certificates as set forth in Section 3.5.

#### Section 2.2 *The Merger.*

(a) *The Surviving Entity.* Subject to the terms and conditions of this Agreement, at the Effective Time, which shall be immediately following the Redemption, MergerCo shall merge with and into Hydrocarbon, the separate existence of MergerCo shall cease and Hydrocarbon shall survive and continue to exist as a Delaware entity (Hydrocarbon, as the surviving corporation in the Merger, sometimes being referred to herein as the "Surviving Entity"), such that following the Merger, Hydrocarbon will be a direct, wholly owned subsidiary of Energy Partners.

(b) *Effectiveness and Effects of the Merger.* Subject to the satisfaction or waiver of the conditions set forth in Article VII in accordance with this Agreement, the Merger shall become effective upon the later to occur of the filing in the office of the Secretary of State of the State of Delaware of a properly executed certificate of merger (the "Certificate of Merger") or such later date and time as may be set forth in the Certificate of Merger (the "Effective Time"), in accordance with the DGCL and the Delaware Limited Liability Company Act (the "LLC Act"). The Merger shall have the effects prescribed in the DGCL and the LLC Act.

(c) *Certificate of Incorporation and Bylaws.* At the Effective Time, the Hydrocarbon Charter shall be amended in its entirety to read as set forth in Annex C, and as so amended shall be the certificate of incorporation of the Surviving Entity, until duly amended in accordance with the terms thereof and applicable law. At the Effective Time, the Hydrocarbon Bylaws shall be amended in its entirety to read as set forth in Annex D, and as so amended shall be the bylaws of the Surviving Entity until duly amended in accordance with the terms of the certificate of incorporation of the Surviving Entity, such bylaws and applicable law.

(d) *Directors of the Surviving Entity.* Frank M. Semple, Nancy K. Buese and Andrew L. Schroeder shall be the directors of the Surviving Entity as of the Effective Time, until their respective successors are duly elected or appointed and qualified or their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Entity.

(e) *Officers of the Surviving Entity.* The officers of Hydrocarbon immediately prior to the Effective Time shall be the officers of the Surviving Entity as of the Effective Time, until their respective successors are duly elected or appointed and qualified or their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Entity.

Section 2.3 *Closing.* Subject to the satisfaction or waiver of the conditions as set forth in Article VII in accordance with this Agreement, the filing of the Redemption Charter Amendment, followed by the filing of the Certificate of Merger (as defined herein) with the Delaware Secretary of State, and the closing of the Redemption, the Restructuring Transactions, the Merger and the other transactions contemplated hereby (the "Closing") shall occur on (a) the third business day after the day on which the last of the conditions set forth in Article VII shall have been satisfied or waived in accordance with the terms of this Agreement or (b) such other date to which the parties may agree in writing. The date on which the Closing occurs is referred to as the "Closing Date." The Closing of the transactions contemplated by this Agreement shall take place at the offices of Hogan & Hartson L.L.P., One Tabor Center, Suite 1500, 1200 Seventeenth Street, Denver, Colorado 80202, at 10:00 a.m. local time on the Closing Date.

### ARTICLE III

#### REDEMPTION AND MERGER CONSIDERATION; EXCHANGE PROCEDURES

Section 3.1 *Redemption and Merger Consideration.* Subject to the provisions of this Agreement:

(a) By virtue of the Redemption, each Redemption Share shall be redeemed upon the effectiveness of the Charter Amendment immediately prior to the Effective Time for cash in an amount having a value equal to the Per Share Consideration in the Redemption (the "Per Share Cash Consideration").

(b) By virtue of the Merger, at the Effective Time each share of Hydrocarbon Common Stock issued and outstanding immediately prior to the Effective Time that has not been



redeemed pursuant to the Redemption (other than Treasury Shares, shares held by Energy Partners or its Subsidiaries and, to the fullest extent permitted by law, shares of Dissenting Holders and Hydrocarbon Restricted Stock) shall be converted into the Per Share Unit Consideration. The Per Share Unit Consideration, together with the Per Share Cash Consideration, shall be referred to herein as the "Redemption/Merger Consideration."

(c) By virtue of the Redemption, the Total Cash Amount deposited by Hydrocarbon with the Redemption/Exchange Agent will be used to redeem shares of Hydrocarbon Common Stock and such shares of Hydrocarbon Common Stock shall be treated as redeemed and canceled immediately prior to the Merger.

(d) By virtue of the Merger, all of the limited liability company interests in MergerCo outstanding immediately prior to the Effective Time shall be converted into and become 1,000 fully paid and nonassessable shares of common stock of the Surviving Corporation.

(e) By virtue of the Merger, each Treasury Share and each share of Hydrocarbon Common Stock owned by Energy Partners or its Subsidiaries shall cease to be outstanding and shall be canceled without payment of any consideration therefor, and no partnership interest of Energy Partners or other consideration shall be delivered in exchange therefor.

(f) All shares of Hydrocarbon Common Stock, when redeemed in the Redemption or converted in the Merger, shall cease to be outstanding and shall automatically be canceled and cease to exist. Each holder of a certificate (a "Certificate") previously representing any such shares shall cease to have any rights with respect thereto, except the right to receive (i) the Redemption/Merger Consideration, (ii) any distributions in accordance with Section 3.5(c) and (iii) any cash to be paid in lieu of any fractional Common Unit in accordance with Section 3.5(e), in each case to be issued or paid in consideration therefor upon the surrender of such Certificates in accordance with Section 3.5.

### Section 3.2 *Election Procedures.*

(a) An election form and other appropriate and customary transmittal materials (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates theretofore representing shares of Hydrocarbon Common Stock shall pass, only upon proper delivery of such Certificates to the Redemption/Exchange Agent) in such form as Energy Partners and Hydrocarbon shall mutually agree (the "Election Form") and pursuant to which each holder of record of shares of Hydrocarbon Common Stock as of the close of business on the Election Deadline may make an election pursuant to this Section 3.2, shall be mailed at the same time as the Joint Proxy Statement or at such other time as Hydrocarbon and Energy Partners may agree (the date on which such mailing is commenced or such other agreed date, the "Mailing Date") to each holder of record of Hydrocarbon Common Stock as of the close of business on the record date for notice of the Hydrocarbon Meeting (the "Election Form Record Date").

(b) Each Election Form shall permit the holder (or the beneficial owner through appropriate and customary documentation and instructions), other than any holder of Appraisal Shares, to specify (i) the number of such holder's shares of Hydrocarbon Common Stock with respect to which such holder elects to have redeemed for the Per Share Cash Consideration in the

Redemption ("Cash Election Shares"), (ii) the number of such holder's shares of Hydrocarbon Common Stock with respect to which such holder elects to have exchanged for the Per Share Unit Consideration in the Merger ("Unit Election Shares"), (iii) the number of such holder's shares of Hydrocarbon Common Stock with respect to which such holder elects to receive the Stated Consideration (the "Stated Consideration Shares"), a portion of which shares shall be Stated Consideration Cash Shares to be redeemed for the Per Share Cash Consideration in the Redemption, and a portion of which shares shall be Stated Consideration Unit Shares to be exchanged for the Per Share Unit Consideration in the Merger, both as provided for herein, and (iv) the number of such holder's shares of Hydrocarbon Common Stock with respect to which such holder makes no election ("Non-Electing Shares"). For each holder electing to receive the Stated Consideration, (x) that number of such holder's Stated Consideration Shares equal to the quotient obtained by dividing (1) the product of the Per Share Stated Cash Consideration multiplied by the number of such holder's Stated Consideration Shares by (2) the Per Share Cash Consideration, rounded to the nearest whole share, shall be deemed "Stated Consideration Cash Shares" hereunder and (y) that number of such holder's Stated Consideration Shares equal to (1) the number of such holder's Stated Consideration Shares minus (2) the number of such holder's Stated Consideration Cash Shares shall be deemed "Stated Consideration Unit Shares" hereunder. Any Hydrocarbon Common Stock with respect to which the Redemption/Exchange Agent has not received an effective, properly completed Election Form on or before 5:00 p.m., New York City time, on the 33rd day following the Mailing Date (or such other time and date as Hydrocarbon and Energy Partners shall agree) (the "Election Deadline") (other than any shares of Hydrocarbon Common Stock that constitute Appraisal Shares as of such time) shall also be deemed to be Non-Electing Shares. In addition, any shares of Hydrocarbon Common Stock treated as outstanding upon the exercise of Hydrocarbon Stock Options pursuant to Section 3.7(a) shall be deemed to be Non-Electing Shares.

(c) Hydrocarbon and Energy Partners shall mail one or more Election Forms as may reasonably be requested from time to time by all Persons who become holders (or beneficial owners) of Hydrocarbon Common Stock between the Election Form Record Date and the close of business on the Business Day prior to the Election Deadline. Hydrocarbon shall provide to the Redemption/Exchange Agent all information reasonably necessary for it to perform as specified herein.

(d) Any such election shall have been properly made only if the Redemption/Exchange Agent shall have actually received a properly completed Election Form by the Election Deadline. An Election Form shall be deemed properly completed only if accompanied by (i) one or more Certificates (or customary affidavits and indemnification regarding the loss or destruction of such Certificates or the guaranteed delivery of such Certificates) representing all certificated shares of Hydrocarbon Common Stock covered by such Election Form or (ii) in the case of shares in book-entry form, any additional documents specified by the procedures set forth in the Election Form, together with duly executed transmittal materials included in the Election Form. Any Election Form may be revoked or changed by the Person submitting such Election Form prior to the Election Deadline. In the event an Election Form is revoked prior to the Election Deadline, the shares of Hydrocarbon Common Stock represented by such Election Form shall become Non-Electing Shares and Energy Partners shall cause the Certificates, if any, representing Hydrocarbon Common Stock to be promptly returned without charge to the Person submitting the Election Form upon written

request to that effect from the holder who submitted the Election Form, except to the extent (if any) a subsequent election is properly made with respect to any or all of the applicable shares of Hydrocarbon Common Stock. Subject to the terms of this Agreement and of the Election Form, the Redemption/Exchange Agent shall have reasonable discretion to determine whether any election, revocation or change has been properly or timely made and to disregard immaterial defects in the Election Forms, and any good faith decisions of the Redemption/Exchange Agent regarding such matters shall be binding and conclusive. None of Energy Partners, MergerCo or the Redemption/Exchange Agent shall be under any obligation to notify any Person of any defect in an Election Form.

(e) Within ten Business Days after the Election Deadline, unless the Effective Time has not yet occurred, in which case as soon after the Effective Time as practicable (and in no event more than ten Business Days after the Effective Time), Hydrocarbon and Energy Partners shall cause the Redemption/Exchange Agent to effect the allocation among the holders of shares of Hydrocarbon Common Stock of rights to receive cash in the Redemption or Common Units in the Merger in accordance with the Election Forms (subject to compliance with the provisions of this Agreement) as follows:

(i) *Cash Election Shares More Than Total Remaining Cash Amount.* If the aggregate cash amount that would be paid upon the redemption of the Cash Election Shares in the Redemption is greater than the Total Remaining Cash Amount, then:

- (A) all Unit Election Shares, Stated Consideration Unit Shares and Non-Electing Shares shall be exchanged for the Per Share Unit Consideration in the Merger,
- (B) the Redemption/Exchange Agent shall then select from among the Cash Election Shares, by a pro rata selection process based on the number of shares held by a stockholder, a sufficient number of shares ("Unit Designated Shares") such that the aggregate cash amount that will be paid in the Redemption equals as closely as practicable the Total Cash Amount (such calculation to take into consideration the number of Stated Consideration Cash Shares and the Total Stated Cash Consideration Amount), and all Unit Designated Shares shall be exchanged for the Per Share Unit Consideration in the Merger, and
- (C) all Stated Consideration Cash Shares and those Cash Election Shares that are not Unit Designated Shares shall be redeemed at a redemption price per share equal to the Per Share Cash Consideration in the Redemption.

(ii) *Cash Election Shares Less Than Total Remaining Cash Amount.* If the aggregate cash amount that would be paid upon the redemption of the Cash Election Shares in the Redemption is less than the Total Remaining Cash Amount, then:

- (A) all Cash Election Shares and Stated Consideration Cash Shares shall be redeemed at a redemption price per share equal to the Per Share Cash Consideration in the Redemption,
- (B) the Redemption/Exchange Agent shall then select first from among the Non-Electing Shares and then (if necessary) from among the Unit Election Shares, by a pro rata selection process based on the number of shares held by a stockholder, a sufficient number of shares ("Cash Designated Shares") such that the aggregate cash amount that will be paid in the Redemption equals as closely as practicable the Total Cash Amount (such calculation to take into consideration the number of Stated Consideration Cash Shares and the Total Stated Cash Consideration Amount), and all Cash Designated Shares shall be redeemed at a redemption price per share equal to the Per Share Cash Consideration in the Redemption, and
- (C) all Stated Consideration Unit Shares and those Unit Election Shares and the Non-Electing Shares that are not Cash Designated Shares shall be exchanged for the Per Share Unit Consideration in the Merger.

(iii) *Cash Election Shares Equal to Total Remaining Cash Amount.* If the aggregate cash amount that would be paid upon the redemption of the Cash Election Shares in the Redemption is equal to the Total Remaining Cash Amount, then subparagraphs (i) and (ii) above shall not apply and all Cash Election Shares and Stated Consideration Cash Shares shall be redeemed at a redemption price per share equal to the Per Share Cash Consideration in the Redemption and all Unit Election Shares, Stated Consideration Unit Shares and Non-Electing Shares shall be exchanged for the Per Share Unit Consideration in the Merger.

Notwithstanding anything in this Agreement to the contrary, to the fullest extent permitted by law, for purposes of determining the allocations set forth in this Section 3.2, Energy Partners shall have the right to require, but not the obligation to require, that any shares of Hydrocarbon Common Stock that constitute Appraisal Shares as of the Election Deadline be treated as Cash Election Shares but not be subject to the pro rata selection process contemplated by this Section 3.2, and, if Energy Partners so requires, then, to the fullest extent permitted by law, any Appraisal Shares that receive the Redemption/Merger Consideration provided under this Article III shall be treated as Cash Election Shares but not be subject to the pro rata selection process contemplated by this Section 3.2.

(f) The pro rata selection process to be used by the Redemption/Exchange Agent shall consist of such equitable pro ration processes as shall be mutually determined by Energy Partners and Hydrocarbon.

Section 3.3 *Appraisal Rights.* Notwithstanding anything in this Agreement to the contrary, shares of Hydrocarbon Common Stock issued and outstanding immediately prior to the

filing of the Redemption Charter Amendment or the Effective Time that are held by any record holder who is entitled to demand and properly demands appraisal of such shares pursuant to, and who complies in all respects with, the provisions of Section 262 of the DGCL (the "Appraisal Shares") shall not be converted into the right to receive the Redemption/Merger Consideration, but instead shall become the right to payment of the fair value of such shares in accordance with the provisions of Section 262 of the DGCL and the Redemption Charter Amendment and at the filing of the Redemption Charter Amendment or the Effective Time, all Appraisal Shares shall no longer be outstanding and shall automatically be canceled and cease to exist. Notwithstanding the foregoing, if any such holder shall fail to perfect or otherwise shall waive, withdraw or lose the right to appraisal under Section 262 of the DGCL or a court of competent jurisdiction shall determine that such holder is not entitled to the relief provided by Section 262 of the DGCL, then the right of such holder to be paid the fair value of such holder's Appraisal Shares under Section 262 of the DGCL and the Redemption Charter Amendment shall be forfeited and cease and if such forfeiture shall occur following the Election Deadline, each of such holder's Appraisal Shares, to the extent permitted by law, shall be treated as Non-Electing Shares or pursuant to Section 3.2(e) as Cash Election Shares. Hydrocarbon shall deliver prompt notice to Energy Partners of any demands for appraisal of any shares of Hydrocarbon Common Stock and provide Energy Partners with the opportunity to participate in all negotiations and proceedings with respect to demands for appraisal. Prior to the Effective Time, Hydrocarbon shall not, without the prior written consent of Energy Partners, make any payment with respect to, or settle or offer to settle, any such demands, or agree to do any of the foregoing.

Section 3.4 *Rights As Stockholders; Stock Transfers.* After the Redemption or the Effective Time, as the case may be, holders of Hydrocarbon Common Stock shall cease to be, and shall have no rights, as stockholders of Hydrocarbon, other than to receive (a) any dividend or other distribution with respect to such Hydrocarbon Common Stock with a record date occurring prior to the Effective Time that may have been declared or made by Hydrocarbon on such shares of Hydrocarbon Common Stock in accordance with the terms of this Agreement or prior to the date hereof and which remain unpaid at the Effective Time and (b) the consideration provided under this Article III. After the Effective Time, there shall be no transfers on the stock transfer books of the shares of Hydrocarbon Common Stock.

Section 3.5 *Exchange of Certificates.*

(a) *Redemption/Exchange Agent.* Hydrocarbon shall irrevocably deposit with the Redemption/Exchange Agent an amount in cash that shall be sufficient to effect the Redemption, and Energy Partners shall deposit or shall cause to be deposited the Common Units for the Merger with the Redemption/Exchange Agent, in each case for the benefit of the holders of shares of Hydrocarbon Common Stock and both of which together shall be used to make all deliveries of cash and the Common Units as required by and pursuant to this Article III. Energy Partners agrees to make available to the Redemption/Exchange Agent, from time to time as needed, cash sufficient to pay any distributions pursuant to Section 3.5(c) and to make payments in lieu of any fractional Common Units pursuant to Section 3.5(e). Any cash and Common Units deposited with the Redemption/Exchange Agent (including as payment for any fractional Common Units in accordance with Section 3.5(e) and any distributions in accordance with Section 3.5(c)) shall hereinafter be referred to as the "Exchange Fund." The Redemption/Exchange Agent shall, pursuant to irrevocable instructions, deliver the

Redemption/Merger Consideration contemplated to be paid for shares of Hydrocarbon Common Stock pursuant to this Agreement, both through the Redemption and through the Merger, out of the Exchange Fund. Except as contemplated by Sections 3.5(c) and 3.5(e) hereof, the Exchange Fund shall not be used for any other purpose.

(b) *Exchange Procedures.* Promptly after the Effective Time, Energy Partners shall instruct the Redemption/Exchange Agent to mail to each record holder of Certificates (other than such holders who have properly completed an Election form and elected the shares with respect to such Certificates as Cash Election Shares, Unit Election Shares, Stated Consideration Shares or Non-Electing Shares in accordance with Section 3.2 and other than Appraisal Shares), (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Redemption/Exchange Agent, and shall be in customary form and agreed to by Energy Partners and Hydrocarbon prior to the Effective Time) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the Redemption/Merger Consideration payable in respect of the shares of Hydrocarbon Common Stock represented by such Certificates. Promptly after the Effective Time, upon surrender of Certificates for cancellation to the Redemption/Exchange Agent together with such letters of transmittal, properly completed and duly executed, and such other documents as may be required pursuant to such instructions, the holders of such Certificates and the holders of Certificates who previously surrendered Certificates to the Redemption/Exchange Agent with properly completed and duly executed Election Forms shall be entitled to receive in exchange therefor (A) Common Units representing, in the aggregate, the whole number of Common Units that such holder has the right to receive pursuant to this Article III (after taking into account all shares of Hydrocarbon Common Stock then held by such holder) and (B) a check in the amount equal to the aggregate amount of cash that such holder has the right to receive pursuant to this Article III, including cash payable in lieu of any fractional Common Units pursuant to Section 3.5(e) and distributions pursuant to Section 3.5(c). No interest shall be paid or accrued on any Redemption/Merger Consideration, cash in lieu of fractional shares or on any unpaid dividends and distributions payable to holders of Certificates. In the event of a transfer of ownership of shares of Hydrocarbon Common Stock which is not registered in the transfer records of Hydrocarbon, the Redemption/Merger Consideration payable in respect of such shares of Hydrocarbon Common Stock may be paid to a transferee if the Certificate representing such shares of Hydrocarbon Common Stock is presented to the Redemption/Exchange Agent, accompanied by all documents required to evidence and effect such transfer and the Person requesting such exchange shall pay to the Redemption/Exchange Agent in advance any transfer or other Taxes required by reason of the delivery of the Redemption/Merger Consideration in any name other than that of the registered holder of the Certificate surrendered, or shall establish to the satisfaction of the Redemption/Exchange Agent that such Taxes have been paid or are not payable. Until surrendered as contemplated by this Section 3.5, each Certificate other than Certificates representing Appraisal Shares shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the Redemption/Merger Consideration payable in respect of the shares of Hydrocarbon Common Stock represented by such Certificate and any distributions to which such holder is entitled pursuant to Section 3.4.

(c) *Distributions with Respect to Unexchanged Common Units.* No distributions declared or made with respect to Common Units with a record date after the Effective Time shall

be paid to the holder of any unsurrendered Certificate representing Hydrocarbon Common Stock with respect to the Common Units that such holder would be entitled to receive upon surrender of such Certificate and no cash payment in lieu of fractional Common Units shall be paid to any such holder until such holder shall surrender such Certificate in accordance with this Section 3.5. Subject to applicable law, following surrender of any such Certificate, there shall be paid to such holder of the Common Units issuable in exchange therefor, without interest, (i) promptly after the time of such surrender, the amount of any cash due pursuant to Section 3.2 and cash payable in lieu of fractional Common Units to which such holder is entitled pursuant to Section 3.5(e) and the amount of distributions with a record date after the Effective Time theretofore paid with respect to the Common Units and payable with respect to such Common Units, and (ii) at the appropriate payment date, the amount of distributions with a record date after the Effective Time but prior to such surrender and a payment date subsequent to such surrender payable with respect to such Common Units.

(d) *No Further Rights in Hydrocarbon Common Stock.* The Redemption/Merger Consideration delivered or issued, as the case may be, in accordance with the terms hereof (including any cash paid pursuant to Section 3.4, Section 3.5(c) or Section 3.5(e)) shall be deemed to have been issued in full satisfaction of all rights pertaining to such share of Hydrocarbon Common Stock.

(e) *Fractional Common Units.* No certificates or scrip of the Common Units representing fractional Common Units or book entry credit of the same shall be issued upon the surrender for exchange of Certificates in the Merger, and such fractional interests will not entitle the owner thereof to vote or to have any rights as a holder of any Common Units. Notwithstanding any other provision of this Agreement, each holder of shares of Hydrocarbon Common Stock exchanged in the Merger who would otherwise have been entitled to receive a fraction of a Common Unit (after taking into account all Certificates delivered by such holder) shall receive, in lieu thereof, cash (without interest rounded up to the nearest whole cent) in an amount equal to the product of (i) the closing sale price of the Common Units on the NYSE as reported by *The Wall Street Journal* on the trading day immediately preceding the date on which the Effective Time shall occur and (ii) the fraction of a Common Unit that such holder would otherwise be entitled to receive pursuant to this Article III. As promptly as practicable after the determination of the amount of cash, if any, to be paid to holders of fractional interests, the Redemption/Exchange Agent shall so notify Energy Partners, and it shall, or shall cause the Surviving Entity to, deposit such amount with the Redemption/Exchange Agent and shall cause the Redemption/Exchange Agent to forward payments to such holders of fractional interests subject to and in accordance with the terms hereof.

(f) *Termination of Exchange Fund with Respect to Merger.* Any portion of the Exchange Fund constituting Common Units that remains undistributed to the holders of Hydrocarbon Common Stock in the Merger after 180 days following the Effective Time shall be delivered to Energy Partners upon demand and, from and after such delivery, any former holders of Hydrocarbon Common Stock (other than Appraisal Shares) who have not theretofore complied with this Article III shall thereafter look only to Energy Partners for the Redemption/Merger Consideration payable in the Merger in respect of such shares of Hydrocarbon Common Stock, any cash in lieu of fractional Common Units to which they are entitled pursuant to Section 3.5(e) and any distributions with respect to the Common Units to

which they are entitled pursuant to Section 3.5(c), in each case, without any interest thereon. Any amounts remaining unclaimed by holders of shares of Hydrocarbon Common Stock immediately prior to such time as such amounts would otherwise escheat to or become the property of any governmental entity shall, to the extent permitted by applicable law, become the property of Energy Partners or Hydrocarbon, as the case may be, free and clear of any Liens, claims or interest of any Person previously entitled thereto.

(g) *No Liability.* Neither Energy Partners, Hydrocarbon, nor the Surviving Entity shall be liable to any holder of shares of Hydrocarbon Common Stock for any Common Units (or distributions with respect thereto) or cash from the Exchange Fund delivered to a public official pursuant to any abandoned property, escheat or similar law.

(h) *Lost Certificates.* If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Hydrocarbon or Energy Partners, the posting by such Person of a bond, in such reasonable amount as Hydrocarbon or Energy Partners may direct, as indemnity against any claim that may be made against it with respect to such Certificate, the Redemption/Exchange Agent shall pay in exchange for such lost, stolen or destroyed Certificate the Redemption/Merger Consideration payable in respect of the shares of Hydrocarbon Common Stock represented by such Certificate and any distributions to which the holders thereof are entitled pursuant to Section 3.4.

(i) *Withholding.* Each of Hydrocarbon, Energy Partners, the Surviving Entity and the Redemption/Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of Hydrocarbon Common Stock such amounts as Hydrocarbon, Energy Partners, the Surviving Entity or the Redemption/Exchange Agent is required to deduct and withhold under the Code or any provision of state, local, or foreign Tax law, with respect to the making of such payment. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of Hydrocarbon Common Stock in respect of whom such deduction and withholding was made by Hydrocarbon, Energy Partners, the Surviving Entity or the Redemption/Exchange Agent, as the case may be.

(j) *Book Entry of Common Units.* All Common Units to be issued in the Merger shall be issued in book entry form, without physical certificates.

**Section 3.6 Anti-Dilution Provisions.** In the event of any subdivisions, reclassifications, recapitalizations, splits, combinations or dividends in the form of equity interests with respect to the Common Units and the Hydrocarbon Common Stock (in each case, as permitted pursuant to Section 4.3), the number of Common Units to be issued in the Merger, the average closing sales prices of the Common Units determined in accordance with Section 3.5(e), the Per Share Cash Consideration, the Per Share Unit Consideration, the Per Share Stated Cash Consideration and the Per Share Stated Unit Consideration will be correspondingly adjusted.



**Section 3.7    *Options and Restricted Shares.***

(a) Immediately prior to the Redemption, Hydrocarbon shall cause all outstanding Hydrocarbon Stock Options heretofore granted, regardless of whether or not vested or exercisable at the Effective Time, to be deemed exercised and each holder of an outstanding Hydrocarbon Stock Option, for purposes of this Agreement, shall be treated as of the Redemption, which shall occur immediately prior to the Effective Time, as holding a number of shares of Hydrocarbon Common Stock equal to (i) the number of shares of Hydrocarbon Common Stock subject to such Hydrocarbon Stock Option minus (ii) a number of shares of Hydrocarbon Common Stock that are equal in value, as determined as of the Effective Time, to (A) (x) the exercise price of such Hydrocarbon Stock Option times (y) the number of shares of Hydrocarbon Common Stock subject to such Hydrocarbon Stock Option plus (B) such amounts as are required to be withheld or deducted by Law with respect to the exercise of such Hydrocarbon Stock Options.

(b) At the Effective Time, all outstanding shares of Hydrocarbon Restricted Stock heretofore granted shall cease to represent shares of Hydrocarbon Restricted Stock and shall be assumed by Energy Partners and converted into Energy Partners Phantom Units at the Exchange Ratio. Any fractional Energy Partners Phantom Unit shall be rounded up to the nearest whole Energy Partners Phantom Unit. Each share of Hydrocarbon Restricted Stock so assumed and converted shall be subject to, and shall vest upon, the terms and conditions that are the same as those currently applicable to the shares of Hydrocarbon Restricted Stock. Promptly after the Effective Time, Energy Partners will provide each holder of shares of Hydrocarbon Restricted Stock with a notice describing the assumption and conversion of such shares.

(c) With the exception of those Persons who hold shares of Hydrocarbon Restricted Stock, no Person shall have any right under any plan, program, agreement or arrangement with respect to Hydrocarbon Common Stock, or for the issuance or grant of any right of any kind, contingent or accrued, to receive benefits measured by the value of a number of shares of Hydrocarbon Common Stock at and after the Effective Time.

**ARTICLE IV**

**ACTIONS PENDING MERGER**

From the date hereof until the Effective Time, except for the Redemption, the Restructuring Transactions or otherwise as expressly contemplated by this Agreement, (a) without the prior written consent of the Conflicts Committee (which consent shall not be unreasonably withheld, delayed or conditioned), Hydrocarbon will not, and will cause each of its Subsidiaries not to, and (b) without the prior written consent of the Deal Committee (which consent shall not be unreasonably withheld, delayed or conditioned), Energy Partners will not, and will cause each of its Subsidiaries not to:

**Section 4.1    *Ordinary Course.*** Conduct the business of it and its Subsidiaries, other than, in the case of Hydrocarbon, Energy Partners and its Subsidiaries, other than in the ordinary and usual course or, to the extent consistent therewith, fail to use commercially reasonable best

efforts to preserve intact its business organizations, goodwill and assets and maintain its rights, franchises and existing relations with customers, suppliers, employees and business associates, or take any action that would (a) adversely affect the ability of any party to obtain any approvals required under the HSR for the transactions contemplated hereby or (b) adversely affect its ability to perform any of its material obligations under this Agreement.

Section 4.2 *Capital Stock.* In the case of Hydrocarbon and its Subsidiaries, other than (a) pursuant to stock options Previously Disclosed in its Disclosure Schedule, or (b) as otherwise set forth on Schedule 4.2 of Hydrocarbon's Disclosure Schedule, (i) issue, sell or otherwise permit to become outstanding, or authorize the creation of, any additional shares of capital stock, any stock appreciation rights or any Rights, (ii) enter into any agreement with respect to the foregoing or (iii) permit any additional shares of capital stock to become subject to new grants of employee stock options, stock appreciation rights or similar stock-based employee rights (other than awards to newly hired employees consistent with past practice).

Section 4.3 *Dividends, Distributions.* Other than in connection with the Restructuring Transactions,

(a) make, declare or pay any dividend or distribution (except (i) in the case of Energy Partners, regular quarterly cash distributions of Available Cash (as defined in the Partnership Agreement) on the Common Units and the general partner interest of Energy Partners and (ii) in the case of Hydrocarbon, regular quarterly dividends, in each case in the ordinary course consistent with past practice but in an amount no greater than the per share dividend for the second quarter of 2007), on or in respect of, or declare or make any distribution on any shares of its equity securities other than as Previously Disclosed;

(b) split, combine or reclassify any of its capital stock or issue or authorize or propose the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock; or

(c) repurchase, redeem or otherwise acquire, or permit any of its Subsidiaries to purchase, redeem or otherwise acquire any shares of its capital stock, except as required by the terms of its securities outstanding on the date hereof or as contemplated by any existing Compensation and Benefit Plan.

Section 4.4 *Compensation; Employment Agreements.* In the case of Hydrocarbon and its Subsidiaries, except as set forth on Schedule 4.4 of Hydrocarbon's Disclosure Schedule, enter into or amend any written employment, severance or similar agreements or arrangements with any of its directors, officers or employees, or grant any salary or wage increase or increase any employee benefit (including incentive or bonus payments), except for (a) normal individual increases in compensation to employees (other than officers and directors) in the ordinary course of business consistent with past practice, (b) other changes as are provided for herein or as may be required by law or to satisfy contractual obligations existing as of the date hereof or (c) additional grants of awards to newly hired employees consistent with past practice.

Section 4.5 *Benefit Plans.* In the case of Hydrocarbon and its Subsidiaries, except as set forth on Schedule 4.5 of the Hydrocarbon Disclosure Schedule, enter into or amend (except

(i) as may be required by applicable law, (ii) to satisfy contractual obligations existing as of the date hereof, or (iii) in the ordinary course of business consistent with past practice which amendments, either individually or in the aggregate, would not reasonably be expected to result in a material liability to Hydrocarbon or such Subsidiaries) any pension, retirement, stock option, stock purchase, savings, profit sharing, deferred compensation, consulting, bonus, group insurance or other employee benefit, incentive or welfare contract, plan or arrangement, or any trust agreement related thereto, in respect of any of its present or former directors, officers or other employees, including, without limitation, taking any action that accelerates the vesting or exercise of any benefits payable thereunder.

Section 4.6 *Acquisitions and Dispositions.* In the case of Hydrocarbon and its Subsidiaries, sell, lease, dispose of or discontinue any portion of its assets, business or properties, which is material to it and such Subsidiaries taken as a whole, or acquire, by merger or otherwise, or lease (other than by way of foreclosures or acquisitions of control in a *bona fide* fiduciary capacity or in satisfaction of debts previously contracted in good faith, in each case in the ordinary and usual course of business consistent with past practice) any assets or all or any portion of, the business or property of any other entity which, in either case, is material to it and such Subsidiaries taken as a whole, or would be likely to have a Material Adverse Effect on the ability of the parties to consummate the transactions contemplated by this Agreement or to delay materially the Effective Time. In the case of Energy Partners, Energy Partners will not, and will cause its Subsidiaries not to, merge, consolidate or enter into any other business combination transaction with any Person or make any acquisition or take any other action which would have a Material Adverse Effect on its ability to consummate the transactions contemplated by this Agreement.

Section 4.7 *Amendments.* In the case of Hydrocarbon, amend its certificate of incorporation or bylaws.

Section 4.8 *Accounting Methods.* Implement or adopt any material change in its accounting principles, practices or methods, other than as may be required by law or generally accepted accounting principles.

Section 4.9 *Insurance.* Fail to use commercially reasonable best efforts to maintain with financially responsible insurance companies, insurance in such amounts and against such risks and losses as has been customarily maintained by it in the past.

Section 4.10 *Taxes.*

(a) Make or rescind any material express or deemed election relating to Taxes unless it is reasonably expected that such action will not materially and adversely affect it, including elections for any and all joint ventures, partnerships, limited liability companies, working interests or other investments where it has the capacity to make such binding election;

(b) settle or compromise any material claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to Taxes, except where such settlement or compromise will not materially and adversely affect it; or

(c) change in any material respect any of its methods of reporting income, or deductions for federal income tax purposes from those employed in the preparation of its federal income tax return for the most recent taxable year for which a return has been filed, except as may be required by applicable law or except for such changes that are reasonably expected not to materially adversely affect it.

Section 4.11 *Debt, Capital Expenditures and the Like.* In the case of Hydrocarbon, except as provided in Schedule 4.11, (a) incur any indebtedness for borrowed money (except for working capital under existing credit facilities or equipment financing arrangements) or guarantee any such indebtedness of others, (b) enter into any material lease (whether operating or capital), (c) create any Lien on the property of Hydrocarbon or such Subsidiaries in connection with any pre-existing indebtedness, new indebtedness or lease (other than as permitted by clauses (a) and (b) of this Section 4.11), or (d) make or commit to make aggregate capital expenditures in excess of \$5.0 million.

Section 4.12 *No Dissolution.* Authorize, recommend, propose or announce an intention to adopt a plan of complete or partial dissolution or liquidation.

Section 4.13 *Adverse Actions.* Knowingly take any action that is intended or is reasonably likely to result in (a) any of its representations and warranties set forth in this Agreement being or becoming untrue (taking into account the standard in Section 5.2) at any time prior to the Closing, (b) any of the conditions to the Redemption and Merger set forth in Article VII not being satisfied, (c) any material delay or prevention of the consummation of the Redemption and Merger or (d) a material violation of any provision of this Agreement except, in each case, as may be required by applicable law.

Section 4.14 *Agreements.* Agree or commit to do anything prohibited by Sections 4.1 through 4.13.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

Section 5.1 *Disclosure Schedule.* On or prior to the date hereof, Energy Partners has delivered to Hydrocarbon and Hydrocarbon has delivered to Energy Partners a schedule (respectively, its "Disclosure Schedule") setting forth, among other things, items the disclosure of which is necessary or appropriate in relation to any or all of its representations and warranties; *provided, however*, that (a) no such item is required to be set forth in a Disclosure Schedule as an exception to a representation or warranty if its absence is not reasonably likely to result in the related representation or warranty being deemed untrue or incorrect under the standard established by Section 5.2, and (b) the mere inclusion of an item in a Disclosure Schedule shall not be deemed an admission by a party that such item represents a material exception or fact, event or circumstance or that such item is reasonably likely to result in a Material Adverse Effect.

Section 5.2 *Standard.* No representation or warranty of Energy Partners or Hydrocarbon contained in Section 5.3 (except Sections 5.3(b), 5.3(c)(i), 5.3(c)(ii), 5.3(d) and 5.3(e)) shall be deemed untrue or incorrect, and no party hereto shall be deemed to have breached a representation or warranty, as a consequence of the existence of any fact, circumstance or event unless such fact, circumstance or event, individually or taken together with all other facts, circumstances or events inconsistent with any paragraph of Section 5.3, has had or is reasonably expected to have a Material Adverse Effect.

Section 5.3 *Representations and Warranties.* Subject to Sections 5.1 and 5.2 and except as Previously Disclosed or (other than with respect to Sections 5.3(a) and (b)) as set forth in its SEC Documents filed and publicly available prior to the date hereof (excluding any disclosures included therein to the extent they are cautionary, predictive or forward-looking in nature, including those in any risk factor section of such documents), Hydrocarbon hereby represents and warrants to Energy Partners, and Energy Partners hereby represents and warrants to Hydrocarbon, to the extent applicable, in each case with respect to itself and its Subsidiaries, as follows:

(a) *Organization, Standing and Authority.* Such party is a corporation, or in the case of Energy Partners, a limited partnership, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Such party (i) is duly qualified to do business and is in good standing in the states of the United States where its ownership or leasing of property or the conduct of its business requires it to be so qualified and (ii) has in effect all federal, state, local, and foreign governmental authorizations and permits necessary for it to own or lease its properties and assets and to carry on its business as it is now conducted.

(b) *Shares.*

(i) In the case of Hydrocarbon, as of the date hereof, the authorized capital stock of Hydrocarbon consists of 20,000,000 shares of Common Stock, \$0.01 par value, of which 12,001,151 shares are issued and outstanding, and 5,000,000 shares of Preferred Stock, no shares of which are issued and outstanding. Such outstanding shares were duly authorized and are validly issued and fully paid and non-assessable and are not subject to any preemptive or similar rights (and were not issued in violation of any preemptive or similar rights).

(ii) In the case of Energy Partners, as of the date hereof, there are 36,500,445 Common Units and no Subordinated Units issued and outstanding, and all of such Common Units and Subordinated Units and the limited partner interests represented thereby were duly authorized and validly issued in accordance with the Partnership Agreement and are fully paid (to the extent required under the Partnership Agreement) and nonassessable (except as such nonassessability may be affected by Sections 17-303, 17-607 and 17-804 of the Delaware LP Act). As of the date hereof, the General Partner owns a 2% general partner interest in Energy Partners and all of the IDRs, and such general partner interest was duly authorized and validly issued in accordance with the Partnership Agreement. The Common Units to be issued in the Merger will be duly authorized and validly issued in accordance with the Amended and Restated Partnership Agreement and will be fully paid (to the extent required under the Amended and Restated

Partnership Agreement) and nonassessable (except as such nonassessability may be affected by Sections 17-303, 17-607 and 17-804 of the Delaware LP Act).

(iii) As of the date hereof, except as Previously Disclosed in Schedule 5.3(b) of a party's Disclosure Schedule, there are no shares of capital stock (in the case of Hydrocarbon) or interests (in the case of Energy Partners) of such party's equity securities authorized and reserved for issuance, such party does not have any Rights issued or outstanding with respect to its equity securities, and such party does not have any commitment to authorize, issue or sell any such equity securities or Rights, except pursuant to this Agreement. Since December 31, 2006, Hydrocarbon has not issued any shares of its capital stock or rights in respect thereof or reserved any shares for such purposes except pursuant to plans or commitments Previously Disclosed in Schedule 5.3(b) of its Disclosure Schedule.

(iv) The number of shares of Hydrocarbon Common Stock which are issuable and reserved for issuance upon exercise of Hydrocarbon Stock Options as of the date hereof are Previously Disclosed in Schedule 5.3(b) of Hydrocarbon's Disclosure Schedule, and the number of Common Units that are issuable upon vesting of phantom units or exercise of any employee or director options to purchase Common Units as of the date hereof are Previously Disclosed in Schedule 5.3(b) of Energy Partners' Disclosure Schedule.

(c) *Subsidiaries.*

(i) (A) Such party has Previously Disclosed in Schedule 5.3(c) of its Disclosure Schedule a list of all of its Subsidiaries together with the jurisdiction of organization of each such Subsidiary, (B) it owns, directly or indirectly, all of the equity interests of each of its Subsidiaries, except as Previously Disclosed in Schedule 5.3(c) of a party's Disclosure Schedule, (C) no equity interests of any of its Subsidiaries are or may become required to be issued by reason of any Rights, (D) there are no contracts, commitments, understandings or arrangements by which any of such Subsidiaries is or may be bound to sell or otherwise transfer any equity interests of any such Subsidiaries, (E) there are no contracts, commitments, understandings, or arrangements relating to its rights to vote or to dispose of such equity interests, and (F) all of the equity interests of each such Subsidiary held by it or its Subsidiaries are fully paid and nonassessable and are owned by it or its Subsidiaries free and clear of any Liens.

(ii) In the case of the representations and warranties of Hydrocarbon, other than ownership of its Subsidiaries, Hydrocarbon does not own beneficially, directly or indirectly, any equity securities or similar interests of any person, or any interest in a partnership or joint venture of any kind, except as disclosed in Schedule 5.3(c)(ii).

(iii) Each of such party's Subsidiaries has been duly organized and is validly existing in good standing under the laws of the jurisdiction of its organization and (A) is duly qualified to do business and in good standing in the jurisdictions where its ownership or leasing of property or the conduct of its business requires it to be so qualified and (B) has in effect all federal, state, local, and foreign governmental

authorizations and permits necessary for it to own or lease its properties and assets and to carry on its business as it is now conducted.

(d) *Corporate or Partnership Power.* Such party and each of its Subsidiaries has the corporate power and authority, or in the case of Energy Partners the partnership power and authority, to carry on its business as it is now being conducted and to own all its properties and assets; and it has the corporate power and authority or, in the case of Energy Partners, the partnership power and authority, to execute, deliver and perform its obligations under this Agreement and to consummate the transactions contemplated hereby.

(e) *Equityholder Authority.* In the case of this Agreement, subject to Hydrocarbon Stockholder Approval in the case of Hydrocarbon and Energy Partners Unitholder Approval in the case of Energy Partners, this Agreement and the transactions contemplated hereby have been authorized by all necessary corporate action (partnership action in the case of Energy Partners and limited liability company action in the case of MergerCo), and this Agreement has been duly executed and delivered and is a legal, valid and binding agreement of it, enforceable in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or affecting creditors' rights or by general equity principles).

(f) *No Defaults.* Subject to receipt of the HSR approval, and the approval of Hydrocarbon's bank group, the declaration of effectiveness of the Registration Statement, required filings under federal and state securities laws and the NYSE, and the approvals contemplated by Article VII, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby do not and will not (i) constitute a breach or violation of, or result in a default (or an event that, with notice or lapse of time or both, would become a default) under, or result in the termination or in a right of termination or cancellation of, or accelerate the performance required by, any note, bond, mortgage, indenture, deed of trust, license, franchise, lease, contract, agreement, joint venture or other instrument or obligation to which it or any of its Subsidiaries is a party or by which it or any of its Subsidiaries or properties is subject or bound, (ii) constitute a breach or violation of, or a default under, in the case of Hydrocarbon its certificate of incorporation or bylaws and in the case of Energy Partners its Partnership Agreement or MergerCo's operating agreement, (iii) contravene or conflict with or constitute a violation of any provision of any law, rule, regulation, judgment, order or decree binding upon or applicable to it or any of its Subsidiaries, (iv) result in the creation of any Lien on any of its assets or its Subsidiaries' assets other than in connection with any indebtedness obtained in connection with the transactions contemplated by this Agreement, or (v) cause the transactions contemplated by this Agreement to be subject to Takeover Laws.

(g) *Financial Reports and SEC Documents.* Its annual report on Form 10-K for the fiscal year ended December 31, 2006, and all other reports, registration statements, definitive proxy statements or information statements filed or to be filed by it or any of its Subsidiaries subsequent to December 31, 2004 under the Securities Act, or under Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, in the form filed, or to be filed (collectively, its "SEC Documents"), with the SEC (i) complied or will comply in all material respects as to form with the applicable requirements under the Securities Act or the Exchange Act, as the case may be, and (ii) did not and will not contain any untrue statement of a material fact or omit to state a

material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading; and each of the balance sheets contained in or incorporated by reference into any such SEC Document (including the related notes and schedules thereto) fairly presents the financial position of the entity or entities to which it relates as of its date, and each of the statements of income and changes in stockholders' equity and cash flows or equivalent statements in the case of Energy Partners in such SEC Documents (including any related notes and schedules thereto) fairly presents the results of operations, changes in stockholders' equity and changes in cash flows, as the case may be, of the entity or entities to which it relates for the periods to which it relates, in each case in accordance with generally accepted accounting principles consistently applied during the periods involved, except in each case as may be noted therein, subject to normal year-end audit adjustments in the case of unaudited statements. Except as and to the extent set forth on its balance sheet as of December 31, 2006, as of such date, neither it nor any of its Subsidiaries had any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) that would be required to be reflected on, or reserved against in, a balance sheet or in the notes thereto prepared in accordance with generally accepted accounting principles consistently applied.

(h) *Litigation; Regulatory Action.*

(i) No litigation, claim or other proceeding before any court or governmental agency is pending against it or any of its Subsidiaries and, to the best of its knowledge, no such litigation, claim or other proceeding has been threatened, other than normal and routine litigation which is either covered by insurance in amounts sufficient to discharge any likely exposure. There are no outstanding judgments, decrees, injunctions, awards or orders against it or any of its Subsidiaries. Schedule 5.3(h) of its Disclosure Schedule contains, as of the date of this Agreement, an accurate and complete list of all actions, suits and proceedings pending or, to the best of its knowledge, threatened against it, except as to routine law suits arising in the ordinary course of business which are fully covered by insurance (except for deductible amounts under such insurance policies which if required to be paid would not individually or in the aggregate have a Material Adverse Effect).

(ii) Neither it nor any of its Subsidiaries or properties is a party to or is subject to any order, decree, agreement, memorandum of understanding or similar arrangement with, or a commitment letter or similar submission to, any federal or state governmental agency or court or authority or body or the supervision or regulation of it or any of its Subsidiaries (collectively, the "Regulatory Authorities").

(iii) Neither it nor any of its Subsidiaries has been advised by any Regulatory Authority that such Regulatory Authority is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such order, decree, agreement, memorandum of understanding, commitment letter or similar submission.

(i) *Compliance with Laws.* Except as set forth in Schedule 5.3(i) of its Disclosure Schedule, it and each of its Subsidiaries:



(i) in the conduct of its business, is in compliance with all applicable federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders or decrees applicable thereto or to the employees conducting such businesses, (any instance of failure to so comply is referred to herein as a "Non-Compliance Event");

(ii) has all permits, licenses, authorizations, orders and approvals of, and has made all filings, applications and registrations with, all Regulatory Authorities that are required in order to permit it to conduct its businesses substantially as presently conducted; all such permits, licenses, certificates of authority, orders and approvals are in full force and effect and, to the best of its knowledge, no suspension or cancellation of any of them is threatened (any instance of failure to obtain any of the foregoing and to maintain them in full force and effect is referred to herein as a "Permitting Violation"); and

(iii) has not received, since December 31, 2004, any notification or communication from any Regulatory Authority asserting that it or any of its Subsidiaries is not in compliance with any of the statutes, regulations, or ordinances which such Regulatory Authority enforces or threatening to revoke any license, franchise, permit, or governmental authorization nor, to its knowledge, do any grounds for any of the foregoing exist (any instance of the foregoing referred to herein as a "Non-Compliance Notification").

(j) *Defaults.* Neither it nor any of its Subsidiaries is in default under any contract, agreement, commitment, arrangement, lease, insurance policy, or other instrument to which it is a party, by which its respective assets, business, or operations may be bound or affected, or under which it or its respective assets, business, or operations receives benefits, and there has not occurred any event that, with the lapse of time or the giving of notice or both, would constitute such a default.

(k) *No Brokers.* No action has been taken by it that would give rise to any valid claim against any party hereto for a brokerage commission, finder's fee or other like payment with respect to the transactions contemplated by this Agreement, excluding, in the case of Hydrocarbon, fees to be paid to Merrill Lynch, Pierce, Fenner & Smith Incorporated, and, in the case of Energy Partners, fees to be paid to Lehman Brothers Inc. and RBC Capital Markets, in every case pursuant to letter agreements which have been heretofore disclosed to the other party.

(l) *Compensation and Benefit Plans.*

(i) Schedule 5.3(l)(i) of a party's Disclosure Schedule contains a complete list of all material bonus, vacation, deferred compensation, pension, retirement, profit-sharing, thrift, savings, employee stock ownership, stock bonus, stock purchase, restricted stock and stock option plans, all employment or severance contracts, all medical, dental, disability, health and life insurance plans, all other employee benefit and fringe benefit plans, contracts or arrangements and any applicable "change of control" or similar provisions in any plan, contract or arrangement maintained or contributed to by it or any of its Subsidiaries for the benefit of officers, former officers, employees, former employees, directors, former directors, or the

beneficiaries of any of the foregoing, including all "employee benefit plans" as defined in ERISA Section 3(3) (collectively, "Compensation and Benefit Plans").

(ii) True and complete copies of its Compensation and Benefit Plans, including, but not limited to, any trust instruments and/or insurance contracts, if any, forming a part thereof, and all amendments thereto and, if applicable, the most recent Form 5500 and annual reports for such plans have been made available to the other party.

(iii) Each of its Compensation and Benefit Plans has been administered in all material respects in accordance with the terms thereof. All "employee benefit plans" within the meaning of Section 3(3) of ERISA, other than "multiemployer plans" within the meaning of Section 3(37) of ERISA ("Multiemployer Plans"), covering employees or former employees of it and its Subsidiaries (its "Plans"), to the extent subject to ERISA, are in material compliance with ERISA, the Code, and other applicable laws and, to the knowledge of Hydrocarbon, no prohibited transaction has occurred with respect to any such employee benefit plan that would result in any material excise Tax or other material liability under ERISA or the Code. Each Compensation and Benefit Plan of it or its Subsidiaries which is an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA ("Pension Plan") and which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or may rely on an opinion letter from the Internal Revenue Service, and it is not aware of any circumstances reasonably likely to result in the revocation or denial of any such favorable determination or opinion letter. There is no pending or, to its knowledge, threatened litigation or governmental audit, examination or investigation relating to any of the Compensation and Benefit Plans (other than regular claims for benefits).

(iv) No material liability under Title IV of ERISA has been or is expected to be incurred by it or any of its Subsidiaries with respect to any ongoing, frozen or terminated "single-employer plan," within the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by any of them, or the single-employer plan of any entity which is considered one employer with it under Section 4001(a)(15) of ERISA or Section 414 of the Code (an "ERISA Affiliate"). Neither it nor any of its Subsidiaries presently contributes to a Multiemployer Plan, nor have they contributed to such a plan within the past five calendar years. No Pension Plan is a "defined benefit plan" within the meaning of ERISA Section 3(35) or "money purchase" plan subject to Section 412 of the Code.

(v) All contributions, premiums and payments required to be made under the terms of any Compensation and Benefit Plan of it or any of its Subsidiaries have been made.

(vi) Neither it nor any of its Subsidiaries has any obligations under any Compensation and Benefit Plans to provide benefits, including death or medical benefits, with respect to employees of it or its Subsidiaries beyond their retirement or other termination of service other than (A) coverage mandated by Part 6 of Title I of ERISA or Section 4980B of the Code, (B) retirement or death benefits under any employee pension benefit plan (as defined under Section 3(2) of ERISA), (C) disability benefits under any employee welfare plan that have been fully provided for by insurance or otherwise, or (D) benefits in the nature of severance pay.

(vii) Except as Previously Disclosed under Schedule 5.3(l)(vii) of a party's Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (A) result in any payment (including, without limitation, severance, unemployment compensation, golden parachute or otherwise) becoming due to any director or any employee of it or any of its Subsidiaries under any Compensation and Benefit Plan or otherwise from it or any of its Subsidiaries, (B) increase any benefits otherwise payable under any Compensation and Benefit Plan or (C) result in any acceleration of the time of payment or vesting of any such benefit.

(m) *Labor Matters.* Except as set forth in Schedule 5.3(m) of a party's Disclosure Schedule, neither it nor any of its Subsidiaries is a party to, or is bound by, any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization, nor is it or any of its Subsidiaries the subject of a proceeding asserting that it or any such Subsidiaries has committed an unfair labor practice (within the meaning of the National Labor Relations Act) or seeking to compel it or such Subsidiaries to bargain with any labor organization as to wages and conditions of employment.

(n) *Environmental Matters.* Except as Previously Disclosed under Schedule 5.3(n) of a party's Disclosure Schedule, neither (i) the past or present conduct nor operation of such party or its Subsidiaries nor any condition of any property or asset presently or previously owned, leased or operated by any of them, including but not limited to on-site or off-site disposal or release of any chemical substance, product or waste, violates or violated Environmental Laws, and no condition has existed or event has occurred with respect to any of them or any such property that, with notice or the passage of time, or both, is reasonably likely to result in liability or obligations for any clean-up, remediation, disposal or corrective action under Environmental Laws or claims for personal injury, property damage or damage to natural resources, and (ii) such party nor any of its Subsidiaries has received any notice from any person or entity that it or its Subsidiaries or the operation or condition of any property or asset ever owned, leased, operated, held as collateral or held as a fiduciary by any of them is or was in violation of or otherwise are alleged to have liability under any Environmental Law or has entered into any consent decree or order or is subject to any order of any court or governmental authority or tribunal under any Environmental Law or relating to the clean-up of any hazardous materials contamination, including, but not limited to, responsibility (or potential responsibility) for the cleanup or other remediation of any pollutants, contaminants, or hazardous or toxic wastes, substances or materials at, on, beneath, or originating from any such property.

(o) *Tax Matters.*

(i) All material returns, declarations, reports, estimates, information returns and statements required to be filed under federal, state, local or any foreign Tax Laws ("Tax Returns") with respect to it or any of its Subsidiaries, have been timely filed, or requests for extensions have been timely filed and have not expired;

(ii) all Tax Returns filed by it are complete and accurate in all material respects;

(iii) all Taxes shown to be due on such Tax Returns and all other Taxes, if any, required to be paid by it or its Subsidiaries for all periods ending through the date hereof have been paid or adequate reserves have in accordance with generally accepted accounting principles been established for the payment of such Taxes; and

(iv) no material (A) audit or examination or (B) refund litigation with respect to any Tax Return is pending. As of the date hereof, neither it nor any of its Subsidiaries (x) has granted any requests, agreements, consents or waivers to extend the statutory period of limitations applicable to the assessment of any Taxes with respect to any Tax Returns, (y) is a party to any Tax sharing or Tax indemnity agreement or (z) is a party to an agreement that provides for the payment of any amount that would constitute a "parachute payment" within the meaning of Section 280G of the Code.

(p) *Regulatory Approvals.* Except as set forth in Schedule 5.3(p) of a party's Disclosure Schedule, the only approval of any governmental agency necessary to consummate the transactions contemplated by this Agreement (other than filings under the Securities Act) is pursuant to the HSR. As of the date hereof, neither Hydrocarbon nor the Energy Partners is aware of any reason why the approvals under the HSR will not be received.

(q) *No Material Adverse Change.* Except as disclosed in its SEC Documents filed with the SEC on or before the date hereof, since December 31, 2006, (i) it and its Subsidiaries have conducted their respective businesses in the ordinary and usual course (excluding the incurrence of expenses related to this Agreement and the transactions contemplated hereby), (ii) it has not made any material change in its accounting methods, principles or practices or its Tax methods, practices or elections and (iii) no event has occurred or circumstance arisen that, individually or taken together with all other facts, circumstances and events is reasonably likely to result in a Material Adverse Effect.

(r) *Insurance.* It has previously delivered to the other party a schedule listing the officers' and directors' liability insurance policies, primary and excess casualty and liability insurance policies providing coverage for bodily injury and property damage maintained by it and its Subsidiaries. It and its Subsidiaries maintain insurance coverage reasonably adequate for the operation of their respective businesses taking into account the cost and availability of such insurance.

(s) *Condition and Sufficiency of Assets.* The assets used in the business of it and its Subsidiaries are in operating condition and repair consistent with normal industry standards and are adequate for the uses to which they are being put and none of such assets are in need of replacement, maintenance or repairs except for ordinary and routine maintenance and repairs that are not material in nature or cost, except for assets which are not in service and the use of which are not required to conduct the business of it and its Subsidiaries in the ordinary course consistent with past practices. The assets in service are sufficient for the continued conduct of its business after the Closing.

(t) *Intellectual Property.* Except as may be disclosed in Schedule 5.3(t) of its Disclosure Schedule, it and its Subsidiaries own or possess adequate licenses and other valid rights to use all patents, patent rights, trademarks, trademark rights and proprietary information

used or held for use in connection with their respective businesses as currently being conducted, and there are no assertions or claims challenging the validity of any of the foregoing.

(u) *The Hydrocarbon Board Recommendations.* At a meeting duly called and held, the Deal Committee determined that this Agreement and the transactions contemplated hereby, including the adoption of the Redemption Charter Amendment, are fair to and in the best interests of the Unaffiliated Stockholders, and recommended that the Hydrocarbon Board approve the Redemption Charter Amendment, this Agreement and the transactions contemplated hereby, declare the Redemption Charter Amendment and the Agreement advisable and recommend their adoption by the stockholders of Hydrocarbon. At a meeting duly called and held, the Hydrocarbon Board has approved and declared the advisability of, and resolved to recommend that its stockholders approve the Redemption Charter Amendment and adopt this Agreement. Hydrocarbon has taken all necessary actions to render the restrictions on "business combinations" (as defined in Section 203 of the DGCL) inapplicable to this Agreement and the transactions contemplated hereby and thereby.

(v) *The Board of Directors of the General Partner Recommendations.* At a meeting duly called and held, the Conflicts Committee determined that this Agreement and the transactions contemplated hereby, including the Unit Issuance and the adoption of the Amended and Restated Partnership Agreement, are fair and reasonable to, and in the best interests of, the Unaffiliated Common Unitholders and the Partnership, and recommended that the Board of Directors of the General Partner approve this Agreement and the transactions contemplated hereby and recommend to the Unaffiliated Common Unitholders that they approve the Merger, the Unit Issuance and the Amended and Restated Partnership Agreement. At a meeting duly called and held, the Board of Directors of the General Partner has approved and declared the advisability of, and resolved to recommend that the unitholders of Energy Partners approve the Merger, the Unit Issuance and the Amended and Restated Partnership Agreement.

(w) *Operations of MergerCo.* In the case of Energy Partners, MergerCo was formed solely for the purpose of engaging in the transactions contemplated by this Agreement and has engaged in no business other than in connection with entering into this Agreement and engaging in the transactions contemplated hereby.

(x) *Hydrocarbon Fairness Opinion.* Merrill Lynch, Pierce, Fenner & Smith Incorporated has delivered to the Deal Committee its written opinion dated as of the date hereof, that as of such date, the Redemption/Merger Consideration is fair, from a financial point of view, to the Unaffiliated Stockholders, a copy of which has been provided to Energy Partners.

(y) *Energy Partners Fairness Opinion.* Lehman Brothers Inc. has delivered to the Conflicts Committee its written opinion dated as of the date hereof, that as of such date, the Redemption/Merger Consideration paid in the Redemption and the Merger and the consideration paid for the Class B membership interests in the General Partner pursuant to the Class B Membership Interest Contribution Agreement, in the aggregate, are fair, from a financial point of view, to the holders of the Common Units (other than Hydrocarbon and its affiliates), a copy of which has been provided to the Hydrocarbon Board.

## ARTICLE VI

### COVENANTS

Hydrocarbon hereby covenants to and agrees with Energy Partners, and Energy Partners hereby covenants to and agrees with Hydrocarbon, that:

Section 6.1 *Best Efforts.* Subject to the terms and conditions of this Agreement, it shall use its commercially reasonable best efforts in good faith to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper, desirable or advisable under applicable laws, so as to permit consummation of the Redemption and Merger promptly and otherwise to enable consummation of the transactions contemplated hereby, including, without limitation, obtaining (and cooperating with the other party hereto to obtain) HSR approval and any other third party approval that is required to be obtained by Hydrocarbon or Energy Partners or any of their respective Subsidiaries in connection with the Redemption and/or Merger and the other transactions contemplated by this Agreement, and using commercially reasonable best efforts to lift or rescind any injunction or restraining order or other order adversely affecting the ability of the parties to consummate the transactions contemplated hereby, and using commercially reasonable best efforts to defend any litigation seeking to enjoin, prevent or delay the consummation of the transactions contemplated hereby or seeking material damages, and each shall cooperate fully with the other parties hereto to that end, and shall furnish to the other party copies of all correspondence, filings and communications between it and its Affiliates and any Regulatory Authority with respect to the transactions contemplated hereby. In complying with the foregoing, neither it nor its Subsidiaries shall be required to take measures that would have a Material Adverse Effect on it and such Subsidiaries taken as a whole.

Section 6.2 *Equityholder Approvals.* Subject to the terms and conditions of this Agreement, each of them shall take, in accordance with applicable law, applicable stock exchange rules and its certificate of incorporation and bylaws, in the case of Hydrocarbon, and the Partnership Agreement, in the case of Energy Partners, all action necessary to call, hold and convene, respectively, (i) an appropriate meeting of stockholders of Hydrocarbon to consider and vote upon the approval of the Redemption Charter Amendment, the Merger, the adoption of this Agreement and any other matters required to be approved by Hydrocarbon's stockholders for consummation of the Redemption and Merger (including any adjournment or postponement, the "Hydrocarbon Meeting") and (ii) an appropriate meeting of the holders of the Common Units to consider and vote upon the approval of the Merger, the Unit Issuance and the Amended and Restated Partnership Agreement, and any other matters required to be approved by them for consummation of the Merger (including any adjournment or postponement, the "Energy Partners Meeting"; and each of the Hydrocarbon Meeting and Energy Partners Meeting, a "Meeting"), respectively, promptly after the date hereof. Subject to Section 6.6(c), the Hydrocarbon Board and the Deal Committee shall recommend such approval (the "Hydrocarbon Recommendation"), and each of Energy Partners and Hydrocarbon shall take all reasonable lawful action to solicit such approval by its respective equity holders. The Board of Directors of the General Partner and the Conflicts Committee shall recommend approval of the Merger, the Unit Issuance and the Amended and Restated Partnership Agreement to its holders of Common Units (the "Energy Partners Recommendation"). Notwithstanding the foregoing, at any time prior to obtaining Energy Partners Unitholder Approval, the Board of Directors of the General Partner and the

Conflicts Committee may withdraw, modify or qualify in any manner adverse to Hydrocarbon the Energy Partners Recommendation (any such action being referred to as a "Energy Partners Change in Recommendation") if they have concluded in good faith, after consultation with, and taking into account the advice of their outside legal advisors and financial consultants, that an Energy Partners Change in Recommendation is necessary to comply with their fiduciary duties under applicable law. The obligation of Hydrocarbon to call, hold and convene the Hydrocarbon Meeting shall not be affected by a Hydrocarbon Change in Recommendation, and the obligation of Energy Partners to call, hold and convene the Energy Partners Meeting shall not be affected by an Energy Partners Change in Recommendation.

Section 6.3 *Registration Statement.*

(a) Each of Energy Partners and Hydrocarbon agrees to cooperate in the preparation of a registration statement on Form S-4 (the "Registration Statement") (including the joint proxy statement and prospectus and other proxy solicitation materials of Energy Partners and Hydrocarbon constituting a part thereof (the "Joint Proxy Statement") and all related documents) to be filed by Energy Partners with the SEC in connection with the issuance of Common Units in the Merger as contemplated by this Agreement. Each of Energy Partners and Hydrocarbon agrees that the other party shall have the right to consent to the disclosure to be contained in the Registration Statement and the Joint Proxy Statement. Provided Hydrocarbon has cooperated as required above, Energy Partners agrees to file the Registration Statement with the SEC as promptly as practicable. Each of Hydrocarbon and Energy Partners agrees to use all commercially reasonable best efforts to cause the Registration Statement to be declared effective under the Securities Act as promptly as practicable after filing thereof. Energy Partners also agrees to use commercially reasonable best efforts to obtain all necessary state securities law or "Blue Sky" permits and approvals required to carry out the transactions contemplated by this Agreement. Hydrocarbon agrees to furnish to Energy Partners all information concerning Hydrocarbon, its Subsidiaries (other than Energy Partners and its Subsidiaries), officers, directors and stockholders and to take such other action as may be reasonably requested in connection with the foregoing.

(b) Each of Hydrocarbon and Energy Partners agrees, as to itself and its Subsidiaries, other than, in the case of Hydrocarbon, Energy Partners and its Subsidiaries, that (i) none of the information supplied or to be supplied by it for inclusion or incorporation by reference in the Registration Statement will, at the time the Registration Statement and each amendment or supplement thereto, if any, becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any 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, and (ii) the Joint Proxy Statement and any amendment or supplement thereto will, at the date of mailing to stockholders and at the times of the Energy Partners Meeting and Hydrocarbon Meeting, not contain any untrue statement of a material fact or omit to state any 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. Each of Hydrocarbon and Energy Partners further agrees that if it shall become aware prior to the Closing Date of any information that would cause any of the statements in the Registration Statement to be false or misleading with respect to any material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not false or

misleading, it will promptly inform the other party thereof and take the necessary steps to correct such information in an amendment or supplement to the Registration Statement.

(c) Energy Partners will advise Hydrocarbon, promptly after Energy Partners receives notice thereof, of the time when the Registration Statement has become effective or any supplement or amendment has been filed, of the issuance of any stop order or the suspension of the qualification of the Common Units for offering or sale in any jurisdiction, of the initiation or threat of any proceeding for any such purpose, or of any request by the SEC for the amendment or supplement of the Registration Statement or for additional information.

(d) Each of Energy Partners and Hydrocarbon will use its commercially reasonable best efforts to cause the Joint Proxy Statement to be mailed to its unitholders and stockholders, respectively, as soon as practicable after the effective date of the Registration Statement.

Section 6.4 *Press Releases.* Each of Hydrocarbon and Energy Partners will not, without the prior approval of the Conflicts Committee in the case of Hydrocarbon and the Deal Committee in the case of Energy Partners, issue any press release or written statement for general circulation relating to the transactions contemplated hereby, except as otherwise required by applicable law or regulation or the rules of the NYSE (and the American Stock Exchange as applicable), in which case it will consult with the other party before issuing any such press release or written statement.

Section 6.5 *Access; Information.*

(a) Upon reasonable notice and subject to applicable laws relating to the exchange of information, each party shall, and shall cause its Subsidiaries to, afford the other parties and their officers, employees, counsel, accountants and other authorized representatives, access, during normal business hours throughout the period prior to the Effective Time, to all of its properties, books, contracts, commitments and records, and to its officers, employees, accountants, counsel or other representatives, and, during such period, it shall, and shall cause its Subsidiaries to, furnish promptly to such other parties and its representatives (i) a copy of each material report, schedule and other document filed by it pursuant to the requirements of federal or state securities law (other than reports or documents that Hydrocarbon or Energy Partners or their respective Subsidiaries, as the case may be, are not permitted to disclose under applicable law) and (ii) all other information concerning the business, properties and personnel of it as the other may reasonably request. Neither Hydrocarbon nor Energy Partners nor any of their respective Subsidiaries shall be required to provide access to or to disclose information where such access or disclosure would violate or prejudice the rights of its customers, jeopardize the attorney-client privilege of the institution in possession or control of such information or contravene any law, rule, regulation, order, judgment, decree, fiduciary duty or binding agreement entered into prior to the date of this Agreement. The parties hereto will make appropriate substitute disclosure arrangements under the circumstances in which the restrictions of the preceding sentence apply.

(b) Energy Partners will not use any information obtained pursuant to this Section 6.5 for any purpose unrelated to the consummation of the transactions contemplated by this Agreement and will hold all information and documents obtained pursuant to this paragraph in confidence. No investigation by either party of the business and affairs of the other shall affect



or be deemed to modify or waive any representation, warranty, covenant or agreement in this Agreement, or the conditions to either party's obligation to consummate the transactions contemplated by this Agreement.

Section 6.6 *Acquisition Proposals.*

(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until the No-Solicitation Period Start Date, Hydrocarbon and its Representatives shall have the right to, directly or indirectly, (i) initiate, solicit, facilitate and encourage Acquisition Proposals, (ii) enter into discussions relating to Acquisition Proposals, (iii) continue or otherwise participate in any discussions or negotiations regarding any Acquisition Proposal, (iv) furnish to any Person any information or data with respect to Hydrocarbon, including by way of providing access to non-public information pursuant to (but only pursuant to an executed confidentiality agreement no less restrictive than the Confidentiality Agreement); *provided* that Hydrocarbon shall promptly provide or make available to Energy Partners any non-public information concerning Hydrocarbon or any Subsidiary that is provided or made available to any Person which was not previously provided or made available to Energy Partners; and (v) otherwise cooperate with or take any other action to facilitate any proposal that constitutes, or could reasonably be expected to lead to, an Acquisition Proposal. Within 24 hours following the No-Solicitation Period Start Date, Hydrocarbon shall notify Energy Partners of (i) the number of Excluded Parties, (ii) the identity of each Excluded Party and (iii) the material terms and conditions of each Excluded Party's Acquisition Proposal and furnish copies of any documents and related correspondence provided in connection therewith (including any amendments or modifications to any of the foregoing) received from any Excluded Party. Hydrocarbon shall immediately cease any discussions with any Person (other than Energy Partners) that are ongoing as of the No-Solicitation Period Start Date and that constitute an Acquisition Proposal, except as may be expressly provided for in Sections 6.6(b) and 6.6(c), and except in respect of any Excluded Party.

Any Person that submits an Acquisition Proposal that the Deal Committee and the Hydrocarbon Board determines in good faith constitutes, or could reasonably be expected to lead to, a Superior Proposal, no later than 24 hours following the No Solicitation Period Start Date shall be referred to herein as an "Excluded Party." Notwithstanding anything contained in Section 6.6(a) to the contrary, any Excluded Party shall cease to be an Excluded Party for all purposes under this Agreement at such time as the Deal Committee determines in good faith that the Acquisition Proposal made by such party ceases to be reasonably likely to lead to a Superior Proposal.

(b) Except with respect to any written Acquisition Proposal from an Excluded Party received after the date hereof and prior to the No-Solicitation Period Start Date, none of Hydrocarbon and its Subsidiaries shall, and they shall cause their Representatives not to, directly or indirectly, (i) initiate, solicit, facilitate or knowingly encourage the submission of, any Acquisition Proposal, or (ii) participate in any negotiations or negotiations regarding, or furnish to any person any non-public information with respect to, any Acquisition Proposal. Notwithstanding anything to the contrary in this Section 6.6, nothing contained in this Agreement shall prohibit Hydrocarbon from furnishing any information to, or entering into or participating in discussions or negotiations with, any person that makes an unsolicited written

Acquisition Proposal which did not result from a breach of this Section 6.6, if (i) the Deal Committee determines that such Acquisition Proposal constitutes or is likely to result in a Superior Proposal, and (ii) prior to furnishing such non-public information to such person, Hydrocarbon receives from such person an executed confidentiality agreement no less restrictive than the Confidentiality Agreement and furnishes Energy Partners with any such information that has not previously been furnished. Any breach of this Section 6.6 by any of Hydrocarbon's or its Subsidiaries' Representatives shall constitute a breach of this Section 6.6 by Hydrocarbon.

(c) Other than in accordance with Section 6.6(e), and except as otherwise provided in this Section 6.6(c), neither the Hydrocarbon Board nor any committee thereof shall (1) (a) withdraw, modify or qualify in any manner adverse to Energy Partners the Hydrocarbon Recommendation or (b) publicly approve or recommend, or publicly propose to approve or recommend, any Acquisition Proposal (any action described in this clause (1) being referred to as a "Hydrocarbon Change in Recommendation"); or (2) approve, adopt or recommend, or publicly propose to approve, adopt or recommend, or allow Hydrocarbon or any of its Subsidiaries to execute or enter into, any letter of intent, memorandum of understanding, agreement in principle, merger agreement, acquisition agreement, option agreement, joint venture agreement, partnership agreement, or other similar contract or any tender or exchange offer providing for, with respect to, or in connection with, any Acquisition Proposal. Notwithstanding the foregoing, at any time prior to obtaining the Hydrocarbon Stockholder Approval, the Deal Committee may make a Hydrocarbon Change in Recommendation if it shall have concluded in good faith, after consultation with, and taking into account the advice of, its outside legal advisors and financial consultants, the Hydrocarbon Change in Recommendation is necessary to comply with its fiduciary duties under applicable law; *provided, however*, that the Deal Committee shall not be entitled to exercise its right to make a Hydrocarbon Change in Recommendation pursuant to this sentence unless Hydrocarbon has: (x) complied in all material respects with this Section 6.6, (y) provided to Energy Partners four calendar days prior written notice (such notice, a "Notice of Proposed Recommendation Change") advising Energy Partners that the Deal Committee intends to take such action and specifying the reasons therefor in reasonable detail, including, if applicable, the terms and conditions of any Superior Proposal that is the basis of the proposed action and the identity of the Person making the proposal and contemporaneously providing a copy of all relevant proposed transaction documents for such Superior Proposal (it being understood and agreed that any amendment to the terms of any such Superior Proposal shall require a new Notice of Proposed Recommendation Change and an additional four calendar day period), and (z) if applicable, provided to Energy Partners all materials and information delivered or made available to the Person or group of persons making any Superior Proposal in connection with such Superior Proposal (to the extent not previously provided). Any Hydrocarbon Change in Recommendation shall not change the approval of this Agreement or any other approval of the Board of Directors of Hydrocarbon, including in any respect that would have the effect of causing any state (including Delaware) corporate takeover statute or other similar statute to be applicable to the transactions contemplated hereby or thereby, including the Redemption and/or Merger.

(d) In addition to the obligations of Hydrocarbon set forth in this Section 6.6, Hydrocarbon shall as promptly as practicable (and in any event within 24 hours after receipt) advise Energy Partners orally and in writing of any Acquisition Proposal or any matter giving rise to a Hydrocarbon Change in Recommendation and the material terms and conditions of any

such Acquisition Proposal or any matter giving rise to a Hydrocarbon Change in Recommendation (including any changes thereto) and the identity of the Person making any such Acquisition Proposal. Hydrocarbon shall keep Energy Partners informed on a reasonably current basis of material developments with respect to any such Acquisition Proposal or any matter giving rise to a Hydrocarbon Change in Recommendation.

(e) Nothing contained in this Agreement shall prevent Hydrocarbon or the Hydrocarbon Board from taking and disclosing to its stockholders a position contemplated by Rule 14d-9 and Rule 14e-2(a) promulgated under the Exchange Act (or any similar communication to stockholders) or from making any legally required disclosure to stockholders. Any "stop-look-and-listen" communication by Hydrocarbon or the Hydrocarbon Board to the stockholders of Hydrocarbon pursuant to Rule 14d-9(f) promulgated under the Exchange Act (or any similar communication to the stockholders of Hydrocarbon) shall not be considered a failure to make, or a withdrawal, modification or change in any manner adverse to Energy Partners of, all or a portion of the Hydrocarbon Recommendation.

Section 6.7 *Affiliate Arrangements.*

(a) Not later than the 15th day after the mailing of the Joint Proxy Statement, Hydrocarbon shall deliver to Energy Partners a schedule of each person that, to the best of its knowledge, is or is reasonably likely to be, as of the date of the relevant Meeting, deemed to be an "affiliate" of Hydrocarbon (a "Rule 145 Affiliate") as that term is used in Rule 145 under the Securities Act.

(b) Hydrocarbon shall use its commercially reasonable best efforts to cause its Rule 145 Affiliates not to sell any securities received under the Merger in violation of the registration requirements of the Securities Act, including Rule 145 thereunder.

Section 6.8 *Takeover Laws.* Neither party shall take any action that would cause the transactions contemplated by this Agreement to be subject to requirements imposed by any Takeover Laws, and each of them shall take all necessary steps within its control to exempt (or ensure the continued exemption of) the transactions contemplated by this Agreement from, or if necessary challenge the validity or applicability of, any stockholder rights plan adopted by such party or any applicable Takeover Law, as now or hereafter in effect, including, without limitation, Takeover Laws of any state that purport to apply to this Agreement or the transactions contemplated hereby.

Section 6.9 *No Rights Triggered.* Each of Hydrocarbon and Energy Partners shall take all steps necessary to ensure that the entering into of this Agreement and the consummation of the transactions contemplated hereby and any other action or combination of actions, or any other transactions contemplated hereby, do not and will not result in the grant of any Rights to any person (a) in the case of Hydrocarbon under its certificate of incorporation or bylaws and in the case of Energy Partners under its Partnership Agreement or (b) under any material agreement to which it or any of its Subsidiaries is a party.

Section 6.10 *Common Units Listed.* In the case of Energy Partners, Energy Partners shall use its commercially reasonable best efforts to list, prior to the Closing, on the NYSE, upon

official notice of issuance, the Common Units to be issued to the holders of Hydrocarbon Common Stock in the Merger.

Section 6.11 *Third Party Approvals.*

(a) Energy Partners and Hydrocarbon and their respective Subsidiaries, shall cooperate and use their respective commercially reasonable best efforts to prepare all documentation, to effect all filings, to obtain all permits, consents, approvals and authorizations of all third parties and HSR approval necessary to consummate the transactions contemplated by this Agreement and to comply with the terms and conditions of such permits, consents, approvals and authorizations and to cause the Redemption and/or Merger to be consummated as expeditiously as practicable. Each of Energy Partners and Hydrocarbon shall have the right to review in advance, and to the extent practicable each will consult with the other, in each case subject to applicable laws relating to the exchange of information, with respect to, all material written information submitted to any third party or any Regulatory Authorities in connection with the transactions contemplated by this Agreement. In exercising the foregoing right, each of the parties hereto agrees to act reasonably and promptly. Each party hereto agrees that it will consult with the other parties hereto with respect to the obtaining of all material permits, consents, approvals and authorizations of all third parties and Regulatory Authorities necessary or advisable to consummate the transactions contemplated by this Agreement, and each party will keep the other parties apprised of the status of material matters relating to completion of the transactions contemplated hereby.

(b) Each party agrees, upon request, to furnish the other party with all information concerning itself, its Subsidiaries, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with the Registration Statement, the Joint Proxy Statement or any filing, notice or application made by or on behalf of such other party or any of such Subsidiaries to any Regulatory Authority in connection with the transactions contemplated hereby.

Section 6.12 *Indemnification; Directors' and Officers' Insurance.*

(a) Without limiting any additional rights that any director, officer, trustee, employee, agent, or fiduciary may have under any employment or indemnification agreement or under the Hydrocarbon Charter, the Hydrocarbon Bylaws or this Agreement or, if applicable, similar organizational documents or agreements of any of Hydrocarbon's Subsidiaries, from and after the Effective Time, Energy Partners and the Surviving Entity, jointly and severally, shall: (i) indemnify and hold harmless each person who is at the date hereof or during the period from the date hereof through the date of the Effective Time serving as a director or officer of Hydrocarbon or any of its Subsidiaries or as a fiduciary under or with respect to any employee benefit plan (within the meaning of Section 3(3) of ERISA) (collectively, the "Indemnified Parties") to the fullest extent authorized or permitted by applicable law, as now or hereafter in effect, in connection with any Claim and any losses, claims, damages, liabilities, costs, Indemnification Expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of any thereof) resulting therefrom; and (ii) promptly pay on behalf of or, within ten (10) days after any request for advancement, advance to each of the Indemnified Parties, any Indemnification Expenses

incurred in defending, serving as a witness with respect to or otherwise participating with respect to any Claim in advance of the final disposition of such Claim, including payment on behalf of or advancement to the Indemnified Party of any Indemnification Expenses incurred by such Indemnified Party in connection with enforcing any rights with respect to such indemnification and/or advancement, in each case without the requirement of any bond or other security). The indemnification and advancement obligations of Energy Partners and the Surviving Entity pursuant to this Section 6.12(a) shall extend to acts or omissions occurring at or before the Effective Time and any Claim relating thereto (including with respect to any acts or omissions occurring in connection with the approval of this Agreement and the consummation of the Redemption and Merger and the transactions contemplated by this Agreement, including the consideration and approval thereof and the process undertaken in connection therewith and any Claim relating thereto), and all rights to indemnification and advancement conferred hereunder shall continue as to a person who has ceased to be a director or officer of Hydrocarbon or any of its Subsidiaries after the date hereof and shall inure to the benefit of such person's heirs, executors and personal and legal representatives. As used in this Section 6.12(a): (x) the term "Claim" means any threatened, asserted, pending or completed action, whether instituted by any party hereto, any Governmental Authority or any other person, that any Indemnified Party in good faith believes might lead to the institution of any Action, whether civil, criminal, administrative, investigative or other, including any arbitration or other alternative dispute resolution mechanism, arising out of or pertaining to matters that relate to such Indemnified Party's duties or service as a director or officer of Hydrocarbon, any of its Subsidiaries, or any employee benefit plan (within the meaning of Section 3(3) of ERISA) maintained by any of the foregoing at or prior to the Effective Time; and (y) the term "Indemnification Expenses" means reasonable attorneys' fees and all other reasonable costs, expenses and obligations (including experts' fees, travel expenses, court costs, retainers, transcript fees, duplicating, printing and binding costs, as well as telecommunications, postage and courier charges) paid or incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to investigate, defend, be a witness in or participate in, any Claim for which indemnification is authorized pursuant to this Section 6.12(a), including any Action relating to a claim for indemnification or advancement brought by an Indemnified Party. Neither Energy Partners nor the Surviving Entity shall settle, compromise or consent to the entry of any judgment in any actual or threatened Action in respect of which indemnification has been or could be sought by such Indemnified Party hereunder unless such settlement, compromise or judgment includes an unconditional release of such Indemnified Party from all liability arising out of such Action without admission or finding of wrongdoing, or such Indemnified Party otherwise consents thereto.

(b) Without limiting the foregoing, Energy Partners and MergerCo agree that all rights to indemnification, advancement of expenses and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time now existing in favor of the current or former directors or officers of Hydrocarbon or any of its Subsidiaries as provided in the Hydrocarbon Charter and Hydrocarbon Bylaws (or, as applicable, the charter, bylaws, partnership agreement, limited liability company agreement, or other organizational documents of any of Hydrocarbon's Subsidiaries) and indemnification agreements of Hydrocarbon or any of its Subsidiaries shall be assumed by the Surviving Entity in the Merger, without further action, at the Effective Time and shall survive the Merger and shall continue in full force and effect in accordance with their terms.

(c) For a period of six (6) years from the Effective Time, the certificate of incorporation and bylaws of the Surviving Entity shall contain provisions no less favorable with respect to indemnification, advancement of expenses and limitations on liability of directors and officers than are set forth in the Hydrocarbon Charter and Hydrocarbon Bylaws, which provisions shall not be amended, repealed or otherwise modified for a period of six (6) years from the Effective Time in any manner that would affect adversely the rights thereunder of individuals who, at or prior to the Effective Time, were Indemnified Parties, unless such modification shall be required by Law and then only to the minimum extent required by Law.

(d) Energy Partners shall, or shall cause the Surviving Entity to, maintain for a period of at least six (6) years following the Effective Time, the current policies of directors' and officers' liability insurance maintained by Hydrocarbon and its Subsidiaries (*provided*, that the Surviving Entity may substitute therefor policies of at least the same coverage and amounts containing terms and conditions which are not less advantageous to such directors and officers of Hydrocarbon than the terms and conditions of such existing policy from carriers with the same or better rating as the carrier under the existing policy provided that such substitution shall not result in gaps or lapses of coverage with respect to matters occurring before the Effective Time) with respect to claims arising from facts or events that occurred on or before the Effective Time, including in respect of the Redemption and Merger and the transactions contemplated by this Agreement; *provided*, that Energy Partners shall not be required to pay annual premiums in excess of 250% of the last annual premium paid by Hydrocarbon prior to the date hereof but in such case shall purchase as much coverage as reasonably practicable for such amount.

(e) The provisions of Section 6.12(d) shall be deemed to have been satisfied if prepaid "tail" policies have been obtained by the Surviving Entity for purposes of this Section 6.12 from carriers with the same or better rating as the carrier of such insurances as of the date of this Agreement, which policies provide such directors and officers with the coverage described in Section 6.12(d) for an aggregate period of not less than six (6) years with respect to claims arising from facts or events that occurred on or before the Effective Time, including, in respect of the Redemption and Merger and the transactions contemplated by this Agreement.

(f) If the Surviving Entity or any of its respective successors or assigns (i) consolidates with or merges with or into any other person and shall not be the continuing or surviving corporation, partnership or other entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any person, then, and in each such case, proper provision shall be made so that the successors and assigns of the Surviving Entity assume the obligations set forth in this Section 6.12.

(g) Energy Partners shall cause the Surviving Entity to perform all of the obligations of the Surviving Entity under this Section 6.12.

(h) This Section 6.12 shall survive the consummation of the Redemption and Merger and is intended to be for the benefit of, and shall be enforceable by, the Indemnified Parties and their respective heirs and personal representatives, and shall be binding on the Surviving Entity and its successors and assigns.

Section 6.13 *Comfort Letters.*

(a) Hydrocarbon shall use all commercially reasonable best efforts to cause to be delivered to Energy Partners a "comfort" letter of Deloitte & Touche LLP, Hydrocarbon's independent public accountants, dated and delivered the date on which the Registration Statement shall become effective, in form and substance reasonably satisfactory to the Conflicts Committee and customary in scope and substance for letters delivered by independent public accountants in connection with registration statements similar to the Registration Statement.

(b) Energy Partners shall use all commercially reasonable best efforts to cause to be delivered to Hydrocarbon a "comfort" letter of Deloitte & Touche LLP, Energy Partners' independent public accountants, dated and delivered the date on which the Registration Statement shall become effective, in form and substance reasonably satisfactory to the Deal Committee and customary in scope and substance for letters delivered by independent public accountants in connection with registration statements similar to the Registration Statement.

Section 6.14 *Benefit Plans.* The parties agree to take such actions with respect to compensation and employee benefit plans, programs, arrangements and other perquisites as are set forth on Schedule 4.5 of Hydrocarbon's Disclosure Schedule.

Section 6.15 *Notification of Certain Matters.* Each of Hydrocarbon and Energy Partners shall give prompt notice to the other of (a) any fact, event or circumstance known to it that (i) is reasonably likely, individually or taken together with all other facts, events and circumstances known to it, to result in any Material Adverse Effect with respect to it or (ii) would cause or constitute a material breach of any of its representations, warranties, covenants or agreements contained herein, and (b) any change in its condition (financial or otherwise) or business or any litigation or governmental complaints, investigations or hearings, in each case to the extent such change, litigation, complaints, investigations, or hearings results in, or would reasonably be expected to result in, a Material Adverse Effect.

Section 6.16 *Rule 16b-3.* Prior to the Effective Time, Hydrocarbon shall take such steps as may be reasonably requested by any party hereto to cause dispositions of Hydrocarbon equity securities (including derivative securities) pursuant to the transactions contemplated by this Agreement by each individual who is a director or officer of Hydrocarbon to be exempt under Rule 16b-3 promulgated under the Exchange Act in accordance with that certain No-Action Letter dated January 12, 1999 issued by the SEC regarding such matters.

Section 6.17 *Amended and Restated Partnership Agreement.* Subject to receipt of the Energy Partners Unitholder Approval, Energy Partners shall execute and make effective the Amended and Restated Partnership Agreement.

Section 6.18 *Board Membership.* Prior to the mailing of the Joint Proxy Statement, Hydrocarbon shall designate in its sole discretion three (3) members from among the current members of the Hydrocarbon Board, two (2) of whom must be independent (the "Hydrocarbon Director Designees") to serve as members of the Board of Directors of General Partner following the Effective Time. Subject to the foregoing, the parties shall take such action as is necessary to cause the General Partner to cause the Hydrocarbon Director Designees to be appointed to the

Board of Directors of General Partner effective as of the Effective Time, to serve until the earlier of such individual's resignation or removal or until his successor is duly elected and qualified.

## ARTICLE VII

### CONDITIONS TO CONSUMMATION OF THE REDEMPTION AND MERGER

The obligations of each of the parties to consummate the Redemption and Merger are conditioned upon the satisfaction at or prior to the Closing of each of the following:

**Section 7.1 *Stockholder Vote.*** The Merger, the Unit Issuance, the Amended and Restated Partnership Agreement and the other transactions contemplated hereby shall have been approved and adopted by the affirmative vote of a Unit Majority at the Energy Partners Meeting ("Energy Partners Unitholder Approval"), and the Redemption Charter Amendment, the Merger and this Agreement and the other transactions contemplated hereby shall have been approved and adopted by the affirmative vote of the holders of a majority of the shares of Hydrocarbon Common Stock outstanding and entitled to vote thereon at the Hydrocarbon Meeting ("Hydrocarbon Stockholder Approval").

**Section 7.2 *Governmental Approvals.*** Any waiting period (including any extended waiting period arising as a result of a request for additional information by the Federal Trade Commission or the U.S. Department of Justice) under the HSR shall have expired or been terminated. All other filings required to be made prior to the Effective Time with, and all other consents, approvals, permits and authorizations required to be obtained prior to the Effective Time from, any Regulatory Authority in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by the parties hereto or their Affiliates shall have been made or obtained, except where the failure to obtain such consents, approvals, permits and authorizations would not be reasonably likely to result in a Material Adverse Effect on Energy Partners or Hydrocarbon.

**Section 7.3 *No Injunction.*** No order, decree or injunction of any court or agency of competent jurisdiction shall be in effect, and no law, statute or regulation shall have been enacted or adopted, that enjoins, prohibits or makes illegal consummation of any of the transactions contemplated hereby, and no action, proceeding or investigation by any Regulatory Authority with respect to the Redemption, the Merger or the other transactions contemplated hereby shall be pending that seeks to restrain, enjoin, prohibit or delay consummation of the Redemption, the Merger or such other transaction or to impose any material restrictions or requirements thereon or on Energy Partners or Hydrocarbon with respect thereto; *provided, however*, that prior to invoking this condition, each party shall have complied fully with its obligations under Section 6.1.

**Section 7.4 *Representations, Warranties and Covenants of Energy Partners.*** In the case of Hydrocarbon's obligation to consummate the Redemption and the Merger:

(a) each of the representations and warranties contained herein of Energy Partners shall be true and correct as of the date of this Agreement and upon the Closing Date with the



same effect as though all such representations and warranties had been made on the Closing Date, except for any such representations and warranties made as of a specified date, which shall be true and correct as of such date, in any case subject to the standard set forth in Section 5.2;

(b) each and all of the agreements and covenants of Energy Partners to be performed and complied with pursuant to this Agreement on or prior to the Closing Date shall have been duly performed and complied with in all material respects; and

(c) Hydrocarbon shall have received a certificate signed by the Chief Financial Officer of the General Partner, dated the Closing Date, to the effect set forth in Section 7.4(a) and Section 7.4(b).

**Section 7.5 *Representations, Warranties and Covenants of Hydrocarbon.*** In the case of Energy Partners' obligation to consummate the Merger:

(a) each of the representations and warranties contained herein of Hydrocarbon shall be true and correct as of the date of this Agreement and upon the Closing Date with the same effect as though all such representations and warranties had been made on the Closing Date, except for any such representations and warranties made as of a specified date, which shall be true and correct as of such date, in any case subject to the standard set forth in Section 5.2;

(b) each and all of the agreements and covenants of Hydrocarbon to be performed and complied with pursuant to this Agreement on or prior to the Closing Date shall have been duly performed and complied with in all material respects; and

(c) Energy Partners shall have received a certificate signed by the Chief Financial Officer of Hydrocarbon, dated the Closing Date, to the effect set forth in Section 7.5(a) and Section 7.5(b).

**Section 7.6 *Effective Registration Statement.*** The Registration Statement shall have become effective under the Securities Act and no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the SEC or any other Regulatory Authority.

**Section 7.7 *Opinion of Vinson & Elkins L.L.P. or Other Counsel.*** In the case of Energy Partners' obligation to consummate the Merger, Energy Partners shall have received an opinion from Vinson & Elkins L.L.P., counsel to Energy Partners, or other counsel that is reasonably acceptable to Energy Partners, to the effect that:

(a) the Merger and the transactions contemplated by this Agreement will not result in the loss of limited liability of any limited partner of Energy Partners;

(b) 90% of the current gross income of Energy Partners constitutes qualifying income within the meaning of Section 7704(d) of the Code;

(c) the Merger and the transactions contemplated by this Agreement will not cause Energy Partners to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes;

(d) to the extent that it describes provisions of United States federal tax law, the discussion in the Registration Statement under the caption "Material U.S. Federal Income Tax Consequences," as it relates to the holders of Common Units (other than Hydrocarbon), is correct in all material respects; and

(e) no gain or loss should be recognized by holders of Common Units as a result of the Merger (other than gain resulting from any decrease in partnership liabilities pursuant to Section 752 of the Code).

In rendering such opinions, Vinson & Elkins L.L.P. or other counsel may require and rely upon representations and covenants including those contained in certificates of officers of the General Partner and others and opinions of Delaware counsel, reasonably satisfactory in form and substance to such counsel.

**Section 7.8 *Opinion of Hogan & Hartson L.L.P. or Other Counsel.*** In the case of Hydrocarbon's obligation to consummate the Redemption and the Merger, Hydrocarbon shall have received an opinion from Hogan & Hartson L.L.P., counsel to Hydrocarbon, or other counsel that is reasonably acceptable to Hydrocarbon, to the effect that:

(a) to the extent that it describes provisions of United States federal tax law, the discussion in the Registration Statement under the caption "Material U.S. Federal Income Tax Consequences," as it relates to the holders of Hydrocarbon Common Stock, is correct in all material respects; and

(b) no gain or loss should be recognized by the holders of Hydrocarbon Common Stock to the extent Common Units are received in exchange therefor as a result of the Merger.

In rendering such opinion, Hogan & Hartson L.L.P. or other counsel may require and rely upon representations and covenants including those contained in certificates of officers of Hydrocarbon and others and opinions of Delaware counsel reasonably satisfactory in form and substance to such counsel.

**Section 7.9 *NYSE Listing.*** The Common Units issuable pursuant to this Agreement shall have been approved for listing on the NYSE, subject to official notice of issuance.

**Section 7.10 *Amended and Restated Partnership Agreement.*** In the case of Hydrocarbon's obligation to consummate the Redemption and the Merger, Energy Partners shall have executed and made effective the Amended and Restated Partnership Agreement.

**Section 7.11 *Dissenting Holders.*** In the case of Energy Partners' obligation to consummate the Merger, the shares of Hydrocarbon Common Stock held by Dissenting Holders shall not exceed 5% of the outstanding shares of Hydrocarbon Common Stock immediately prior to the Redemption.

**Section 7.12 *Resignation of the Hydrocarbon Board.*** In the case of Energy Partners' obligation to consummate the Merger, Hydrocarbon shall have received resignations for all of the directors on the Hydrocarbon Board.

Section 7.13 *Restructuring Transactions.* The Restructuring Transactions shall have been consummated pursuant to the Exchange Agreement.

Section 7.14 *Valuation Appraisal.* In the case of Hydrocarbon's obligation to consummate the Redemption and the Merger, Energy Partners shall have received an appraisal from Duff & Phelps Acquisitions, LLC, which appraisal comes to the conclusion that the value of (i) the Common Units owned by Hydrocarbon and (ii) the IDRs and the economic interest in the 2% general partner interest in Energy Partners owned by the General Partner, collectively, can reasonably be found to be equal to the value of the Class A Units for which such common units, IDRs and economic interest in the general partner interest are being exchanged in consummation of the Restructuring Transactions as provided for in the Exchange Agreement.

Section 7.15 *Changes in Tax Law.*

(a) Hydrocarbon shall not be obligated to consummate the Redemption; and neither Hydrocarbon nor Energy Partners shall be obligated to consummate the Merger if either of the following shall have occurred:

(i) the issuance of Proposed Treasury Regulations Section 1.337(d)-3 in final form, with an effective date that would cause the final regulations to be applicable to the Merger, unless Hydrocarbon or Energy Partners, as the case may be, has received an opinion, in a form reasonably acceptable to it, from a law or accounting firm, that such regulations should not cause Hydrocarbon to recognize income or gain as a result of either the Merger or Restructuring Transactions, or

(ii) a Change in U.S. Federal Income Tax Law, other than as contemplated under clause (i), unless Hydrocarbon or Energy Partners, as the case may be, has received an opinion, in a form reasonably acceptable to it, from a law or accounting firm, that such change should not cause Hydrocarbon to recognize income or gain as a result of either the Merger or Restructuring Transactions.

(b) "Change in U.S. Federal Income Tax Law" means any change in the Code, Treasury Regulations, administrative pronouncements of the Internal Revenue Service, or judicial interpretations of the foregoing, if the Deal Committee or the Conflicts Committee determines, in its reasonable judgment, that it is more likely than not that such change could materially and adversely affect the U.S. federal income tax consequences to Hydrocarbon from the Merger or Restructuring Transactions.

Section 7.16 *Redemption.* In the case of Hydrocarbon's and Energy Partners' obligation to consummate the Merger, the Redemption has been consummated pursuant to the Redemption Charter Amendment, subject to the payment of the redemption price of the Per Share Cash Consideration as provided in Section 3.5.

## ARTICLE VIII TERMINATION

Section 8.1 *Termination.* Notwithstanding anything herein to the contrary, this Agreement may be terminated and the Redemption and the Merger may be abandoned at any time prior to the Effective Time whether before or after the Hydrocarbon Stockholder Approval or Energy Partners Unitholder approval:

(a) By the mutual consent of Energy Partners and Hydrocarbon in a written instrument.

(b) By either Hydrocarbon or Energy Partners upon written notice to the other, if:

(i) the Redemption and the Merger have not been consummated on or before February 27, 2008 (the "Termination Date"); *provided* that the right to terminate this Agreement pursuant to this Section 8.1(b)(i) shall not be available to a party whose failure to fulfill any material obligation under this Agreement or other material breach of this Agreement has been the primary cause of, or resulted in, the failure of the Redemption or Merger to have been consummated on or before such date;

(ii) any Regulatory Authority has issued a statute, rule, order, decree or regulation or taken any other action (which statute, rule, order, decree, regulation or other action the parties hereto shall have used their commercially reasonable best efforts to lift), in each case permanently restraining, enjoining or otherwise prohibiting the consummation of the Redemption or the Merger or making the Redemption or the Merger illegal and such statute, rule, order, decree, regulation or other action shall have become final and nonappealable (*provided* that the terminating party is not then in breach of Section 6.1);

(iii) Hydrocarbon fails to obtain Hydrocarbon Stockholder Approval at the Hydrocarbon Meeting; *provided* that Hydrocarbon shall not be entitled to terminate this Agreement pursuant to this Section 8.1(b)(iii) if it has breached any of its obligations under Section 6.6;

(iv) there has been a material breach of or any inaccuracy in any of the representations or warranties set forth in this Agreement on the part of any of the other parties (treating Energy Partners and MergerCo as one party for the purposes of this Section 8.1), which breach is not cured within 30 days following receipt by the breaching party of written notice of such breach from the terminating party, or which breach, by its nature, cannot be cured prior to the Termination Date (*provided* in any such case that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein); *provided, however*, that no party shall have the right to terminate this Agreement pursuant to this Section 8.1(b)(iv) unless the breach of representation or warranty, together with all other such breaches, would entitle the party receiving such representation not to consummate the transactions contemplated by this Agreement under Section 7.4 (in the case of a breach of representation or warranty by

Energy Partners or MergerCo) or Section 7.5 (in the case of a breach of representation or warranty by Hydrocarbon);

(v) if there has been a material breach of any of the covenants or agreements set forth in this Agreement on the part of any of the other parties, which breach has not been cured within 30 days following receipt by the breaching party of written notice of such breach from the terminating party, or which breach, by its nature, cannot be cured prior to the Termination Date (provided in any such case that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein); *provided, however*, that no party shall have the right to terminate this Agreement pursuant to this Section 8.1(b)(v) unless the breach of covenants or agreements, together with all other such breaches, would entitle the party receiving the benefit of such covenants or agreements not to consummate the transactions contemplated by this Agreement under Section 7.4. (in the case of a breach of covenants or agreements by Energy Partners or MergerCo) or Section 7.5. (in the case of a breach of covenants or agreements by Hydrocarbon); or

(vi) Energy Partners fails to obtain the Energy Partners Unitholder Approval at the Energy Partners Meeting.

(c) By Energy Partners, upon written notice to Hydrocarbon, in the event that: (i) Hydrocarbon shall have materially breached Section 6.6; or (ii) a Hydrocarbon Change in Recommendation has occurred.

(d) By Hydrocarbon (with the prior approval of the Deal Committee), upon written notice to Energy Partners, in the event that (i) if, at any time after the date of this Agreement and prior to obtaining the Hydrocarbon Stockholder Approval, Hydrocarbon receives an Acquisition Proposal and the Hydrocarbon Board (acting through the Deal Committee if such committee still exists) shall have concluded in good faith that such Acquisition Proposal constitutes a Superior Proposal, Hydrocarbon has complied with Section 6.6(c) of this Agreement, and the Hydrocarbon Board concurrently approves, and Hydrocarbon concurrently enters into, a definitive agreement with respect to such Superior Proposal and has paid the Hydrocarbon Termination Fee pursuant to Section 9.1(b), or (ii) an Energy Partners Change in Recommendation has occurred.

Section 8.2 *Effect of Termination.* In the event of the termination of this Agreement as provided in Section 8.1, written notice thereof shall forthwith be given by the terminating party to the other parties specifying the provision of this Agreement pursuant to which such termination is made, and except as provided in this Section 8.2, this Agreement (other than Article IX) shall forthwith become null and void after the expiration of any applicable period following such notice. In the event of such termination, there shall be no liability on the part of Energy Partners, MergerCo or Hydrocarbon, except as set forth in Section 9.1 of this Agreement and except with respect to the requirement to comply with the Confidentiality Agreement; *provided* that nothing herein shall relieve any party from any liability or obligation with respect to any fraud or intentional breach of this Agreement.

**ARTICLE IX  
MISCELLANEOUS**

**Section 9.1    *Fees and Expenses.***

(a) Whether or not the Redemption and the Merger are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs or expenses, except as provided in Section 9.1(b), 9.1(c), 9.1(d) and 9.1(f).

(b) If this Agreement is terminated by Energy Partners pursuant to Section 8.1(c) or by Hydrocarbon pursuant to Section 8.1(d)(i), then Hydrocarbon shall pay to the Escrow Agent for the benefit of Energy Partners the Hydrocarbon Termination Fee. If this Agreement is terminated by Hydrocarbon pursuant to Section 8.1(d)(ii), then Energy Partners shall pay to Hydrocarbon in immediately available funds the Energy Partners Termination Fee. If this Agreement is terminated by Energy Partners pursuant to Section 8.1(b)(iv) or Section 8.1(b)(v) or by Hydrocarbon or Energy Partners pursuant to Section 8.1(b)(iii), then Hydrocarbon shall pay to the Escrow Agent for the benefit of Energy Partners the Expenses of Energy Partners; *provided, however*, that Hydrocarbon shall not be obligated to pay the Expenses to Energy Partners in connection with the termination of this Agreement pursuant to Section 8.1(b)(iii) if Mr. Fox failed to comply with the terms of the Fox Support Agreement.

(c) In the event that (i) an Acquisition Proposal with respect to Hydrocarbon has been proposed by any Person (meaning, for the purpose of this Section 9.1(c), a Person other than Energy Partners and MergerCo) or any Person has publicly announced its intention (whether or not conditional) to make such an Acquisition Proposal or such an Acquisition Proposal or such intention has otherwise become publicly known to Hydrocarbon's stockholders generally and in any event such proposal or intention is not subsequently withdrawn prior to the termination of this Agreement, (ii) thereafter this Agreement is terminated by either Hydrocarbon or Energy Partners pursuant to Section 8.1(b)(i) or Section 8.1(b)(iii) or by Energy Partners pursuant to Section 8.1(b)(iv) or Section 8.1(b)(v), and (iii) within 12 months after the termination of this Agreement, Hydrocarbon or any of its Subsidiaries enters into any definitive agreement providing for an Acquisition Proposal, or an Acquisition Proposal with respect to Hydrocarbon or any of its Subsidiaries is consummated, then Hydrocarbon shall pay to the Escrow Agent for the benefit of Energy Partners, if and when consummation of such Acquisition Proposal occurs, the Hydrocarbon Termination Fee less all Expenses of Energy Partners previously paid to Energy Partners; *provided* that for purposes of this Section 9.1(c), "50%" shall be substituted for "20%" in the definition of Acquisition Proposal.

(d) If this Agreement is (i) terminated by Hydrocarbon or Energy Partners pursuant to Section 8.1(b)(vi), or (ii) terminated by Hydrocarbon pursuant to Section 8.1(b)(iv) or Section 8.1(b)(v), then Energy Partners shall pay to Hydrocarbon the Expenses of Hydrocarbon.

(e) Except as otherwise provided herein, any payment of the Hydrocarbon Termination Fee, the Energy Partners Termination Fee or Expenses pursuant to this Section 9.1 shall be made by wire transfer of immediately available funds to an account of the Escrow Agent designated by Energy Partners or an account designated by Hydrocarbon, as applicable, within

one Business Day after such payment becomes payable; *provided, however*, that any payment of the Hydrocarbon Termination Fee pursuant to Section 9.1(b) by Hydrocarbon as a result of termination under Section 8.1(d)(i) shall be made prior to or concurrently with termination of this Agreement; *provided, further*, that any payment of the Hydrocarbon Termination Fee pursuant to Section 9.1(c) shall be made contemporaneously with the consummation of the Acquisition Proposal as provided in clause (iii) of Section 9.1(c). The parties acknowledge that the agreements contained in this Section 9.1 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, none of the parties would enter into this Agreement.

(f) (i) If the Redemption and the Merger are consummated, the Surviving Entity shall pay, or cause to be paid, any and all property or transfer taxes imposed on either party in connection with the Merger, (ii) expenses incurred in connection with filing, printing and mailing the Joint Proxy Statement and the Registration Statement shall be paid by Energy Partners and (iii) filing fees payable pursuant to the HSR Act, regulatory laws and other filing fees incurred in connection with this Agreement shall be paid by the party incurring the fees. As used in this agreement, "Expenses" includes good faith estimate of all out-of-pocket expenses (including all fees and expenses of counsel, accountants, investment bankers, experts and consultants to a party hereto and its affiliates) incurred by a party or on its behalf in connection with or related to the authorization, preparation, negotiation, execution and performance of this Agreement and the transactions contemplated hereby, including the preparation, printing, filing and mailing of the Joint Proxy Statement and the Registration Statement and the solicitation of stockholder/unitholder approvals and all other matters related to the transactions contemplated hereby; *provided* that the amount of Expenses payable by one party to another under this Section 9.1 shall not exceed \$6.0 million.

(g) Any amounts paid to the Escrow Agent pursuant to this Article IX, together with interest thereon (the "Escrow Fund"), shall be released by the Escrow Agent to Energy Partners as follows:

(i) Prior to the end of the calendar year in which the payment was made to the Escrow Agent, Energy Partners shall submit to the Escrow Agent a certificate demanding a portion of the Escrow Fund equal to no greater than 70% of the maximum remaining amount which, in the good faith view of the General Partner, may still be taken into the gross revenues of Energy Partners without exceeding the permissible qualifying income (as defined in Section 7704 of the Code) limits for a publicly traded partnership, after taking into consideration all other sources of non-qualifying income (such maximum remaining amount, the "Non-Qualifying Income Cushion"), and the Escrow Agent shall within one Business Day thereafter, pay Energy Partners the amount demanded, by wire transfer of immediately available funds to an account designated by Energy Partners;

(ii) During the calendar year following the date that the payment was made to the Escrow Agent but prior to the passage of 30 calendar days following the filing of the IRS Form 1065 for the prior year, Energy Partners shall submit to the Escrow Agent a certificate identifying the actual Non-Qualifying Income Cushion from the prior year. If the payment contemplated by clause (i) above was (A) less than 80% of the actual Non-Qualifying Income Cushion, then Energy Partners shall submit to the Escrow Agent a

certificate demanding a portion of the Escrow Fund equal to an amount which, when combined with the payment contemplated by clause (i) will equal 90% of the actual Non-Qualifying Income Cushion, and the Escrow Agent shall within one Business Day thereafter, pay Energy Partners the amount demanded, (B) greater than or equal to 80%, but less than or equal to 90% of the actual Non-Qualifying Income Cushion, then Energy Partners shall notify the Escrow Agent that it will not demand any additional payments from the Escrow Account, and (C) greater than 90% of the actual Non-Qualifying Income Cushion, then Energy Partners shall deliver a certificate to such effect to the Escrow Agent and return to the Escrow Fund an amount equal to the excess of the payment contemplated by clause (i) over 80% of the Non-Qualifying Income Cushion. Any payment under this clause (ii) shall be made by the Escrow Agent, or Energy Partners, as the case may be, by wire transfer of immediately available funds to an account designated by Energy Partners or the Escrow Agent, as the case may be; and

(iii) Within one Business Day following the earlier of (A) completion of the procedures as contemplated by Section 9.1(g)(ii) above and (B) the passage of 30 days following the filing of the IRS Form 1065 for the prior year, the Escrow Agent shall pay Hydrocarbon the remainder, if any, of the Escrow Fund, by wire transfer of immediately available funds to an account designated by Hydrocarbon.

Hydrocarbon acknowledges and agrees that (x) the amount of a payment, if any, pursuant to Section 9.1(g)(ii) above is uncertain, and that depending on the amount of the demands made by Energy Partners pursuant to Section 9.1(g)(ii) above, the Escrow Fund may be insufficient to permit payments to Hydrocarbon pursuant to Section 9.1(g)(ii) above, and (y) it shall have no rights to any amounts in the Escrow Fund (other than as contemplated by this subsection (h)) or to audit or inquire into the amounts demanded by or paid to Energy Partners.

(h) Hydrocarbon agrees that, notwithstanding any right that it or the General Partner may otherwise have, including pursuant to the Partnership Agreement, the Amended and Restated Partnership Agreement, or otherwise, it hereby waives and renounces for itself and its affiliates, and shall cause the General Partner to waive and renounce, any distribution by Energy Partners to its partners of any amount paid to Energy Partners by the Escrow Agent, together with an income allocation associated with such distribution, it being understood that following payment to Energy Partners from the Escrow Agent, Energy Partners will make a distribution to the holders of common units of Energy Partners who are unaffiliated with Hydrocarbon.

(i) This Section 9.1 shall survive any termination of this Agreement.

Section 9.2 *Waiver; Amendment.* Subject to compliance with applicable law, prior to the Closing, any provision of this Agreement may be (a) waived in writing by the party benefited by the provision and approved by the Conflicts Committee in the case of Energy Partners and by the Deal Committee in the case of Hydrocarbon and executed in the same manner as this Agreement, or (b) amended or modified at any time, whether before or after the Hydrocarbon Stockholder Approval, by an agreement in writing between the parties hereto approved by the Conflicts Committee in the case of Energy Partners and by the Deal Committee in the case of Hydrocarbon and executed in the same manner as this Agreement; *provided* that after the



Hydrocarbon Stockholder Approval, no amendment shall be made that requires further Hydrocarbon Stockholder Approval without such further approval.

Section 9.3 *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original.

Section 9.4 *Governing Law.* This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Delaware, without regard to the conflict of law principles thereof (except to the extent that mandatory provisions of federal or Delaware law govern).

Section 9.5 *Confidentiality.* Each of the parties hereto and their respective agents, attorneys and accountants will maintain the confidentiality of all information provided in connection herewith to the extent required by, and subject to the limitations of, the Confidentiality Agreement.

Section 9.6 *Notices.* All notices, requests and other communications hereunder to a party shall be in writing and shall be deemed given if personally delivered, telecopied (with confirmation) or mailed by registered or certified mail (return receipt requested) to such party at its address set forth below or such other address as such party may specify by notice to the parties hereto.

If to Energy Partners, to:

MarkWest Energy GP, L.L.C.  
Attn: General Counsel  
1515 Arapahoe Street  
Tower 2, Suite 700  
Denver, Colorado 80202  
Fax: (303) 290-8769

With copies to:

Chairman of the Conflicts Committee  
William P. Nicoletti  
c/o Nicoletti & Company Inc.  
620 Van Beuren Road  
Morristown, NJ 07960  
Fax: (973) 440-1520

Vinson & Elkins L.L.P.  
Attn: Michael J. Swidler  
666 Fifth Avenue, 26<sup>th</sup> Floor  
New York, NY 10103  
Fax: (212)237-0100

Andrews Kurth LLP  
Attn: Bill Cooper  
1350 I Street, N.W., Suite 1100  
Washington, D.C. 20005  
Fax: (202) 662-2739

If to Hydrocarbon, to:

MarkWest Hydrocarbon, Inc.  
Attn: General Counsel  
1515 Arapahoe Street  
Tower 2, Suite 700  
Denver, Colorado 80202  
Fax: (303) 290-8769

With copies to:

Chairman of the Deal Committee  
Michael L. Beatty  
Beatty & Wozniak, P.C.  
Columbine Place, Suite 1100  
216 Sixteenth Street  
Denver, Colorado 80202-5115  
Fax: (303) 407-4490

Hogan & Hartson L.L.P.  
Attn: George Hagerty  
One Tabor Center, Suite 1500  
1200 Seventeenth Street  
Denver, Colorado 80202  
Fax: (303) 899-7333

Akin, Gump, Strauss, Hauer & Feld LLP  
Attn: Michael E. Dillard, P.C. and J. Vincent Kendrick  
1111 Louisiana Street, 44<sup>th</sup> Floor  
Houston, Texas 77002  
Fax: (713) 236 -0822

Section 9.7 *Entire Understanding; No Third Party Beneficiaries.* Except for the Confidentiality Agreement, the Class B Membership Interest Contribution Agreement and the Exchange Agreement, all of which shall remain in effect, this Agreement represents the entire understanding of the parties hereto with reference to the transactions contemplated hereby and supersedes any and all other oral or written agreements heretofore made. Except as contemplated by Section 6.12, nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto or their respective successors, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 9.8 *Severability*. Any provision of this Agreement which is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction.

Section 9.9 *Headings*. The headings contained in this Agreement are for reference purposes only and are not part of this Agreement.

Section 9.10 *Jurisdiction*. The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in any federal court located in the State of Delaware or the Delaware Court of Chancery, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 9.6 shall be deemed effective service of process on such party.

Section 9.11 *Waiver of Jury Trial*. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 9.12 *Specific Performance*. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and, accordingly, that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in any federal court located in the State of Delaware or in the Delaware Court of Chancery, in addition to any other remedy to which they are entitled at law or in equity.

Section 9.13 *Survival*. All representations, warranties, agreements and covenants contained in this Agreement shall not survive the Closing or the termination of this Agreement if this Agreement is terminated prior to the Closing; provided, however, that if the Closing occurs, the agreements of the parties in Sections 3.5, 3.7, 6.12 and Article IX shall survive the Closing, and if this Agreement is terminated prior to the Closing, the agreements of the parties in Section 6.5(b), 8.2, and Article IX shall survive such termination.


Section 9.14 *No Act or Failure to Act*. No act or failure to act by the Board of Directors of the General Partner shall constitute a breach by Energy Partners of this Agreement unless such act or failure to act is expressly approved by the Conflicts Committee.

*[Remainder of this page is intentionally left blank.]*




IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in counterparts by their duly authorized officers, all as of the day and year first above written.

**MARKWEST HYDROCARBON, INC.**

By:   
Frank M. Semple  
President

**MARKWEST ENERGY PARTNERS, L.P.**

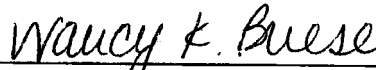
By: MarkWest Energy GP, L.L.C.,  
its general partner

By:   
Nancy K. Buese  
Chief Financial Officer

**MWEP, L.L.C.**

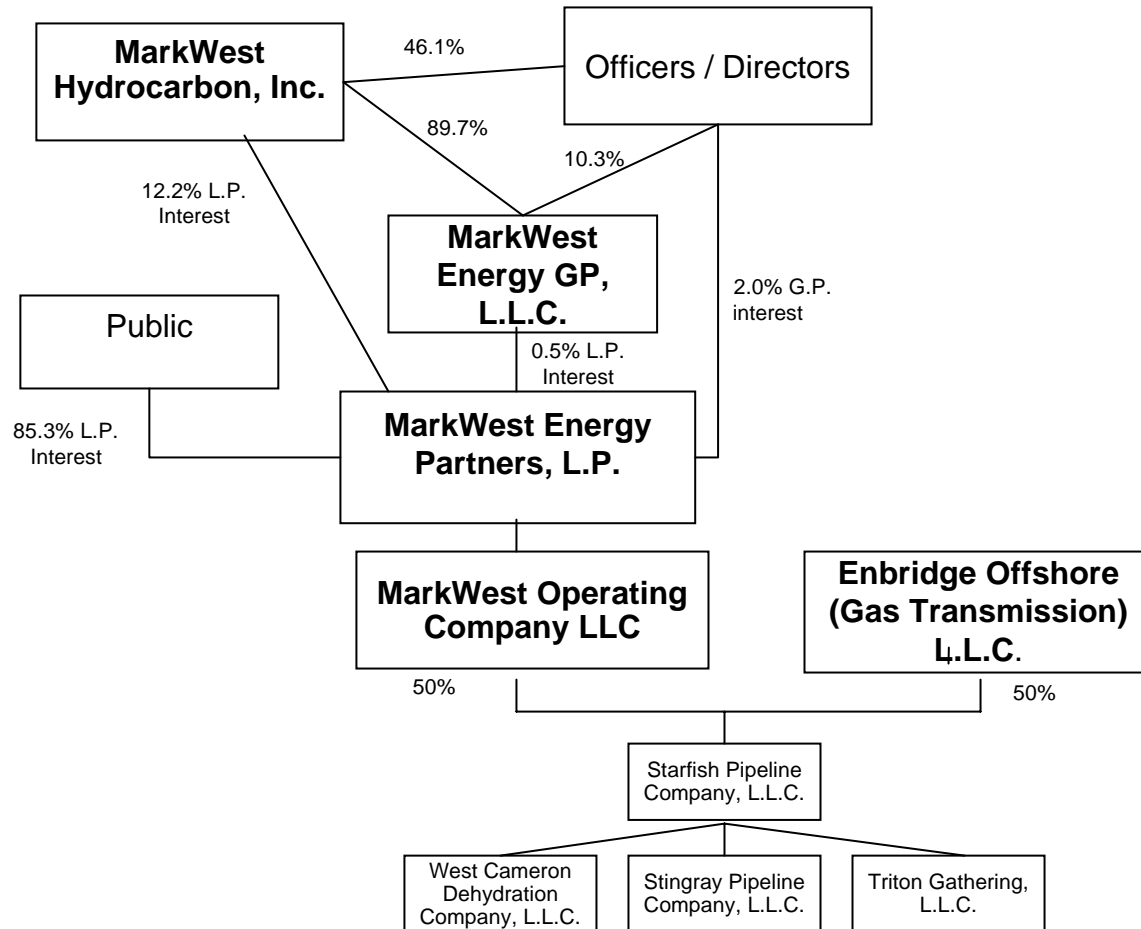
By: MarkWest Energy Partners, L.P.,  
its sole member

By: MarkWest Energy GP, L.L.C.,  
its general partner

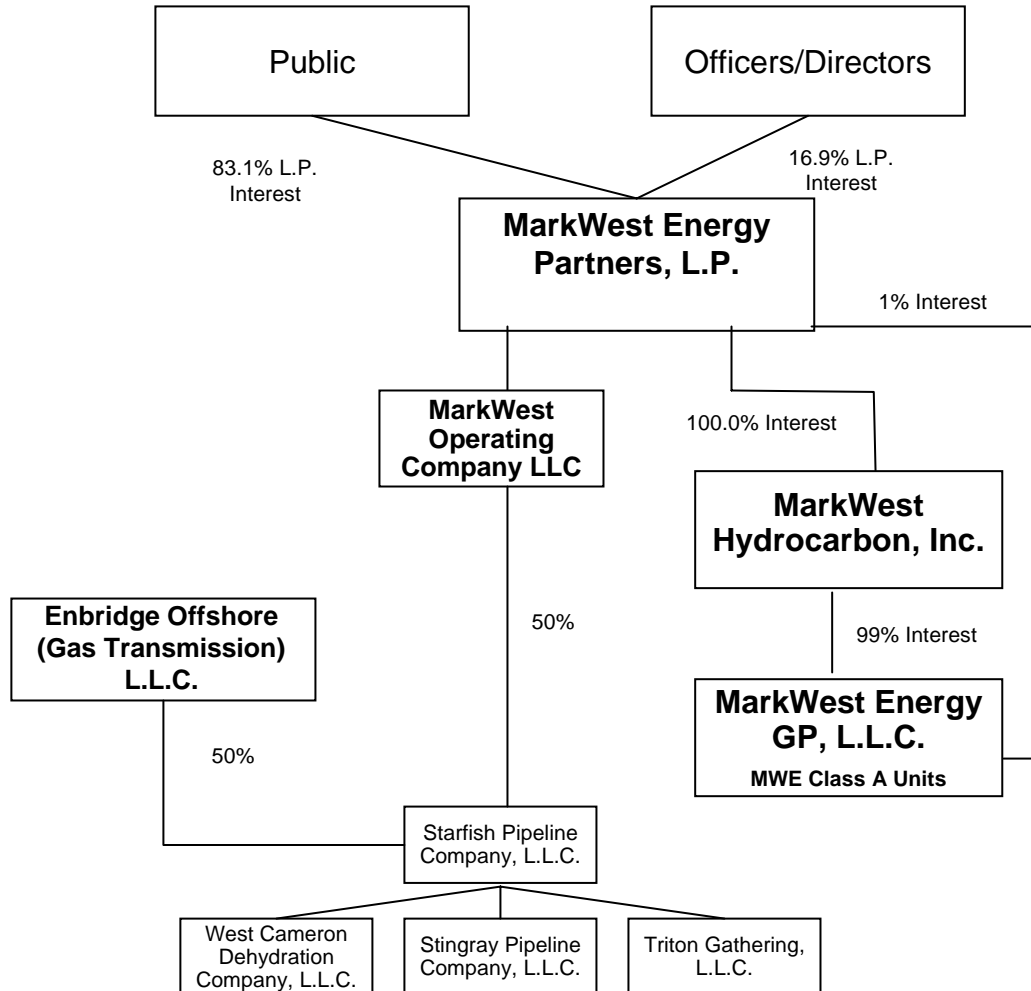
By:   
Nancy K. Buese  
Chief Financial Officer

## Ownership Structure – Pre Merger

**Exhibit No. SPC-49**  
Docket No. RP08-\_\_\_\_-000  
Page 1 of 2



## Ownership Structure – Post Merger



**Exhibit No. SPC-49**  
Docket No. RP08-\_\_\_\_-000  
Page 2 of 2

**SECOND AMENDED AND RESTATED**  
**AGREEMENT OF LIMITED PARTNERSHIP**  
**OF**  
**MARKWEST ENERGY PARTNERS, L.P.**



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**SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED  
PARTNERSHIP OF MARKWEST ENERGY PARTNERS, L.P.**

THIS SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF MARKWEST ENERGY PARTNERS, L.P. dated effective as of February 28, 2007, is entered into by and among MarkWest Energy GP, L.L.C., a Delaware limited liability company, as the General Partner, MarkWest Michigan, Inc., a Delaware corporation, as an Initial Limited Partner, and MarkWest Hydrocarbon, Inc., a Delaware corporation, as the Organizational Limited Partner, (MarkWest Michigan, Inc. merged with and into MarkWest Hydrocarbon, Inc. effective December 28, 2006, with MarkWest Hydrocarbon, Inc. remaining as the surviving entity), together with any other Persons who become Partners in the Partnership or parties hereto as provided herein. In consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

**Section 1.1**     *Definitions.*

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

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

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

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

*"Adjusted Operating Surplus"* means, with respect to any period, Operating Surplus generated during such period (a) less (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) plus (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 5.5(d)(i) or 5.5(d)(ii).

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

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

*“Agreed Allocation”* means any allocation, other than a Required Allocation, of an item of income, gain, loss or deduction pursuant to the provisions of Section 6.1, including, 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 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 Amended and Restated Agreement of Limited Partnership of MarkWest Energy Partners, L.P., as it may be amended, supplemented or restated from time to time.

*“APB 25”* means Accounting Principles Board Opinion Number 25, an accounting principle governing accounting for stock issued to employees.

*“Assignee”* means a Non-citizen Assignee or a Person to whom one or more Limited Partner Interests 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 been admitted as 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, who has the same principal residence as such Person.

*"Available Cash"* means, with respect to any Quarter ending prior to the Liquidation Date:

(a) the sum of (i) all cash and cash equivalents of the Partnership Group on hand at the end of such Quarter, and (ii) 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 made subsequent to the end of such Quarter, less

(b) the amount of any cash reserves that are necessary or appropriate in the reasonable discretion of the General Partner to (i) provide for the proper conduct of the business of the Partnership Group (including reserves for future capital expenditures and for anticipated future credit needs of the Partnership Group) subsequent to such Quarter, (ii) comply with applicable law or any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which any Group Member is a party or by which it is bound or its assets are subject or (iii) provide funds for distributions under Section 6.4 or 6.5 in respect of any one or more of the next four Quarters; provided, however, that the General Partner may not establish cash reserves pursuant to (iii) above if the effect of such reserves would be that the Partnership is unable to distribute the Minimum Quarterly Distribution on all Common Units, plus any Cumulative Common Unit Arrearage on all Common Units, with respect to such Quarter; and, provided further, that disbursements made by a Group Member or cash reserves established, increased or reduced after the end of such Quarter but on or before the date of determination of Available Cash with respect to such Quarter shall be deemed to have been made, established, increased or reduced, for purposes of determining Available Cash, within such Quarter if the General Partner so determines.

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

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

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

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

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

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

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

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

*"Capital Contribution"* means any cash, cash equivalents or the Net Agreed Value of Contributed Property that a Partner contributes to the Partnership pursuant to this Agreement or the Contribution Agreement.

*"Capital Improvement"* means any (a) addition or improvement to the capital assets owned by any Group Member or (b) acquisition of existing, or the construction of new, capital assets (including, without limitation, natural gas processing plants and natural gas liquids pipelines, fractionation plants and storage and distribution facilities and related assets), in each case if such addition, improvement, acquisition or construction is made to increase the operating capacity or revenues of the Partnership Group from the operating capacity or revenues of the Partnership Group existing immediately prior to such addition, improvement, acquisition or construction.

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

*"Carrying Value"* means (a) with respect to a Contributed Property, the Agreed Value of such property reduced (but not below zero) by all depreciation, amortization and cost recovery deductions charged to the Partners' 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 5.5(d)(i) and 5.5(d)(ii) and to reflect changes, additions or other adjustments to the Carrying

Value for dispositions and acquisitions of Partnership properties, as deemed appropriate by the General Partner.

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

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

“*Certificate of Limited Partnership*” means the Certificate of Limited Partnership of the Partnership filed with the Secretary of State of the State of Delaware as referenced in Section 2.1, 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 7.12(c).

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

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

“*Cobb Contributions*” means those contributions made by the General Partner pursuant to Section 5.2(c).

“*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 successor law.

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

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

“*Common Unit*” means a Partnership Security representing a fractional part of the Partnership Interests of all Limited Partners and Assignees, and having the rights and obligations specified with respect to Common Units in this Agreement. The term “Common Unit” does not

refer to a Subordinated Unit prior to its conversion into a Common Unit pursuant to the terms hereof.

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

*"Conflicts Committee"* means a committee of the Board of Directors of the General Partner composed entirely of two or more directors 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 to serve on an audit committee of a board of directors by the National Securities Exchange on which the Common Units are listed for trading.

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

*"Contribution Agreement"* means that certain Contribution, Conveyance and Assumption Agreement, dated as of the Closing Date, among the General Partner, the Partnership, the Operating Company, MarkWest Hydrocarbon, Inc. and certain other parties, together with the additional conveyance documents and instruments contemplated or referenced thereunder.

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

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

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

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

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

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

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

*"Eligible Citizen"* means a Person qualified to own interests in real property in jurisdictions in which any Group Member does business or proposes to do business from time to time, and whose status as a Limited Partner 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 11.1(a).

*"FAS 123R"* means Statement of Financial Accounting Standards Number 123R, an accounting principle governing accounting for share based payments.

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

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

*"First Target Distribution"* means \$0.275 per Unit per Quarter (or, with respect to the period commencing on the Closing Date and ending on June 30, 2002, it means the product of \$0.275 multiplied by a fraction of which the numerator is the number of days in such period, and of which the denominator is 91), subject to adjustment in accordance with Sections 6.6 and 6.9.

*"Fully Diluted Basis"* means, when calculating the number of Outstanding Units for any period, a basis that includes, in addition to the Outstanding Units, all Partnership Securities and options, rights, warrants and appreciation rights relating to an equity interest in the Partnership (a) that are convertible into or exercisable or exchangeable for Units that are senior to or pari passu with the Subordinated Units, (b) whose conversion, exercise or exchange price is less than the Current Market Price on the date of such calculation, and (c) that may be converted into or exercised or exchanged for such Units prior to or during the Quarter following the end of the last Quarter contained in the period for which the calculation is being made without the satisfaction of any contingency beyond the control of the holder other than the payment of consideration and the compliance with administrative mechanics applicable to such conversion, exercise or exchange; provided that for purposes of determining the number of Outstanding Units on a Fully Diluted Basis when calculating whether the Subordination Period has ended or Subordinated Units are entitled to convert into Common Units pursuant to Section 5.8, such Partnership Securities, options, rights, warrants and appreciation rights shall be deemed to have been Outstanding Units only for the four Quarters that comprise the last four Quarters of the

measurement period; provided, further, that if consideration will be paid to any Group Member in connection with such conversion, exercise or exchange, the number of Units to be included in such calculation shall be that number equal to the difference between (i) the number of Units issuable upon such conversion, exercise or exchange and (ii) the number of Units which such consideration would purchase at the Current Market Price.

*“General Partner”* means MarkWest Energy GP, L.L.C. and its successors and permitted assigns 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 may be evidenced by Partnership Securities or a combination thereof or interest therein, and includes any and all benefits to which the General Partner is entitled as provided in this Agreement, together with all obligations of the General Partner to comply with the terms and provisions of this Agreement.

*“Group”* means a Person that with or through any of its Affiliates or Associates has any 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 Securities.

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

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

*“Incentive Distribution Right”* means a non-voting Limited Partner Interest issued to the General Partner in connection with the transfer of all of its membership interests in MarkWest Energy Appalachia, L.L.C. to the Partnership pursuant to Section 5.2, which Partnership Interest will confer upon the holder thereof only the rights and obligations specifically provided in this Agreement with respect to Incentive Distribution Rights (and no other rights otherwise available to or other obligations of a holder of a Partnership Interest). Notwithstanding anything in this Agreement to the contrary, the holder of an Incentive Distribution Right shall not be entitled to vote such Incentive Distribution Right on any Partnership matter except as may otherwise be required by law.

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

*“Indemnified Persons”* has the meaning assigned to such term in Section 7.12(c).

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

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

*"Initial Limited Partners"* means MarkWest Energy GP, L.L.C., MarkWest Michigan, Inc. and the Underwriters, in each case upon being admitted to the Partnership in accordance with Section 10.1.

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

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

*"Interim Capital Transactions"* means the following transactions if they occur prior to the Liquidation Date: (a) borrowings, refinancings or refundings of indebtedness 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 (including the Common Units sold to the Underwriters pursuant to the exercise of their over-allotment option); and (c) sales or other voluntary or involuntary dispositions of any assets of any Group Member other than (i) sales or other dispositions of inventory, accounts receivable and other assets in the ordinary course of business, and (ii) sales or other dispositions of assets as part of normal retirements or replacements.

*"Issue Price"* means the price at which a Unit is purchased from the Partnership, after taking into account any sales commission or underwriting discount charged to the Partnership.

*"Limited Partner"* means, unless the context otherwise requires, (a) the Organizational Limited Partner prior to its withdrawal from the Partnership, 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 11.3 or (b)

solely for purposes of Articles V, VI, VII and IX, each Assignee; provided, however, that when the term "Limited Partner" is used herein in the context of any vote or other approval, including without limitation Articles XIII and XIV, such term shall not, solely for such purpose, include any holder of an Incentive Distribution Right except as may otherwise be required by law.

*"Limited Partner Interest"* means the ownership interest of a Limited Partner or Assignee in the Partnership, which may be evidenced by Common Units, Subordinated Units, Incentive Distribution Rights or other Partnership Securities or a combination thereof or interest therein, and includes any and all benefits to which such Limited Partner or Assignee is entitled as provided in this Agreement, together with all obligations of such Limited Partner or Assignee to comply with the terms and provisions of this Agreement; provided, however, that when the term "Limited Partner Interest" is used herein in the context of any vote or other approval, including without limitation Articles XIII and XIV, such term shall not, solely for such purpose, include any holder of an Incentive Distribution Right except as may otherwise be required by law.

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

*"Liquidator"* means one or more Persons selected by the General Partner to perform the functions described in Section 12.3 as liquidating trustee of the Partnership within the meaning of the Delaware Act.

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

*"Minimum Quarterly Distribution"* means \$0.25 per Unit per Quarter (or with respect to the period commencing on the Closing Date and ending on June 30, 2002, it means the product of \$0.25 multiplied by a fraction of which the numerator is the number of days in such period and of which the denominator is 91), subject to adjustment in accordance with Sections 6.6 and 6.9.

*"National Securities Exchange"* means an exchange registered with the Commission under Section 6(a) of the Securities Exchange Act of 1934, as amended, supplemented or restated from time to time, and any successor to such statute, or the Nasdaq Stock Market or any successor thereto.

*"Net Agreed Value"* means, (a) in the case of any Contributed Property, the Agreed Value of such property reduced by any liabilities either assumed by the Partnership upon such contribution or to which such property is subject when contributed, 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 5.5(d)(ii)) at the time such property is distributed, reduced by any indebtedness either assumed by such Partner or Assignee upon such



distribution or to which such property is subject at the time of distribution, in either case, as determined under Section 752 of the Code.

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

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

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

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

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

*"New Cobb Plant"* means the Gas Extraction Plant designed to the specifications contained in the Amended and Restated Agreement for Construction and Removal (Cobb Plant) dated as of December 31, 2004 entered into between MarkWest Hydrocarbon, Inc. and MarkWest Energy Appalachia, L.L.C., replacing and superceding that certain Agreement for Construction and Removal dated October 10, 2003.

*"Non-citizen Assignee"* means a Person whom the General Partner has determined in its 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 4.9.

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

*"Nonrecourse Deductions"* means any and all items of loss, deduction or expenditure (including, 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 15.1(b).

*"Omnibus Agreement"* means that Omnibus Agreement, dated as of the Closing Date, among MarkWest Hydrocarbon, Inc., the General Partner, the Partnership and the Operating Company.

*"Operating Company"* means MarkWest Energy Operating Company, L.L.C., a Delaware limited liability company, and any successors thereto.

*"Operating Company Agreement"* means the Amended and Restated Limited Liability Company Agreement of the Operating Company, as it may be amended, supplemented or restated from time to time.

*"Operating Expenditures"* means all Partnership Group expenditures, including, but not limited to, taxes, reimbursements of the General Partner, repayment of Working Capital Borrowings, debt service payments and capital expenditures, subject to the following:

(a) Payments (including prepayments) of principal of and premium on indebtedness other than Working Capital Borrowings shall not constitute Operating Expenditures; and

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

(a) the sum of (i) \$6.3 million plus all cash and cash equivalents of the Partnership Group on hand as of the close of business on the Closing Date, (ii) all cash receipts of the Partnership Group for the period beginning on the Closing 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 6.5) 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 Closing 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 or the General Partner or any of its Affiliates) acceptable to the General Partner in its reasonable discretion.

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

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

*“Outstanding”* means, with respect to Partnership Securities, all Partnership Securities that are issued by the Partnership and reflected as outstanding on the Partnership’s books and records as of the date of determination; provided, however, that if at any time any Person or Group (other than the General Partner or its Affiliates) beneficially owns 20% or more of any Outstanding Partnership Securities of any class then Outstanding, all Partnership Securities owned by such Person or Group shall not be voted on any matter and shall not be considered to be Outstanding when sending notices of a meeting of Limited Partners to vote on any matter (unless otherwise required by law), calculating required votes, determining the presence of a quorum or for other similar purposes under this Agreement, except that Common Units so owned shall be considered to be Outstanding for purposes of Section 11.1(b)(iv) (such Common Units shall not, however, be treated as a separate class of Partnership Securities for purposes of this

Agreement); provided, further, that the foregoing limitation shall not apply (i) to any Person or Group who acquired 20% or more of any Outstanding Partnership Securities of any class then Outstanding directly from the General Partner or its Affiliates, (ii) to any Person or Group who acquired 20% or more of any Outstanding Partnership Securities of any class then Outstanding directly or indirectly from a Person or Group described in clause (i) provided that the General Partner shall have notified such Person or Group in writing that such limitation shall not apply, or (iii) to any Person or Group who acquired 20% or more of any Partnership Securities issued by the Partnership with the prior approval of the board of directors of the General Partner.

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

*"Parity Units"* means Common Units and all other Units of any other class or series that have the right (i) to receive distributions of Available Cash from Operating Surplus pursuant to each of subclauses (a)(i) and (a)(ii) of Section 6.4 in the same order of priority with respect to the participation of Common Units in such distributions or (ii) to participate in allocations of Net Termination Gain pursuant to Section 6.1(c)(i)(B) in the same order of priority with the Common Units, in each case regardless of whether the amounts or value so distributed or allocated on each Parity Unit equals the amount or value so distributed or allocated on each Common Unit. Units whose participation in such (i) distributions of Available Cash from Operating Surplus and (ii) allocations of Net Termination Gain are subordinate in order of priority to such distributions and allocations on Common Units shall not constitute Parity Units even if such Units are convertible under certain circumstances into Common Units or Parity Units.

*"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 MarkWest Energy Partners, L.P., a Delaware limited partnership, and any successors thereto.

*"Partnership Group"* means the Partnership, the Operating Company and any Subsidiary of any such entity, treated as a single consolidated entity.

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

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

*"Partnership Security"* means any class or series of equity interest in the Partnership (but excluding any options, rights, warrants and appreciation rights relating to an equity interest in the Partnership), including without limitation, Common Units, Subordinated Units and Incentive Distribution Rights.

*"Percentage Interest"* means as of any date of determination (a) as to the General Partner (in its capacity as General Partner without reference to any Limited Partner Interests held by it), 2.0%, (b) as to any Unitholder or Assignee holding Units, the product obtained by multiplying (i) 98% less the percentage applicable to paragraph (c) by (ii) the quotient obtained by dividing (A) the number of Units held by such Unitholder or Assignee by (B) the total number of all Outstanding Units, and (c) as to the holders of additional Partnership Securities issued by the Partnership in accordance with Section 5.6, the percentage established as a part of such issuance. The Percentage Interest with respect to an Incentive Distribution Right shall at all times be zero.

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

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

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

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

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

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

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

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

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

*"Registration Statement"* means the Registration Statement on Form S-1 (Registration No. 333-81780) as it has been or as it may be amended or supplemented from time to time, filed by the Partnership with the Commission under the Securities Act to register the offering and sale of the Common Units in the Initial Offering.

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

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

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

*"Restricted Business"* has the meaning assigned to such term in the Omnibus Agreement.

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

*"Second Target Distribution"* means \$0.3125 per Unit per Quarter (or, with respect to the period commencing on the Closing Date and ending on June 30, 2002, it means the product of \$0.3125 multiplied by a fraction of which the numerator is equal to the number of days in such period and of which the denominator is 91), subject to adjustment in accordance with Sections 6.6 and 6.9.

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

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

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

*"Subordinated Unit"* means a 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 Subordinated Units in this Agreement. The term "Subordinated Unit" as used herein does not include a Common Unit or Parity Unit. A Subordinated Unit that is convertible into a Common Unit or a Parity Unit shall not constitute a Common Unit or Parity Unit until such conversion occurs.

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

(a) the first day of any Quarter beginning after June 30, 2009 in respect of which (i) (A) distributions of Available Cash from Operating Surplus on each of the Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units with respect to each of the three consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded the sum of the Minimum Quarterly Distribution (or portion thereof for the first fiscal quarter after

the Closing Date) on all Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in right of distribution to the Subordinated Units during such periods and (B) the Adjusted Operating Surplus generated during each of the three consecutive, non-overlapping four-Quarter periods immediately preceding such date equaled or exceeded the sum of the Minimum Quarterly Distribution on all of the Common Units and Subordinated Units and any other Units that are senior or equal in right of distribution to the Subordinated Units that were Outstanding during such periods on a Fully Diluted Basis, plus the related distribution on the General Partner Interest, during such periods and (ii) there are no Cumulative Common Unit Arrearages; and

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

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

*"Substituted Limited Partner"* means a Person who is admitted as a Limited Partner to the Partnership pursuant to Section 10.2 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.

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

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

*"Third Target Distribution"* means \$0.375 per Unit per Quarter (or, with respect to the period commencing on the Closing Date and ending on June 30, 2002, it means the product of \$0.375 multiplied by a fraction of which the numerator is equal to the number of days in such period and of which the denominator is 91), subject to adjustment in accordance with Sections 6.6 and 6.9.



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

*"Transfer"* has the meaning assigned to such term in Section 4.4(a).

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

*"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.

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

*"Underwriting Agreement"* means the Underwriting Agreement dated May 20, 2002 among the Underwriters, the Partnership, the General Partner, the Operating Company and MarkWest Hydrocarbon, Inc., providing for the purchase of Common Units by such Underwriters.

*"Unit"* means a Partnership Security that is designated as a "Unit" and shall include Common Units and Subordinated Units but shall not include (i) a General Partner Interest or (ii) Incentive Distribution Rights.

*"Unit Majority"* means, during the Subordination Period, at least a majority of the Outstanding Common Units (excluding Common Units owned by the General Partner and its Affiliates) voting as a class and at least a majority of the Outstanding Subordinated Units voting as a class, and thereafter, at least a majority of the Outstanding Common Units.

*"Unit Split"* has the meaning assigned to such term in Section 2.1.

*"Unitholders"* means the holders of Units.

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

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

*"Unrealized Loss"* attributable to any item of Partnership property means, as of any date of determination, the excess, if any, of (a) the Carrying Value of such property as of such date

(prior to any adjustment to be made pursuant to Section 5.5(d) as of such date) over (b) the fair market value of such property as of such date (as determined under Section 5.5(d)).

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

*“U.S. GAAP”* means United States Generally Accepted Accounting Principles consistently applied.

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

*“Working Capital Borrowings”* means borrowings used solely for working capital purposes or to pay distributions to Partners made pursuant to a credit facility or other arrangement requiring all such borrowings thereunder to be reduced to a relatively small amount each year (or for the year in which the Initial Offering is consummated, the 12-month period beginning on the Closing Date) for an economically meaningful period of time.

#### Section 1.2 *Construction.*

Unless the context requires otherwise: (a) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; and (c) the term “include” or “includes” means includes, without limitation, and “including” means including, without limitation.

## ARTICLE II

### ORGANIZATION

#### Section 2.1 *Formation.*

The General Partner and the Organizational Limited Partner have previously formed the Partnership as a limited partnership pursuant to the provisions of the Delaware Act and hereby amend and restate in its entirety the original Agreement of Limited Partnership of MarkWest Energy Partners, L.P. as amended by that certain Amended and Restated Agreement of Limited Partnership of MarkWest Energy Partners, L.P., dated as of May 24, 2002 (“First Amended and Restated Agreement”), as amended by that certain Amendment No. 1, dated December 31, 2004, and Amendment No. 2, dated June 10, 2005, to the First Amended and Restated Agreement. The purpose of this amendment and restatement is to incorporate the above referenced Amendment

Nos. 1 and. 2 to the First Amended and Restated Agreement, and to reflect various numerical changes resulting from the two-for-one split in Common Units and Subordinated Units (the "Unit Split") declared by the General Partner on January 25, 2007, having a record date of February 22, 2007 and a payment date of January 28, 2007, as well as update the address of the Partnership's Principal Office. The Unit Split was effected in accordance with Section 5.10, and all such numerical changes are reflected as if the Unit Split had occurred as of May 24, 2002. 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 and a Partner has no interest in specific Partnership property.

Section 2.2 *Name.*

The name of the Partnership shall be "MarkWest Energy Partners, L.P." The Partnership's business may be conducted under any other name or names deemed necessary or appropriate by the General Partner in its sole discretion, 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 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 2.3 *Registered Office; Registered Agent; Principal Office; Other Offices*

Unless and until changed by the General Partner, the registered office of the Partnership in the State of Delaware shall be located at 1209 Orange Street, Wilmington, Delaware 19801, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office shall be The Corporation Trust Company. The principal office of the Partnership shall be located at 1515 Arapahoe Street, Tower 2, Suite 700, Denver, Colorado 80202 or such other place as the General Partner may from time to time designate by notice to the Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner deems necessary or appropriate. The address of the General Partner shall be 1515 Arapahoe Street, Tower 2, Suite 700, Denver, Colorado 80202 or such other place as the General Partner may from time to time designate by notice to the Limited Partners.

Section 2.4 *Purpose and Business.*

The purpose and nature of the business to be conducted by the Partnership shall be to (a) serve as a member of the Operating Company and, in connection therewith, to exercise all the rights and powers conferred upon the Partnership as a member of the Operating Company pursuant to the Operating Company Agreement or otherwise, (b) engage directly in, or enter into or form any corporation, partnership, joint venture, limited liability company or other

arrangement to engage indirectly in, any business activity that the Operating Company is permitted to engage in by the Operating Company Agreement or that its subsidiaries are permitted to engage in by their limited liability company or partnership agreements 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, (c) engage directly in, or 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; provided, however, that the General Partner reasonably determines, as of the date of the acquisition or commencement of such activity, that such activity does not affect the Partnership's treatment as a partnership for Federal income tax purposes, and (d) do anything necessary or appropriate to the foregoing, including the making of capital contributions or loans to a Group Member. The General Partner has no obligation or duty to the Partnership, the Limited Partners or the Assignees to propose or approve, and in its discretion may decline to propose or approve, the conduct by the Partnership of any business.

#### Section 2.5 *Powers.*

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

#### Section 2.6 *Power of Attorney.*

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

(i) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (A) all certificates, documents and other instruments (including this Agreement and the Certificate of Limited Partnership and all amendments or restatements hereof or thereof) that the General Partner or the Liquidator 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 IV, X, XI or XII; (E) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges of any class or series of Partnership Securities issued pursuant to Section 5.6; and (F) all certificates, documents and other instruments (including agreements and a certificate of merger) relating to a merger or consolidation of the Partnership pursuant to Article XIV; and

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

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

(b) The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest, and it shall survive and, to the maximum extent permitted by law, not be affected by the subsequent death, incompetency, disability, incapacity, dissolution, bankruptcy or termination of any Limited Partner 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, to the maximum extent permitted by law, hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the General Partner or the Liquidator taken in good faith under such power of attorney. Each Limited Partner or Assignee shall execute and deliver to the General Partner or the Liquidator, within 15 days after receipt of the request therefor, such further designation, powers of attorney and other instruments as the General Partner or the Liquidator deems necessary to effectuate this Agreement and the purposes of the Partnership.

Section 2.7 *Term.*

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

Section 2.8 *Title to Partnership Assets.*

Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner 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 reasonable efforts to cause record title to such assets (other than those assets in respect of which the General Partner determines that the expense and difficulty of conveyancing makes transfer of record title to the Partnership impracticable) to be vested in the Partnership as soon as reasonably practicable; provided, further, that, prior to the withdrawal or removal of the General Partner or as soon thereafter as practicable, the General Partner shall use reasonable efforts to effect the transfer of record title to the Partnership and, prior to any such transfer, will provide for the use of such assets in a manner satisfactory to the General Partner. All Partnership assets shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which record title to such Partnership assets is held.

**ARTICLE III**

**RIGHTS OF LIMITED PARTNERS**

Section 3.1 *Limitation of Liability.*

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

Section 3.2 *Management of Business.*

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

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

Section 3.3 *Outside Activities of the Limited Partners.*

Subject to the provisions of Section 7.5 and the Omnibus Agreement, which shall continue to be applicable to the Persons referred to therein, regardless of whether such Persons shall also be Limited Partners 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 3.4 *Rights of Limited Partners.*

(a) In addition to other rights provided by this Agreement or by applicable law, and except as limited by Section 3.4(b), each Limited Partner shall have the right, for a purpose reasonably related to such Limited Partner's interest as a limited partner in the Partnership, upon reasonable written demand 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 income tax returns for each year;

(iii) to have furnished to him a current list of the name and last known business, residence or mailing address of each Partner;

(iv) to have furnished to him 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 agreement with any third party to keep confidential (other than agreements with Affiliates of the Partnership the primary purpose of which is to circumvent the obligations set forth in this Section 3.4).

#### ARTICLE IV

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

##### *Section 4.1 Certificates.*

Upon the Partnership's issuance of Common Units or Subordinated 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. In addition, (a) upon the General Partner's request, the Partnership shall issue to it one or more Certificates in the name of the General Partner evidencing its interests in the Partnership and (b) upon the request of any Person owning Incentive Distribution Rights or any other Partnership Securities other than Common Units or Subordinated Units, the Partnership shall issue to such Person one or more certificates evidencing such Incentive Distribution Rights or other Partnership Securities other than Common Units or Subordinated Units. Certificates shall be executed on behalf of the Partnership by the Chairman of the Board, President or any Executive Vice President or Vice President and the Secretary or any Assistant Secretary of the General Partner. No Common Unit Certificate shall be valid for any purpose until it has been countersigned by the Transfer Agent; provided, however, that if the General Partner elects to issue Common Units in global form, the Common Unit Certificates shall be valid upon receipt of a certificate from the Transfer Agent certifying that the Common Units have been duly registered in accordance with the directions of the Partnership and the Underwriters. Subject to the requirements of Section 6.7(b), the Partners holding Certificates evidencing Subordinated Units may exchange such Certificates for Certificates evidencing Common Units on or after the date on which such Subordinated Units are converted into Common Units pursuant to the terms of Section 5.8.

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

(a) If any mutilated Certificate is surrendered to the Transfer Agent, the appropriate officers of the General Partner on behalf of the Partnership shall execute, and the Transfer Agent shall countersign and deliver in exchange therefor, a new Certificate evidencing the same number and type of Partnership Securities as the Certificate so surrendered.



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

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

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

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

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

If a Limited Partner or Assignee fails to notify the General Partner within a reasonable time after he has notice of the loss, destruction or theft of a Certificate, and a transfer of the Limited Partner Interests represented by the Certificate is registered before the Partnership, the General Partner or the Transfer Agent receives such notification, the Limited Partner 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 4.2, the General Partner may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Transfer Agent) reasonably connected therewith.

#### Section 4.3 *Record Holders.*

The Partnership shall be entitled to recognize the Record Holder as the Partner or Assignee with respect to any Partnership Interest and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Partnership Interest on the part of any other Person, regardless of whether the Partnership shall have actual or other notice thereof, except as otherwise provided by law or any applicable rule, regulation, guideline or requirement of any National Securities Exchange on which such Partnership Interests are listed 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 Partnership Interests, as between the Partnership on the one hand, and such other Persons on the other, such

representative Person (a) shall be the 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 Partner or Assignee (as the case may be) hereunder and as, and to the extent, provided for herein.

Section 4.4 *Transfer Generally.*

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

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

(c) Nothing contained in this Agreement shall be construed to prevent a disposition by any member of the General Partner of any or all of the membership interests of the General Partner.

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

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

(b) Except as otherwise provided in Section 4.9, the General Partner shall not recognize any transfer of Limited Partner Interests until the Certificates evidencing such Limited Partner Interests are surrendered for registration of transfer 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 General Partner for such transfer; provided, that as a condition to the issuance of any new Certificate under this Section 4.5, the General Partner may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed with respect thereto.

(c) Limited Partner Interests may be transferred only in the manner described in this Section 4.5. The transfer of any Limited Partner Interests and the admission of any new Limited Partner shall not constitute an amendment to this Agreement.

(d) Until admitted as a Substituted Limited Partner pursuant to Section 10.2, the Record Holder of a Limited Partner Interest shall be an Assignee in respect of such Limited Partner Interest. Limited Partners may include custodians, nominees or any other individual or entity in its own or any representative capacity.

(e) A transferee of a Limited Partner Interest 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.

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

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

(a) Subject to Section 4.6(c) below, prior to June 30, 2012, the General Partner shall not transfer all or any part of its General Partner Interest to a Person unless such transfer (i) has been approved by the prior written consent or vote of the holders of at least a majority of the Outstanding Common Units (excluding Common Units held by the General Partner and its Affiliates) or (ii) is of all, but not less than all, of its General Partner Interest to (A) an Affiliate of the General Partner (other than an individual) or (B) another Person (other than an individual) in connection with the merger or consolidation of the General Partner with or into another Person (other than an individual) or the transfer by the General Partner of all or substantially all of its assets to another Person (other than an individual).

(b) Subject to Section 4.6(c) below, on or after June 30, 2012, the General Partner may transfer all or any of its General Partner Interest without Unitholder approval.

(c) Notwithstanding anything herein to the contrary, no transfer by the General Partner of all or any part of its General Partner Interest to another Person shall be permitted unless (i) the transferee agrees to assume the rights and duties of the General Partner under this Agreement and to be bound by the provisions of this Agreement, (ii) the Partnership receives an

Opinion of Counsel that such transfer would not result in the loss of limited liability of any Limited Partner or of any member of the Operating Company or cause the Partnership or the Operating Company to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed) and (iii) such transferee also agrees to purchase all (or the appropriate portion thereof, if applicable) of the partnership or membership interest of the General Partner as the general partner or managing member, if any, of each other Group Member. In the case of a transfer pursuant to and in compliance with this Section 4.6, the transferee or successor (as the case may be) shall, subject to compliance with the terms of Section 10.3, be admitted to the Partnership as the General Partner immediately prior to the transfer of the Partnership Interest, and the business of the Partnership shall continue without dissolution.

Section 4.7 *Transfer of Incentive Distribution Rights.*

Prior to June 30, 2012, a holder of Incentive Distribution Rights may transfer any or all of the Incentive Distribution Rights held by such holder without any consent of the Unitholders (a) to an Affiliate of such holder (other than an individual) or (b) to another Person (other than an individual) in connection with (i) the merger or consolidation of such holder of Incentive Distribution Rights with or into such other Person, (ii) the transfer by such holder of all or substantially all of its assets to such other Person or (iii) the sale of all or substantially all its equity interests to such other Person. Any other transfer of the Incentive Distribution Rights prior to June 30, 2012, shall require the prior approval of holders of at least a majority of the Outstanding Common Units (excluding Common Units held by the General Partner and its Affiliates). On or after June 30, 2012, the General Partner or any other holder of Incentive Distribution Rights may transfer any or all of its Incentive Distribution Rights without Unitholder approval. Notwithstanding anything herein to the contrary, no transfer of Incentive Distribution Rights to another Person shall be permitted unless the transferee agrees to be bound by the provisions of this Agreement.

Section 4.8 *Restrictions on Transfers.*

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

(b) The General Partner may impose restrictions on the transfer of Partnership Interests if a subsequent Opinion of Counsel determines that such restrictions are necessary to avoid a significant risk of any Group Member becoming taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes. The restrictions may be imposed by

making such amendments to this Agreement as the General Partner 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 Limited Partner Interests on the principal National Securities Exchange on which such class of Limited Partner Interests is then traded must be approved, prior to such amendment being effected, by the holders of at least a majority of the Outstanding Limited Partner Interests of such class.

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

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

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

(a) If any Group Member is or becomes subject to any federal, state or local law or regulation that, 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 Partnership Interests owned by such Limited Partner or Assignee shall be subject to redemption in accordance with the provisions of Section 4.10. In addition, the General Partner may require that the status of any such 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 Limited Partner Interests.

(b) The General Partner shall, in exercising voting rights in respect of Limited Partner Interests held by it on behalf of Non-citizen Assignees, distribute the votes in the same ratios as the votes of Partners (including without limitation the General Partner) in respect of Limited Partner Interests other than those of Non-citizen Assignees are cast, either for, against or abstaining as to the matter.

(c) Upon dissolution of the Partnership, a Non-citizen Assignee shall have no right to receive a distribution in kind pursuant to Section 12.4 but shall be entitled to the cash equivalent

thereof, and the Partnership shall provide cash in exchange for an assignment of the Non-citizen Assignee's share of the distribution in kind. Such payment and assignment shall be treated for Partnership purposes as a purchase by the Partnership from the Non-citizen Assignee of his Limited Partner Interest (representing his right to receive his share of such distribution in kind).

(d) At any time after he can and does certify that he has become an Eligible Citizen, a Non-citizen Assignee may, upon application to the General Partner, request admission as a Substituted Limited Partner with respect to any Limited Partner Interests of such Non-citizen Assignee not redeemed pursuant to Section 4.10, and upon his admission pursuant to Section 10.2, the General Partner shall cease to be deemed to be the Limited Partner in respect of the Non-citizen Assignee's Limited Partner Interests.

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

(a) If at any time a Limited Partner or Assignee fails to furnish a Citizenship Certification or other information requested within the 30-day period specified in Section 4.9(a), or if upon receipt of such Citizenship Certification or other information the General Partner determines, with the advice of counsel, that a Limited Partner 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 Partnership Interests to a Person who is an Eligible Citizen and who furnishes a Citizenship Certification to the General Partner prior to the date fixed for redemption as provided below, redeem the 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 Interests, the date fixed for redemption, the place of payment, that payment of the redemption price will be made upon surrender of the Certificate evidencing the Redeemable Interests and that on and after the date fixed for redemption no further allocations or distributions to which the Limited Partner or Assignee would otherwise be entitled in respect of the Redeemable Interests will accrue or be made.

(ii) The aggregate redemption price for Redeemable Interests shall be an amount equal to the Current Market Price (the date of determination of which shall be the date fixed for redemption) of Limited Partner Interests of the class to be so redeemed multiplied by the number of Limited Partner Interests of each such class included among the Redeemable Interests. The redemption price shall be paid, in the 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 Interests, 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 Interests shall no longer constitute issued and Outstanding Limited Partner Interests.

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

(c) Nothing in this Section 4.10 shall prevent the recipient of a notice of redemption from transferring his Limited Partner Interest before the redemption date if such transfer is otherwise permitted under this Agreement. Upon receipt of notice of such a transfer, the General Partner shall withdraw the notice of redemption, provided the transferee of such Limited Partner Interest certifies to the satisfaction of the General Partner in a Citizenship Certification delivered in connection with 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 V

### CAPITAL CONTRIBUTIONS AND ISSUANCE OF PARTNERSHIP INTERESTS

#### Section 5.1 *Organizational Contributions.*

In connection with the formation of the Partnership under the Delaware Act, the General Partner made an initial Capital Contribution to the Partnership in the amount of \$20.00, for a 2% General Partner interest in the Partnership and has been admitted as the General Partner of the Partnership, and the Organizational Limited Partner made an initial Capital Contribution to the Partnership in the amount of \$980.00 for a 98% Limited Partner interest in the Partnership and has been admitted as a Limited Partner of the Partnership. As of the Closing Date, the interest of the Organizational Limited Partner shall be redeemed as provided in the Contribution Agreement; the initial Capital Contributions of the Organizational Limited Partner shall thereupon be refunded; and the Organizational Limited Partner shall cease to be a Limited Partner of the Partnership. Ninety-eight percent of any interest or other profit that may have resulted from the investment or other use of such initial Capital Contributions shall be allocated and distributed to the Organizational Limited Partner, and the balance thereof shall be allocated and distributed to the General Partner.

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

(a) On the Closing Date and pursuant to the Contribution Agreement, (i) the General Partner shall contribute to the Partnership, as a Capital Contribution, all of its ownership interests in MarkWest Energy Appalachia, L.L.C. in exchange for (A) the continuation of its 2% General Partner Interest, subject to all of the rights, privileges and duties of the General Partner under this Agreement, (B) the Incentive Distribution Rights, (C) 3,554,000 Subordinated Units, (D) the right to receive \$25.8 million from the Partnership on the Closing Date sourced to new debt and (E) the right to be reimbursed for \$16.1 million in capital expenditures and (ii) MarkWest Michigan, Inc. shall contribute to the Partnership, as a Capital Contribution, all of its interest in Basin Pipeline L.L.C. and West Shore Processing Company, L.L.C. in exchange for (A) 2,446,000 Subordinated Units, (B) the assumption by the Partnership of \$15.1 million in debt and (C) the right to be reimbursed for \$0.4 million in capital expenditures.

(b) Upon the issuance of any additional Limited Partner Interests by the Partnership (other than the issuance of the Common Units issued in the Initial Offering and other than the issuance of the Common Units issued pursuant to the Over-Allotment Option), the General Partner shall be required to make additional Capital Contributions equal to 2/98ths of any amount contributed to the Partnership by the Limited Partners in exchange for the additional Limited Partner Interests issued to such Limited Partners. Except as set forth in the immediately preceding sentence and Article XII, the General Partner shall not be obligated to make any additional Capital Contributions to the Partnership.

(c) The General Partners shall contribute \$1,600,000 as required by the Partnership to fund the construction and completion of the New Cobb Plant.

Section 5.3 *Contributions by Initial Limited Partners and Distributions to the General Partner and its Affiliates.*

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

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



quotient obtained by dividing (i) the cash contributions to the Partnership by or on behalf of such Underwriter by (ii) the Issue Price per Initial Common Unit.

(c) No Limited Partner Interests will be issued or issuable as of or at the Closing Date other than (i) the Common Units issuable pursuant to subparagraph (a) hereof in aggregate number equal to 4,200,000, (ii) the "Additional Units" as such term is used in the Underwriting Agreement in an aggregate number up to 630,000 issuable upon exercise of the Over-Allotment Option pursuant to subparagraph (b) hereof, (iii) the 6,000,000 Subordinated Units issuable to MarkWest Michigan, Inc. and the General Partner pursuant to Section 5.2 hereof, and (iv) the Incentive Distribution Rights.

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

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

#### Section 5.5 *Capital Accounts.*

(a) The Partnership shall maintain for each Partner (or a beneficial owner of Partnership Interests held by a nominee in any case in which the nominee has furnished the identity of such owner to the Partnership in accordance with Section 6031(c) of the Code or any other method acceptable to the General Partner 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 5.5(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1, and decreased by (x) the amount of cash or Net Agreed Value of all actual and deemed distributions of cash or property made with respect to such Partnership Interest pursuant to this Agreement and (y) all items of Partnership deduction and loss computed in accordance with Section 5.5(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1.

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

(i) Solely for purposes of this Section 5.5, the Partnership shall be treated as owning directly its proportionate share (as determined by the General Partner based upon the provisions of the Operating Company Agreement) of all property owned by the Operating Company or any other Subsidiary that is classified as a partnership for federal income tax purposes.

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

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

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

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

(vi) If the Partnership's adjusted basis in a depreciable or cost recovery property is reduced for federal income tax purposes pursuant to Section 48(q)(1) or 48(q)(3) of the Code, the amount of such reduction shall, solely for purposes hereof, be deemed to be an additional depreciation or cost recovery deduction in the year such property is placed in service and shall be allocated among the Partners pursuant to Section 6.1. Any restoration of such basis pursuant to Section 48(q)(2) of the Code shall, to the extent possible, be allocated in the same manner to the Partners to whom such deemed deduction was allocated.

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

(ii) Immediately prior to the transfer of a Subordinated Unit or of a Subordinated Unit that has converted into a Common Unit pursuant to Section 5.8 by a holder thereof (other than a transfer to an Affiliate unless the General Partner elects to have this subparagraph 5.5(c)(ii) apply), the Capital Account maintained for such Person with respect to its Subordinated Units or converted Subordinated Units will (A) first, be allocated to the Subordinated Units or converted Subordinated Units to be transferred in an amount equal to the product of (x) the number of such Subordinated Units or converted Subordinated Units to be transferred and (y) the Per Unit Capital Amount for a Common Unit, and (B) second, any remaining balance in such Capital Account will be retained by the transferor, regardless of whether it has retained any Subordinated Units or converted Subordinated Units. Following any such allocation, the transferor's Capital Account, if any, maintained with respect to the retained Subordinated Units or converted Subordinated Units, if any, will have a balance equal to the amount allocated under clause (B) hereinabove, and the transferee's Capital Account established with respect to the transferred Subordinated Units or converted Subordinated Units will have a balance equal to the amount allocated under clause (A) hereinabove.

(d) (i) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), on an issuance of additional Partnership Interests for cash or Contributed Property or the conversion of the General Partner's Combined Interest to Common Units pursuant to Section 11.3(b), the Capital Account of all Partners and the Carrying Value of each Partnership property immediately prior to such issuance shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property, as if such Unrealized Gain or Unrealized Loss had been recognized on an actual sale of each such property immediately prior to such issuance and had been allocated to the Partners at such time pursuant to Section 6.1 in the same manner as any item of gain or loss actually recognized during such period would have been allocated. In determining such Unrealized Gain or Unrealized Loss, the aggregate cash amount and fair market value of all Partnership assets (including, without limitation, cash or cash equivalents) immediately prior to the issuance of additional Partnership Interests shall be determined by the General Partner using such reasonable method of valuation as it may adopt; provided, however, that the General Partner, in arriving at such valuation, must take fully into account the fair market value of the Partnership Interests of all Partners at such time. The

General Partner shall allocate such aggregate value among the assets of the Partnership (in such manner as it determines in its 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 6.1 in the same manner as any item of gain or loss actually recognized during such period would have been allocated. In determining such Unrealized Gain or Unrealized Loss the aggregate cash amount and fair market value of all Partnership assets (including, 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 12.4 or in the case of a deemed distribution, be determined and allocated in the same manner as that provided in Section 5.5(d)(i) or (B) in the case of a liquidating distribution pursuant to Section 12.4, be determined and allocated by the Liquidator using such reasonable method of valuation as it may adopt.

Section 5.6 *Issuances of Additional Partnership Securities.*

(a) Subject to Section 5.7, the Partnership may issue additional Partnership Securities and options, rights, warrants and appreciation rights relating to the Partnership Securities for any Partnership purpose at any time and from time to time to such Persons for such consideration and on such terms and conditions as shall be established by the General Partner in its sole discretion, all without the approval of any Limited Partners.

(b) Each additional Partnership Security authorized to be issued by the Partnership pursuant to Section 5.6(a) may be issued in one or more classes, or one or more series of any such classes, with such designations, preferences, rights, powers and duties (which may be senior to existing classes and series of Partnership Securities), as shall be fixed by the General Partner 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 or exchange and, if so, the terms and conditions of such conversion or exchange; (vi) the terms and conditions upon which each Partnership Security will be issued, evidenced by certificates and assigned or transferred; 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 (i) each issuance of Partnership Securities and options, rights, warrants and appreciation rights relating to Partnership Securities pursuant to this Section 5.6, (ii) the conversion of the General Partner Interest or any Incentive Distribution Rights into Units pursuant to the terms of this Agreement, (iii) the admission of Additional Limited Partners and (iv) all additional issuances of Partnership Securities. The General Partner is further authorized and directed 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 or in connection with the conversion of the General Partner Interest or any Incentive Distribution Rights into Units pursuant to the terms of this Agreement, including compliance with any statute, rule, regulation or guideline of any federal, state or other governmental agency or any National Securities Exchange on which the Units or other Partnership Securities are listed for trading.

Section 5.7 *Limitations on Issuance of Additional Partnership Securities.*

The issuance of Partnership Securities pursuant to Section 5.6 shall be subject to the following restrictions and limitations:

(a) During the Subordination Period, the Partnership shall not issue (and shall not issue any options, rights, warrants or appreciation rights relating to) an aggregate of more than 1,050,000 (plus an amount, if any, equal to one half of the number of Units issued pursuant to the Over-Allotment Option, if and to the extent exercised) additional Parity Units without the prior approval of the holders of a Unit Majority. In applying this limitation, there shall be excluded Common Units and other Parity Units issued (A) in connection with the exercise of the Over-Allotment Option, (B) in accordance with Sections 5.7(b), 5.7(c) and 5.7(d), (C) upon conversion of Subordinated Units pursuant to Section 5.8, (D) upon conversion of the General Partner Interest or any Incentive Distribution Rights pursuant to Section 11.3(b), (D) pursuant to the employee benefit plans of the General Partner, the Partnership or any other Group Member, (E) upon a conversion or exchange of Parity Units issued after the date hereof into Common Units or other Parity Units; provided that the total amount of Available Cash required to pay the aggregate Minimum Quarterly Distribution on all Common Units and all Parity Units does not increase as a result of this conversion or exchange and (F) in the event of a combination or subdivision of Common Units.

(b) The Partnership may also issue an unlimited number of Parity Units, prior to the end of the Subordination Period and without the prior approval of the Unitholders, if such issuance occurs (i) in connection with an Acquisition or a Capital Improvement or (ii) within 365 days of, and the net proceeds from such issuance are used to repay debt incurred in connection with, an Acquisition or a Capital Improvement, in each case where such Acquisition or Capital Improvement involves assets that, if acquired by the Partnership as of the date that is one year prior to the first day of the Quarter in which such Acquisition is to be consummated or such

Capital Improvement is to be completed, would have resulted, on a pro forma basis, in an increase in:

(A) the amount of Adjusted Operating Surplus generated by the Partnership on a per-Unit basis (for all Outstanding Units) with respect to each of the four most recently completed Quarters (on a pro forma basis as described below) as compared to

(B) the actual amount of Adjusted Operating Surplus generated by the Partnership on a per-Unit basis (for all Outstanding Units) (excluding Adjusted Operating Surplus attributable to the Acquisition or Capital Improvement) with respect to each of such four most recently completed Quarters.

The General Partner's good faith determination that such an increase would have resulted shall be conclusive. If the issuance of Parity Units with respect to an Acquisition or Capital Improvement occurs within the first four full Quarters after the Closing Date, then Adjusted Operating Surplus as used in clauses (A) (subject to the succeeding sentence) and (B) above shall be calculated (i) for each Quarter, if any, that commenced after the Closing Date for which actual results of operations are available, based on the actual Adjusted Operating Surplus of the Partnership generated with respect to such Quarter, and (ii) for each other Quarter, on a pro forma basis consistent with the procedures, as applicable, set forth in Appendix D to the Registration Statement. Furthermore, the amount in clause (A) shall be determined on a pro forma basis assuming that (1) all of the Parity Units to be issued in connection with or within 365 days of such Acquisition or Capital Improvement had been issued and outstanding, (2) all indebtedness for borrowed money to be incurred or assumed in connection with such Acquisition or Capital Improvement (other than any such indebtedness that is to be repaid with the proceeds of such issuance of Parity Units) had been incurred or assumed, in each case as of the commencement of such four-Quarter period, (3) the personnel expenses that would have been incurred by the Partnership in the operation of the acquired assets are the personnel expenses for employees to be retained by the Partnership in the operation of the acquired assets, and (4) the non-personnel costs and expenses are computed on the same basis as those incurred by the Partnership in the operation of the Partnership's business at similarly situated Partnership facilities. For the purposes of this Section 5.7(b), the term "debt" shall be deemed to include indebtedness used to extend, refinance, renew, replace or defease debt originally incurred in connection with an Acquisition or Capital Improvement; provided, that, the amount of such extended, refinanced, renewed, replaced or defeased indebtedness does not exceed the principal sum of, plus accrued interest on, the indebtedness so extended, replaced renewed, replaced or defeased.

(c) The Partnership may also issue an unlimited number of Parity Units, prior to the end of the Subordination Period and without the approval of the Unitholders, if the proceeds from such issuance are used exclusively to repay indebtedness of a Group Member where the aggregate amount of distributions that would have been paid with respect to such newly issued Units, plus the related distributions on the General Partner Interest in the Partnership in respect of the four-Quarter period ending prior to the first day of the Quarter in which the issuance is to

be consummated (assuming such additional Units had been Outstanding throughout such period and that distributions equal to the distributions that were actually paid on the Outstanding Units during the period were paid on such additional Units) would not have exceeded the interest costs actually incurred during such period on the indebtedness that is to be repaid (or, if such indebtedness was not outstanding throughout the entire period, would have been incurred had such indebtedness been outstanding for the entire period). In the event that the Partnership is required to pay a prepayment penalty in connection with the repayment of such indebtedness, for purposes of the foregoing test the number of Parity Units issued to repay such indebtedness shall be deemed increased by the number of Parity Units that would need to be issued to pay such penalty.

(d) During the Subordination Period, without the prior approval of the holders of a Unit Majority, the Partnership shall not issue any additional Partnership Securities (or options, rights, warrants or appreciation rights related thereto) (i) that are entitled in any Quarter to receive in respect of the Subordination Period any distribution of Available Cash from Operating Surplus before the Common Units and any Parity Units have received (or amounts have been set aside for payment of) the Minimum Quarterly Distribution and any Cumulative Common Unit Arrearage for such Quarter or (ii) that are entitled to allocations in respect of the Subordination Period of Net Termination Gain before the Common Units and any Parity Units have been allocated Net Termination Gain pursuant to Section 6.1(c)(i)(B).

(e) During the Subordination Period, without the prior approval of the holders of a Unit Majority, the Partnership may issue additional Partnership Securities (or options, rights, warrants or appreciation rights related thereto) (i) that are not entitled in any Quarter during the Subordination Period to receive any distributions of Available Cash from Operating Surplus until after the Common Units and any Parity Units have received (or amounts have been set aside for payment of) the Minimum Quarterly Distribution and any Cumulative Common Unit Arrearage for such Quarter and (ii) that are not entitled to allocations in respect of the Subordination Period of Net Termination Gain before the Common Units and Parity Units have been allocated Net Termination Gain pursuant to Section 6.1(c)(i)(B), even if (A) the amount of Available Cash from Operating Surplus to which each such Partnership Security is entitled to receive after the Minimum Quarterly Distribution and any Cumulative Common Unit Arrearage have been paid or set aside for payment on the Common Units exceeds the Minimum Quarterly Distribution, (B) the amount of Net Termination Gain to be allocated to such Partnership Security after Net Termination Gain has been allocated to any Common Units and Parity Units pursuant to Section 6.1(c)(i)(B) exceeds the amount of such Net Termination Gain to be allocated to each Common Unit or Parity Unit or (C) the holders of such additional Partnership Securities have the right to require the Partnership or its Affiliates to repurchase such Partnership Securities at a discount, par or a premium.

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

Section 5.8 *Conversion of Subordinated Units.*

(a) A total of 1,200,000 of the Outstanding Subordinated Units will convert into Common Units on a one-for-one basis immediately after the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of any Quarter ending on or after June 30, 2005, in respect of which:

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

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

(iii) the Cumulative Common Unit Arrearage on all of the Common Units is zero.

(b) An additional 1,200,000 of the Outstanding Subordinated Units will convert into Common Units on a one-for-one basis immediately after the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of any Quarter ending on or after June 30, 2006, in respect of which:

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

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



Fully Diluted Basis, plus the related distribution on the General Partner Interest during such periods; and

(iii) the Cumulative Common Unit Arrearage on all of the Common Units is zero;

provided, however, that the conversion of Subordinated Units pursuant to this Section 5.8(b) may not occur until at least one year following the conversion of Subordinated Units pursuant to Section 5.8(a).

(c) An additional 1,200,000 of the Outstanding Subordinated Units will convert into Common Units on a one-for-one basis immediately after the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of any Quarter ending on or after June 30, 2007, in respect of which:

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

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

(iii) the Cumulative Common Unit Arrearage on all of the Common Units is zero;

provided, however, that the conversion of Subordinated Units pursuant to this Section 5.8(c) may not occur until at least one year following the conversion of Subordinated Units pursuant to Section 5.8(b).

(d) An additional 1,200,000 of the Outstanding Subordinated Units will convert into Common Units on a one-for-one basis immediately after the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of any Quarter ending on or after June 30, 2008, in respect of which:

(i) distributions under Section 6.4 in respect of all Outstanding Common Units and Subordinated Units and any other Outstanding Units that are senior or equal in

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

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

(iii) the Cumulative Common Unit Arrearage on all of the Common Units is zero;

provided, however, that the conversion of Subordinated Units pursuant to this Section 5.8(d) may not occur until at least one year following the conversion of Subordinated Units pursuant to Section 5.8(c).

(e) An additional 1,200,000 of the Outstanding Subordinated Units will convert into Common Units on a one-for-one basis immediately after the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of any Quarter ending on or after June 30, 2005, in respect of which:

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

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

(iii) the Cumulative Common Unit Arrearage on all of the Common Units is zero;

(f) An additional 1,200,000 of the Outstanding Subordinated Units will convert into Common Units on a one-for-one basis immediately after the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of any Quarter ending on or after June 30, 2005 in respect of which:

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

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

(iii) the Cumulative Common Unit Arrearage on all of the Common Units is zero;

(g) In the event that less than all of the Outstanding Subordinated Units shall convert into Common Units pursuant to Sections 5.8(a)-(f) at a time when there shall be more than one holder of Subordinated Units, then, unless all of the holders of Subordinated Units shall agree to a different allocation, the Subordinated Units that are to be converted into Common Units shall be allocated among the holders of Subordinated Units pro rata based on the number of Subordinated Units held by each such holder.

(h) Any Subordinated Units that are not converted into Common Units pursuant to Section 5.8(a)-(f) shall convert into Common Units on a one-for-one basis immediately after the distribution of Available Cash to Partners pursuant to Section 6.3(a) in respect of the final Quarter of the Subordination Period.

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

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

Section 5.9 *Limited Preemptive Right.*

Except as provided in this Section 5.9 and in Section 5.2, no Person shall have any preemptive, preferential or other similar right with respect to the issuance of any Partnership Security, whether unissued, held in the treasury or hereafter created. The General Partner shall have the right, which it may from time to time assign in whole or in part to any of its Affiliates, to purchase Partnership Securities from the Partnership whenever, and on the same terms that, the Partnership issues Partnership Securities to Persons other than the General Partner and its Affiliates, to the extent necessary to maintain the Percentage Interests of the General Partner and its Affiliates equal to that which existed immediately prior to the issuance of such Partnership Securities.

Section 5.10 *Splits and Combinations.*

(a) Subject to Sections 5.10(d), 6.6 and 6.9 (dealing with adjustments of distribution levels), the Partnership may make a Pro Rata distribution of Partnership Securities to all Record Holders or may effect a subdivision or combination of Partnership Securities so long as, after any such event, each Partner shall have the same Percentage Interest in the Partnership as before such event, and any amounts calculated on a per Unit basis (including any Common Unit Arrearage or Cumulative Common Unit Arrearage) or stated as a number of Units (including the number of Subordinated Units that may convert prior to the end of the Subordination Period and the number of additional Parity Units that may be issued pursuant to Section 5.7 without a Unitholder vote) 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 a date not less than 10 days prior to the date of such notice. The General Partner also may cause a firm of independent public accountants selected by it to calculate the number of Partnership Securities to be held by each Record Holder after giving effect to such distribution, subdivision or combination. The General Partner shall be entitled to rely on any certificate provided by such firm as conclusive evidence of the accuracy of such calculation.

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

(d) The Partnership shall not issue fractional Units upon any distribution, subdivision or combination of Units. If a distribution, subdivision or combination of Units would result in the

issuance of fractional Units but for the provisions of Section 5.7(f) and this Section 5.10(d), each fractional Unit shall be rounded to the nearest whole Unit (and a 0.5 Unit shall be rounded to the next higher Unit).

*Section 5.11 Fully Paid and Non-Assessable Nature of Limited Partner Interests.*

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

**ARTICLE VI**

**ALLOCATIONS AND DISTRIBUTIONS**

*Section 6.1 Allocations for Capital Account Purposes.*

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

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

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

(ii) Second, 2% to the General Partner, in an amount equal to the aggregate Net Losses allocated to the General Partner pursuant to Section 6.1(b)(ii) for all previous taxable years and 98% to the Unitholders, in accordance with their respective Percentage Interests, until the aggregate Net Income allocated to such Partners pursuant to this Section 6.1(a)(ii) for the current taxable year and all previous taxable years is equal to the aggregate Net Losses allocated to such Partners pursuant to Section 6.1(b)(ii) for all previous taxable years; and

(iii) Third, 2% to the General Partner, and 98% to the Unitholders, Pro Rata.

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

(i) First, 2% to the General Partner, and 98% to the Unitholders, Pro Rata, until the aggregate Net Losses allocated pursuant to this Section 6.1(b)(i) for the current taxable year and all previous taxable years is equal to the aggregate Net Income allocated to such Partners pursuant to Section 6.1(a)(iii) for all previous taxable years, provided that the Net Losses shall not be allocated pursuant to this Section 6.1(b)(i) to the extent that such allocation would cause any Unitholder to have a deficit balance in its Adjusted Capital Account at the end of such taxable year (or increase any existing deficit balance in its Adjusted Capital Account);

(ii) Second, 2% to the General Partner, and 98% to the Unitholders, Pro Rata; provided, that Net Losses shall not be allocated pursuant to this Section 6.1(b)(ii) to the extent that such allocation would cause any Unitholder to have a deficit balance in its Adjusted Capital Account at the end of such taxable year (or increase any existing deficit balance in its Adjusted Capital Account);

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

(c) Net Termination Gains and Losses. After giving effect to the special allocations set forth in Section 6.1(d), all items of income, gain, loss and deduction taken into account in computing Net Termination Gain or Net Termination Loss for such taxable period shall be allocated in the same manner as such Net Termination Gain or Net Termination Loss is allocated hereunder. All allocations under this Section 6.1(c) shall be made after Capital Account balances have been adjusted by all other allocations provided under this Section 6.1 and after all distributions of Available Cash provided under Sections 6.4 and 6.5 have been made; provided, however, that solely for purposes of this Section 6.1(c), Capital Accounts shall not be adjusted for distributions made pursuant to Section 12.4.

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

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

(B) Second, 98% to all Unitholders holding Common Units, Pro Rata, and 2% to the General Partner, until the Capital Account in respect of each

Common Unit then Outstanding is equal to the sum of (1) its Unrecovered Capital plus (2) the Minimum Quarterly Distribution for the Quarter during which the Liquidation Date occurs, reduced by any distribution pursuant to Section 6.4(a)(i) or (b)(i) with respect to such Common Unit for such Quarter (the amount determined pursuant to this clause (2) is hereinafter defined as the "Unpaid MQD") plus (3) any then existing Cumulative Common Unit Arrearage;

(C) Third, if such Net Termination Gain is recognized (or is deemed to be recognized) prior to the expiration of the Subordination Period, 98% to all Unitholders holding Subordinated Units, Pro Rata, and 2% to the General Partner, until the Capital Account in respect of each Subordinated Unit then Outstanding equals the sum of (1) its Unrecovered Capital, determined for the taxable year (or portion thereof) to which this allocation of gain relates, plus (2) the Minimum Quarterly Distribution for the Quarter during which the Liquidation Date occurs, reduced by any distribution pursuant to Section 6.4(a)(iii) with respect to such Subordinated Unit for such Quarter;

(D) Fourth, 98% to all Unitholders, Pro Rata, and 2% to the General Partner, until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) its Unrecovered Capital, plus (2) the Unpaid MQD, 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 cumulative per Unit amount of any distributions of Available Cash that is deemed to be Operating Surplus made pursuant to Sections 6.4(a)(iv) and 6.4(b)(ii) (the sum of (1) plus (2) plus (3) plus (4) is hereinafter defined as the "First Liquidation Target Amount");

(E) Fifth, 85% to all Unitholders, Pro Rata, 13% to the holders of the Incentive Distribution Rights, Pro Rata, and 2% to the General Partner, until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) the First Liquidation Target Amount, plus (2) the excess of (aa) the Second Target Distribution less the First Target Distribution for each Quarter of the Partnership's existence over (bb) the cumulative per Unit amount of any distributions of Available Cash that is deemed to be Operating Surplus made pursuant to Sections 6.4(a)(v) and 6.4(b)(iii) (the sum of (1) plus (2) is hereinafter defined as the "Second Liquidation Target Amount");

(F) Sixth, 75% to all Unitholders, Pro Rata, 23% to the holders of the Incentive Distribution Rights, Pro Rata, and 2% to the General Partner, until the Capital Account in respect of each Common Unit then Outstanding is equal to the sum of (1) the Second Liquidation Target Amount, plus (2) the excess of (aa) the Third Target Distribution less the Second Target Distribution for each Quarter of the Partnership's existence over (bb) the cumulative per Unit amount of any distributions of Available Cash that is deemed to be Operating Surplus made

pursuant to Sections 6.4(a)(vi) and 6.4(b)(iv) (the sum of (1) plus (2) is hereinafter defined as the "Third Liquidation Target Amount"); and

(G) Finally, any remaining amount 50% to all Unitholders, Pro Rata, 48% to the holders of the Incentive Distribution Rights, Pro Rata, and 2% to the General Partner.

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

(A) First, if such Net Termination Loss is recognized (or is deemed to be recognized) prior to the conversion of the last Outstanding Subordinated Unit, 98% to the Unitholders holding Subordinated Units, Pro Rata, and 2% to the General Partner, until the Capital Account in respect of each Subordinated Unit then Outstanding has been reduced to zero;

(B) Second, 98% to all Unitholders holding Common Units, Pro Rata, and 2% to the General Partner, until the Capital Account in respect of each Common Unit then Outstanding has been reduced to zero; and

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

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

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

(ii) *Chargeback of Partner Nonrecourse Debt Minimum Gain.* Notwithstanding the other provisions of this Section 6.1 (other than Section 6.1(d)(i)), except as provided in Treasury Regulation Section 1.704-2(i)(4), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain during any Partnership taxable period, any Partner with a share of Partner Nonrecourse Debt Minimum Gain at the beginning of



such taxable period shall be allocated items of Partnership income and gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii), or any successor provisions. For purposes of this Section 6.1(d), each Partner's Adjusted Capital Account balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 6.1(d), other than Section 6.1(d)(i) and other than an allocation pursuant to Sections 6.1(d)(vi) and 6.1(d)(vii), with respect to such taxable period. This Section 6.1(d)(ii) is intended to comply with the chargeback of items of income and gain requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) *Priority Allocations.*

(A) If the amount of cash or the Net Agreed Value of any property distributed (except cash or property distributed pursuant to Section 12.4) to any Unitholder with respect to its Units for a taxable year is greater (on a per Unit basis) than the amount of cash or the Net Agreed Value of property distributed to the other Unitholders with respect to their Units (on a per Unit basis), then (1) each Unitholder 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 Unitholder exceeds the distribution (on a per Unit basis) to the Unitholders receiving the smallest distribution and (bb) the number of Units owned by the Unitholder receiving the greater distribution; and (2) the General Partner shall be allocated gross income in an aggregate amount equal to 1/98th of the sum of the amounts allocated in clause (1) above.

(B) After the application of Section 6.1(d)(iii)(A), all or any portion of the remaining items of Partnership gross income or gain for the taxable period, if any, shall be allocated 100% to the holders of Incentive Distribution Rights, Pro Rata, until the aggregate amount of such items allocated to the holders of Incentive Distribution Rights pursuant to this paragraph 6.1(d)(iii)(B) for the current taxable year and all previous taxable years is equal to the cumulative amount of all Incentive Distributions made to the holders of Incentive Distribution Rights from the Closing Date to a date 45 days after the end of the current taxable year.

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

possible unless such deficit balance is otherwise eliminated pursuant to Section 6.1(d)(i) or (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 6.1(d)(v) shall be made only if and to the extent that such Partner would have a deficit balance in its Capital Account as adjusted after all other allocations provided for in this Section 6.1 have been tentatively made as if this Section 6.1(d)(v) were not in this Agreement.

(vi) *Nonrecourse Deductions.* Nonrecourse Deductions for any taxable period shall be allocated to the Partners in accordance with their respective Percentage Interests. If the General Partner determines 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 other Partners, to revise the prescribed ratio to the numerically closest ratio that does satisfy such requirements.

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

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

(ix) *Code Section 754 Adjustments.* To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) or 743(c) 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.* At the election of the General Partner with respect to any taxable period ending upon, or after, the termination of the Subordination Period, all or a portion of the remaining items of Partnership gross income or gain for such taxable period, after taking into account allocations pursuant to Section 6.1(d)(iii), shall be allocated 100% to each Partner holding Subordinated Units that are Outstanding as of the termination of the Subordination Period ("Final Subordinated Units") in the proportion of the number of Final Subordinated Units held by such Partner to the total number of Final Subordinated Units then Outstanding, until each such Partner has been allocated an amount of gross income or gain which increases the Capital Account maintained with respect to such Final Subordinated Units to an amount equal to the product of (A) the number of Final Subordinated Units held by such Partner and (B) the Per Unit Capital Amount for a Common Unit. The purpose of this allocation is to establish uniformity between the Capital Accounts underlying Final Subordinated Units and the Capital Accounts underlying Common Units held by Persons other than the General Partner and its Affiliates immediately prior to the conversion of such Final Subordinated Units into Common Units. This allocation method for establishing such economic uniformity will only be available to the General Partner if the method for allocating the Capital Account maintained with respect to the Subordinated Units between the transferred and retained Subordinated Units pursuant to Section 5.5(c)(ii) does not otherwise provide such economic uniformity to the Final Subordinated Units.

(xi) *Curative Allocation.*

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

to the extent the General Partner 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 6.1(d)(xi)(A) in whatever order is most likely to minimize the economic distortions that might otherwise result from the Required Allocations, and (2) divide all allocations pursuant to Section 6.1(d)(xi)(A) among the Partners in a manner that is likely to minimize such economic distortions.

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

(A) In the case of any allocation of Additional Book Basis Derivative Items (other than an allocation of Unrealized Gain or Unrealized Loss under Section 5.5(d) hereof), the General Partner shall allocate additional items of gross income and gain away from the holders of Incentive Distribution Rights to the Unitholders and the General Partner, or additional items of deduction and loss away from the Unitholders and the General Partner to the holders of Incentive Distribution Rights, to the extent that the Additional Book Basis Derivative Items allocated to the Unitholders or the General Partner exceed their Share of Additional Book Basis Derivative Items. For this purpose, the Unitholders and the General Partner shall be treated as being allocated Additional Book Basis Derivative Items to the extent that such Additional Book Basis Derivative Items have reduced the amount of income that would otherwise have been allocated to the Unitholders or the General Partner under the Partnership Agreement (e.g., Additional Book Basis Derivative Items taken into account in computing cost of goods sold would reduce the amount of book income otherwise available for allocation among the Partners). Any allocation made pursuant to this Section 6.1(d)(xii)(A) shall be made after all of the other Agreed Allocations have been made as if this Section 6.1(d)(xii) were not in this Agreement and, to the extent necessary, shall require the reallocation of items that have been allocated pursuant to such other Agreed Allocations.

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

(C) In making the allocations required under this Section 6.1(d)(xii), the General Partner, in its sole discretion, may apply whatever conventions or other methodology it deems reasonable to satisfy the purpose of this Section 6.1(d)(xii).

(xiii) The first \$1,660,000 of depreciation or other amortization deductions attributable to the New Cobb Plant and any other deductions funded by the General Partner's Cobb Contribution shall be allocated 100% to the General Partner.

(xiv) Any compensation expense attributable to deemed contributions by the General Partner resulting from the application of APB 25 and/or FAS 123R to the transfer of ownership interests in the General Partner and subordinated units of the Partnership to certain directors and officers of the General Partner and of the Company, shall be allocated 100% to the General Partner.

**Section 6.2** *Allocations for Tax Purposes.*

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

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

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

(ii) (A) In the case of an Adjusted Property, such items shall (1) first, be allocated among the Partners in a manner consistent with the principles of Section 704(c) of the Code to take into account the Unrealized Gain or Unrealized Loss attributable to such property and the allocations thereof pursuant to Section 5.5(d)(i) or 5.5(d)(ii), and (2) second, in the event such property was originally a Contributed Property, be allocated among the Partners in a manner consistent with Section 6.2(b)(i)(A); and (B) any item of Residual Gain or Residual Loss attributable to an Adjusted Property shall be allocated among the Partners in the same manner as its correlative item of "book" gain or loss is allocated pursuant to Section 6.1.

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

(c) For the proper administration of the Partnership and for the preservation of uniformity of the Limited Partner Interests (or any class or classes thereof), the General Partner shall 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 Limited Partner Interests (or any class or classes thereof). The General Partner may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 6.2(c) only if such conventions, allocations or amendments would not have a material adverse effect on the Partners, the holders of any class or classes of Limited Partner Interests issued and Outstanding or the Partnership, and if such allocations are consistent with the principles of Section 704 of the Code.

(d) The General Partner in its 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 any inconsistency of such approach with Treasury Regulation Section 1.167(c)-1(a)(6) or any successor regulations thereto. If the General Partner determines that such reporting position cannot reasonably be taken, the General Partner may adopt depreciation and amortization conventions under which all purchasers acquiring Limited Partner Interests in the same month would receive depreciation and amortization deductions, based upon the same applicable rate as if they had purchased a direct interest in the Partnership's property. If the General Partner chooses not to utilize such aggregate method, the General Partner may use any other reasonable depreciation and amortization conventions to preserve the uniformity of the intrinsic tax characteristics of any Limited Partner Interests that would not have a material adverse effect on the Limited Partners or the Record Holders of any class or classes of Limited Partner Interests.

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

(f) All items of income, gain, loss, deduction and credit recognized by the Partnership for federal income tax purposes and allocated to the Partners in accordance with the provisions hereof shall be determined without regard to any election under Section 754 of the Code 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 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 (i) such items for the period beginning on the Closing Date and ending on the last day of the month in which the Option Closing Date or the expiration of the Over-allotment Option occurs shall be allocated to the Partners as of the opening of the New York Stock Exchange on the first Business Day of the next succeeding month; and provided, further, that gain or loss on a sale or other disposition of any assets of the Partnership or any other extraordinary item of income or loss realized and recognized other than in the ordinary course of business, as determined by the General Partner in its sole discretion, 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 or appropriate in its sole discretion, to the extent permitted or required by Section 706 of the Code and the regulations or rulings promulgated thereunder.

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

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

(a) Within 45 days following the end of each Quarter commencing with the Quarter ending on June 30, 2002, an amount equal to 100% of Available Cash with respect to such Quarter shall, subject to Section 17-607 of the Delaware Act, be distributed in accordance with this Article VI by the Partnership to the Partners as of the Record Date selected by the General Partner in its reasonable discretion. All amounts of Available Cash distributed by the Partnership on any date from any source shall be deemed to be Operating Surplus until the sum of all amounts of Available Cash theretofore distributed by the Partnership to the Partners pursuant to Section 6.4 equals the Operating Surplus from the Closing Date through the close of the immediately preceding Quarter. Any remaining amounts of Available Cash distributed by the Partnership on such date shall, except as otherwise provided in Section 6.5, be deemed to be "Capital Surplus." All distributions required to be made under this Agreement shall be made subject to Section 17-607 of the Delaware Act.

(b) Notwithstanding Section 6.3(a), in the event of the dissolution and liquidation of the Partnership, all receipts received during or after the Quarter in which the Liquidation Date occurs, other than from borrowings described in (a)(ii) of the definition of Available Cash, shall

be applied and distributed solely in accordance with, and subject to the terms and conditions of, Section 12.4.

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

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

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

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

(i) First, 98% to the Unitholders holding Common Units, Pro Rata, and 2% to the General Partner, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Minimum Quarterly Distribution for such Quarter;

(ii) Second, 98% to the Unitholders holding Common Units, Pro Rata, and 2% to the General Partner, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Cumulative Common Unit Arrearage existing with respect to such Quarter;

(iii) Third, 98% to the Unitholders holding Subordinated Units, Pro Rata, and 2% to the General Partner, until there has been distributed in respect of each Subordinated Unit then Outstanding an amount equal to the Minimum Quarterly Distribution for such Quarter;

(iv) Fourth, 98% to all Unitholders, Pro Rata, and 2% to the General Partner, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the First Target Distribution over the Minimum Quarterly Distribution for such Quarter;

(v) Fifth, 85% to all Unitholders, Pro Rata, 13% to the holders of the Incentive Distribution Rights, Pro Rata, and 2% to the General Partner, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the Second Target Distribution over the First Target Distribution for such Quarter;



(vi) Sixth, 75% to all Unitholders, Pro Rata, 23% to the holders of the Incentive Distribution Rights, Pro Rata, and 2% to the General Partner, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the Third Target Distribution over the Second Target Distribution for such Quarter; and

(vii) Thereafter, 50% to all Unitholders, Pro Rata, 48% to the holders of the Incentive Distribution Rights, Pro Rata, and 2% to the General Partner;

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

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

(i) First, 98% to all Unitholders, Pro Rata, and 2% to the General Partner, until there has been distributed in respect of each Unit then Outstanding an amount equal to the Minimum Quarterly Distribution for such Quarter;

(ii) Second, 98% to all Unitholders, Pro Rata, and 2% to the General Partner, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the First Target Distribution over the Minimum Quarterly Distribution for such Quarter;

(iii) Third, 85% to all Unitholders, Pro Rata, 13% to the holders of the Incentive Distribution Rights, Pro Rata, and 2% to the General Partner, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the Second Target Distribution over the First Target Distribution for such Quarter;

(iv) Fourth, 75% to all Unitholders, Pro Rata, 23% to the holders of the Incentive Distribution Rights, Pro Rata, and 2% to the General Partner, until there has been distributed in respect of each Unit then Outstanding an amount equal to the excess of the Third Target Distribution over the Second Target Distribution for such Quarter; and

(v) Thereafter, 50% to all Unitholders, Pro Rata, 48% to the holders of the Incentive Distribution Rights, Pro Rata, and 2% to the General Partner;

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

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

Available Cash that is deemed to be Capital Surplus pursuant to the provisions of Section 6.3(a) shall, subject to Section 17-607 of the Delaware Act, be distributed, unless the provisions of Section 6.3 require otherwise, 98% to all Unitholders, Pro Rata, and 2% to the General Partner, until a hypothetical holder of a Common Unit acquired on the Closing Date has received with respect to such Common Unit, during the period since the Closing Date through such date, distributions of Available Cash that are deemed to be Capital Surplus in an aggregate amount equal to the Initial Unit Price. Available Cash that is deemed to be Capital Surplus shall then be distributed 98% to all Unitholders holding Common Units, Pro Rata, and 2% to the General Partner, until there has been distributed in respect of each Common Unit then Outstanding an amount equal to the Cumulative Common Unit Arrearage. Thereafter, all Available Cash shall be distributed as if it were Operating Surplus and shall be distributed in accordance with Section 6.4.

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

(a) The Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution, Third Target Distribution, Common Unit Arrearages and Cumulative Common Unit Arrearages shall be proportionately adjusted in the event of any distribution, combination or subdivision (whether effected by a distribution payable in Units or otherwise) of Units or other Partnership Securities in accordance with Section 5.10. In the event of a distribution of Available Cash that is deemed to be from Capital Surplus, the then applicable Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution and Third Target Distribution, shall be adjusted proportionately downward to equal the product obtained by multiplying the otherwise applicable Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution and Third Target Distribution, as the case may be, by a fraction of which the numerator is the Unrecovered Capital of the Common Units immediately after giving effect to such distribution and of which the denominator is the Unrecovered Capital of the Common Units immediately prior to giving effect to such distribution.

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

Section 6.7 *Special Provisions Relating to the Holders of Subordinated Units.*

(a) Except with respect to the right to vote on or approve matters requiring the vote or approval of a percentage of the holders of Outstanding Common Units and the right to participate in allocations of income, gain, loss and deduction and distributions made with respect to Common Units, the holder of a Subordinated Unit shall have all of the rights and obligations of a Unitholder holding Common Units hereunder; provided, however, that immediately upon the conversion of Subordinated Units into Common Units pursuant to Section 5.8, the Unitholder holding a Subordinated Unit shall possess all of the rights and obligations of a Unitholder holding Common Units hereunder, including the right to vote as a Common Unitholder and the right to participate in allocations of income, gain, loss and deduction and distributions made with respect to Common Units; provided, however, that such converted Subordinated Units shall remain subject to the provisions of Sections 5.5(c)(ii), 6.1(d)(x) and 6.7(b).

(b) The Unitholder holding a Subordinated Unit which has converted into a Common Unit pursuant to Section 5.8 shall not be issued a Common Unit Certificate pursuant to Section 4.1, and shall not be permitted to transfer its converted Subordinated Units to a Person which is not an Affiliate of the holder until such time as the General Partner determines, based on advice of counsel, that a converted Subordinated Unit should have, as a substantive matter, like intrinsic economic and federal income tax characteristics, in all material respects, to the intrinsic economic and federal income tax characteristics of an Initial Common Unit. In connection with the condition imposed by this Section 6.7(b), the General Partner may take whatever reasonable steps are required to provide economic uniformity to the converted Subordinated Units in preparation for a transfer of such converted Subordinated Units, including the application of Sections 5.5(c)(ii) and 6.1(d)(x); provided, however, that no such steps may be taken that would have a material adverse effect on the Unitholders holding Common Units represented by Common Unit Certificates.

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

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

Section 6.9 *Entity-Level Taxation.*

If legislation is enacted or the interpretation of existing language is modified by the relevant governmental authority which causes a Group Member to be treated as an association taxable as a corporation or otherwise subjects a Group Member to entity-level taxation for

federal, state or local income tax purposes, the then applicable Minimum Quarterly Distribution, First Target Distribution, Second Target Distribution and Third Target Distribution, shall be adjusted to equal 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 Group Member for the taxable year of the Group Member 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 Group Member 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 Group Member 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 Group Member had been subject to such state and local taxes during such preceding taxable year.

## ARTICLE VII

### MANAGEMENT AND OPERATION OF BUSINESS

#### Section 7.1 *Management.*

(a) The General Partner shall conduct, direct and manage all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and no Limited Partner 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 7.3, 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 2.5 and to effectuate the purposes set forth in Section 2.4, including the following:

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

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

(iii) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any or all of the assets of the Partnership or the merger or

other combination of the Partnership with or into another Person (the matters described in this clause (iii) being subject, however, to any prior approval that may be required by Section 7.3);

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

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

(vi) the distribution of Partnership cash;

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

(viii) the maintenance of such insurance for the benefit of the Partnership 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 (including the acquisition of interests in, and the contributions of property to, any Group Member from time to time) subject to the restrictions set forth in Section 2.4;

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

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

(xii) the entering into of listing agreements with any National Securities Exchange and the delisting of some or all of the Limited Partner Interests from, or

requesting that trading be suspended on, any such exchange (subject to any prior approval that may be required under Section 4.8);

(xiii) unless restricted or prohibited by Section 5.7, the purchase, sale or other acquisition or disposition of Partnership Securities, or the issuance of additional options, rights, warrants and appreciation rights relating to Partnership Securities; and

(xiv) the undertaking of any action in connection with the Partnership's participation in any Group Member as a member or partner.

(b) Notwithstanding any other provision of this Agreement, the Operating Company Agreement, the Delaware Act or any applicable law, rule or regulation, each of the Partners and the Assignees and each other Person who may acquire an interest in Partnership Securities hereby (i) approves, ratifies and confirms the execution, delivery and performance by the parties thereto of the Underwriting Agreement, the Omnibus Agreement, the Contribution Agreement, the Operating Company Agreement, any other limited liability company or partnership agreement of any other Group Member and the other agreements described in or filed as exhibits to the Registration Statement that are related to the transactions contemplated by the Registration Statement; (ii) agrees that the General Partner (on its own or through any officer of the Partnership) is authorized to execute, deliver and perform the agreements referred to in clause (i) of this sentence and the other agreements, acts, transactions and matters described in or contemplated by the Registration Statement on behalf of the Partnership without any further act, approval or vote of the Partners or the Assignees or the other Persons who may acquire an interest in Partnership Securities; and (iii) agrees that the execution, delivery or performance by the General Partner, any Group Member or any Affiliate of any of them, of this Agreement or any agreement authorized or permitted under this Agreement (including the exercise by the General Partner or any Affiliate of the General Partner of the rights accorded pursuant to Article XV), shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Limited Partners or any other Persons under this Agreement (or any other agreements) or of any duty stated or implied by law or equity.

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

The General Partner has caused the Certificate of Limited Partnership to be filed with the Secretary of State of the State of Delaware as required by the Delaware Act. The General Partner shall use all reasonable efforts to cause to be filed such other certificates or documents 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. 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 or other entity in which the limited partners have limited liability) under the laws of the State of Delaware or of any other state in which the Partnership may elect

to do business or own property. Subject to the terms of Section 3.4(a), the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate of Limited Partnership, any qualification document or any amendment thereto to any Limited Partner.

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

(a) The General Partner may not, without written approval of the specific act by holders of all of the Outstanding Limited Partner Interests or by other written instrument executed and delivered by holders of all of the Outstanding Limited Partner Interests 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 a general partner of the Partnership.

(b) Except as provided in Articles XII and XIV, 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 (including by way of merger, consolidation or other combination) or approve on behalf of the Partnership the sale, exchange or other disposition of all or substantially all of the assets of the Operating Company and its subsidiaries taken as a whole 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 or the Operating Company and shall not apply to any forced sale of any or all of the assets of the Partnership or the Operating Company pursuant to the foreclosure of, or other realization upon, any such encumbrance. Without the approval of holders of a Unit Majority, the General Partner shall not, on behalf of the Partnership, (i) consent to any amendment to the Operating Company Agreement or, except as expressly permitted by Section 7.9(d), take any action permitted to be taken by a member of the Operating Company, in either case, that would adversely affect the Limited Partners (including any particular class of Partnership Interests as compared to any other class of Partnership Interests) in any material respect or (ii) except as permitted under Sections 4.6, 11.1 and 11.2, elect or cause the Partnership to elect a successor general partner of the Partnership.

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

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

(b) The General Partner shall be reimbursed on a monthly basis, or such other reasonable 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 including Affiliates of the

General Partner 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 7.4 shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to Section 7.7.

(c) Subject to Section 5.7, 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 and adopt on behalf of the Partnership employee benefit plans, employee programs and employee practices (including plans, programs and practices involving the issuance of Partnership Securities or options to purchase or rights, warrants or appreciation rights relating to Partnership Securities), or cause the Partnership to issue Partnership Securities in connection with, or pursuant to, any employee benefit plan, employee program or employee practice maintained or sponsored by the General Partner 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 Partnership Securities that the General Partner or such Affiliates are obligated to provide to any employees pursuant to any such employee benefit plans, employee programs or employee practices. Expenses incurred by the General Partner in connection with any such plans, programs and practices (including the net cost to the General Partner or such Affiliates of Partnership Securities purchased by the General Partner or such Affiliates from the Partnership to fulfill options or awards under such plans, programs and practices) shall be reimbursed in accordance with Section 7.4(b). Any and all obligations of the General Partner under any employee benefit plans, employee programs or employee practices adopted by the General Partner as permitted by this Section 7.4(c) shall constitute obligations of the General Partner hereunder and shall be assumed by any successor General Partner approved pursuant to Section 11.1 or 11.2 or the transferee of or successor to all of the General Partner's General Partner Interest pursuant to Section 4.6.

#### Section 7.5 *Outside Activities.*

(a) After the Closing Date, the General Partner, for so long as it is the General Partner of the Partnership (i) agrees that its sole business will be to act as a general partner or managing member, as the case may be, of the Partnership and any other partnership or limited liability company of which the Partnership or the Operating Company is, directly or indirectly, a partner or member and to undertake activities that are ancillary or related thereto (including being a limited partner in the Partnership), (ii) shall not engage in any business or activity or incur any debts or liabilities except in connection with or incidental to (A) its performance as general partner or managing member of one or more Group Members or as described in or contemplated by the Registration Statement or (B) the acquiring, owning or disposing of debt or



equity securities in any Group Member and (iii) except to the extent permitted in the Omnibus Agreement, shall not, and shall cause its Affiliates not to, engage in any Restricted Business.

(b) MarkWest Hydrocarbon, Inc. and certain of its Affiliates have entered into the Omnibus Agreement, which agreement sets forth certain restrictions on the ability of MarkWest Hydrocarbon, Inc. and its Affiliates to engage in Restricted Businesses.

(c) Except as specifically restricted by Section 7.5(a) and the Omnibus 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 express or implied by law 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, the Operating Company Agreement, the limited liability company or partnership agreements of any other Group Member or the partnership relationship established hereby in any business ventures of any Indemnitee.

(d) Subject to the terms of Section 7.5(a), Section 7.5(b), Section 7.5(c) and the Omnibus 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 7.5 is hereby approved by the Partnership and all Partners, (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 Indemnitees (other than the General Partner) to engage in such business interests and activities in preference to or to the exclusion of the Partnership and (iii) except as set forth in the Omnibus Agreement, the General Partner and the Indemnitees shall have no obligation to present business opportunities to the Partnership.

(e) The General Partner and any of its Affiliates may acquire Units or other Partnership Securities in addition to those acquired on the Closing Date and, except as otherwise provided in this Agreement, shall be entitled to exercise all rights of the General Partner or Limited Partner, as applicable, relating to such Units or Partnership Securities.

(f) The term "Affiliates" when used in Section 7.5(a) and Section 7.5(e) with respect to the General Partner shall not include any Group Member or any Subsidiary of the Group Member.

(g) Anything in this Agreement to the contrary notwithstanding, to the extent that provisions of Sections 7.7, 7.8, 7.9, 7.10 or other Sections of this Agreement purport or are interpreted to have the effect of restricting the fiduciary duties that might otherwise, as a result of Delaware or other applicable law, be owed by the General Partner to the Partnership and its Limited Partners, or to constitute a waiver or consent by the Limited Partners to any such

restriction, such provisions shall be inapplicable and have no effect in determining whether the General Partner has complied with its fiduciary duties in connection with determinations made by it under this Section 7.5.

Section 7.6 *Loans from the General Partner; Loans or Contributions from the Partnership; Contracts with Affiliates; Certain Restrictions on the General Partner.*

(a) The General Partner or any of its Affiliates may lend to any Group Member, and any Group Member may borrow from the General Partner or any of its Affiliates, funds needed or desired by the Group Member for such periods of time and in such amounts as the General Partner may determine; provided, however, that in any such case the lending party may not charge the borrowing party interest at a rate greater than the rate that would be charged the borrowing party or impose terms less favorable to the borrowing party than would be charged or imposed on the borrowing party by unrelated lenders on comparable loans made on an arm's-length basis (without reference to the lending party's financial abilities or guarantees). The borrowing party shall reimburse the lending party for any costs (other than any additional interest costs) incurred by the lending party in connection with the borrowing of such funds. For purposes of this Section 7.6(a) and Section 7.6(b), the term "Group Member" shall include any Affiliate of a Group Member that is controlled by the Group Member. No Group Member may lend funds to the General Partner or any of its Affiliates (other than another Group Member).

(b) The Partnership may lend or contribute to any Group Member, and any Group Member may borrow from the Partnership, funds on terms and conditions established in the sole discretion of the General Partner; provided, however, that the Partnership may not charge the Group Member interest at a rate less 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 a Group Member or to the General Partner in the discharge of its duties as General Partner of the Partnership. Any services rendered to a Group Member 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 7.6(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 Group 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 Group), is equitable to the Partnership Group. The provisions of Section 7.4 shall apply to the rendering of services described in this Section 7.6(c).

(d) The Partnership Group 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 7.6(e) shall be deemed to be satisfied as to (i) the transactions effected pursuant to Sections 5.2 and 5.3, the Contribution Agreement and any other transactions described in or contemplated by the Registration 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 Partnership Securities, the Conflicts Committee, in determining whether the appropriate number of Partnership Securities are being issued, may 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 7.6(a) through 7.6(f), and notwithstanding anything to the contrary in this Agreement, the existence of the conflicts of interest described in the Registration Statement are hereby approved by all Partners.

#### Section 7.7 *Indemnification.*

(a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, all Indemnitees shall be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements or other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as an Indemnitee; provided, that in each case the Indemnitee acted in good faith and in a manner that such Indemnitee reasonably believed to be in, or (in the case of a Person other than the General Partner) 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 7.7 shall be available to the General Partner of its Affiliates (other than a Group Member) with respect to its or their obligations incurred pursuant to the Underwriting Agreement or the Contribution Agreement (other than obligations incurred by the General Partner on behalf of the Partnership). The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that the Indemnatee acted in a manner contrary to that specified above. Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Partnership, it being agreed that the General Partner shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate such indemnification.

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

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

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

(e) For purposes of this Section 7.7, the Partnership shall be deemed to have requested an Indemnatee 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 Indemnatee with respect to an employee benefit plan pursuant to applicable law shall constitute "fines" within the meaning of Section 7.7(a); and action taken or omitted by it with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the 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 the Limited Partners to personal liability by reason of the indemnification provisions set forth in this Agreement.

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

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

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

Section 7.8 *Liability of Indemnitees.*

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

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

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

(d) Any amendment, modification or repeal of this Section 7.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the liability to the Partnership, the Limited Partners, the General Partner, and the Partnership's and General

Partner's directors, officers and employees under this Section 7.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

Section 7.9 *Resolution of Conflicts of Interest.*

(a) Unless otherwise expressly provided in this Agreement, the Operating Company Agreement or the limited liability company or partnership agreement of any other Group Member 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, the Operating Company, any other Group Member, any Partner or any Assignee, on the other, any resolution or course of action by the General Partner or its Affiliates in respect of such conflict of interest shall be permitted and deemed approved by all Partners, and shall not constitute a breach of this Agreement, of the Operating Company 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 such resolution. 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 (as long as the material facts known to the General Partner or any of its Affiliates regarding any proposed transaction were disclosed to the Conflicts Committee at the time it gave its 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 other Group Member, 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, the Operating Company Agreement, the limited liability company or partnership agreement of any other Group Member, 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 other than in the ordinary course of business. 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 (A) enable distributions to the General Partner or its Affiliates (including in their capacities as Limited Partners) to exceed 2% of the total amount distributed to all partners or (B) hasten the expiration of the Subordination Period or the conversion of any Subordinated Units into Common Units.

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

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

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

(b) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it,

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

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

(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 7.11 Purchase or Sale of Partnership Securities.*

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

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

(a) If (i) the General Partner or any Affiliate of the General Partner or of MarkWest Hydrocarbon, Inc. (including for purposes of this Section 7.12, any Person that is an Affiliate of the General Partner or MarkWest Hydrocarbon Inc. at the date hereof notwithstanding that it may later cease to be an Affiliate of the General Partner or MarkWest Hydrocarbon, Inc.) holds Partnership Securities that it desires to sell and (ii) Rule 144 of the Securities Act (or any successor rule or regulation to Rule 144) or another exemption from registration is not available to enable such holder of Partnership Securities (the "Holder") to dispose of the number of Partnership Securities it desires to sell at the time it desires to do so without registration under the Securities Act, then upon the request of the General Partner or any of its or MarkWest Hydrocarbon's 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 Partnership Securities covered by such registration statement have been sold, a registration statement under the Securities Act registering the offering and sale of the number of Partnership Securities specified by the Holder; provided, however, that the Partnership shall not be required to effect more than three



registrations pursuant to this Section 7.12(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 securities subject to such registration under the securities laws of such states as the Holder shall reasonably request; provided, however, that no such qualification shall be required in any jurisdiction where, as a result thereof, the Partnership would become subject to general service of process or to taxation or qualification to do business as a foreign corporation or partnership doing business in such jurisdiction solely as a result of such registration, and (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 Partnership Securities in such states. Except as set forth in Section 7.12(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 securities held by the Holder in such registration statement as the Holder shall request. If the proposed offering pursuant to this Section 7.12(b) shall be an underwritten offering, then, in the event that the managing underwriter or managing underwriters of such offering advise the Partnership and the Holder in writing that in their opinion the inclusion of all or some of the Holder's Partnership Securities would adversely and materially affect the success of the offering, the Partnership shall include in such offering only that number or amount, if any, of securities held by the Holder which, in the opinion of the managing underwriter or managing underwriters, will not so adversely and materially affect the offering. Except as set forth in Section 7.12(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 this Section 7.12, the Partnership shall provide indemnification, representations, covenants, opinions and other assurance to the underwriters in form and substance reasonably satisfactory to such underwriters. Further, in addition to and not in limitation of the Partnership's obligation under Section 7.7, the Partnership shall, to the fullest extent permitted by law, indemnify and hold harmless the Holder, its officers, directors and each Person who controls the Holder (within the meaning of the Securities Act) and any agent thereof (collectively, "Indemnified Persons") 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 7.12(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 Partnership Securities were registered under the Securities Act or any state securities or Blue Sky laws, in any preliminary prospectus (if used prior to the effective date of such registration statement), or in any summary or final prospectus or in any amendment or supplement thereto (if used during the period the Partnership is required to keep the registration statement current), or arising out of, based upon or resulting from the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements made therein not misleading; provided, however, that the Partnership shall not be liable to any Indemnified Person to the extent that any such claim arises out of, is based upon or results from an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, such preliminary, summary or final prospectus or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Partnership by or on behalf of such Indemnified Person specifically for use in the preparation thereof.

(d) The provisions of Section 7.12(a) and 7.12(b) shall continue to be applicable with respect to the General Partner (and any of the General Partner's or MarkWest Hydrocarbon, Inc.'s Affiliates) 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 Partnership Securities with respect to which it has requested during such two-year period inclusion in a registration statement otherwise filed or that a registration statement be filed; provided, however, that the Partnership shall not be required to file successive registration statements covering the same Partnership Securities for which registration was demanded during such two-year period. The provisions of Section 7.12(c) shall continue in effect thereafter.

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

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

Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner and any officer of the General Partner authorized by the General Partner to act on behalf of and in the name of the Partnership has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any authorized contracts on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner or any such officer as if it were the

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

## ARTICLE VIII

### BOOKS, RECORDS, ACCOUNTING AND REPORTS

#### Section 8.1 *Records and Accounting.*

The General Partner shall keep or cause to be kept at the principal office of the Partnership appropriate books and records with respect to the Partnership's business, including all books and records necessary to provide to the Limited Partners any information required to be provided pursuant to Section 3.4(a). Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including the record of the Record Holders 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 U.S. GAAP.

#### Section 8.2 *Fiscal Year.*

The fiscal year of the Partnership shall be a fiscal year ending December 31.

#### Section 8.3 *Reports.*

(a) As soon as practicable, but in no event later than 120 days after the close of each fiscal year of the Partnership, the General Partner shall cause to be mailed or made available to each Record Holder of a Unit as of a date selected by the General Partner in its discretion, an annual report containing financial statements of the Partnership for such fiscal year of the Partnership, presented in accordance with U.S. GAAP, including a balance sheet and statements

of operations, Partnership equity and cash flows, such statements to be audited by a firm of independent public accountants selected by the General Partner.

(b) As soon as practicable, but in no event later than 90 days after the close of each Quarter except the last Quarter of each fiscal year, the General Partner shall cause to be mailed or made available to each Record Holder of a Unit, as of a date selected by the General Partner in its 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 Partnership shall timely file all returns of the Partnership that are required for federal, state and local income tax purposes on the basis of the accrual method and 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. Notwithstanding any other provision herein contained, for the purposes of computing the adjustments under Section 743(b) of the Code, the General Partner shall be authorized (but not required) to adopt a convention whereby the price paid by a transferee of a Limited Partner Interest will be deemed to be the lowest quoted closing price of the Limited Partner Interests on any National Securities Exchange on which such Limited Partner Interests are traded during the calendar month in which such transfer is deemed to occur pursuant to Section 6.2(g) without regard to the actual price paid by such transferee.

(b) The Partnership shall elect to deduct expenses incurred in organizing the Partnership ratably over a sixty-month period as provided in Section 709 of the Code.

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

Section 9.3 *Tax Controversies.*

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

Section 9.4 *Withholding.*

Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that it determines in its discretion to be necessary or appropriate to cause the Partnership and other Group Members to comply with any withholding requirements established under the Code or any other federal, state or local law including, without limitation, pursuant to Sections 1441, 1442, 1445 and 1446 of the Code. To the extent that the Partnership is required or elects to withhold and pay over to any taxing authority any amount resulting from the allocation or distribution of income to any Partner or Assignee (including, without limitation, by reason of Section 1446 of the Code), the amount withheld may at the discretion of the General Partner be treated by the Partnership as a distribution of cash pursuant to Section 6.3 in the amount of such withholding from such Partner.

## ARTICLE X

### ADMISSION OF PARTNERS

Section 10.1 *Admission of Initial Limited Partners.*

Upon the issuance by the Partnership of Common Units, Subordinated Units and Incentive Distribution Rights to the General Partner, MarkWest Michigan, Inc. and the Underwriters as described in Sections 5.2 and 5.3 in connection with the Initial Offering, the General Partner shall admit such parties to the Partnership as Initial Limited Partners in respect of the Common Units, Subordinated Units or Incentive Distribution Rights issued to them.

Section 10.2 *Admission of Substituted Limited Partner.*

By transfer of a Limited Partner Interest in accordance with Article IV, 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 Limited Partner Interests. Each

transferee of a Limited Partner Interest (including any nominee holder or an agent acquiring such Limited Partner Interest 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 Limited Partner Interests 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 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 Limited Partner Interests 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 Limited Partner Interests on any matter, vote such Limited Partner Interests at the written direction of the Assignee who is the Record Holder of such Limited Partner Interests. If no such written direction is received, such Limited Partner Interests will not be voted. An Assignee shall have no other rights of a Limited Partner.

*Section 10.3 Admission of Successor General Partner.*

A successor General Partner approved pursuant to Section 11.1 or 11.2 or the transferee of or successor to all of the General Partner Interest pursuant to Section 4.6 who is proposed to be admitted as a successor General Partner shall be admitted to the Partnership as the General Partner, effective immediately prior to the withdrawal or removal of the predecessor or transferring General Partner, pursuant to Section 11.1 or 11.2 or the transfer of the General Partner Interest pursuant to Section 4.6, provided, however, that no such successor shall be admitted to the Partnership until compliance with the terms of Section 4.6 has occurred and such successor has executed and delivered such other documents or instruments as may be required to effect such admission. Any such successor shall, subject to the terms hereof, carry on the business of the members of the Partnership Group without dissolution.

*Section 10.4 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 2.6, 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 10.4, 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 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 10.5 *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 practicable an amendment to this Agreement and, if required by law, the General Partner shall prepare and file an amendment to the Certificate of Limited Partnership, and the General Partner may for this purpose, among others, exercise the power of attorney granted pursuant to Section 2.6.

**ARTICLE XI**

**WITHDRAWAL OR REMOVAL OF PARTNERS**

**Section 11.1 *Withdrawal of the General Partner.***

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

(i) The General Partner voluntarily withdraws from the Partnership by giving written notice to the other Partners;

(ii) The General Partner transfers all of its rights as General Partner pursuant to Section 4.6;

(iii) The General Partner is removed pursuant to Section 11.2;

(iv) The General Partner (A) makes a general assignment for the benefit of creditors; (B) files a voluntary bankruptcy petition for relief under Chapter 7 of the United States Bankruptcy Code; (C) files a petition or answer seeking for itself a liquidation, dissolution or similar relief (but not a reorganization) under any law; (D) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (A)-(C) of this Section 11.1(a)(iv); or (E) seeks, consents to or acquiesces in the appointment of a trustee (but not a debtor-in-possession), receiver or liquidator of the General Partner or of all or any substantial part of its properties;

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

(vi) (A) in the event the General Partner is a corporation, a certificate of dissolution or its equivalent is filed for the General Partner, or 90 days expire after the date of notice to the General Partner of revocation of its charter without a reinstatement of its charter, under the laws of its state of incorporation; (B) in the event the General Partner is a partnership or a limited liability company, the dissolution and commencement of winding up of the General Partner; (C) in the event the General Partner is acting in such capacity by virtue of being a trustee of a trust, the termination of the trust; (D) in the event the General Partner is a natural person, his death or adjudication of incompetency; and (E) otherwise in the event of the termination of the General Partner.

If an Event of Withdrawal specified in Section 11.1(a)(iv), (v) or (vi)(A), (B), (C) or (E) occurs, the withdrawing General Partner shall give notice to the Limited Partners within 30 days after such occurrence. The Partners hereby agree that only the Events of Withdrawal described in this Section 11.1 shall result in the withdrawal of the General Partner from the Partnership.

(b) Withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall not constitute a breach of this Agreement under the following circumstances: (i) at any time during the period beginning on the Closing Date and ending at 12:00 midnight, Eastern Standard Time, on June 30, 2012, the General Partner voluntarily withdraws by giving at least 90 days' advance notice of its intention to withdraw to the Limited Partners; provided that prior to the effective date of such withdrawal, the withdrawal is approved by Unitholders holding at least a majority of the Outstanding Common Units (excluding Common Units held by the General Partner and its Affiliates) and the General Partner delivers to the Partnership an Opinion of Counsel ("Withdrawal Opinion of Counsel") that such withdrawal (following the selection of the successor General Partner) would not result in the loss of the limited liability of any Limited Partner or any Group Member or cause any Group Member to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not previously treated as such); (ii) at any time after 12:00 midnight, Eastern Standard Time, on June 30, 2012, the General Partner voluntarily withdraws by giving at least 90 days' advance notice to the Unitholders, such withdrawal to take effect on the date specified in such notice; (iii) at any time that the General Partner ceases to be the General Partner pursuant to Section 11.1(a)(ii) or is removed pursuant to Section 11.2; or (iv) notwithstanding clause (i) of this sentence, at any time that the General Partner voluntarily withdraws by giving at least 90 days' advance notice of its intention to withdraw to the Limited Partners, such withdrawal to take effect on the date specified in the notice, if at the time such notice is given one Person and its Affiliates (other than the General Partner and its Affiliates) own beneficially or of record or control at least 50% of the Outstanding Units. The withdrawal of the General Partner from the Partnership upon the occurrence of an Event of Withdrawal shall also constitute the withdrawal of the General Partner as general partner or managing member, to



the extent applicable, of the other Group Members. If the General Partner gives a notice of withdrawal pursuant to Section 11.1(a)(i), the holders of a Unit Majority, may, prior to the effective date of such withdrawal, elect a successor General Partner. The Person so elected as successor General Partner shall automatically become the successor general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. If, prior to the effective date of the General Partner's withdrawal, a successor is not selected by the Unitholders as provided herein or the Partnership does not receive a Withdrawal Opinion of Counsel, the Partnership shall be dissolved in accordance with Section 12.1. Any successor General Partner elected in accordance with the terms of this Section 11.1 shall be subject to the provisions of Section 10.3.

*Section 11.2 Removal of the General Partner.*

The General Partner may be removed if such removal is approved by the Unitholders holding at least 66 2/3% of the Outstanding Units (including Units held by the General Partner and its Affiliates). Any such action by such holders for removal of the General Partner must also provide for the election of a successor General Partner by the Unitholders holding a majority of the outstanding Common Units voting as a class and a majority of the outstanding Subordinated Units voting as a class (including Units held by the General Partner and its Affiliates). Such removal shall be effective immediately following the admission of a successor General Partner pursuant to Section 10.3. The removal of the General Partner shall also automatically constitute the removal of the General Partner as general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. If a Person is elected as a successor General Partner in accordance with the terms of this Section 11.2, such Person shall, upon admission pursuant to Section 10.3, automatically become a successor general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member. The right of the holders of Outstanding Units to remove the General Partner shall not exist or be exercised unless the Partnership has received an opinion opining as to the matters covered by a Withdrawal Opinion of Counsel. Any successor General Partner elected in accordance with the terms of this Section 11.2 shall be subject to the provisions of Section 10.3.

*Section 11.3 Interest of Departing Partner and Successor General Partner.*

(a) In the event of (i) withdrawal of the General Partner under circumstances where such withdrawal does not violate this Agreement or (ii) removal of the General Partner by the holders of Outstanding Units under circumstances where Cause does not exist, if the successor General Partner is elected in accordance with the terms of Section 11.1 or 11.2, 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 General Partner Interest and its general partner interest (or equivalent interest), if any, in the other Group Members and all of its Incentive Distribution Rights (collectively, the "Combined Interest") in exchange for an amount in cash equal to the fair market value of such Combined Interest, such amount to be determined and payable as of the effective date of its departure. If the General Partner is removed by the Unitholders under circumstances where Cause exists or if the General Partner withdraws under

circumstances where such withdrawal violates this Agreement, and if a successor General Partner is elected in accordance with the terms of Section 11.1 or 11.2, such successor shall have the option, exercisable prior to the effective date of the departure of such Departing Partner, to purchase the Combined Interest for such fair market value of such Combined Interest of the Departing Partner. In either event, the Departing Partner shall be entitled to receive all reimbursements due such Departing Partner pursuant to Section 7.4, including any employee-related liabilities (including severance liabilities), incurred in connection with the termination of any employees employed by the Departing Partner for the benefit of the Partnership or the other Group Members.

For purposes of this Section 11.3(a), the fair market value of the Departing 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 Partner's 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 third independent investment banking firm or other independent expert shall determine the fair market value of the Combined Interest of the Departing Partner. In making its determination, such third independent investment banking firm or other independent expert may consider the then current trading price of Units on any National Securities Exchange on which Units are then listed, the value of the Partnership's assets, the rights and obligations of the Departing Partner and other factors it may deem relevant.

(b) If the Combined Interest is not purchased in the manner set forth in Section 11.3(a), the Departing Partner (or its transferee) shall become a Limited Partner and its Combined Interest shall be converted into Common Units pursuant to a valuation made by an investment banking firm or other independent expert selected pursuant to Section 11.3(a), without reduction in such Partnership Interest (but subject to proportionate dilution by reason of the admission of its successor). Any successor General Partner shall indemnify the Departing Partner (or its transferee) as to all debts and liabilities of the Partnership arising on or after the date on which the Departing Partner (or its transferee) becomes a Limited Partner. For purposes of this Agreement, conversion of the Combined Interest of the Departing Partner to Common Units will be characterized as if the Departing Partner (or its transferee) contributed its Combined Interest to the Partnership in exchange for the newly issued Common Units.

(c) If a successor General Partner is elected in accordance with the terms of Section 11.1 or 11.2 and the option described in Section 11.3(a) is not exercised by the party entitled to do so, the successor General Partner shall, at the effective date of its admission to the Partnership, contribute to the Partnership cash in the amount equal to 2/98ths of the Net Agreed

Value of the Partnership's assets on such date. In such event, such successor General Partner shall, subject to the following sentence, be entitled to 2% of all Partnership allocations and distributions to which the Departing Partner was entitled. In addition, the successor General Partner shall cause this Agreement to be amended to reflect that, from and after the date of such successor General Partner's admission, the successor General Partner's interest in all Partnership distributions and allocations shall be 2%.

**Section 11.4** *Termination of Subordination Period, Conversion of Subordinated Units and Extinguishment of Cumulative Common Unit Arrearages.*

Notwithstanding any provision of this Agreement, if the General Partner is removed as general partner of the Partnership under circumstances where Cause does not exist and Units held by the General Partner and its Affiliates are not voted in favor of such removal, (i) the Subordination Period will end and all Outstanding Subordinated Units will immediately and automatically convert into Common Units on a one-for-one basis and (ii) all Cumulative Common Unit Arrearages on the Common Units will be extinguished.

**Section 11.5** *Withdrawal of Limited Partners.*

No Limited Partner shall have any right to withdraw from the Partnership; provided, however, that when a transferee of a Limited Partner's Limited Partner Interest becomes a Record Holder of the Limited Partner Interest so transferred, such transferring Limited Partner shall cease to be a Limited Partner with respect to the Limited Partner Interest so transferred.

**ARTICLE XII**

**DISSOLUTION AND LIQUIDATION**

**Section 12.1** *Dissolution.*

The Partnership shall not be dissolved by the admission of 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 11.1 or 11.2, the Partnership shall not be dissolved and such successor General Partner shall continue the business of the Partnership. The Partnership shall dissolve, and (subject to Section 12.2) its affairs shall be wound up, upon:

(a) an Event of Withdrawal of the General Partner as provided in Section 11.1(a) (other than Section 11.1(a)(ii)), unless a successor is elected and an Opinion of Counsel is received as provided in Section 11.1(b) or 11.2 and such successor is admitted to the Partnership pursuant to Section 10.3;

(b) an election to dissolve the Partnership by the General Partner that is approved by the holders of a Unit Majority;

(c) the entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Delaware Act; or

(d) the sale of all or substantially all of the assets and properties of the Partnership Group.

Section 12.2 *Continuation of the Business of the Partnership After Dissolution.*

Upon (a) dissolution of the Partnership following an Event of Withdrawal caused by the withdrawal or removal of the General Partner as provided in Section 11.1(a)(i) or (iii) and the failure of the Partners to select a successor to such Departing Partner pursuant to Section 11.1 or 11.2, then within 90 days thereafter, or (b) dissolution of the Partnership upon an event constituting an Event of Withdrawal as defined in Section 11.1(a)(iv), (v) or (vi), then, to the maximum extent permitted by law, within 180 days thereafter, the holders of a Unit Majority may elect to reconstitute the Partnership and continue its business on the same terms and conditions set forth in this Agreement by forming a new limited partnership on terms identical to those set forth in this Agreement and having as the successor General partner a Person approved by the holders of a Unit Majority. Unless such an election is made within the applicable time period as set forth above, the Partnership shall conduct only activities necessary to wind up its affairs. If such an election is so made, then:

(i) the reconstituted Partnership shall continue unless earlier dissolved in accordance with this Article XII;

(ii) if the successor General Partner is not the former General Partner, then the interest of the former General Partner shall be treated in the manner provided in Section 11.3; and

(iii) all necessary steps shall be taken to cancel this Agreement and the Certificate of Limited Partnership and to enter into and, as necessary, to file a new partnership agreement and certificate of limited partnership, and the successor General Partner may for this purpose exercise the powers of attorney granted the General Partner pursuant to Section 2.6; provided, that the right of the holders of a Unit Majority 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 (y) neither the Partnership, the reconstituted limited partnership nor the Operating Company or 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.

Section 12.3 *Liquidator.*

Upon dissolution of the Partnership, unless the Partnership is continued under an election to reconstitute and continue the Partnership pursuant to Section 12.2, the General Partner shall

select one or more Persons to act as Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by holders of at least a majority of the Outstanding Common Units and Subordinated Units voting as a single class. The Liquidator (if other than the General Partner) shall agree not to resign at any time without 15 days' prior notice and may be removed at any time, with or without cause, by notice of removal approved by holders of at least a majority of the Outstanding Common Units and Subordinated Units voting as a single class. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be approved by holders of at least a majority of the Outstanding Common Units and Subordinated Units voting as a single class. The right to approve a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XII, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, other than the limitation on sale set forth in Section 7.3(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 12.4 *Liquidation.*

The Liquidator shall proceed to dispose of the assets of the Partnership, discharge its liabilities, and otherwise wind up its affairs in such manner and over such period as the Liquidator determines to be in the best interest of the Partners, subject to Section 17-804 of the Delaware Act and the following:

(a) The assets may be disposed of by public or private sale or by distribution in kind to one or more Partners on such terms as the Liquidator and such Partner or Partners may agree. If any property is distributed in kind, the Partner receiving the property shall be deemed for purposes of Section 12.4(c) to have received cash equal to its fair market value; and contemporaneously therewith, appropriate cash distributions must be made to the other Partners. The Liquidator may, in its absolute discretion, defer liquidation or distribution of the Partnership's assets for a reasonable time if it determines that an immediate sale or distribution of all or some of the Partnership's assets would be impractical or would cause undue loss to the Partners. The Liquidator may, in its absolute discretion, distribute the Partnership's assets, in whole or in part, in kind if it determines that a sale would be impractical or would cause undue loss to the Partners.

(b) Liabilities of the Partnership include amounts owed to the Liquidator as compensation for serving in such capacity (subject to the terms of Section 12.3) and amounts to Partners otherwise than in respect of their distribution rights under Article VI. With respect to any liability that is contingent, conditional or unmaturing or is otherwise not yet due and payable,

the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for its payment. When paid, any unused portion of the reserve shall be distributed as additional liquidation proceeds.

(c) All property and all cash in excess of that required to discharge liabilities as provided in Section 12.4(b) shall be distributed to the Partners in accordance with, and to the extent of, the positive balances in their respective Capital Accounts, as determined after taking into account all Capital Account adjustments (other than those made by reason of distributions pursuant to this Section 12.4(c)) for the taxable year of the Partnership during which the liquidation of the Partnership occurs (with such date of occurrence being determined pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(g)), and such distribution shall be made by the end of such taxable year (or, if later, within 90 days after said date of such occurrence).

**Section 12.5 *Cancellation of Certificate of Limited Partnership.***

Upon the completion of the distribution of Partnership cash and property as provided in Section 12.4 in connection with the liquidation of the Partnership, the 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 12.6 *Return of Contributions.***

The General Partner shall not be personally liable for, and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate, the return of the Capital Contributions of the Limited Partners or Unitholders, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

**Section 12.7 *Waiver of Partition.***

To the maximum extent permitted by law, each Partner hereby waives any right to partition of the Partnership property.

**Section 12.8 *Capital Account Restoration.***

No Limited Partner shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Partnership. The General Partner shall be obligated to restore any negative balance in its Capital Account upon liquidation of its interest in the Partnership by the end of the taxable year of the Partnership during which such liquidation occurs, or, if later, within 90 days after the date of such liquidation.

## ARTICLE XIII

### AMENDMENT OF PARTNERSHIP AGREEMENT; MEETINGS; RECORD DATE

#### Section 13.1 *Amendment to be Adopted Solely by the General Partner.*

Each Partner agrees that the General Partner, without the approval of any 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 Group Members will not be treated as associations taxable as corporations or otherwise taxed as entities for federal income tax purposes;

(d) a change that, in the discretion of the General Partner, (i) does not adversely affect the Limited Partners (including any particular class of Partnership Interests as compared to other classes of Partnership Interests) in any material respect, (ii) is necessary or advisable to (A) satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute (including the Delaware Act) or (B) facilitate the trading of the Units (including the division of any class or classes of Outstanding Units into different classes to facilitate uniformity of tax consequences within such classes of Units) or comply with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are or will be listed for trading, compliance with any of which the General Partner determines in its 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 5.10 or (iv) is required to effect the intent expressed in the Registration Statement or the intent of the provisions of this Agreement or is otherwise contemplated by this Agreement;

(e) a change in the fiscal year or taxable year of the Partnership and any changes that, in the 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, officers, trustees or agents from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, the Investment Advisers Act of 1940, as amended, or "plan asset" regulations adopted under the Employee Retirement Income Security Act of 1974, as amended, regardless of whether such are substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor;

(g) subject to the terms of Section 5.7, an amendment that, in the 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 5.6;

(h) any amendment expressly permitted in this Agreement to be made by the General Partner acting alone;

(i) an amendment effected, necessitated or contemplated by a Merger Agreement approved in accordance with Section 14.3;

(j) an amendment that, in the 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 2.4;

(k) a merger or conveyance pursuant to Section 14.3(d); or

(l) any other amendments substantially similar to the foregoing.

### Section 13.2 *Amendment Procedures.*

Except as provided in Sections 13.1 and 13.3, all amendments to this Agreement shall be made in accordance with the following requirements. Amendments to this Agreement may be proposed only by or with the consent of the General Partner which consent may be given or withheld in its sole discretion. A proposed amendment shall be effective upon its approval by the holders of a Unit Majority, unless a greater or different percentage is required under this Agreement or by Delaware law. Each proposed amendment that requires the approval of the holders of a specified percentage of Outstanding Units shall be set forth in a writing that contains the text of the proposed amendment. If such an amendment is proposed, the General Partner shall seek the written approval of the requisite percentage of Outstanding Units or call a meeting of the Unitholders to consider and vote on such proposed amendment. The General Partner shall notify all Record Holders upon final adoption of any such proposed amendments.



Section 13.3 *Amendment Requirements.*

(a) Notwithstanding the provisions of Sections 13.1 and 13.2, no provision of this Agreement that establishes a percentage of Outstanding Units (including Units deemed owned by the General Partner) required to take any action shall be amended, altered, changed, repealed or rescinded in any respect that would have the effect of reducing such voting percentage unless such amendment is approved by the written consent or the affirmative vote of holders of Outstanding Units whose aggregate Outstanding Units constitute not less than the voting requirement sought to be reduced.

(b) Notwithstanding the provisions of Sections 13.1 and 13.2, no amendment to this Agreement may (i) enlarge the obligations of any Limited Partner without its consent, unless such shall be deemed to have occurred as a result of an amendment approved pursuant to Section 13.3(c), (ii) enlarge the obligations of, restrict in any way any action by or rights of, or reduce in any way the amounts distributable, reimbursable or otherwise payable to, the General Partner or any of its Affiliates without its consent, which consent may be given or withheld in its sole discretion, (iii) change Section 12.1(b), or (iv) change the term of the Partnership or, except as set forth in Section 12.1(b), give any Person the right to dissolve the Partnership.

(c) Except as provided in Section 14.3, and without limitation of the General Partner's authority to adopt amendments to this Agreement without the approval of any Partners or Assignees as contemplated in Section 13.1, any amendment that would have a material adverse effect on the rights or preferences of any class of Partnership Interests in relation to other classes of Partnership Interests must be approved by the holders of not less than a majority of the Outstanding Partnership Interests of the class affected.

(d) Notwithstanding any other provision of this Agreement, except for amendments pursuant to Section 13.1 and except as otherwise provided by Section 14.3(b), no amendments shall become effective without the approval of the holders of at least 90% of the Outstanding Units voting as a single class unless the Partnership obtains an Opinion of Counsel to the effect that such amendment will not affect the limited liability of any Limited Partner under applicable law.

(e) Except as provided in Section 13.1, this Section 13.3 shall only be amended with the approval of the holders of at least 90% of the Outstanding Units.

Section 13.4 *Special Meetings.*

All acts of Limited Partners to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XIII. Special meetings of the Limited Partners may be called by the General Partner or by Limited Partners owning 20% or more of the Outstanding Units of the class or classes for which a meeting is proposed. Limited Partners shall call a special meeting by delivering to the General Partner one or more requests in writing stating that the signing Limited Partners wish to call a special meeting and indicating the general or specific purposes for which the special meeting is to be called. Within 60 days after receipt of such a call from Limited

Partners or within such greater time as may be reasonably necessary for the Partnership to comply with any statutes, rules, regulations, listing agreements or similar requirements governing the holding of a meeting or the solicitation of proxies for use at such a meeting, the General Partner shall send a notice of the meeting to the Limited Partners either directly or indirectly through the Transfer Agent. A meeting shall be held at a time and place determined by the General Partner on a date not less than 10 days nor more than 60 days after the mailing of notice of the meeting. Limited Partners shall not vote on matters that would cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability under the Delaware Act or the law of any other state in which the Partnership is qualified to do business.

Section 13.5 *Notice of a Meeting.*

Notice of a meeting called pursuant to Section 13.4 shall be given to the Record Holders of the class or classes of Units for which a meeting is proposed in writing by mail or other means of written communication in accordance with Section 16.1. The notice shall be deemed to have been given at the time when deposited in the mail or sent by other means of written communication.

Section 13.6 *Record Date.*

For purposes of determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners or to give approvals without a meeting as provided in Section 13.11 the General Partner may set a Record Date, which shall not be less than 10 nor more than 60 days before (a) the date of the meeting (unless such requirement conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed 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 13.7 *Adjournment.*

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than 45 days. At the adjourned meeting, the Partnership may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if a new Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with this Article XIII.

Section 13.8 *Waiver of Notice; Approval of Meeting; Approval of Minutes.*

The transactions of any meeting of Limited Partners, however called and noticed, and whenever held, shall be as valid as if it had occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, 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 13.9 *Quorum.*

The holders of a majority of the Outstanding Units of the class or classes for which a meeting has been called (including Outstanding Units deemed owned by the General Partner) represented in person or by proxy shall constitute a quorum at a meeting of Limited Partners of such class or classes unless any such action by the Limited Partners requires approval by holders of a greater percentage of such Units, in which case the quorum shall be such greater percentage. At any meeting of the Limited Partners duly called and held in accordance with this Agreement at which a quorum is present, the act of Limited Partners holding Outstanding Units that in the aggregate represent a majority of the Outstanding Units entitled to vote and be present in person or by proxy at such meeting shall be deemed to constitute the act of all Limited Partners, unless a greater or different percentage is required with respect to such action under the provisions of this Agreement, in which case the act of the Limited Partners holding Outstanding Units that in the aggregate represent at least such greater or different percentage shall be required. The Limited Partners present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Limited Partners to leave less than a quorum, if any action taken (other than adjournment) is approved by the required percentage of Outstanding Units specified in this Agreement (including Outstanding Units deemed owned by the General Partner). In the absence of a quorum any meeting of Limited Partners may be adjourned from time to time by the affirmative vote of holders of at least a majority of the Outstanding Units entitled to vote at such meeting (including Outstanding Units deemed owned by the General Partner) represented either in person or by proxy, but no other business may be transacted, except as provided in Section 13.7.

#### Section 13.10 *Conduct of a Meeting.*

The General Partner shall have full power and authority concerning the manner of conducting any meeting of the Limited Partners or solicitation of approvals in writing, including the determination of Persons entitled to vote, the existence of a quorum, the satisfaction of the requirements of Section 13.4, the conduct of voting, the validity and effect of any proxies and the determination of any controversies, votes or challenges arising in connection with or during the meeting or voting. The General Partner shall designate a Person to serve as chairman of any meeting and shall further designate a Person to take the minutes of any meeting. All minutes shall be kept with the records of the Partnership maintained by the General Partner. The General Partner may make such other regulations consistent with applicable law and this Agreement as it

may deem advisable concerning the conduct of any meeting of the Limited Partners or solicitation of approvals in writing, including regulations in regard to the appointment of proxies, the appointment and duties of inspectors of votes and approvals, the submission and examination of proxies and other evidence of the right to vote, and the revocation of approvals in writing.

Section 13.11 *Action Without a Meeting.*

If authorized by the General Partner, any action that may be taken at a meeting of the Limited Partners may be taken without a meeting if an approval in writing setting forth the action so taken is signed by Limited Partners owning not less than the minimum percentage of the Outstanding Units (including Units deemed owned by the General Partner) that would be necessary to authorize or take such action at a meeting at which all the Limited Partners were present and voted (unless such provision conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Units are listed for trading, in which case the rule, regulation, guideline or requirement of such exchange shall govern). Prompt notice of the taking of action without a meeting shall be given to the Limited Partners who have not approved in writing. The General Partner may specify that any written ballot submitted to Limited Partners for the purpose of taking any action without a meeting shall be returned to the Partnership within the time period, which shall be not less than 20 days, specified by the General Partner. If a ballot returned to the Partnership does not vote all of the Units held by the Limited Partners, the Partnership shall be deemed to have failed to receive a ballot for the Units that were not voted. If approval of the taking of any action by the Limited Partners is solicited by any Person other than by or on behalf of the General Partner, the written approvals shall have no force and effect unless and until (a) they are deposited with the Partnership in care of the General Partner, (b) approvals sufficient to take the action proposed are dated as of a date not more than 90 days prior to the date sufficient approvals are deposited with the Partnership and (c) an Opinion of Counsel is delivered to the General Partner to the effect that the exercise of such right and the action proposed to be taken with respect to any particular matter (i) will not cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability, and (ii) is otherwise permissible under the state statutes then governing the rights, duties and liabilities of the Partnership and the Partners.

Section 13.12 *Voting and Other Rights.*

(a) Only those Record Holders of the Units on the Record Date set pursuant to Section 13.6 (and also subject to the limitations contained in the definition of "Outstanding") shall be entitled to notice of, and to vote at, a meeting of Limited Partners or to act with respect to matters as to which the holders of the Outstanding Units have the right to vote or to act. All references in this Agreement to votes of, or other acts that may be taken by, the Outstanding Units shall be deemed to be references to the votes or acts of the Record Holders of such Outstanding Units.

(b) With respect to Units that are held for a Person's account by another Person (such as a broker, dealer, bank, trust company or clearing corporation, or an agent of any of the

foregoing), in whose name such Units are registered, such other Person shall, in exercising the voting rights in respect of such Units on any matter, and unless the arrangement between such Persons provides otherwise, vote such Units in favor of, and at the direction of, the Person who is the beneficial owner, and the Partnership shall be entitled to assume it is so acting without further inquiry. The provisions of this Section 13.12(b) (as well as all other provisions of this Agreement) are subject to the provisions of Section 4.3.

## ARTICLE XIV

### MERGER

#### Section 14.1 *Authority.*

The Partnership may merge or consolidate with one or more corporations, limited liability companies, business trusts or associations, real estate investment trusts, common law trusts or unincorporated businesses, including a general partnership or limited partnership, 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 XIV.

#### Section 14.2 *Procedure for Merger or Consolidation.*

Merger or consolidation of the Partnership pursuant to this Article XIV requires the prior approval of the General Partner. If the General Partner shall determine, in the exercise of its 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 jurisdiction 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 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 14.4 or a later date specified in or determinable in accordance with the Merger Agreement (provided, that if the effective time of the merger is to be later than the date of the filing of 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 14.3 Approval by Limited Partners of Merger or Consolidation.*

(a) Except as provided in Section 14.3(d), 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 special meeting or by written consent, in either case in accordance with the requirements of Article XIII. A copy or a summary of the Merger Agreement shall be included in or enclosed with the notice of a special meeting or the written consent.

(b) Except as provided in Section 14.3(d), the Merger Agreement 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 for its approval 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) Except as provided in Section 14.3(d), after such approval by vote or consent of the Limited Partners, and at any time prior to the filing of the certificate of merger pursuant to Section 14.4, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement.

(d) Notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted, in its discretion, without Limited Partner approval, to merge the Partnership or any Group Member into, or convey all of the Partnership's assets to, another limited liability entity which shall be newly formed and shall have no assets, liabilities or operations at the time of such Merger other than those it receives from the Partnership or other

Group Member if (i) the General Partner has received an Opinion of Counsel that the merger or conveyance, as the case may be, would not result in the loss of the limited liability of any Limited Partner or any Group Member or cause the Partnership or 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 previously treated as such), (ii) the sole purpose of such merger or conveyance is to effect a mere change in the legal form of the Partnership into another limited liability entity and (iii) the governing instruments of the new entity provide the Limited Partners and the General Partner with the same rights and obligations as are herein contained.

Section 14.4 *Certificate of Merger.*

Upon the required approval by the General Partner and the Unitholders 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 14.5 *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.

## ARTICLE XV

### RIGHT TO ACQUIRE LIMITED PARTNER INTERESTS

#### Section 15.1 *Right to Acquire Limited Partner Interests.*

(a) Notwithstanding any other provision of this Agreement, if at any time more than 80% of the total Limited Partner Interests of any class then Outstanding is held by the General Partner and its Affiliates, the General Partner shall then have the right, which right it may assign and transfer in whole or in part to the Partnership or any Affiliate of the General Partner, exercisable in its sole discretion, to purchase all, but not less than all, of such Limited Partner Interests of such class then Outstanding held by Persons other than the General Partner and its Affiliates, at the greater of (x) the Current Market Price as of the date three days prior to the date that the notice described in Section 15.1(b) is mailed and (y) the highest price paid by the General Partner or any of its Affiliates for any such Limited Partner Interest of such class purchased during the 90-day period preceding the date that the notice described in Section 15.1(b) is mailed. As used in this Agreement, (i) "Current Market Price" as of any date of any class of Limited Partner Interests means the average of the daily Closing Prices (as hereinafter defined) per Limited Partner Interest of such class for the 20 consecutive Trading Days (as hereinafter defined) immediately prior to such date; (ii) "Closing Price" for any day means the last sale price on such day, regular way, or in case no such sale takes place on such day, the average of the closing bid and asked prices on such day, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted for trading on the principal National Securities Exchange (other than the Nasdaq Stock Market) on which such Limited Partner Interests of such class are listed or admitted to trading or, if such Limited Partner Interests of such class are not listed or admitted to trading on any National Securities Exchange (other than the Nasdaq Stock Market), the last quoted price on such day or, if not so quoted, the average of the high bid and low asked prices on such day in the over-the-counter market, as reported by the Nasdaq Stock Market or such other system then in use, or, if on any such day such Limited Partner Interests of such class are not quoted by any such organization, the average of the closing bid and asked prices on such day as furnished by a professional market maker making a market in such Limited Partner Interests of such class selected by the General Partner, or if on any such day no market maker is making a market in such Limited Partner Interests of such class, the fair value of such Limited Partner Interests on such day as determined reasonably and in good faith by the General Partner; and (iii) "Trading Day" means a day on which the principal National Securities Exchange on which such Limited Partner Interests of any class are listed or admitted to trading is open for the transaction of business or, if Limited Partner Interests 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.

(b) If the General Partner, any Affiliate of the General Partner or the Partnership elects to exercise the right to purchase Limited Partner Interests granted pursuant to Section 15.1(a), the General Partner shall deliver to the Transfer Agent notice of such election to



purchase (the "Notice of Election to Purchase") and shall cause the Transfer Agent to mail a copy of such Notice of Election to Purchase to the Record Holders of Limited Partner Interests of such class (as of a Record Date selected by the General Partner) at least 10, but not more than 60, days prior to the Purchase Date. Such Notice of Election to Purchase shall also be published for a period of at least three consecutive days in at least two daily newspapers of general circulation printed in the English language and published in the Borough of Manhattan, New York. The Notice of Election to Purchase shall specify the Purchase Date and the price (determined in accordance with Section 15.1(a)) at which Limited Partner Interests will be purchased and state that the General Partner, its Affiliate or the Partnership, as the case may be, elects to purchase such Limited Partner Interests, upon surrender of Certificates representing such Limited Partner Interests in exchange for payment, at such office or offices of the Transfer Agent as the Transfer Agent may specify, or as may be required by any National Securities Exchange on which such Limited Partner Interests are listed or admitted to trading. Any such Notice of Election to Purchase mailed to a Record Holder of Limited Partner Interests at his address as reflected in the records of the Transfer Agent shall be conclusively presumed to have been given regardless of whether the owner receives such notice. On or prior to the Purchase Date, the General Partner, its Affiliate or the Partnership, as the case may be, shall deposit with the Transfer Agent cash in an amount sufficient to pay the aggregate purchase price of all of such Limited Partner Interests to be purchased in accordance with this Section 15.1. If the Notice of Election to Purchase shall have been duly given as aforesaid at least 10 days prior to the Purchase Date, and if on or prior to the Purchase Date the deposit described in the preceding sentence has been made for the benefit of the holders of Limited Partner Interests subject to purchase as provided herein, then from and after the Purchase Date, notwithstanding that any Certificate shall not have been surrendered for purchase, all rights of the holders of such Limited Partner Interests (including any rights pursuant to Articles IV, V, VI, and XII) shall thereupon cease, except the right to receive the purchase price (determined in accordance with Section 15.1(a)) for Limited Partner Interests therefor, without interest, upon surrender to the Transfer Agent of the Certificates representing such Limited Partner Interests, and such Limited Partner Interests shall thereupon be deemed to be transferred to the General Partner, its Affiliate or the Partnership, as the case may be, on the record books of the Transfer Agent and the Partnership, and the General Partner or any Affiliate of the General Partner, or the Partnership, as the case may be, shall be deemed to be the owner of all such Limited Partner Interests from and after the Purchase Date and shall have all rights as the owner of such Limited Partner Interests (including all rights as owner of such Limited Partner Interests pursuant to Articles IV, V, VI and XII).

(c) At any time from and after the Purchase Date, a holder of an Outstanding Limited Partner Interest subject to purchase as provided in this Section 15.1 may surrender his Certificate evidencing such Limited Partner Interest to the Transfer Agent in exchange for payment of the amount described in Section 15.1(a), therefor, without interest thereon.

## ARTICLE XVI

### GENERAL PROVISIONS

#### Section 16.1 *Addresses and Notices.*

Any notice, demand, request, report or proxy materials required or permitted to be given or made to a Partner 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 Partnership Securities at his address as shown on the records of the Transfer Agent or as otherwise shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in such Partnership Securities by reason of any assignment or otherwise. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 16.1 executed by the General Partner, the Transfer Agent or the mailing organization shall be prima facie evidence of the giving or making of such notice, payment or report. If any notice, payment or report addressed to a Record Holder at the address of such Record Holder appearing on the books and records of the Transfer Agent or the Partnership is returned by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver it, such notice, payment or report and any subsequent notices, payments and reports shall be deemed to have been duly given or made without further mailing (until such time as such Record Holder or another Person notifies the Transfer Agent or the Partnership of a change in his address) if they are available for the Partner 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 2.3. 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 16.2 *Further Action.*

The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

#### Section 16.3 *Binding Effect.*

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 16.4 *Integration.*

This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

Section 16.5 *Creditors.*

None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Partnership.

Section 16.6 *Waiver.*

No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition.

Section 16.7 *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 16.8 *Applicable Law.*

This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

Section 16.9 *Invalidity of Provisions.*

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

Section 16.10 *Consent of Partners.*

Each Partner hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote or consent of less than all of the Partners, such action may be so taken upon the concurrence of less than all of the Partners and each Partner shall be bound by the results of such action.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**GENERAL PARTNER:**

**MARKWEST ENERGY GP, L.L.C.**

By: Nancy K. Buese  
Name: Nancy Buese  
Title: Senior Vice President and  
Chief Financial Officer

**ORGANIZATIONAL LIMITED PARTNER:**

**MARKWEST HYDROCARBON, INC.**

By: Nancy K. Buese  
Name: Nancy Buese  
Title: Senior Vice President and  
Chief Financial Officer

**LIMITED PARTNERS:**

All Limited Partners now and hereafter admitted as Limited Partners of the Partnership, pursuant to powers of attorney now and hereafter executed in favor of, and granted and delivered to the General Partner.

**MARKWEST ENERGY GP, L.L.C.**

By: Nancy K. Buese  
Name: Nancy Buese  
Title: Senior Vice President and  
Chief Financial Officer

**MARKWEST HYDROCARBON, INC.  
as successor by way of merger to  
MARKWEST MICHIGAN, INC.**

By: Nancy K. Buese  
Name: Nancy Buese  
Title: Senior Vice President and  
Chief Financial Officer

**EXHIBIT A**  
**to the Amended and Restated**  
**Agreement of Limited Partnership of**  
**MarkWest Energy Partners, L.P.**  
**Certificate Evidencing Common Units**  
**Representing Limited Partner Interests in**  
**MarkWest Energy Partners, L.P.**

No. \_\_\_\_\_ Common Units

In accordance with Section 4.1 of the Amended and Restated Agreement of Limited Partnership of MarkWest Energy Partners, L.P., as amended, supplemented or restated from time to time (the "*Partnership Agreement*"), MarkWest Energy 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 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 155 Inverness Drive West, Suite 200, Englewood, Colorado 80112. Capitalized terms used herein but not defined shall have the meanings 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.

Dated: \_\_\_\_\_

MarkWest Energy Partners, L.P.

Countersigned and Registered by:

By: MarkWest Energy GP, L.L.C., its  
General Partner

\_\_\_\_\_  
as Transfer Agent and Registrar

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

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

\_\_\_\_\_  
Authorized Signature

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

Secretary



[Reverse of Certificate]

**ABBREVIATIONS**

The following abbreviations, when used in the inscription on the face of this Certificate, shall be construed as follows according to applicable laws or regulations:

TEN COM -	as tenants in common	UNIF GIFT/TRANSFERS MIN ACT
TEN ENT -	as tenants by the entireties	_____ Custodian _____
		(Cust) (Minor)
JT TEN -	as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts/Transfers to CD Minors Act (State)

Additional abbreviations, though not in the above list, may also be used.

**ASSIGNMENT OF COMMON UNITS  
in  
MARKWEST ENERGY PARTNERS, L.P.  
IMPORTANT NOTICE REGARDING INVESTOR RESPONSIBILITIES  
DUE TO TAX SHELTER STATUS OF  
MARKWEST ENERGY PARTNERS, L.P.**

You have acquired an interest in MarkWest Energy Partners, L.P., 155 Inverness Drive West, Suite 200, Englewood, Colorado 80112, whose taxpayer identification number is [ ]. The Internal Revenue Service has issued MarkWest Energy 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 MARKWEST ENERGY PARTNERS, L.P.**

You must report the registration number as well as the name and taxpayer identification number of MarkWest Energy 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 INCOME BY REASON OF YOUR INVESTMENT IN MARKWEST ENERGY PARTNERS, L.P.

If you transfer your interest in MarkWest Energy 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 MarkWest Energy 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 insert Social Security or other  
identifying number of Assignee)

\_\_\_\_\_ Common Units representing limited partner interests evidenced by this Certificate, subject to the Partnership Agreement, and does hereby irrevocably constitute and appoint \_\_\_\_\_ as its attorney-in-fact with full power of substitution to transfer the same on the books of MarkWest Energy 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.

**THE SIGNATURE(S) MUST BE  
GUARANTEED BY AN  
ELIGIBLE GUARANTOR  
INSTITUTION (BANKS,  
STOCKBROKERS, SAVINGS  
AND LOAN ASSOCIATIONS  
AND CREDIT UNIONS WITH  
MEMBERSHIP IN AN  
APPROVED SIGNATURE  
GUARANTEE MEDALLION  
PROGRAM), PURSUANT TO  
S.E.C. RULE 17d-15**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

No transfer of the Common Units evidenced hereby will be registered on the books of the Partnership, unless the Certificate evidencing the Common Units to be transferred is surrendered for registration or transfer 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 Amended and Restated Agreement of Limited Partnership of MarkWest Energy Partners, L.P. (the "*Partnership*"), 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 of the Partnership 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: \_\_\_\_\_

\_\_\_\_\_  
Social Security or other identifying number

\_\_\_\_\_  
Signature of Assignee

\_\_\_\_\_  
Purchase Price including commissions, if any

\_\_\_\_\_  
Name and Address of Assignee

Type of Entity (check one):

- |                                     |  |                                      |
|-------------------------------------|--|--------------------------------------|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Partnership     | <input type="checkbox"/> Corporation |
| <input type="checkbox"/> Trust      | <input type="checkbox"/> Other (specify) |                                      |

Nationality (check one):

- |  |
|--|
| <input type="checkbox"/> U.S. Citizen, Resident or Domestic Entity                       |
| <input type="checkbox"/> Foreign Corporation <input type="checkbox"/> Non-resident Alien |

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 corporation, foreign partnership, foreign trust (Name of Interestholder) 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.

***Execution Copy***

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**THIRD AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
MARKWEST ENERGY PARTNERS, L.P.**

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**THIRD AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF  
MARKWEST ENERGY PARTNERS, L.P.**

THIS THIRD AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF MARKWEST ENERGY PARTNERS, L.P. dated effective as of February 21, 2008, is entered into by and among MarkWest Energy GP, L.L.C., a Delaware limited liability company, as the General Partner and as the lawful agent and attorney-in-fact for the Limited Partners, and MarkWest Hydrocarbon, Inc., a Delaware corporation, together with any other Persons who become Partners in the Partnership or parties hereto as provided herein.

**WITNESSETH:**

WHEREAS, the Partnership was formed under the Delaware Act on January 25, 2002;

WHEREAS, in connection with the initial public offering of the Partnership in May 2002, the General Partner and other parties thereto entered into the First Amended and Restated Agreement;

WHEREAS, on December 31, 2004, the General Partner effected Amendment No.1 to the First Amended and Restated Agreement;

WHEREAS, on June 10, 2005, the Partnership effected Amendment No. 2 to the First Amended and Restated Agreement;

WHEREAS, on February 28, 2007, the General Partner and other parties thereto amended and restated the First Amended and Restated Agreement, Amendment No. 1 and No. 2 in its entirety and entered into the Second Amended and Restated Agreement;

WHEREAS, MarkWest Hydrocarbon, Inc., MWEP, L.L.C., a Delaware limited liability company and a wholly-owned subsidiary of the Partnership, and the Partnership have entered into the Agreement and Plan of Redemption and Merger dated September 5, 2007; and

WHEREAS, the General Partner and the other parties hereto now desire to amend and restate the Second Amended and Restated Agreement in its entirety in the manner set forth in this Agreement, and all of the Partners join in this Agreement to evidence their agreement to the terms of this amended and restated instrument.

NOW, THEREFORE, in consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

Section 1.1 *Definitions.* The following definitions shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the terms used in this Agreement.

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

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

*"Additional Limited Partner"* means a Person admitted to the Partnership as a Limited Partner pursuant to Section 10.2 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 of all losses and deductions that, as of the end of such fiscal year, are reasonably expected to be allocated to such Partner in subsequent years under Sections 704(e)(2) and 706(d) of the Code and Treasury Regulation Section 1.751-1(b)(2)(ii), and (ii) the amount of all distributions that, as of the end of such fiscal year, are reasonably expected to be made to such Partner in subsequent years in accordance with the terms of this Agreement or otherwise to the extent they exceed offsetting increases to such Partner's Capital Account that are reasonably expected to occur during (or prior to) the year in which such distributions are reasonably expected to be made (other than increases as a result of a minimum gain chargeback pursuant to Section 6.1(c)(i) or Section 6.1(c)(ii)). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith. The *"Adjusted Capital Account"* of a Partner in respect of a General Partner Interest, a Common Unit, a Class A Unit or any other specified interest in the Partnership shall be the amount which such Adjusted Capital Account would be if such General Partner Interest, Common Unit, Class A Unit or other interest in the Partnership were the only interest in the Partnership held by such Partner from and after the date on which such General Partner Interest, Common Unit, Class A Unit or other interest was first issued.

*"Adjusted Property"* means any property the Carrying Value of which has been adjusted pursuant to Section 5.3(d)(i) or 5.3(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. *"Affiliate"* with respect to the General Partner shall not include the Partnership for purposes of Section 7.8.

*"Agreed Allocation"* means any allocation, other than a Required Allocation, of an item of income, gain, loss or deduction pursuant to the provisions of Section 6.1, including, 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 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 Third Amended and Restated Agreement of Limited Partnership of MarkWest Energy Partners, L.P., as it may be amended, supplemented or restated from time to time.

*"APB 25"* means Accounting Principles Board Opinion Number 25, an accounting principle governing accounting for stock issued to employees.

*"Assignee"* means a Non-citizen Assignee or a Person to whom one or more Limited Partner Interests 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 been admitted as 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; or (c) any relative or spouse of such Person, or any relative of such spouse, who has the same principal residence as such Person.

*"Available Cash"* means, with respect to any Quarter ending prior to the Liquidation Date:

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

(b) the amount of any cash reserves that are necessary or appropriate in the reasonable discretion of the General Partner to (i) provide for the proper conduct of the business of the Partnership Group (including reserves for future capital expenditures and for anticipated future credit needs of the Partnership Group) subsequent to such Quarter, (ii) comply with applicable law or any loan agreement, security agreement, mortgage, debt instrument or other agreement or obligation to which any Group Member is a party or by which it is bound or its assets are subject or (iii) provide funds for distributions under Section 6.3 in respect of any one or more of the next four Quarters; *provided, however*, that disbursements made by a Group Member or cash reserves established, increased or reduced after the end of such Quarter but on or before the date of determination of Available Cash with respect to such Quarter shall be deemed to have been made, established, increased or reduced, for purposes of determining Available Cash, within such Quarter if the General Partner so determines.

Notwithstanding the foregoing, "*Available Cash*" shall not include any Hydrocarbon Available Cash. "*Available Cash*" with respect to the Quarter in which the Liquidation Date occurs and any subsequent Quarter shall equal zero.

"*Board of Directors*" means the Board of Directors of the General Partner (or comparable governing body of any successor to the General Partner or, if established by the Board of Directors, the Board of Directors of the Partnership).

"*Book-Tax Disparity*" means with respect to any item of Contributed Property or Adjusted Property, as of the date of any determination, the difference between the Carrying Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for federal income tax purposes as of such date. A Partner's share of the Partnership's Book-Tax Disparities in all of its Contributed Property and Adjusted Property will be reflected by the difference between such Partner's Capital Account balance as maintained pursuant to Section 5.3 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.

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

"*Capital Account*" means the capital account maintained for a Partner pursuant to Section 5.3. The "*Capital Account*" of a Partner in respect of a Common Unit, a Class A Unit or any other Partnership Interest shall be the amount which such Capital Account would be if such Common Unit, Class A Unit or other Partnership Interest were the only interest in the Partnership held by such Partner from and after the date on which such Common Unit, Class A Unit or other Partnership Interest was first issued.

"*Capital Contribution*" means any cash, cash equivalents or the Net Agreed Value of Contributed Property that a Partner contributes to the Partnership pursuant to this Agreement or the Contribution Agreement.

"*Capital Improvement*" means any (a) addition or improvement to the capital assets owned by any Group Member or (b) acquisition of existing, or the construction of new, capital assets (including, without limitation, natural gas processing plants and natural gas liquids pipelines, fractionation plants and storage and distribution facilities and related assets), in each case if such addition, improvement, acquisition or construction is made to increase the operating capacity or revenues of the Partnership Group from the operating capacity or revenues of the Partnership Group existing immediately prior to such addition, improvement, acquisition or construction.

"*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

5.3(d)(i) and 5.3(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 a general partner of the Partnership.

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

*"Certificate of Limited Partnership"* means the Certificate of Limited Partnership of the Partnership filed with the Secretary of State of the State of Delaware as referenced in Section 2.1, 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.

*"Class A Unit"* means a Partnership Security representing a fractional part of the Partnership Interests of all Limited Partners and Assignees (but does not include Common Units), and having the rights and obligations specified with respect to Class A Units in this Agreement, which shall be identical to the rights and obligations of the Common Units except the Class A Units (i) will not have the right to vote on, approve or disapprove, or otherwise consent or not consent with respect to any matter (including mergers, share exchanges and similar statutory authorizations) except as otherwise required by any non-waivable provision of law, and (ii) will not share in any Hydrocarbon Items or any Hydrocarbon Available Cash.

*"Closing Price"* means, for any day, 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 for trading on the principal National Securities Exchange (other than the Nasdaq Stock Market) on which such Limited Partner Interests of such class are listed or admitted to trading or, if such Limited Partner Interests of such class are not listed or admitted to trading on any National Securities Exchange (other than the Nasdaq Stock Market), the last quoted price on such day or, if not so quoted, the average of the high bid and low asked prices on such day in the over-the-counter market, as reported by the Nasdaq Stock Market or such other system then in use, or, if on any such day such Limited Partner Interests of such class are not quoted by any such organization, the average of the closing bid and asked prices on such day as furnished by a professional market maker making a market in such Limited Partner Interests of such class selected by the General Partner, or if on any such

day no market maker is making a market in such Limited Partner Interests of such class, the fair value of such Limited Partner Interests on such day as determined reasonably and in good faith by the General Partner.

*"Cobb Contribution"* means the contribution made by the General Partner in the amount of \$1,660,000 as required by the Partnership to fund the construction and completion of the New Cobb Plant.

*"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 successor law.

*"Commission"* means the United States Securities and Exchange Commission.

*"Common Unit"* means a Partnership Security representing a fractional part of the Partnership Interests of all Limited Partners and Assignees, and having the rights and obligations specified with respect to Common Units in this Agreement, but does not include any Class A Units.

*"Contributed Property"* means each property or other asset, in such form as may be permitted by the Delaware Act, but excluding cash, contributed to the Partnership. Once the Carrying Value of a Contributed Property is adjusted pursuant to Section 5.3(d), such property shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.

*"Contribution Agreement"* means that certain Contribution, Conveyance and Assumption Agreement, dated as of May 24, 2002, among the General Partner, the Partnership, the Operating Company, MarkWest Hydrocarbon, Inc. and certain other parties, together with the additional conveyance documents and instruments contemplated or referenced thereunder.

*"Curative Allocation"* means any allocation of an item of income, gain, deduction, loss or credit pursuant to the provisions of Section 6.1(c)(ix).

*"Current Market Price"* means, as of any date of any class of Limited Partner Interests, the average of the daily Closing Prices (as hereinafter defined) per Limited Partner Interest 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. Section 17-101, et seq., as amended, supplemented or restated from time to time, and any successor to such statute.

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

*"Directors"* shall mean the members of the Board of Directors.

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



*"Eligible Citizen"* means a Person qualified to own interests in real property in jurisdictions in which any Group Member does business or proposes to do business from time to time, and whose status as a Limited Partner 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.

*"FAS 123R"* means Statement of Financial Accounting Standards Number 123R, an accounting principle governing accounting for share based payments.

*"First Amended and Restated Agreement"* has the meaning assigned to such term in Section 2.1.

*"Fully Diluted Basis"* means, when calculating the number of Outstanding Units for any period, a basis that includes, in addition to the Outstanding Units, all Partnership Securities and options, rights, warrants and appreciation rights relating to an equity interest in the Partnership (a) that are convertible into or exercisable or exchangeable for Units that are senior to or *pari passu* with the Common Units, (b) whose conversion, exercise or exchange price is less than the Current Market Price on the date of such calculation, and (c) that may be converted into or exercised or exchanged for such Units prior to or during the Quarter following the end of the last Quarter contained in the period for which the calculation is being made without the satisfaction of any contingency beyond the control of the holder other than the payment of consideration and the compliance with administrative mechanics applicable to such conversion, exercise or exchange.

*"General Partner"* means MarkWest Energy GP, L.L.C. and its successors and permitted assigns as general partner of the Partnership.

*"General Partner Interest"* means the management interest of the General Partner in the Partnership in its capacity as a general partner. The General Partner Interest does not have any rights to ownership, profit or any rights to receive distribution from operations or the liquidation of the Partnership.

*"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 Securities.

*"Group Member"* means a member of the Partnership Group.

*"Hydrocarbon Available Cash"* means all cash and cash equivalents on hand derived from or attributable to the Partnership's ownership of, or sale or other disposition of, the shares of common stock of MarkWest Hydrocarbon, Inc.

*"Hydrocarbon Items"* means the income, gains, losses, deductions and credits which are attributable to the Partnership's ownership of, or sale or other disposition of, the shares of common stock of MarkWest Hydrocarbon, Inc.

*"Incentive Distribution Rights"* has the meaning assigned to such term in Section 1.1 of the Second Amended and Restated Agreement.

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

*"Limited Partner"* means, unless the context otherwise requires, (a) a holder of Common Units or Class A Units, except to the extent otherwise provided herein, each Substituted Limited Partner and each Additional Limited Partner or (b) solely for purposes of Articles V, VI, VII and IX, each Assignee; *provided, however*, that when the term "Limited Partner" is used herein in the context of any vote or other approval, including without limitation Articles XIII and XIV, such term shall not, solely for such purpose, include any holder of Class A Units except as may otherwise be required by any non-waivable provision of law.

*"Limited Partner Interest"* means the ownership interest of a Limited Partner or Assignee in the Partnership, which may be evidenced by Common Units, Class A Units or other Partnership Securities or a combination thereof or interest therein, and includes any and all benefits to which such Limited Partner or Assignee is entitled as provided in this Agreement, together with all obligations of such Limited Partner or Assignee to comply with the terms and provisions of this Agreement; *provided, however*, that when the term "Limited Partner Interest" is used herein in the context of any vote or other approval, including without limitation Articles XIII and XIV, such term shall not, solely for such purpose, include any holder of Class A Units except as may otherwise be required by any non-waivable provision of law.

*"Liquidation Date"* means the date on which dissolution of the Partnership occurs.

*"Liquidator"* means one or more Persons selected by the General Partner to perform the functions described in Section 12.2 as liquidating trustee of the Partnership within the meaning of the Delaware Act.

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

*"National Securities Exchange"* means an exchange registered with the Commission under Section 6(a) of the Securities Exchange Act of 1934, as amended, supplemented or restated from time to time, and any successor to such statute, or the Nasdaq Stock Market or any successor thereto.

*"Net Agreed Value"* means, (a) in the case of any Contributed Property, the Agreed Value of such property reduced by any liabilities either assumed by the Partnership upon such contribution or to which such property is subject when contributed, 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 5.3(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 for such taxable year. The items included in the calculation of Net Income shall be determined in accordance with Section 5.3(b) and shall not include any items specially allocated under Sections 6.1(b) and 6.1(c).

*"Net Loss"* means, for any taxable year, the excess, if any, of the Partnership's items of loss and deduction for such taxable year. The items included in the calculation of Net Loss shall be determined in accordance with Section 5.3(b) and shall not include any items specially allocated under Sections 6.1(b) and 6.1(c).

*"New Cobb Plant"* means the Gas Extraction Plant designed to the specifications contained in the Amended and Restated Agreement for Construction and Removal (Cobb Plant) dated as of December 31, 2004 entered into between MarkWest Hydrocarbon, Inc. and MarkWest Energy Appalachia, L.L.C., replacing and superseding that certain Agreement for Construction and Removal dated October 10, 2003.

*"Non-citizen Assignee"* means a Person whom the General Partner has determined in its 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 4.7.

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

*"Nonrecourse Deductions"* means any and all items of loss, deduction or expenditure (including, 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).

*"Operating Company"* means MarkWest Energy Operating Company, L.L.C., a Delaware limited liability company, and any successors thereto.

*"Operating Company Agreement"* means the Amended and Restated Limited Liability Company Agreement of the Operating Company, as it may be amended, supplemented or restated from time to time.

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

*"Outstanding"* means, with respect to Partnership Securities, all Partnership Securities that are issued by the Partnership and reflected as outstanding on the Partnership's books and records as of the date of determination; *provided, however*, that if at any time any Person or Group beneficially owns 20% or more of any Outstanding Partnership Securities of any class then Outstanding, all Partnership Securities owned by such Person or Group shall not be voted on any matter and shall not be considered to be Outstanding when sending notices of a meeting of Limited Partners to vote on any matter (unless otherwise required by any non-waivable provision of law), calculating required votes, determining the presence of a quorum or for other similar purposes under this Agreement; *provided, further*, that the foregoing limitation shall not apply to any Person or Group who acquired 20% or more of any Partnership Securities issued by the Partnership with the prior approval of the Board of Directors of the General Partner.

*"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 MarkWest Energy Partners, L.P., a Delaware limited partnership, and any successors thereto.

*"Partnership Group"* means the Partnership, the Operating Company and any Subsidiary of any such entity, treated as a single consolidated entity.

*"Partnership Interest"* means an interest in the Partnership, which shall include the Limited Partner Interests.

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

*"Partnership Security"* means any class or series of equity interest in the Partnership (but excluding any options, rights, warrants and appreciation rights relating to an equity interest in the Partnership), including without limitation, Common Units and Class A Units.

*"Percentage Interest"* means as of any date of determination (a) as to any Unitholder or Assignee holding Units (Common Units and Class A Units), the product obtained by multiplying (i) 100% less the percentage applicable to paragraph (b) by (ii) the quotient obtained by dividing (A) the number of Units (Common Units and Class A Units) held by such Unitholder or Assignee by (B) the total number of all outstanding Units (Common Units and Class A Units), and (b) as to the holders of additional Partnership Securities issued by the Partnership in

accordance with Section 5.4, the percentage established as a part of such issuance. The Percentage Interest with respect to the General Partner Interest shall at all times be zero.

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

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

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

*"Quarter"* means, unless the context requires otherwise, a fiscal quarter of the Partnership.

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

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

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

*"Redeemable Interests"* means any Partnership Interests for which a redemption notice has been given, and has not been withdrawn, pursuant to Section 4.8.

*"Required Allocations"* means any allocation of an item of income, gain, loss or deduction pursuant to Section 6.1(c)(i), 6.1(c)(ii), 6.1(c)(iii), 6.1(c)(iv), 6.1(c)(vi) or 6.1(c)(viii).

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

*"Second Amended and Restated Agreement"* has the meaning assigned to such term in Section 2.1.

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

*"Subordinated Units"* has the meaning assigned to such term in Section 1.1 of the Second Amended and Restated Agreement.

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

*"Substituted Limited Partner"* means a Person who is admitted as a Limited Partner to the Partnership pursuant to Section 10.1 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.

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

*"Trading Day"* means a day on which the principal National Securities Exchange on which such Limited Partner Interests of any class are listed or admitted to trading is open for the transaction of business or, if Limited Partner Interests 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.

*"Transfer"* has the meaning assigned to such term in Section 4.4(a).

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

"Unit" means a Partnership Security that is designated as a "Unit" and shall include Common Units and Class A Units but shall not include the General Partner Interest; *provided, however*, that when the term "Unit" is used herein in the context of any vote or other approval, including without limitation Article XIII and Article XIV, such term shall not, solely for such purpose, include any holder of Class A Units except as otherwise required by any non-waivable provision of law.

"Unitholders" means the holders of 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 5.3(d)) over (b) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 5.3(d) as of such date).

"Unrealized Loss" attributable to any item of Partnership property means, as of any date of determination, the excess, if any, of (a) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 5.3(d) as of such date) over (b) the fair market value of such property as of such date (as determined under Section 5.3(d)).

"U.S. GAAP" means United States Generally Accepted Accounting Principles consistently applied.

"Voting Units" means all Units that are granted the right under this Agreement or under the Delaware Act to vote with respect to the relevant matter. Common Units constitute Voting Units, but Class A Units, the General Partner Interests or any Partnership Securities owned, directly or indirectly, by the Partnership do not constitute Voting Units.

Section 1.2 *Construction.* Unless the context requires otherwise: (a) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; and (c) the term "include" or "includes" means includes, without limitation, and "including" means including, without limitation.

## ARTICLE II ORGANIZATION

Section 2.1 *Formation.* The General Partner and MarkWest Hydrocarbon, Inc. have previously formed the Partnership as a limited partnership pursuant to the provisions of the Delaware Act and hereby amend and restate in its entirety the original Agreement of Limited Partnership of MarkWest Energy Partners, L.P. as amended by that certain Amended and Restated Agreement of Limited Partnership of MarkWest Energy Partners, L.P., dated as of May 24, 2002 (the "*First Amended and Restated Agreement*"), as amended by that certain Amendment No. 1, dated December 31, 2004, and Amendment No. 2, dated June 10, 2005, to the First Amended and Restated Agreement, and that certain Second Amended and Restated Agreement of Limited Partnership of MarkWest Energy Partners, L.P., dated as of February 28, 2007 (the "*Second Amended and Restated Agreement*"). 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 and a Partner has no interest in specific Partnership property.

Section 2.2 *Name.* The name of the Partnership shall be "MarkWest Energy Partners, L.P." The Partnership's business may be conducted under any other name or names deemed necessary or appropriate by the General Partner in its sole discretion, 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 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 2.3 *Registered Office; Registered Agent; Principal Office; Other Offices.* Unless and until changed by the General Partner, the registered office of the Partnership in the State of Delaware shall be located at 1209 Orange Street, Wilmington, Delaware 19801, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office shall be The Corporation Trust Company. The principal office of the Partnership shall be located at 1515 Arapahoe Street, Tower 2, Suite 700, Denver, Colorado 80202 or such other place as the General Partner may from time to time designate by notice to the Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner deems necessary or appropriate. The address of the General Partner shall be 1515 Arapahoe Street, Tower 2, Suite 700, Denver, Colorado 80202 or such other place as the General Partner may from time to time designate by notice to the Limited Partners.

Section 2.4 *Purpose and Business.* The purpose and nature of the business to be conducted by the Partnership shall be to (a) serve as a member of the Operating Company and, in connection therewith, to exercise all the rights and powers conferred upon the Partnership as a member of the Operating Company pursuant to the Operating Company Agreement or otherwise, (b) engage directly in, or enter into or form any corporation, partnership, joint venture, limited liability company or other arrangement to engage indirectly in, any business activity that the Operating Company is permitted to engage in by the Operating Company Agreement or that its Subsidiaries are permitted to engage in by their limited liability company or partnership agreements 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, (c) engage directly in, or 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; *provided, however,* that the General Partner reasonably determines, as of the date of the acquisition or commencement of such activity, that such activity does not affect the Partnership's treatment as a partnership for Federal income tax purposes, and (d) do anything necessary or appropriate to the foregoing, including the making of capital contributions or loans to a Group Member. The General Partner has no obligation or duty to the Partnership, the Limited Partners or the



Assignees to propose or approve, and in its discretion may decline to propose or approve, the conduct by the Partnership of any business.

Section 2.5 *Powers.* The Partnership shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described in Section 2.4 and for the protection and benefit of the Partnership.

Section 2.6 *Power of Attorney.*

(a) Each Limited Partner and each Assignee hereby constitutes and appoints the General Partner and, if a Liquidator shall have been selected pursuant to Section 12.2, the Liquidator (and any successor to the Liquidator by merger, transfer, assignment, election or otherwise) and each of their authorized officers and attorneys-in-fact, as the case may be, with full power of substitution, as his true and lawful agent and attorney-in-fact, with full power and authority in his name, place and stead, to:

(i) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (A) all certificates, documents and other instruments (including this Agreement and the Certificate of Limited Partnership and all amendments or restatements hereof or thereof) that the General Partner or the Liquidator 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, as applicable, pursuant to, or other events described in, Article IV, X, XI or XII; (E) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges of any class or series of Partnership Securities issued pursuant to Section 5.4; 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 XIV; 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 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 discretion of the General Partner or the Liquidator, to effectuate the terms or intent of this Agreement; *provided, however*, that when required by Section 13.3 or any other provision of this Agreement that establishes a percentage of

the Limited Partners or of the Limited Partners of any class or series required to take any action, the General Partner and the Liquidator may exercise the power of attorney made in this Section 2.6(a)(ii) only after the necessary vote, consent or approval of the Limited Partners or of the Limited Partners of such class or series, as applicable.

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

(b) The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest, and it shall survive and, to the maximum extent permitted by law, not be affected by the subsequent death, incompetency, disability, incapacity, dissolution, bankruptcy or termination of any Limited Partner 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, to the maximum extent permitted by law, hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the General Partner or the Liquidator taken in good faith under such power of attorney. Each Limited Partner or Assignee shall execute and deliver to the General Partner or the Liquidator, within 15 days after receipt of the request therefor, such further designation, powers of attorney and other instruments as the General Partner or the Liquidator deems necessary to effectuate this Agreement and the purposes of the Partnership.

Section 2.7 *Term.* The term of the Partnership commenced upon the filing of the Certificate of Limited Partnership in accordance with the Delaware Act and shall continue in existence until the dissolution of the Partnership in accordance with the provisions of Article XII. The existence of the Partnership as a separate legal entity shall continue until the cancellation of the Certificate of Limited Partnership as provided in the Delaware Act.

Section 2.8 *Title to Partnership Assets.* Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner 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 reasonable efforts to cause record title to such assets (other than those assets in respect of which the General Partner determines that the expense and difficulty of conveyancing makes transfer of record title to the Partnership impracticable) to be vested in the Partnership as soon as reasonably practicable; *provided, further*, that, prior to the withdrawal of the General Partner or as soon thereafter as practicable, the General Partner shall use reasonable efforts to effect the transfer of record title to the Partnership and, prior to any such transfer, will

provide for the use of such assets in a manner satisfactory to the General Partner. All Partnership assets shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which record title to such Partnership assets is held.

### ARTICLE III RIGHTS OF LIMITED PARTNERS

Section 3.1 *Limitation of Liability.* The Limited Partners and the Assignees shall have no liability under this Agreement except as expressly provided in this Agreement or the Delaware Act.

Section 3.2 *Management of Business.* No Limited Partner or Assignee, in its capacity as such, shall participate in the operation, management or control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. Any action taken by any Affiliate of the General Partner or any officer, director, employee, manager, member, general partner, agent or trustee of the General Partner or any of its Affiliates, or any officer, director, employee, member, general partner, agent or trustee of a Group Member, in its capacity as such, shall not be deemed to be participation in the control of the business of the Partnership by a limited partner of the Partnership (within the meaning of Section 17-303(a) of the Delaware Act) and shall not affect, impair or eliminate the limitations on the liability of the Limited Partners or Assignees under this Agreement.

Section 3.3 *Outside Activities of the Limited Partners.* Subject to the provisions of Section 7.6, 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 3.4 *Rights of Limited Partners.*

(a) In addition to other rights provided by this Agreement or by applicable law, and except as limited by Section 3.4(b), each Limited Partner shall have the right, for a purpose reasonably related to such Limited Partner's interest as a limited partner in the Partnership, upon reasonable written demand 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 income tax returns for each year;

(iii) to have furnished to him a current list of the name and last known business, residence or mailing address of each Partner;

(iv) to have furnished to him 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 agreement with any third party to keep confidential (other than agreements with Affiliates of the Partnership the primary purpose of which is to circumvent the obligations set forth in this Section 3.4).

#### ARTICLE IV CERTIFICATES; RECORD HOLDERS; TRANSFER OF PARTNERSHIP INTERESTS; REDEMPTION OF PARTNERSHIP INTERESTS

Section 4.1 *Certificates.* Upon the Partnership's issuance of Common Units or Class A 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. In addition, upon the request of any Person owning Class A Units or any other Partnership Securities other than Common Units, the Partnership shall issue to such Person one or more certificates evidencing such Class A Units or other Partnership Securities other than Common Units. Certificates shall be executed on behalf of the Partnership by the Chairman of the Board of Directors, President or any Executive Vice President or Vice President and the Secretary or any Assistant Secretary of the General Partner. No Common Unit Certificate shall be valid for any purpose until it has been countersigned by the Transfer Agent; *provided, however*, that if the General Partner elects to issue Common Units in global form, the Common Unit Certificates shall be valid upon receipt of a certificate from the Transfer Agent certifying that the Common Units have been duly registered in accordance with the directions of the Partnership.

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

(a) If any mutilated Certificate is surrendered to the Transfer Agent, the appropriate officers of the General Partner on behalf of the Partnership shall execute, and the Transfer Agent shall countersign and deliver in exchange therefor, a new Certificate evidencing the same number and type of Partnership Securities as the Certificate so surrendered.

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

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

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

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

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

If a Limited Partner or Assignee fails to notify the General Partner within a reasonable time after he has notice of the loss, destruction or theft of a Certificate, and a transfer of the Limited Partner Interests represented by the Certificate is registered before the Partnership, the General Partner or the Transfer Agent receives such notification, the Limited Partner 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 4.2, the General Partner may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Transfer Agent) reasonably connected therewith.

**Section 4.3 *Record Holders.*** The Partnership shall be entitled to recognize the Record Holder as the Partner or Assignee with respect to any Partnership Interest and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Partnership Interest on the part of any other Person, regardless of whether the Partnership shall have actual or other notice thereof, except as otherwise provided by law or any applicable rule, regulation, guideline or requirement of any National Securities Exchange on which such Partnership Interests are listed 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 Partnership Interests, as between the Partnership on the one hand, and such other Persons on the other, such representative Person (a) shall be the 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 Partner or Assignee (as the case may be) hereunder and as, and to the extent, provided for herein.

Section 4.4 *Transfer Generally.*

(a) The term "*transfer*," when used in this Agreement with respect to a Partnership Interest, shall be deemed to refer to a transaction by which the General Partner assigns its General Partner Interest to another Person who then becomes the general partner of the Partnership or by which the holder of a Limited Partner Interest assigns such Limited Partner Interest to another Person who is or becomes a Limited Partner or an Assignee, and includes a sale, assignment, gift, pledge, encumbrance, hypothecation, mortgage, exchange or any other disposition by law or otherwise.

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

(c) Nothing contained in this Agreement shall be construed to prevent a disposition by any member of the General Partner (other than MarkWest Hydrocarbon, Inc., its direct and indirect Subsidiaries and the Partnership) of any or all of the membership interests of the General Partner; *provided, however*, the General Partner shall not dispose of any of its Partnership Interests; *provided, further*, the General Partner may distribute its holdings of Class A Units to its members.

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

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

(b) Except as otherwise provided in Section 4.7, the General Partner shall not recognize any transfer of Limited Partner Interests until the Certificates evidencing such Limited Partner Interests are surrendered for registration of transfer 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 General Partner for such transfer; *provided, however*, that as a condition to the issuance of any new Certificate under this Section 4.5, the General Partner may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed with respect thereto.

(c) Limited Partner Interests may be transferred only in the manner described in this Section 4.5. The transfer of any Limited Partner Interests and the admission of any new Limited Partner shall not constitute an amendment to this Agreement.

(d) Until admitted as a Substituted Limited Partner pursuant to Section 10.1, the Record Holder of a Limited Partner Interest shall be an Assignee in respect of such Limited Partner Interest. Limited Partners may include custodians, nominees or any other individual or entity in its own or any representative capacity.

(e) A transferee of a Limited Partner Interest 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 4.6 *Restrictions on Transfers.*

(a) Except as provided in Section 4.6(c) below, but notwithstanding the other provisions of this Article IV, no transfer of any Partnership Interests shall be made if such transfer would (i) violate the then applicable federal or state securities laws or rules and regulations of the Commission, any state securities commission or any other governmental authority with jurisdiction over such transfer, (ii) terminate the existence or qualification of the Partnership or the Operating Company under the laws of the jurisdiction of its formation, or (iii) cause the Partnership or the Operating Company to be treated as an association taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes (to the extent not already so treated or taxed).

(b) The General Partner may impose restrictions on the transfer of Partnership Interests if a subsequent Opinion of Counsel determines that such restrictions are necessary to avoid a significant risk of any Group Member becoming taxable as a corporation or otherwise to be taxed as an entity for federal income tax purposes. The restrictions may be imposed by making such amendments to this Agreement as the General Partner 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 Limited Partner Interests on the principal National Securities Exchange on which such class of Limited Partner Interests is then traded must be approved, prior to such amendment being effected, by the holders of at least a majority of the Outstanding Limited Partner Interests of such class.

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

(d) The General Partner Interest shall not be transferred to any Person for any reason whatsoever. So long as the Partnership is a limited partnership, 100% of the General Partner Interests, if any, shall be owned, beneficially and of record, by the Partnership or one of more of its wholly owned subsidiaries.

Section 4.7 *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 Partnership Interests owned by such Limited Partner or Assignee shall be subject to redemption in accordance with the provisions of Section 4.8. In addition, the General Partner may require that the status of any such 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 Limited Partner Interests.

(b) The General Partner shall, in exercising voting rights in respect of Limited Partner Interests held by it on behalf of Non-citizen Assignees, distribute the votes in the same ratios as the votes of Partners (including without limitation the General Partner) in respect of Limited Partner Interests other than those of Non-citizen Assignees are cast, either for, against or abstaining as to the matter.

(c) Upon dissolution of the Partnership, a Non-citizen Assignee shall have no right to receive a distribution in kind pursuant to Section 12.3 but shall be entitled to the cash equivalent thereof, and the Partnership shall provide cash in exchange for an assignment of the Non-citizen Assignee's share of the distribution in kind. Such payment and assignment shall be treated for Partnership purposes as a purchase by the Partnership from the Non-citizen Assignee of his Limited Partner Interest (representing his right to receive his share of such distribution in kind).

(d) At any time after he can and does certify that he has become an Eligible Citizen, a Non-citizen Assignee may, upon application to the General Partner, request admission as a Substituted Limited Partner with respect to any Limited Partner Interests of such Non-citizen Assignee not redeemed pursuant to Section 4.8, and upon his admission pursuant to Section 10.1, the General Partner shall cease to be deemed to be the Limited Partner in respect of the Non-citizen Assignee's Limited Partner Interests.



Section 4.8 *Redemption of Partnership Interests of Non-citizen Assignees.*

(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 4.7(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 Partnership Interests to a Person who is an Eligible Citizen and who furnishes a Citizenship Certification to the General Partner prior to the date fixed for redemption as provided below, redeem the 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 Interests, the date fixed for redemption, the place of payment, that payment of the redemption price will be made upon surrender of the Certificate evidencing the Redeemable Interests and that on and after the date fixed for redemption no further allocations or distributions to which the Limited Partner or Assignee would otherwise be entitled in respect of the Redeemable Interests will accrue or be made.

(ii) The aggregate redemption price for Redeemable Interests shall be an amount equal to the Current Market Price (the date of determination of which shall be the date fixed for redemption) of Limited Partner Interests of the class to be so redeemed multiplied by the number of Limited Partner Interests of each such class included among the Redeemable Interests. The redemption price shall be paid, in the 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 Interests, 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 Interests shall no longer constitute issued and Outstanding Limited Partner Interests.

(b) The provisions of this Section 4.8 shall also be applicable to Limited Partner Interests 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 4.8 shall prevent the recipient of a notice of redemption from transferring his Limited Partner Interest before the redemption date if such transfer is otherwise permitted under this Agreement. Upon receipt of notice of such a transfer, the General Partner shall withdraw the notice of redemption, provided the transferee of such Limited Partner Interest certifies to the satisfaction of the General Partner in a Citizenship Certification delivered in connection with 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 V CAPITAL CONTRIBUTIONS AND ISSUANCE OF PARTNERSHIP INTERESTS

Section 5.1 *Contributions.* On the date hereof, the Partnership: (i) issued 18,506,132 Class A Units to the General Partner in exchange for (A) the General Partner Interest constituting the 2% economic interest (but not the other rights, privileges and obligations related to the General Partner Interest), which represented the right to be allocated 2% of the income, gains, losses and deductions of the Partnership and to receive 2% of the distributions made by the Partnership and (B) the Incentive Distribution Rights; (ii) issued 5,900,000 Class A Units to MarkWest Hydrocarbon, Inc. in exchange for 4,938,992 Common Units, which represented all of its holdings of the Common Units; and (iii) cancelled such portion of the General Partner Interest, the Incentive Distribution Rights and the Common Units.

Section 5.2 *Interest and Withdrawal.* No interest shall be paid by the Partnership on Capital Contributions. No Partner or Assignee shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent, if any, that distributions made pursuant to this Agreement or upon termination of the Partnership may be considered as such by law and then only to the extent provided for in this Agreement. Except to the extent expressly provided in this Agreement, no Partner or Assignee shall have priority over any other Partner or Assignee either as to the return of Capital Contributions or as to profits, losses or distributions. Any such return shall be a compromise to which all Partners and Assignees agree within the meaning of Section 17-502(b) of the Delaware Act.

### Section 5.3 *Capital Accounts.*

(a) The Partnership shall maintain for each Limited 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 5.3(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1, and decreased by (x) the amount of cash or Net Agreed Value of all actual and deemed distributions of cash or property made with respect to such Partnership Interest pursuant to this

Agreement and (y) all items of Partnership deduction and loss computed in accordance with Section 5.3(b) and allocated with respect to such Partnership Interest pursuant to Section 6.1.

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

(i) Solely for purposes of this Section 5.3, the Partnership shall be treated as owning directly its proportionate share (as determined by the General Partner based upon the provisions of the Operating Company Agreement) of all property owned by the Operating Company or any other Subsidiary that is classified as a partnership for federal income tax purposes.

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

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

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

(v) In accordance with the requirements of Section 704(b) of the Code, any deductions for depreciation, cost recovery or amortization attributable to any Contributed Property shall be determined as if the adjusted basis of such property on the date it was acquired by the Partnership were equal to the Agreed Value of such property. Upon an adjustment pursuant to Section 5.3(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.

(vi) If the Partnership's adjusted basis in a depreciable or cost recovery property is reduced for federal income tax purposes pursuant to Section 48(q)(1) or 48(q)(3) of the Code, the amount of such reduction shall, solely for purposes hereof, be deemed to be an additional depreciation or cost recovery deduction in the year such property is placed in service and shall be allocated among the Partners pursuant to Section 6.1. Any restoration of such basis pursuant to Section 48(q)(2) of the Code shall, to the extent possible, be allocated in the same manner to the Partners to whom such deemed deduction was allocated.

(c) 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) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), on an issuance of additional Partnership Interests for cash or Contributed Property, the Capital Account of all Partners and the Carrying Value of each Partnership property immediately prior to such issuance shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Partnership property, as if such Unrealized Gain or Unrealized Loss had been recognized on an actual sale of each such property immediately prior to such issuance and had been allocated to the Partners at such time pursuant to Section 6.1 in the same manner as any item of gain or loss actually recognized during such period would have been allocated. In determining such Unrealized Gain or Unrealized Loss, the aggregate cash amount and fair market value of all Partnership assets (including, without limitation, cash or cash equivalents) immediately prior to the issuance of additional Partnership Interests shall be determined by the General Partner using such reasonable method of valuation as it may adopt; *provided, however*, that the General Partner, in arriving at such valuation, must take fully into account the fair market value of the Partnership Interests of all Partners at such time. The General Partner shall allocate such aggregate value among the assets of the Partnership (in such manner as it determines in its 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 6.1 in the same manner as any item of gain or loss actually recognized during such period would have been allocated. In

determining such Unrealized Gain or Unrealized Loss the aggregate cash amount and fair market value of all Partnership assets (including, 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 12.3 or in the case of a deemed distribution, be determined and allocated in the same manner as that provided in Section 5.3(d)(i) or (B) in the case of a liquidating distribution pursuant to Section 12.3, be determined and allocated by the Liquidator using such reasonable method of valuation as it may adopt.

**Section 5.4** *Issuances of Additional Partnership Securities.*

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

(b) Each additional Partnership Security authorized to be issued by the Partnership pursuant to Section 5.4(a) may be issued in one or more classes, or one or more series of any such classes, with such designations, preferences, rights, powers and duties (which may be senior to existing classes and series of Partnership 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 or exchange and, if so, the terms and conditions of such conversion or exchange; (vi) the terms and conditions upon which each Partnership Security will be issued, evidenced by certificates and assigned or transferred; 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 (i) each issuance of Partnership Securities and options, rights, warrants and appreciation rights relating to Partnership Securities pursuant to this Section 5.4, (ii) the admission of Additional Limited Partners and (iii) all additional issuances of Partnership Securities. The General Partner is further authorized and directed 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 or in connection with the conversion of the General Partner Interest into Units pursuant to the terms of this Agreement, including compliance with any statute, rule, regulation or guideline of any federal, state or other governmental agency or any National Securities Exchange on which the Units or other Partnership Securities are listed for trading.

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

Section 5.5 *Splits and Combinations.*

(a) Subject to Section 5.5(d), the Partnership may make a Pro Rata distribution of Partnership Securities to all Record Holders or may effect a subdivision or combination of Partnership Securities so long as, after any such event, each Partner shall have the same Percentage Interest in the Partnership as before such event, and any amounts calculated on a per Unit basis or stated as a number of Units 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 a date not less than 10 days prior to the date of such notice. The General Partner also may cause a firm of independent public accountants selected by it to calculate the number of Partnership Securities to be held by each Record Holder after giving effect to such distribution, subdivision or combination. The General Partner shall be entitled to rely on any certificate provided by such firm as conclusive evidence of the accuracy of such calculation.

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

(d) The Partnership shall not issue fractional Units upon any distribution, subdivision or combination of Units. If a distribution, subdivision or combination of Units would result in the issuance of fractional Units but for the provisions of Section 5.4(d) and this Section 5.5(d), each fractional Unit shall be rounded to the nearest whole Unit (and a 0.5 Unit shall be rounded to the next higher Unit).

Section 5.6 *Fully Paid and Non-Assessable Nature of Limited Partner Interests.* All Limited Partner Interests issued pursuant to, and in accordance with the requirements of, this Article V shall be fully paid and non-assessable Limited Partner Interests in the Partnership, except as such non-assessability may be affected by Section 17-607 of the Delaware Act.

ARTICLE VI  
ALLOCATIONS AND DISTRIBUTIONS

Section 6.1 *Allocations for Capital Account Purposes.* For purposes of maintaining the Capital Accounts and in determining the rights of the Partners among themselves, the Partnership's items of income, gain, loss and deduction (computed in accordance with Section 5.3(b)) shall be allocated among the Partners in each taxable year (or portion thereof) as provided herein below.

(a) *Net Income and Net Loss.* After giving effect to the special allocations set forth in Section 6.1(c), Net Income and Net Loss for each taxable period and all items of income, gain, loss and deduction taken into account in computing Net Income and Net Loss for such taxable period shall be allocated to the Unitholders, Pro Rata.

(b) *Certain Special Allocations.*

(i) All Hydrocarbon Items shall be allocated to the Common Unitholders, Pro Rata.

(ii) All items of deduction and loss attributable to the New Cobb plant shall be allocated to the General Partner in its capacity as a holder of Class A Units or any subsequent holder of such Class A Units.

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

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

(ii) *Chargeback of Partner Nonrecourse Debt Minimum Gain.* Notwithstanding the other provisions of this Section 6.1 (other than Section 6.1(c)(i)), except as provided in Treasury Regulation Section 1.704-2(i)(4), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain during any Partnership taxable period, any Partner with a share of Partner Nonrecourse Debt Minimum Gain at the beginning of such taxable period shall be allocated items of Partnership income and gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii), or any successor provisions. For purposes of this Section 6.1(c)(ii), each Partner's Adjusted Capital Account balance shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 6.1(c)(ii), other than Section 6.1(c)(i) and other than an allocation pursuant to Section 6.1(c)(v) and Section 6.1(c)(vi), with respect to such taxable period. This Section 6.1(c)(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) *Qualified Income Offset.* In the event any Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Partnership income and gain shall be specially allocated to such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations promulgated under Section 704(b) of the Code, the deficit balance, if any, in its Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible unless such deficit balance is otherwise eliminated pursuant to Section 6.1(c)(i) or 6.1(c)(ii).

(iv) *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, however*, that an allocation pursuant to this Section 6.1(c)(iv) shall be made only if and to the extent that such Partner would have a deficit balance in its Capital Account as adjusted after all other allocations provided for in this Section 6.1 have been tentatively made as if this Section 6.1(c)(iv) were not in this Agreement.

(v) *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 other Partners, to revise the prescribed ratio to the numerically closest ratio that does satisfy such requirements.

(vi) *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.

(vii) *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.

(viii) *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(c) 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.

(ix) *Curative Allocation.*

(A) Notwithstanding any other provision of this Section 6.1, other than the Required Allocations, the Required Allocations shall be taken into account in making the Agreed Allocations so that, to the extent possible, the net amount of items of income, gain, loss and deduction allocated to each Partner pursuant to the Required Allocations and the Agreed Allocations, together, shall be equal to the net amount of such items that would have been allocated to each such Partner under the Agreed Allocations had the Required Allocations and the related Curative Allocation not otherwise been provided in this Section 6.1. Notwithstanding the preceding sentence, Required Allocations relating to (1) Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partnership Minimum Gain and (2) Partner Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partner Nonrecourse Debt Minimum Gain. Allocations pursuant to this Section 6.1(c)(ix)(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 6.1(c)(ix)(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 6.1(c)(ix)(A) in whatever order is most likely to minimize the economic distortions that might otherwise result from the Required Allocations, and (2) divide all allocations pursuant to Section 6.1(c)(ix)(A) among the Partners in a manner that is likely to minimize such economic distortions.

(x) Items of income and gain allocated under the foregoing provision of Section 6.1(c)(i), 6.1(c)(ii), 6.1(c)(iii) or 6.1(c)(viii) that are Hydrocarbon Items shall, to the maximum extent possible, be allocated to the Common Unitholders, Pro Rata.

Section 6.2 *Allocations for Tax Purposes.*

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

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

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

(ii) In the case of an Adjusted Property, such items shall (A) first, be allocated among the Partners in a manner consistent with the principles of Section 704(c) of the Code to take into account the Unrealized Gain or Unrealized Loss attributable to such property and the allocations thereof pursuant to Section 5.3(d)(i) or 5.3(d)(ii), (B) second, in the event such property was originally a Contributed Property, be allocated among the Partners in a manner consistent with Section 6.2(b)(i)(A) and (C) third, any item of Residual Gain or Residual Loss attributable to an Adjusted Property shall be allocated among the Partners in the same manner as its correlative item of "book" gain or loss is allocated pursuant to Section 6.1.

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

(c) For the proper administration of the Partnership and for the preservation of uniformity of the Limited Partner Interests (or any class or classes thereof), the General Partner shall 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 Limited Partner Interests (or any class or classes thereof). The General Partner may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 6.2(c) only if such conventions, allocations or amendments would not have a material adverse effect on the Partners, the holders of any class or classes of Limited Partner Interests issued and Outstanding or the Partnership, and if such allocations are consistent with the principles of Section 704 of the Code.

(d) The General Partner in its 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 any inconsistency of such approach with Treasury Regulation Section 1.167(c)-1(a)(6) or any successor regulations thereto. If the General Partner determines that such reporting position cannot reasonably be taken, the General Partner may adopt depreciation and amortization conventions under which all purchasers acquiring Limited Partner Interests in the same month would receive depreciation and amortization deductions, based upon the same applicable rate as if they had purchased a direct interest in the Partnership's property. If the General Partner chooses not to utilize such aggregate method, the General Partner may use any other reasonable depreciation and amortization conventions to preserve the uniformity of the intrinsic tax characteristics of any Limited Partner Interests that would not have a material adverse effect on the Limited Partners or the Record Holders of any class or classes of Limited Partner Interests.

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

(f) All items of income, gain, loss, deduction and credit recognized by the Partnership for federal income tax purposes and allocated to the Partners in accordance with the provisions hereof shall be determined without regard to any election under Section 754 of the Code 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 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 or any other extraordinary item of income or loss realized and recognized other than in the ordinary course of business, as determined by the General Partner in its sole discretion, 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 or appropriate in its sole discretion, to the extent permitted or required by Section 706 of the Code and the regulations or rulings promulgated thereunder.

(h) Allocations that would otherwise be made to a Limited Partner under the provisions of this Article VI shall instead be made to the beneficial owner of Limited Partner Interests held by a nominee in any case in which the nominee has furnished the identity of such

owner to the Partnership in accordance with Section 6031(c) of the Code or any other method acceptable to the General Partner in its sole discretion.

**Section 6.3 Distributions.**

(a) Subject to Section 6.3(f), within 45 days following the end of each Quarter, an amount equal to 100% of Available Cash with respect to such Quarter shall, subject to Section 17-607 of the Delaware Act, be distributed in accordance with this Article VI by the Partnership to the Unitholders, Pro Rata, as of the Record Date selected by the General Partner in its reasonable discretion.

(b) Notwithstanding Section 6.3(a), in the event of the dissolution and liquidation of the Partnership, all receipts received during or after the Quarter in which the Liquidation Date occurs, other than from borrowings described in (a)(ii) of the definition of Available Cash, shall be applied and distributed solely in accordance with, and subject to the terms and conditions of, Section 12.3.

(c) In the event of the dissolution and liquidation of the Partnership, all receipts received during or after the Quarter in which the Liquidation Date occurs shall be applied and distributed solely in accordance with, and subject to the terms and conditions of, Section 12.3.

(d) The General Partner shall have the discretion to treat taxes paid by the Partnership on behalf of, or amounts withheld with respect to, all or less than all of the Partners as if they had been distributed to the Partner on whose behalf the taxes were paid or withheld.

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

(f) All Hydrocarbon Available Cash shall be distributed to the Common Unitholders, Pro Rata.

(g) All other distributions of cash and other property shall be made to all Unitholders (Common Unitholders and Class A Unitholders), Pro Rata.

**ARTICLE VII  
MANAGEMENT AND OPERATION OF BUSINESS**

**Section 7.1 Corporate Governance.** The corporate governance of the Partnership, the General Partner or the Board of Directors shall be governed by all applicable rules, regulations, guidelines or requirements of the National Securities Exchange on which such Partnership Interests are listed for trading without regard to any exemptions provided to limited partnerships under such National Securities Exchange.

Section 7.2 *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 7.4, 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 2.5 and to effectuate the purposes set forth in Section 2.4, including the following:

- (i) the making of any expenditures, the lending or borrowing of money, the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness, including indebtedness that is convertible into Partnership Securities, and the incurring of any other obligations;
- (ii) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Partnership;
- (iii) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any or all of the assets of the Partnership or the merger or other combination of the Partnership with or into another Person (the matters described in this clause (iii) being subject, however, to any prior approval that may be required by Section 7.4);
- (iv) the use of the assets of the Partnership (including cash on hand) for any purpose consistent with the terms of this Agreement, including the financing of the conduct of the operations of the Partnership Group; subject to Section 7.7(a), the lending of funds to other Persons (including other Group Members); the repayment or guarantee of obligations of the Partnership Group; and the making of capital contributions to any member of the Partnership Group;
- (v) the negotiation, execution and performance of any contracts, conveyances or other instruments (including instruments that limit the liability of the Partnership under contractual arrangements to all or particular assets of the Partnership, with the other party to the contract to have no recourse against the General Partner or its assets other than its interest in the Partnership, even if same results in the terms of the transaction being less favorable to the Partnership than would otherwise be the case);
- (vi) the distribution of Partnership cash;
- (vii) the selection and dismissal of employees (including employees having titles such as "president," "vice president," "secretary" and "treasurer") and agents,

outside attorneys, accountants, consultants and contractors and the determination of their compensation and other terms of employment or hiring;

(viii) the maintenance of such insurance for the benefit of the Partnership 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 (including the acquisition of interests in, and the contributions of property to, any Group Member from time to time) subject to the restrictions set forth in Section 2.4;

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

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

(xii) the entering into of listing agreements with any National Securities Exchange and the delisting of some or all of the Limited Partner Interests from, or requesting that trading be suspended on, any such exchange (subject to any prior approval that may be required under Section 4.6);

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

(xiv) the undertaking of any action in connection with the Partnership's participation in any Group Member as a member or partner.

**Section 7.3 *Certificate of Limited Partnership.*** The General Partner has caused the Certificate of Limited Partnership to be filed with the Secretary of State of the State of Delaware as required by the Delaware Act. The General Partner shall use all reasonable efforts to cause to be filed such other certificates or documents 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. 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 necessary to maintain the Partnership as a limited partnership (or a partnership or other entity in which the limited partners have limited liability) under the laws of the State of Delaware or of any other state in which the Partnership may elect to do business or own property. Subject to the terms of Section 3.4(a), the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate of Limited Partnership, any qualification document or any amendment thereto to any Limited Partner.

Section 7.4 *Restrictions on the General Partner's Authority.*

(a) The General Partner may not, without written approval of the specific act by holders of all of the Outstanding Limited Partner Interests or by other written instrument executed and delivered by holders of all of the Outstanding Limited Partner Interests 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; or (iv) amending this Agreement in any manner.

(b) Except as provided in Articles XII and XIV, 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 (including by way of merger, consolidation or other combination) or approve on behalf of the Partnership the sale, exchange or other disposition of all or substantially all of the assets of the Operating Company and its subsidiaries taken as a whole without the approval of holders of a majority of the Outstanding Voting Units; *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 or the Operating Company and shall not apply to any forced sale of any or all of the assets of the Partnership or the Operating Company pursuant to the foreclosure of, or other realization upon, any such encumbrance. Without the approval of holders of a majority of the Outstanding Voting Units, the General Partner shall not, on behalf of the Partnership, consent to any amendment to the Operating Company Agreement or take any action permitted to be taken by a member of the Operating Company, in either case, that would adversely affect the Limited Partners (including any particular class of Partnership Interests as compared to any other class of Partnership Interests) in any material respect.

Section 7.5 *Reimbursement of the General Partner.*

(a) Except as provided in this Section 7.5 and elsewhere in this Agreement, the General Partner shall not be compensated for its services as a general partner or managing member of any Group Member.

(b) The General Partner shall be reimbursed on a monthly basis, or such other reasonable 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 including Affiliates of the General Partner 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 7.5 shall be in addition to any reimbursement to the General Partner as a result of indemnification pursuant to Section 7.8.

(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 and adopt on behalf of the Partnership employee benefit plans, employee programs and employee practices (including plans, programs and practices involving the issuance of Partnership Securities or options to purchase or rights, warrants or appreciation rights relating to Partnership Securities), or cause the Partnership to issue Partnership Securities in connection with, or pursuant to, any employee benefit plan, employee program or employee practice maintained or sponsored by the General Partner 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 to the employees any Partnership Securities that the General Partner is obligated to provide to such employees pursuant to any such employee benefit plans, employee programs or employee practices. Expenses incurred by the General Partner in connection with any such plans, programs and practices (including the net cost to the General Partner or such Affiliates of Partnership Securities purchased by the General Partner or such Affiliates from the Partnership to fulfill options or awards under such plans, programs and practices) shall be reimbursed in accordance with Section 7.5(b). Any and all obligations of the General Partner under any employee benefit plans, employee programs or employee practices adopted by the General Partner as permitted by this Section 7.5(c) shall constitute obligations of the General Partner hereunder.

Section 7.6 *Outside Activities.*

(a) The General Partner (i) agrees that its sole business will be to act as a general partner or managing member, as the case may be, of the Partnership and any other partnership or limited liability company of which the Partnership or the Operating Company is, directly or indirectly, a partner or member and to undertake activities that are ancillary or related thereto (including being a limited partner in the Partnership), and (ii) shall not engage in any business or activity or incur any debts or liabilities except in connection with or incidental to (A) its performance as general partner or managing member of one or more Group Members, or (B) the acquiring, owning or disposing of debt or equity securities in any Group Member.

(b) The General Partner may acquire only the Partnership Interests.

(c) Anything in this Agreement to the contrary notwithstanding, to the extent that provisions of Section 7.8, 7.9, 7.10 or other Sections of this Agreement purport or are interpreted to have the effect of restricting the fiduciary duties that might otherwise, as a result of Delaware or other applicable law, be owed by the General Partner to the Partnership and its Limited Partners, or to constitute a waiver or consent by the Limited Partners to any such restriction, such provisions shall be inapplicable and have no effect in determining whether the General Partner has complied with its fiduciary duties in connection with determinations made by it under this Section 7.6.



Section 7.7 *Loans from the General Partner; Loans or Contributions from the Partnership; Contracts with Affiliates; Certain Restrictions on the General Partner.*

(a) The General Partner or any of its Affiliates may lend to any Group Member, and any Group Member may borrow from the General Partner or any of its Affiliates, funds needed or desired by the Group Member for such periods of time and in such amounts as the General Partner may determine; *provided, however*, that in any such case the lending party may not charge the borrowing party interest at a rate greater than the rate that would be charged the borrowing party or impose terms less favorable to the borrowing party than would be charged or imposed on the borrowing party by unrelated lenders on comparable loans made on an arm's-length basis (without reference to the lending party's financial abilities or guarantees). The borrowing party shall reimburse the lending party for any costs (other than any additional interest costs) incurred by the lending party in connection with the borrowing of such funds. For purposes of this Section 7.7(a) and Section 7.7(b), the term "Group Member" shall include any Affiliate of a Group Member that is controlled by the Group Member. No Group Member may lend funds to the General Partner or any of its Affiliates (other than another Group Member).

(b) The Partnership may lend or contribute to any Group Member, and any Group Member may borrow from the Partnership, funds on terms and conditions established in the sole discretion of the General Partner; *provided, however*, that the Partnership may not charge the Group Member interest at a rate less 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 a Group Member or to the General Partner in the discharge of its duties as General Partner of the Partnership. Any services rendered to a Group Member 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 7.7(c) shall be deemed satisfied as to (i) any transaction approved by the Board of Directors, (ii) any transaction, the terms of which are no less favorable to the Partnership Group 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 Group), is equitable to the Partnership Group. The provisions of Section 7.5 shall apply to the rendering of services described in this Section 7.7(c).

(d) The Partnership Group 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 7.7(e) shall be deemed to be satisfied as to (i) any transaction approved by the Board of Directors, (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. With respect to any contribution of assets to the Partnership in exchange for Partnership Securities, the Board of Directors, in determining whether the appropriate number of Partnership Securities are being issued, may 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 Board of Directors 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.

#### Section 7.8 *Indemnification.*

(a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, all Indemnitees shall be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including legal fees and expenses), judgments, fines, penalties, interest, settlements or other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of its status as an Indemnitee; *provided, however*, that the Indemnitee shall not be indemnified and held harmless if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Indemnitee is seeking indemnification pursuant to this Section 7.8, the Indemnitee acted in bad faith or engaged in fraud, willful misconduct or, in the case of a criminal matter, acted with knowledge that the Indemnitee's conduct was unlawful; *provided, further*, no indemnification pursuant to this Section 7.8 shall be available to the General Partner or its Affiliates (other than a Group Member) with respect to its or their obligations incurred pursuant to the Contribution Agreement (other than obligations incurred by the General Partner on behalf of the Partnership). Any indemnification pursuant to this Section 7.8 shall be made only out of the assets of the Partnership, it being agreed that the General Partner shall not be personally liable for such indemnification and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate such indemnification.

(b) To the fullest extent permitted by law, expenses (including legal fees and expenses) incurred by an Indemnitee who is indemnified pursuant to Section 7.8(a) in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Partnership prior to a determination that the Indemnitee is not entitled to be indemnified upon

receipt by the Partnership of an agreement by or on behalf of the Indemnatee to repay such amount if it shall be determined that the Indemnatee is not entitled to be indemnified as authorized in this Section 7.8.

(c) The indemnification provided by this Section 7.8 shall be in addition to any other rights to which an Indemnatee may be entitled under any agreement, pursuant to any vote of the holders of Outstanding Limited Partner Interests, as a matter of law or otherwise, both as to actions in the Indemnatee's capacity as an Indemnatee and as to actions in any other capacity, and shall continue as to an Indemnatee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnatee.

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

(e) For purposes of this Section 7.8, the Partnership shall be deemed to have requested an Indemnatee 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 Indemnatee with respect to an employee benefit plan pursuant to applicable law shall constitute "fines" within the meaning of Section 7.8(a); and action taken or omitted by it with respect to any employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the best interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose that is in the best interests of the Partnership.

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

(g) An Indemnatee shall not be denied indemnification in whole or in part under this Section 7.8 because the Indemnatee 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 or any predecessor agreement thereto, including a transaction involving the General Partner, any Affiliate thereof and/or any member, partner, officer, director, employee, agent or trustee of any Group Member, the General Partner or any Affiliate of any Group Member.

(h) The provisions of this Section 7.8 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

(i) No amendment, modification or repeal of this Section 7.8 or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnatee to be indemnified by the Partnership, nor the obligations of the Partnership to indemnify any such Indemnatee under and in accordance with the provisions of this Section 7.8

as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

Section 7.9 *Liability of Indemnitees.*

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

(b) Subject to its obligations and duties as General Partner set forth in Section 7.2(a), the General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and the General Partner shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the General Partner in good faith.

(c) To the extent that, at law or in equity, an Indemnatee has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or to the Partners, the General Partner and any other Indemnatee acting in connection with the Partnership's business or affairs shall not be liable to the Partnership or to any Partner for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict or otherwise modify the duties and liabilities of an Indemnatee otherwise existing at law or in equity, are agreed by the Partners to replace such other duties and liabilities of such Indemnatee.

(d) Any amendment, modification or repeal of this Section 7.9 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the liability to the Partnership, the Limited Partners, the General Partner, and the Partnership's and General Partner's directors, officers and employees under this Section 7.9 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

Section 7.10 *Other Matters Concerning the General Partner.*

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

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

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

(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 7.11 *Purchase or Sale of Partnership Securities.*** The General Partner may cause the Partnership to purchase or otherwise acquire Partnership Securities. As long as Partnership Securities are held by any Group Member, such Partnership Securities shall not be considered Outstanding for any purpose, except as otherwise provided herein. The General Partner or any Affiliate of the General Partner may also purchase or otherwise acquire and sell or otherwise dispose of Partnership Securities for its own account, subject to the provisions of Articles IV and X.

**Section 7.12 *Reliance by Third Parties.*** Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner and any officer of the General Partner authorized by the General Partner to act on behalf of and in the name of the Partnership has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any authorized contracts on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner or any such officer as if it were the Partnership's sole party in interest, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the General Partner or any such officer in connection with any such dealing. In no event shall any Person dealing with the General Partner or any such officer or its representatives be obligated to ascertain that the terms of the Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the General Partner or any such officer or its representatives. Each and every certificate, document or other instrument executed on behalf of the Partnership by the General Partner or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Partnership and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

## ARTICLE VIII BOOKS, RECORDS, ACCOUNTING AND REPORTS

**Section 8.1 *Records and Accounting.*** The General Partner shall keep or cause to be kept at the principal office of the Partnership appropriate books and records with respect to the Partnership's business, including all books and records necessary to provide to the Limited

Partners any information required to be provided pursuant to Section 3.4(a). Any books and records maintained by or on behalf of the Partnership in the regular course of its business, including the record of the Record Holders 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, however*, that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial reporting purposes, on an accrual basis in accordance with U.S. GAAP.

Section 8.2 *Fiscal Year.* The fiscal year of the Partnership shall be a fiscal year ending December 31.

Section 8.3 *Reports.*

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

(b) As soon as practicable, but in no event later than 90 days after the close of each Quarter except the last Quarter of each fiscal year, the General Partner shall cause to be mailed or made available to each Record Holder of a Unit, as of a date selected by the General Partner in its 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 Partnership shall timely file all returns of the Partnership that are required for federal, state and local income tax purposes on the basis of the accrual method and 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. Notwithstanding any other provision herein contained, for the purposes of computing the adjustments under Section 743(b) of the Code, the General Partner shall be authorized (but not required) to adopt a convention whereby the price paid by a transferee of a Limited Partner Interest will be deemed to be the lowest quoted closing price of the Limited Partner Interests on any National Securities Exchange on which such Limited Partner Interests are traded during the calendar month in which such transfer is deemed to occur pursuant to Section 6.2(g) without regard to the actual price paid by such transferee.

(b) The Partnership shall elect to deduct expenses incurred in organizing the Partnership ratably over a sixty-month period as provided in Section 709 of the Code.

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

Section 9.3 *Tax Controversies.* Subject to the provisions hereof, the General Partner is designated as the Tax Matters Partner (as defined in the Code) and is authorized and required to represent the Partnership (at the Partnership's expense) in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner and to do or refrain from doing any or all things reasonably required by the General Partner to conduct such proceedings.

Section 9.4 *Withholding.* Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that it determines in its discretion to be necessary or appropriate to cause the Partnership and other Group Members to comply with any withholding requirements established under the Code or any other federal, state or local law including, without limitation, pursuant to Sections 1441, 1442, 1445 and 1446 of the Code. To the extent that the Partnership is required or elects to withhold and pay over to any taxing authority any amount resulting from the allocation or distribution of income to any Partner or Assignee (including, without limitation, by reason of Section 1446 of the Code), the amount withheld may at the discretion of the General Partner be treated by the Partnership as a distribution of cash pursuant to Section 6.3 in the amount of such withholding from such Partner.

## ARTICLE X ADMISSION OF PARTNERS

Section 10.1 *Admission of Substituted Limited Partner.* By transfer of a Limited Partner Interest in accordance with Article IV, 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 Limited Partner Interests. Each transferee of a Limited Partner Interest (including any nominee holder or an agent acquiring such Limited Partner Interest 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 Limited Partner Interests 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 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 Limited Partner Interests 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 Limited Partner Interests on any matter, vote such Limited Partner Interests at the written direction of the Assignee who is the Record Holder of such Limited Partner Interests. If no such written direction is received, such Limited Partner Interests will not be voted. An Assignee shall have no other rights of a Limited Partner.

Section 10.2 *Admission of Additional Limited Partners.*

(a) A Person (other than the General Partner or a 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 2.6, 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 10.2, 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 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 10.3 *Amendment of Agreement and Certificate of Limited Partnership.* To effect the admission to the Partnership of any Partner, the General Partner shall take all steps necessary and appropriate under the Delaware Act to amend the records of the Partnership to reflect such admission and, if necessary, to prepare as soon as practicable an amendment to this Agreement and, if required by law, the General Partner shall prepare and file an amendment to the Certificate of Limited Partnership, and the General Partner may for this purpose, among others, exercise the power of attorney granted pursuant to Section 2.6.



## ARTICLE XI WITHDRAWAL OR REMOVAL OF PARTNERS

### Section 11.1 *No Withdrawal or Removal of the General Partner*

(a) The General Partner may not withdraw and may not be removed at any time for any reason whatsoever. Any attempt of withdrawal or removal of the General Partner shall be null and void.

(b) Notwithstanding Section 11.1(a), if the General Partner withdraws in violation of this Agreement pursuant to Section 17-602 of the Delaware Act:

(i) The withdrawing General Partner shall give 90 days prior notice of such withdrawal to the Limited Partners.

(ii) The successor General Partner shall be elected by a plurality of the votes of the Unitholders cast at a special meeting or an annual meeting where a quorum is present.

(iii) A successor General Partner elected pursuant to Section 11.1(b)(ii) shall be admitted to the Partnership as the General Partner, effective as of the date immediately prior to the withdrawal of the predecessor General Partner; *provided, however*, that no such successor shall be admitted to the Partnership until such successor has executed and delivered this Agreement and such other documents or instruments as may be required to effect such admission. Any such successor shall, subject to the terms hereof, carry on the business of the members of the Partnership Group without dissolution.

(iv) The Person so elected as successor General Partner shall automatically become the successor general partner or managing member, to the extent applicable, of the other Group Members of which the General Partner is a general partner or a managing member.

(v) Upon the withdrawal of the General Partner, if a successor General Partner is elected pursuant to Section 11.1(b)(ii), the Partnership shall not be dissolved and such successor General Partner shall continue the business of the Partnership.

Section 11.2 *Withdrawal of Limited Partners.* No Limited Partner shall have any right to withdraw from the Partnership; *provided, however*, that when a transferee of a Limited Partner's Limited Partner Interest becomes a Record Holder of the Limited Partner Interest so transferred, such transferring Limited Partner shall cease to be a Limited Partner with respect to the Limited Partner Interest so transferred.

## ARTICLE XII DISSOLUTION AND LIQUIDATION

Section 12.1 *Dissolution.* The Partnership shall not be dissolved by the admission of Substituted Limited Partners or Additional Limited Partners in accordance with the terms of this Agreement. The Partnership shall dissolve, and its affairs shall be wound up, upon:

(a) withdrawal of the General Partner in violation of this Agreement pursuant to Section 17-602 of the Delaware Act and the successor General Partner is not admitted to the Partnership pursuant to Section 11.1(b);

(b) an election to dissolve the Partnership by the General Partner that is approved by the holders of a majority of the Outstanding Voting Units;

(c) the entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Delaware Act; or

(d) the sale of all or substantially all of the assets and properties of the Partnership Group.

Section 12.2 *Liquidator*. Upon dissolution of the Partnership, the General Partner shall select one or more Persons to act as Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by holders of at least a majority of the Outstanding Common Units. The Liquidator (if other than the General Partner) shall agree not to resign at any time without 15 days' prior notice and may be removed at any time, with or without cause, by notice of removal approved by holders of at least a majority of the Outstanding Common Units. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be approved by holders of at least a majority of the Outstanding Common Units. The right to approve a successor or substitute Liquidator in the manner provided herein shall be deemed to refer also to any such successor or substitute Liquidator approved in the manner herein provided. Except as expressly provided in this Article XII, the Liquidator approved in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, other than the limitation on sale set forth in Section 7.4(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 12.3 *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 Section 17-804 of the Delaware Act and the following:

(a) The assets may be disposed of by public or private sale or by distribution in kind to one or more Partners on such terms as the Liquidator and such Partner or Partners may agree. If any property is distributed in kind, the Partner receiving the property shall be deemed for purposes of Section 12.3(c) to have received cash equal to its fair market value; and contemporaneously therewith, appropriate cash distributions must be made to the other Partners. The Liquidator may, in its absolute discretion, defer liquidation or distribution of the Partnership's assets for a reasonable time if it determines that an immediate sale or distribution

of all or some of the Partnership's assets would be impractical or would cause undue loss to the Partners. The Liquidator may, in its absolute discretion, distribute the Partnership's assets, in whole or in part, in kind if it determines that a sale would be impractical or would cause undue loss to the Partners.

(b) Liabilities of the Partnership include amounts owed to the Liquidator as compensation for serving in such capacity (subject to the terms of Section 12.2) and amounts to Partners otherwise than in respect of their distribution rights under Article VI. With respect to any liability that is contingent, conditional or unmatured or is otherwise not yet due and payable, the Liquidator shall either settle such claim for such amount as it thinks appropriate or establish a reserve of cash or other assets to provide for its payment. When paid, any unused portion of the reserve shall be distributed as additional liquidation proceeds.

(c) All property and all cash in excess of that required to discharge liabilities as provided in Section 12.3(b) shall be distributed to the Partners in accordance with, and to the extent of, the positive balances in their respective Capital Accounts, as determined after taking into account all Capital Account adjustments (other than those made by reason of distributions pursuant to this Section 12.3(c)) for the taxable year of the Partnership during which the liquidation of the Partnership occurs (with such date of occurrence being determined pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(g)), and such distribution shall be made by the end of such taxable year (or, if later, within 90 days after said date of such occurrence).

Section 12.4 *Cancellation of Certificate of Limited Partnership.* Upon the completion of the distribution of Partnership cash and property as provided in Section 12.3 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 12.5 *Return of Contributions.* The General Partner shall not be personally liable for, and shall have no obligation to contribute or loan any monies or property to the Partnership to enable it to effectuate, the return of the Capital Contributions of the Limited Partners or Unitholders, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

Section 12.6 *Waiver of Partition.* To the maximum extent permitted by law, each Partner hereby waives any right to partition of the Partnership property.

Section 12.7 *Capital Account Restoration.* No Limited Partner shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Partnership. The General Partner shall be obligated to restore any negative balance in its Capital Account upon liquidation of its interest in the Partnership by the end of the taxable year of the Partnership during which such liquidation occurs, or, if later, within 90 days after the date of such liquidation.

**ARTICLE XIII**  
**AMENDMENT OF PARTNERSHIP AGREEMENT;**  
**MEETINGS; RECORD DATE**

Section 13.1 *Amendment to be Adopted Solely by the General Partner.* Each Partner agrees that the General Partner, without the approval of any 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, as applicable, 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 Group Members will not be treated as associations taxable as corporations or otherwise taxed as entities for federal income tax purposes;
- (d) a change that, in the discretion of the General Partner, (i) does not adversely affect the Limited Partners (including any particular class of Partnership Interests as compared to other classes of Partnership Interests) in any material respect, (ii) is necessary or advisable to (A) satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute (including the Delaware Act) or (B) facilitate the trading of the Units (including the division of any class or classes of Outstanding Voting 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 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 5.5 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 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, officers, trustees or agents from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, the Investment Advisers Act of 1940, as amended, or "plan asset" regulations adopted under the

Employee Retirement Income Security Act of 1974, as amended, regardless of whether such are substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor;

(g) an amendment that, in the 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 5.4;

(h) any amendment expressly permitted in this Agreement to be made by the General Partner acting alone;

(i) an amendment effected, necessitated or contemplated by a Merger Agreement approved in accordance with Section 14.3;

(j) an amendment that, in the 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 2.4;

(k) a merger or conveyance pursuant to Section 14.3(d); or

(l) any other amendments substantially similar to the foregoing.

Section 13.2 *Amendment Procedures.* Except as provided in Sections 13.1 and 13.3, all amendments to this Agreement shall be made in accordance with the following requirements. Amendments to this Agreement may be proposed only by or with the consent of the General Partner which consent may be given or withheld in its sole discretion. A proposed amendment shall be effective upon its approval by the majority of the Outstanding Voting Units 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 Voting Units shall be set forth in a writing that contains the text of the proposed amendment. If such a Voting amendment is proposed, the General Partner shall seek the written approval of the requisite percentage of Outstanding Voting Units or call a meeting of the Unitholders to consider and vote on such proposed amendment. The General Partner shall notify all Record Holders upon final adoption of any such proposed amendments.

Section 13.3 *Amendment Requirements.*

(a) Notwithstanding the provisions of Sections 13.1 and 13.2, no provision of this Agreement that establishes a percentage of Outstanding Voting Units (including Units deemed owned by the General Partner) required to take any action shall be amended, altered, changed, repealed or rescinded in any respect that would have the effect of reducing such voting percentage unless such amendment is approved by the written consent or the affirmative vote of holders of Outstanding Voting Units whose aggregate Outstanding Voting Units constitute not less than the voting requirement sought to be reduced.

(b) Notwithstanding the provisions of Sections 13.1 and 13.2, no amendment to this Agreement may (i) enlarge the obligations of any Limited Partner without its consent, unless such shall be deemed to have occurred as a result of an amendment approved pursuant to Section 13.3(c), (ii) enlarge the obligations of, restrict in any way any action by or rights of, or reduce in any way the amounts distributable, reimbursable or otherwise payable to, the General Partner or any of its Affiliates without its consent, which consent may be given or withheld in its sole discretion, (iii) change Section 12.1(b), or (iv) change the term of the Partnership or, except as set forth in Section 12.1(b), give any Person the right to dissolve the Partnership.

(c) Except as provided in Section 14.3, and without limitation of the General Partner's authority to adopt amendments to this Agreement without the approval of any Partners or Assignees as contemplated in Section 13.1, any amendment that would have a material adverse effect on the rights or preferences of any class of Partnership Interests in relation to other classes of Partnership Interests must be approved by the holders of not less than a majority of the Outstanding Partnership Interests of the class affected.

(d) Notwithstanding any other provision of this Agreement, except for amendments pursuant to Section 13.1 and except as otherwise provided by Section 14.3(b), no amendments shall become effective without the approval of the holders of at least 90% of the Outstanding Voting Units voting as a single class unless the Partnership obtains an Opinion of Counsel to the effect that such amendment will not affect the limited liability of any Limited Partner under applicable law.

(e) Except as provided in Section 13.1, this Section 13.3 shall only be amended with the approval of the holders of at least 90% of the Outstanding Voting Units.

#### Section 13.4 *Common Unitholder Meetings.*

(a) All acts of Limited Partners to be taken pursuant to this Agreement shall be taken in the manner provided in this Article XIII.

(b) Special meetings of the Limited Partners may be called by the General Partner or by Limited Partners owning 20% or more of the Outstanding Voting Units of the class or classes for which a meeting is proposed. Limited Partners shall call a special meeting by delivering to the General Partner (if there is a General Partner at such time) one or more requests in writing stating that the signing Limited Partners wish to call a special meeting and indicating the general or specific purposes (including the election of directors to the Board of Directors, as necessary), for which the special meeting is to be called. Within 60 days after receipt of such a call from Limited Partners or within such greater time as may be reasonably necessary for the Partnership to comply with any statutes, rules, regulations, listing agreements or similar requirements governing the holding of a meeting or the solicitation of proxies for use at such a meeting, the General Partner (or, if there is no General Partner at such time, Limited Partners owning at least 20% of the Outstanding Voting Units of the class or classes for which the meeting is proposed) shall send a notice of the meeting to the Limited Partners either directly or indirectly through the Transfer Agent. A special meeting shall be held at a time and place determined by the General Partner (or, if there is no General Partner at such time, Limited Partners owning at least 20% of the Outstanding Voting Units of the class or classes for which the meeting is proposed) on a date

not less than 10 days nor more than 60 days after the mailing of notice of the meeting. Limited Partners shall not vote on matters that would cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability under the Delaware Act or the law of any other state in which the Partnership is qualified to do business.

(c) (i) An annual meeting of the Limited Partners holding Voting Units for the election of directors to the Board of Directors and such other matters as the Board of Directors shall submit to a vote of the Limited Partners holding Voting Units shall be held in June of each year or at such other date and time as may be fixed from time to time by the General Partner (or, if there is no General Partner at such time, Limited Partners owning at least 20% of the Outstanding Voting Units of the class or classes for which the meeting is proposed) at such place within or without the State of Delaware as may be fixed from time to time by the General Partner (or, if there is no General Partner at such time, Limited Partners owning at least 20% of the Outstanding Voting Units of the class or classes for which the meeting is proposed) and all as stated in the notice of the meeting. Notice of the annual meeting shall be given in accordance with Section 13.5 not less than 10 days nor more than 60 days prior to the date of such meeting.

(ii) The Limited Partners holding Voting Units shall vote together as a single class. The Limited Partners entitled to vote shall elect by a plurality of the votes cast at such meeting persons to serve on the Board of Directors of the General Partner who are nominated in accordance with the provisions of this Section 13.4(c). The exercise by a Limited Partner of the right to elect the Directors and any other rights afforded to such Limited Partner under this Section 13.4(c) shall be in such Limited Partner's capacity as a limited partner of the Partnership and shall not cause a Limited Partner to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize such Limited Partner's limited liability under the Delaware Act or the law of any other state in which the Partnership is qualified to do business.

(iii) Each Limited Partner holding Voting Units shall be entitled to one vote for each Outstanding Unit that is registered in the name of such Limited Partner on the Record Date for such meeting; *provided, however*, that the General Partner, the Partnership and their Affiliates shall not be entitled to vote Units that are otherwise entitled to vote at any meeting of the Unitholders and any such Units that are not entitled to be voted pursuant to this provision shall not be deemed to be Outstanding for purposes of determining a quorum under Section 13.9.

(iv) The number of Directors that shall constitute the whole Board of Directors of the General Partner shall not be less than seven and not more than eleven as shall be established from time to time by a resolution adopted by a majority of the Directors; *provided, however*, that no decrease shall shorten the term of any incumbent Director. Unless otherwise previously elected at a special meeting, at each annual meeting of the Limited Partners, Directors shall be elected to hold office until the next annual meeting.

(v) Each Director shall hold office for the term for which such Director is elected and thereafter until such Director's successor shall have been duly elected and qualified, or until such Director's earlier death, resignation or removal. Any vacancies may be filled, until the next annual meeting, by a majority of the remaining Directors then in office. A Director may be removed only for cause and only upon a vote of the majority of the remaining Directors then in office.

(vi) If the Commission promulgates a rule that provides for nominations by shareholders of publicly traded companies of persons for election to the board of directors, the Partnership and the General Partner shall adopt such rule as applied to a corporation without regard to any exemptions provided to limited partnerships.

(vii) This Section 13.4(c) shall not be deemed in any way to limit or impair the ability of the Board of Directors to adopt a "poison pill" or unitholder or other similar rights plan with respect to the Partnership, whether such poison pill or plan contains "dead hand" provisions, "no hand" provisions or other provisions relating to the redemption of the poison pill or plan, in each case as such terms are used under Delaware common law.

(viii) The General Partner shall use its commercially reasonable best efforts to take such action as shall be necessary or appropriate to give effect to and implement the provisions of this Section 13.4(c), including, without limitation, amending the limited liability company agreement of the General Partner.

(ix) This Article XIII may not be amended except upon the prior approval of Limited Partners that hold 80% of the Outstanding Voting Units.

(x) If the General Partner delegates to an existing or newly formed wholly-owned subsidiary the power and authority to manage and control the business and affairs of the Partnership Group, the foregoing provisions of this Section 13.4(c) shall be applicable with respect to the Board of Directors or other governing body of such Subsidiary.

**Section 13.5 Notice of a Meeting.** Notice of a meeting called pursuant to Section 13.4 shall be given to the Record Holders of the class or classes of Units for which a meeting is proposed in writing by mail or other means of written communication in accordance with Section 15.1. The notice shall be deemed to have been given at the time when deposited in the mail or sent by other means of written communication.

**Section 13.6 Record Date.** For purposes of determining the Limited Partners entitled to notice of or to vote at a meeting of the Limited Partners or to give approvals without a meeting as provided in Section 13.11 the General Partner (or, if there is no General Partner at such time, Limited Partners owning at least 20% of the Outstanding Voting Units of the class or classes for which the meeting is proposed or which would have the right to vote on such action, as applicable) 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 Limited Partner Interests 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 (or, if there is no General Partner at such time, Limited Partners owning at least 20% of the Outstanding Voting Units of the class or classes which would have the right to vote on such action) to give such approvals.

Section 13.7 *Adjournment.* When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than 45 days. At the adjourned meeting, the Partnership may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if a new Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with this Article XIII.

Section 13.8 *Waiver of Notice; Approval of Meeting; Approval of Minutes.* The transactions of any meeting of Limited Partners, however called and noticed, and whenever held, shall be as valid as if it had occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, 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 13.9 *Quorum.* The holders of a majority of the Outstanding Voting 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 Voting 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 Voting Units that in the aggregate represent a majority of the Outstanding Voting 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 Voting 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 Voting 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 Voting Units entitled

to vote at such meeting represented either in person or by proxy, but no other business may be transacted, except as provided in Section 13.7.

Section 13.10 *Conduct of a Meeting*. The General Partner (or, if there is no General Partner at such time, Limited Partners owning at least 20% of the Outstanding Voting Units of the class or classes for which the meeting is proposed) shall have full power and authority concerning the manner of conducting any meeting of the Limited Partners or solicitation of approvals in writing, including the determination of Persons entitled to vote, the existence of a quorum, the satisfaction of the requirements of Section 13.4, the conduct of voting, the validity and effect of any proxies and the determination of any controversies, votes or challenges arising in connection with or during the meeting or voting. The General Partner (or, if there is no General Partner at such time, Limited Partners owning at least 20% of the Outstanding Voting Units of the class or classes for which the meeting is proposed) 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 (or, if there is no General Partner at such time, Limited Partners owning at least 20% of the Outstanding Voting Units of the class or classes for which the meeting is proposed) may make such other regulations consistent with applicable law and this Agreement as it may deem advisable concerning the conduct of any meeting of the Limited Partners or solicitation of approvals in writing, including regulations in regard to the appointment of proxies, the appointment and duties of inspectors of votes and approvals, the submission and examination of proxies and other evidence of the right to vote, and the revocation of approvals in writing.

Section 13.11 *Action Without a Meeting*. If authorized by the General Partner (or, if there is no General Partner at such time, Limited Partners owning at least 20% of the Outstanding Voting Units of the class or classes which would have the right to vote on such action), 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 Voting Units that would be necessary to authorize or take such action at a meeting at which all the Limited Partners were present and voted (unless such provision conflicts with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Voting Units are listed for trading, in which case the rule, regulation, guideline or requirement of such exchange shall govern). Prompt notice of the taking of action without a meeting shall be given to the Limited Partners who have not approved in writing. The General Partner (or, if there is no General Partner at such time, Limited Partners owning at least 20% of the Outstanding Voting Units of the class or classes which would have the right to vote on such action) 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 (or, if there is no General Partner at such time, Limited Partners owning at least 20% of the Outstanding Voting Units of the class or classes which would have the right to vote on such action). If a ballot returned to the Partnership does not vote all of the Voting Units held by the Limited Partners, the Partnership shall be deemed to have failed to receive a ballot for the Voting 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 (or, if there is no General Partner at such time, Limited Partners owning at least

20% of the Outstanding Voting Units of the class or classes which would have the right to vote on such action), the written approvals shall have no force and effect unless and until (a) they are deposited with the Partnership in care of the General Partner, (b) approvals sufficient to take the action proposed are dated as of a date not more than 90 days prior to the date sufficient approvals are deposited with the Partnership and (c) an Opinion of Counsel is delivered to the General Partner to the effect that the exercise of such right and the action proposed to be taken with respect to any particular matter (i) will not cause the Limited Partners to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to jeopardize the Limited Partners' limited liability, and (ii) is otherwise permissible under the state statutes then governing the rights, duties and liabilities of the Partnership and the Partners.

*Section 13.12 Voting and Other Rights.*

(a) Only those Record Holders of the Voting Units on the Record Date set pursuant to Section 13.6 (and also subject to the limitations contained in the definition of "*Outstanding*") shall be entitled to notice of, and to vote at, a meeting of Limited Partners or to act with respect to matters as to which the holders of the Outstanding Voting 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 Voting Units shall be deemed to be references to the votes or acts of the Record Holders of such Outstanding Voting Units.

(b) With respect to Voting 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 Voting Units are registered, such other Person shall, in exercising the voting rights in respect of such Voting Units on any matter, and unless the arrangement between such Persons provides otherwise, vote such Voting Units in favor of, and at the direction of, the Person who is the beneficial owner, and the Partnership shall be entitled to assume it is so acting without further inquiry. The provisions of this Section 13.12(b) (as well as all other provisions of this Agreement) are subject to the provisions of Section 4.3.

**ARTICLE XIV  
MERGER**

Section 14.1 *Authority.* The Partnership may merge or consolidate with one or more corporations, limited liability companies, business trusts or associations, real estate investment trusts, common law trusts or unincorporated businesses, including a general partnership or limited partnership, 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 XIV.

Section 14.2 *Procedure for Merger or Consolidation.* Merger or consolidation of the Partnership pursuant to this Article XIV requires the prior approval of the General Partner. If the General Partner shall determine, in the exercise of its 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 jurisdiction 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 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 14.4 or a later date specified in or determinable in accordance with the Merger Agreement (*provided, however*, 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 14.3 *Approval by Limited Partners of Merger or Consolidation.*

- (a) Except as provided in Section 14.3(d), 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 special meeting or by written consent, in either case in accordance with the requirements of Article XIII. A copy or a summary of the Merger Agreement shall be included in or enclosed with the notice of a special meeting or the written consent.
- (b) Except as provided in Section 14.3(d), the Merger Agreement shall be approved upon receiving the affirmative vote or consent of the holders of a majority of the Outstanding Voting Units 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 for its approval the vote or consent of a greater percentage of the Outstanding Voting

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) Except as provided in Section 14.3(d), after such approval by vote or consent of the Limited Partners, and at any time prior to the filing of the certificate of merger pursuant to Section 14.4, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the Merger Agreement.

(d) Notwithstanding anything else contained in this Article XIV or in this Agreement, the General Partner is permitted, in its discretion, without Limited Partner approval, to merge the Partnership or any Group Member into, or convey all of the Partnership's assets to, another limited liability entity which shall be newly formed and shall have no assets, liabilities or operations at the time of such Merger other than those it receives from the Partnership or other Group Member if (i) the General Partner has received an Opinion of Counsel that the merger or conveyance, as the case may be, would not result in the loss of the limited liability of any Limited Partner or any Group Member or cause the Partnership or 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 previously treated as such), (ii) the sole purpose of such merger or conveyance is to effect a mere change in the legal form of the Partnership into another limited liability entity and (iii) the governing instruments of the new entity provide the Limited Partners and the General Partner with the same rights and obligations as are herein contained.

Section 14.4 *Certificate of Merger.* Upon the required approval by the General Partner and the Unitholders 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 14.5 *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.

## ARTICLE XV GENERAL PROVISIONS

Section 15.1 *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 Partnership Securities at his address as shown on the records of the Transfer Agent or as otherwise shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in such Partnership Securities by reason of any assignment or otherwise. An affidavit or certificate of making of any notice, payment or report in accordance with the provisions of this Section 15.1 executed by the General Partner, the Transfer Agent or the mailing organization shall be prima facie evidence of the giving or making of such notice, payment or report. If any notice, payment or report addressed to a Record Holder at the address of such Record Holder appearing on the books and records of the Transfer Agent or the Partnership is returned by the United States 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 2.3. 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 15.2 *Further Action.* The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 15.3 *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 15.4 *Integration.* This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

Section 15.5 *Creditors*. None of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Partnership.

Section 15.6 *Waiver*. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach of any other covenant, duty, agreement or condition.

Section 15.7 *Counterparts*. This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto or, in the case of a Person acquiring a 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 15.8 *Applicable Law*. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

Section 15.9 *Invalidity of Provisions*. If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

Section 15.10 *Consent of Partners*. Each Partner hereby expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote or consent of less than all of the Partners, such action may be so taken upon the concurrence of less than all of the Partners and each Partner shall be bound by the results of such action.

*[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]*

The parties hereto have executed this Agreement as of the date first written above.

**GENERAL PARTNER:**

MARKWEST ENERGY GP, L.L.C.

By: Nancy K. Buese  
Name: Nancy Buese  
Title: Senior Vice President and  
Chief Financial Officer

**LIMITED PARTNERS:**

All Limited Partners now and hereafter admitted as  
Limited Partners of the Partnership, pursuant to  
powers of attorney now and hereafter executed  
in favor of, and granted and delivered to the  
General Partner.

MARKWEST ENERGY GP, L.L.C.

By: Nancy K. Buese  
Name: Nancy Buese  
Title: Senior Vice President and  
Chief Financial Officer

MARKWEST HYDROCARBON, INC.

By: [Signature]  
Name: [Signature]  
Title: President and  
Chief Executive Officer



EXHIBIT A

to the Third Amended and Restated  
Agreement of Limited Partnership of  
MarkWest Energy Partners, L.P.  
Certificate Evidencing Common Units  
Representing Limited Partner Interests in  
MarkWest Energy Partners, L.P.

No.

Common Units

In accordance with Section 4.1 of the Third Amended and Restated Agreement of Limited Partnership of MarkWest Energy Partners, L.P., as amended, supplemented or restated from time to time (the "*Partnership Agreement*"), MarkWest Energy 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 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 155 Inverness Drive West, Suite 200, Englewood, Colorado 80112. Capitalized terms used herein but not defined shall have the meanings 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.

Dated:

MarkWest Energy Partners, L.P.

Countersigned and Registered by:

By: MarkWest Energy GP, L.L.C., its  
General Partner

\_\_\_\_\_  
as Transfer Agent and Registrar

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

By: \_\_\_\_\_  
Authorized Signature

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

[Reverse of Certificate]

**ABBREVIATIONS**

The following abbreviations, when used in the inscription on the face of this Certificate, shall be construed as follows according to applicable laws or regulations:

TEN COM - as tenants in common	UNIF GIFT/TRANSFERS MIN ACT
TEN ENT - as tenants by the entireties	<u>Custodian</u>
JT TEN - as joint tenants with right of survivorship and not as tenants in common	(Cust) (Minor) under Uniform Gifts/Transfers to CD Minors Act (State)

Additional abbreviations, though not in the above list, may also be used.

**ASSIGNMENT OF COMMON UNITS**

in

**MARKWEST ENERGY PARTNERS, L.P.**

**IMPORTANT NOTICE REGARDING INVESTOR RESPONSIBILITIES  
DUE TO TAX SHELTER STATUS OF  
MARKWEST ENERGY PARTNERS, L.P.**

You have acquired an interest in MarkWest Energy Partners, L.P., 155 Inverness Drive West, Suite 200, Englewood, Colorado 80112, whose taxpayer identification number is 20-0005456. The Internal Revenue Service has issued MarkWest Energy 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 MARKWEST ENERGY PARTNERS, L.P.**

You must report the registration number as well as the name and taxpayer identification number of MarkWest Energy 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 INCOME BY REASON OF YOUR INVESTMENT IN MARKWEST ENERGY PARTNERS, L.P.

If you transfer your interest in MarkWest Energy 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 MarkWest Energy 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 insert Social Security or other  
identifying number of Assignee)

Common Units representing limited partner interests evidenced by this Certificate, subject to the Partnership Agreement, and does hereby irrevocably constitute and appoint \_\_\_\_\_ as its attorney-in-fact with full power of substitution to transfer the same on the books of MarkWest Energy 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.

**THE SIGNATURE(S) MUST BE  
GUARANTEED BY AN ELIGIBLE  
GUARANTOR INSTITUTION  
(BANKS, STOCKBROKERS,  
SAVINGS AND LOAN  
ASSOCIATIONS AND CREDIT  
UNIONS WITH MEMBERSHIP IN  
AN APPROVED SIGNATURE  
GUARANTEE MEDALLION  
PROGRAM), PURSUANT TO  
S.E.C. RULE 17d-15**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

No transfer of the Common Units evidenced hereby will be registered on the books of the Partnership, unless the Certificate evidencing the Common Units to be transferred is surrendered for registration or transfer 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 Amended and Restated Agreement of Limited Partnership of MarkWest Energy Partners, L.P. (the "*Partnership*"), 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 of the Partnership 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:

\_\_\_\_\_  
Social Security or other identifying number

\_\_\_\_\_  
Signature of Assignee

\_\_\_\_\_  
Purchase Price including commissions, if any

\_\_\_\_\_  
Name and Address of Assignee

Type of Entity (check one):

- ☐ Individual                      ☐ Partnership                      ☐ Corporation  
☐ Trust                              ☐ Other (specify)

Nationality (check one):

- ☐ U.S. Citizen, Resident or Domestic Entity  
☐ Foreign Corporation      ☐ Non-resident Alien

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 corporation, foreign partnership, foreign trust (Name of Interestholder) 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.

<b>1065</b>		<b>U.S. Return of Partnership Income</b>		OMB No. 1545-0099	
Form Department of the Treasury Internal Revenue Service		For calendar year 2006, or tax year beginning _____, and ending _____		<b>2006</b>	
EXTENSION GRANTED TO 10/15/07					
<b>A</b> Principal business activity		Name of partnership		<b>D</b> Employer identification number	
Use the IRS label.		MARKWEST ENERGY PARTNERS, L.P.		27-0005456	
<b>B</b> Principal product or service		Number, street, and room or suite no. If a P.O. box, see the instructions.		<b>E</b> Date business started	
Other- wise, print or type.		1515 ARAPAHOE ST., TOWER 2, #700		05/21/2002	
<b>C</b> Business code number		City or town, state, and ZIP code		<b>F</b> Total assets	
339900		DENVER CO 80202-2126		\$ 1,114,778,756.	
<b>G</b> Check applicable boxes: (1) <input type="checkbox"/> Initial return (2) <input type="checkbox"/> Final return (3) <input type="checkbox"/> Name change (4) <input type="checkbox"/> Address change (5) <input type="checkbox"/> Amended return					
<b>H</b> Check accounting method: (1) <input type="checkbox"/> Cash (2) <input checked="" type="checkbox"/> Accrual (3) <input type="checkbox"/> Other (specify) ▶					
<b>I</b> Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶ 16,409					
<b>J</b> Check if Schedule M-3 required (attach Schedule M-3) <input checked="" type="checkbox"/>					
<b>Caution:</b> Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.					
<b>Income</b>					
1 a Gross receipts or sales		1a	567,022,696.		
b Less returns and allowances		1b		1c	567,022,696.
2 Cost of goods sold (Schedule A, line 8)		2	367,548,868.		
3 Gross profit. Subtract line 2 from line 1c		3	199,473,828.		
4 Ordinary income (loss) from other partnerships, estates, and trusts (attach schedule)		4	SEE STATEMENT 1	4	13,284,903.
5 Net farm profit (loss) (attach Schedule F (Form 1040))		5		5	
6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)		6		6	-12,399.
7 Other income (loss) (attach schedule)		7	SEE STATEMENT 2	7	14,093,415.
8 Total income (loss). Combine lines 3 through 7		8		8	226,839,747.
<b>Deductions (see instructions for limitations)</b>					
9 Salaries and wages (other than to partners) (less employment credits)		9		9	
10 Guaranteed payments to partners		10		10	
11 Repairs and maintenance		11		11	
12 Bad debts		12		12	825.
13 Rent		13		13	60,600.
14 Taxes and licenses		14	SEE STATEMENT 3	14	3,208,326.
15 Interest		15		15	40,666,431.
16 a Depreciation (if required, attach Form 4562)		16a	73,070,383.	16a	
b Less depreciation reported on Schedule A and elsewhere on return		16b		16c	73,070,383.
17 Depletion (Do not deduct oil and gas depletion.)		17		17	
18 Retirement plans, etc.		18		18	
19 Employee benefit programs		19		19	
20 Other deductions (attach schedule)		20	SEE STATEMENT 4	20	77,349,198.
21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20		21		21	194,355,764.
22 Ordinary business income (loss). Subtract line 21 from line 8		22		22	32,483,983.
23 Credit for federal telephone excise tax paid (attach Form 8913)		23		23	
<b>Sign Here</b>					
Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member) is based on all information of which preparer has any knowledge.		Signature of general partner or limited liability company member manager		Date	
				May the IRS discuss this return with the preparer shown below (see instr.)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Paid Preparer's Use Only</b>		Preparer's signature		Date	
		Firm's name (or yours if self-employed), address, and ZIP code		Check if self-employed <input type="checkbox"/>	
		PRICEWATERHOUSECOOPERS LLP		Preparer's SSN or PTIN	
		1670 BROADWAY, SUITE 1000		BIN 13-4008324	
		DENVER CO 80202		Phone no.	

Form 1065 (2006) <b>MARKWEST ENERGY PARTNERS, L.P.</b>		27-0005456	Page 3
<b>Schedule K Partners' Distributive Share Items</b>			<b>Total amount</b>
Income (Loss)	1 Ordinary business income (loss) (page 1, line 22)	1	32,483,983.
	2 Net rental real estate income (loss) (attach Form 8825)	2	
	3a Other gross rental income (loss)	3a	
	b Expenses from other rental activities (attach statement)	3b	
	c Other net rental income (loss). Subtract line 3b from line 3a	3c	
	4 Guaranteed payments	4	
	5 Interest income	5	979,655.
	6 Dividends: a Ordinary dividends	6a	
	b Qualified dividends	6b	
	7 Royalties	7	
	8 Net short-term capital gain (loss) (attach Schedule D (Form 1065))	8	
Deductions	9a Net long-term capital gain (loss) (attach Schedule D (Form 1065))	9a	-128,998.
	b Collectibles (28%) gain (loss)	9b	
	c Unrecaptured section 1250 gain (attach statement)	9c	
	10 Net section 1231 gain (loss) (attach Form 4797)	10	367,525.
	11 Other income (loss) (see instructions) Type ▶	11	
	12 Section 179 deduction (attach Form 4562)	12	
	13a Contributions	13a	13,730.
	b Investment interest expense	13b	
	c Section 59(e)(2) expenditures: (1) Type ▶ (2) Amount ▶	13c(2)	
	d Other deductions (see instructions) Type ▶	13d	
	Self-Employment	14a Net earnings (loss) from self-employment	14a
b Gross farming or fishing income		14b	
c Gross nonfarm income		14c	
Credits	15a Low-income housing credit (section 42(i)(5))	15a	
	b Low-income housing credit (other)	15b	
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)	15c	
	d Other rental real estate credits (see instructions) Type ▶	15d	
	e Other rental credits (see instructions) Type ▶	15e	
	f Other credits (see instructions) Type ▶	15f	
Foreign Transactions	16a Name of country or U.S. possession ▶	16a	
	b Gross income from all sources	16b	
	c Gross income sourced at partner level	16c	
	Foreign gross income sourced at partnership level		
	d Passive ▶ e Listed categories (attach stmt.) ▶ f General limitation ▶	16f	
	Deductions allocated and apportioned at partner level		
	g Interest expense ▶ h Other ▶	16h	
	Deductions allocated and apportioned at partnership level to foreign source income		
	i Passive ▶ j Listed categories (attach stmt.) ▶ k General limitation ▶	16k	
	l Total foreign taxes (check one): ▶ Paid <input type="checkbox"/> Accrued <input type="checkbox"/>	16l	
	m Reduction in taxes available for credit (attach statement)	16m	
n Other foreign tax information (attach statement)			
Alternative Minimum Tax (AMT) Items	17a Post-1986 depreciation adjustment	17a	6,010,475.
	b Adjusted gain or loss	17b	-120,595.
	c Depletion (other than oil and gas)	17c	
	d Oil, gas, and geothermal properties - gross income	17d	
	e Oil, gas, and geothermal properties - deductions	17e	
	f Other AMT items (attach statement)	17f	
Other Information	18a Tax-exempt interest income	18a	
	b Other tax-exempt income	18b	
	c Nondeductible expenses	18c	81,996.
	19a Distributions of cash and marketable securities	19a	64,941,077.
	b Distributions of other property	19b	
	20a Investment income	20a	979,655.
	b Investment expenses	20b	
c Other items and amounts (attach statement)	20c		

Form 1065 (2006) **MARKWEST ENERGY PARTNERS, L.P.**

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Page 4

**Analysis of Net Income (Loss)**

1 Net income (loss). Combine Schedule K, lines 1 through 11. From the result, subtract the sum of Schedule K, lines 12 through 13d, and 16i						1	33,688,435.
2 Analysis by partner type:	(i) Corporate	(ii) Individual (active)	(iii) Individual (passive)	(iv) Partnership	(v) Exempt organization	(vi) Nominee/Other	
a General partners				15,640,714.			
b Limited partners	10,089,570.	-2,241,328.	-508,021.	-556,373.	-122,529.		

**Schedule L Balance Sheets per Books**

Assets	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
1 Cash		20,105,328.		34,402,105.
2a Trade notes and accounts receivable	101,044,831.		68,809,592.	
b Less allowance for bad debts	150,692.	100,894,139.	117,722.	68,691,870.
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach statement)	STMT 10	27,499,073.		32,938,980.
7 Mortgage and real estate loans				
8 Other investments (attach statement)	STMT 11	39,349,058.		64,239,649.
9a Buildings and other depreciable assets	525,603,137.		614,054,631.	
b Less accumulated depreciation	74,133,359.	451,469,778.	104,863,040.	509,191,591.
10a Depletable assets				
b Less accumulated depletion				
11 Land (net of any amortization)				
12a Intangible assets (amortizable only)	382,620,041.		394,428,014.	
b Less accumulated amortization	17,661,536.	364,958,505.	34,610,673.	359,817,341.
13 Other assets (attach statement)	STMT 12	41,816,951.		45,497,220.
14 Total assets		1,046,092,832.		1,114,778,756.
<b>Liabilities and Capital</b>				
15 Accounts payable		42,355,376.		86,475,768.
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities (attach statement)	STMT 13	94,198,481.		45,296,269.
18 All nonrecourse loans				
19 Mortgages, notes, bonds payable in 1 year or more		601,262,000.		526,865,000.
20 Other liabilities (attach statement)	STMT 14	1,101,745.		3,492,555.
21 Partners' capital accounts		307,175,230.		452,649,164.
22 Total liabilities and capital		1,046,092,832.		1,114,778,756.

**Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return**

Note: Schedule M-3 may be required instead of Schedule M-1 (see instructions).

1 Net income (loss) per books		6 Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize):	
2 Income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10, and 11, not recorded on books this year (itemize):		a Tax-exempt interest \$	
3 Guaranteed payments (other than health insurance)		7 Deductions included on Schedule K, lines 1 through 13d, and 16i, not charged against book income this year (itemize):	
4 Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16i (itemize):		a Depreciation \$	
a Depreciation \$			
b Travel and entertainment \$		8 Add lines 6 and 7	
		9 Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5	
5 Add lines 1 through 4			

**Schedule M-2 Analysis of Partners' Capital Accounts**

1 Balance at beginning of year	307,175,230.	6 Distributions: a Cash	64,941,077.
2 Capital contributed: a Cash	142,071,209.	b Property	
b Property	275,812.	7 Other decreases (itemize):	
3 Net income (loss) per books	70,084,198.	STMT 16	2,016,208.
4 Other increases (itemize):		8 Add lines 6 and 7	66,957,285.
		9 Balance at end of year. Subtract line 8 from line 5	452,649,164.
5 Add lines 1 through 4	519,606,449.		